

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH
O.A.NO. 107/ 2022 (WZ)

IN THE MATTER OF:-

MR. IBRA MASHNAJI KONAPURE & ANR

...APPLICANTS

VERSUS

UNION OF INDIA THROUGH SECRETARY,

MoEF & ORS

...RESPONDENT

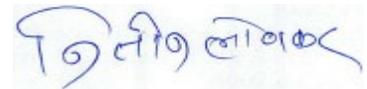
COMPILATION OF CASE LAWS ON BEHALF OF ORIGINAL APPLICANT
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Through,

Place: New Delhi

Date:21.01.2023



Advocate for Applicant
Adv. Nitin Lonkar

HANUMAN LAXMAN AROSKAR v. UNION OF INDIA

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(2019) 15 Supreme Court Cases 401

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

a

Civil Appeal No. 12251 of 2018[†]

HANUMAN LAXMAN AROSKAR .. Appellant;

Versus

UNION OF INDIA .. Respondent.

b

With

Civil Appeal No. 1053 of 2019

FEDERATION OF RAINBOW WARRIORS .. Appellant;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

c

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

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

d

e — One month's time given for this — Till then EC granted by Ministry of Environment, Forests and Climate Change (MoEFCC) on 28-10-2015 shall remain suspended — No other court or tribunal shall entertain any challenge to report that is to be submitted before Court by EAC in compliance with the present order — MoEFCC and State Government given liberty to file report of EAC before Court to facilitate passing of appropriate orders thereon (Paras 162 to 166)

f

— Concerns highlighted in judgment:

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

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

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— (2) Airport operations — Collection of baseline data — Guidance Manual for Airports specifically requires collection of baseline data on (i) land environment, (ii) water environment, (iii) air environment, (iv) noise environment, (v) biological environment, (vi) socioeconomic environment, and (vii) solid waste — As airport operations might have possible impact on biological environment, collection of baseline data on sensitive habitats and wild or endangered species in project area is contemplated — Baseline data of environmental parameters aid in preparation of an environment management plan (EMP) (Paras 63 to 69)

— (3) EAC shall have due regard to assurance furnished by concessionaire to Court that it is willing to adopt and implement necessary safeguards bearing in mind international best practices governing greenfield airports (Para 163.5)

— (4) Duty and onus of project proponent — It is duty of project proponent to make full, complete and candid disclosure of all environmental aspects — Burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of environment — However, in present case project proponent failed to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1 of EIA Notification, 2006 — Duty to disclose about forest does not mean only reserve forest as contemplated within S. 20(2) of Forest Act, 1927 or forest as understood in any statutory enactment — Expression “forest” must receive its ordinary and natural connotation — The effort must not be to overlook and destroy forests but to notice and protect them — A failure to disclose information in Form 1 impairs the functioning of EAC in preparation of ToR and in consequence, leads to preparation of a deficient EIA report — There has been a patent failure on part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law (Paras 70 to 82)

— (5) EIA report defective — EIA report failed to notice existence of Ecologically Sensitive Zones (ESZs) within buffer distance of 10 km of project site — EIA report must encompass all aspects of environmental concern which render area ecologically sensitive i.e. wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests (Paras 91 and 92)

— (6) Data collection incomplete — Allegedly, no primary data with regard to environmental parameters like air quality, water quality, noise quality and flora and fauna were collected from State of Maharashtra and related only to State of Goa (Paras 93 to 101)

— (7) Incorrect information about trees — EIA report incorrectly stated that area required for proposed airport has only few trees but evidently permissions were granted for felling 54,676 trees — Issues pertaining to vegetational cover must be taken seriously in the EIA process (Paras 102 to 109)

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- (8) Issues raised in public consultation not included in EIA — Intrinsic and instrumental value of public consultation — Stages of public consultation
- a* — Project proponent’s duty to address all material environmental concerns raised during public consultation and make appropriate changes in draft EIA and EMP — Though only seven out of sixty-eight issues dealt with issue of unemployment, project proponent observed that major issue was unemployment — Duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC, which it failed in doing (Paras 110 to 117)
- b* — (9) EAC as an expert body failed to apply mind — Duty to apply mind to documents like EIA report, outcome of public consultation and public hearing proceedings — EAC is under a mandate to conduct process of appraisal in “a transparent manner” — And make a categorical recommendation about grant of EC on stipulated terms and conditions or rejection of EC — Recommendations made by EAC to regulatory authority must be based on “reasons” — Said recommendations constitute substantive material which ultimately affects decision-making process and also might form subject-matter of challenge before Tribunal — However, minutes indicate non-application of mind by EAC with reference to 15 ESZs in study area — In absence of critical analysis EAC failed in discharging its duties under 2006 Notification (Paras 118 to 129)
- c*
- d* — (10) NGT as an expert adjudicatory body on environment failed in its duty to exercise the jurisdiction entrusted to it under S. 16(h) r/w S. 20, NGT Act, 2010 by merely deferring decision to recommend and grant an EC — Though several important submissions were urged before it, entire analysis by NGT is contained in one paragraph and next para only deals with requirement of data collection — This does not fulfil requirement of merits review by the expert adjudicatory body like NGT (Paras 130 to 141)
- e*
- (11) In environmental governance, means are as significant as ends, process of decision is as crucial as ultimate decision — However, there has been a failure of due process commencing from non-disclosure of vital information by project proponent to non-application of mind by EAC and failure of merits review by NGT — Thus in present case neither decision-making process nor ultimate decision of granting EC can be said to be valid — Bearing in mind that there is an urgency for setting up a new airport to tackle with increasing volume of passengers and at the same time protect environment, time bound directions were issued (Paras 142 to 167)
- f*
- g* — Infrastructure Laws — Carriage of Goods and Persons by Air, Land and Sea — Carriage by Air/Aircraft and Airports — Airport Development — EIA Guidance Manual for Airports, 2010 — Forests, Wildlife and Zoos — Demarcation/Determination/Identification of Forest Land — Forest Act, 1927 — S. 20 — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 — Form 1 — Regulatory Framework, Bodies and Judicial Intervention — Expert Appraisal Committee (EAC) — Duties of and manner of exercise of power while conducting EIA in grant of EC — National Green Tribunal Act, 2010 — Ss. 16(h) and 20 — Duties of and proper
- h*

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

a

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

b

— In cases concerning environmental governance, courts should decide case on merits — Such cases involve present and future generations, sustainable development for today and tomorrow — If a court comes to finding that appeal before it lacks bona fides, it may issue directions which it thinks appropriate in that case — Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment — Regulatory Framework, Bodies and Judicial Intervention — Generally — Environmental adjudication — Approach to — Constitution of India, Arts. 21 and 19(1)(g) & (g) (Para 164)

c

C. Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 distinguished from 1994 Notification (Para 41)

d

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

— In laying down a detailed procedure for the grant of an EC, 2006 Notification attempts to bridge perceived gap between environment and development — Development vis-à-vis Ecology: National, Urban and Rural Development — Development Projects — Prerequisites for/Environmental clearance/viability (Paras 45 to 62)

e

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

f

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

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Development — Development Projects — Prerequisites for/Environmental clearance/viability (Paras 45 to 62)

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

— To ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available

— This will determine what conditions be imposed for grant of EC —

b EC is required before any construction work, or preparation of land (except for securing the land) is started on the project or activity listed in the schedule to 2006 Notification — Development vis-à-vis Ecology: National, Urban and Rural Development — Development Projects — Prerequisites for/Environmental clearance/viability (Paras 34 to 62)

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

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

e Held :

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

C.1. EIA Process

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

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

h The 2006 Notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. In laying down a detailed procedure for the grant of an EC, the 2006 Notification attempts to bridge the perceived gap between the environment and development. (Para 56)

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It is for this reason that EAC and SEAC comprise experts in the field of environmental law. Given that these bodies comprise experts in the field of environmental law, the recommendation of EAC or SEAC to grant EC to an applicant or reject the application is *normally* accepted by the regulatory authority. (Paras 57 and 58)

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Given the environmental consequences of a proposed project, no difference of opinion is provided for in the grant of an EC at the State level. It is further mandated that the project management submit half-yearly compliance reports to the regulatory authority in respect of EC and conditions. (Para 59)

b

Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1-A. Crucial information regarding the particulars of the proposed project is sought to enable EAC or SEAC to prepare comprehensive Terms of Reference (ToR) which the applicant is required to address during the course of the preparation of the EIA. The ToR so prepared addresses all possible environmental concerns. It is on the basis of ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment. (Paras 60 and 61)

c

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

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C.2. Guidance Manual for Airports

In February 2010, MoEF brought out its Guidance Manual for Airports. The need for a sector-specific manual arose because the 2006 Notification “re-engineered the entire EC process” under its earlier avatar of 1994 and new sectors were incorporated into the ambit of EC process. The 2006 Notification noted that as many as 39 developmental sectors require prior ECs. Sector-specific manuals, it was hoped, would bring about standardisation in the quality of appraisal and obviate potential inconsistencies between the work performed by SEIAAs and SEACs. (Para 63)

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

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(v) biological environment; (iv) socioeconomic environment; and (vii) solid waste. (Para 64)

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

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

D. Forests

c The court cannot gloss over the patent and abject failure of the State of Goa as the project proponent in failing to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1. (Paras 70 to 73)

d It cannot be accepted that the disclosure required was of reserved forests comprehended within a notification under Section 20(2) of the Forest Act, 1927. The expression “forests”, means a forest as commonly understood, without reference to a notification under the Forest Act, 1927 or any other statutory enactment. Such an interpretation will subserve the purpose of an EIA. The purpose is to ensure that all relevant facets of the environment are noticed, that baselines are documented, and that the potential impact of a project or activity on the environment is assessed. Forests are forests without reference to recognition in a statutory form devised for a specific purpose. (Para 74)

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

f *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267; *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744, *distinguished*
Federation of Rainbow Warriors v. Union of India, 2017 SCC OnLine NGT 1964; *Federation of Rainbow Warriors v. Union of India*, 2017 SCC OnLine NGT 1962; *Federation of Rainbow Warriors v. Conservator of Forests*, 2018 SCC OnLine Bom 329 : (2018) 3 Mah LJ 424; *Hanuman Laxman Aroskar v. Union of India*, 2019 SCC OnLine SC 500, *referred to*

Alternative submission that disclosure about forests was made not tenable

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

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the functioning of EAC in the preparation of ToR and in consequence, leads to preparation of a deficient EIA report. (Paras 78 to 81)

The failure on the part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 Notification has a cascading effect on the salient objective which underlies the 2006 Notification. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment: a ‘heads I win, tails you lose’ approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law. (Para 82)

E. Ecologically Sensitive Zones (ESZs)

The glaring deficiency which emerges from the EIA report is its failure to notice the existence of ESZs within a buffer distance of 10 km of the project site. The EIA report fails to meet a classical requirement of administrative law: to take into account a relevant consideration, namely, that within the study area which has to be considered, there is the presence of ESZs. (Para 91)

The EIA report must factor in those specific features which make an area ecologically sensitive. These would encompass all aspects of environmental concern which render the area ecologically sensitive. This would include wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests. The deficiency of the EIA report emanates from its failure to notice that the purpose of the study was not only to determine whether the project site is ecologically sensitive. Confining itself to this aspect, the EIA report failed to consider a crucial and relevant consideration. (Para 92)

F. Sampling points

The submission of the appellants is that the Guidance Manual requires the collection of primary data through measures and field studies in the study area within 10 km radius from the ARP. Secondary data has to be collected within a 15 km aerial distance for the parameters mentioned in Column 9(III) of Form 1 of the 2006 Notification. In the present case, it was urged that not a single sampling station with reference to any of the parameters is situated in Maharashtra. (Para 93)

The grievance is that no data has been collected from the State of Maharashtra and all secondary data collected by the project proponent related only to the State of Goa. There is substance in the submission which has been urged on behalf of the appellant. A reading of the counter-affidavit filed by the State of Goa would seem to support the appellant’s submission. (Paras 93 to 101)

F.5. Felling of trees

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

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a data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinised the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented. (Paras 102 to 108)

b The purpose of prescribing an EIA report is precisely to undertake a baseline study on all aspects of the environment and to anticipate the impact of a projected activity on the environment. Ignoring *any* component of the environment amounts to a serious dereliction of duty which detracts from the rule of law in matters of environmental governance. (Para 108)

c Issues pertaining to vegetational cover must be taken seriously in the EIA process. The formula of planting a set number of trees for every existing tree felled must be alive to the fact that the survival of new plantations is replete with uncertainty. The survival of transplanted trees is equally a matter of uncertainty. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 Notification must be transparent, candid and robust. A regulatory regime for environmental governance is based on the hypothesis that all stakeholders will act with rectitude. Hiding significant components of the environment from scrutiny is not an acceptable modality to secure project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy. (Para 109)

G. Public consultation

e The importance of public consultation is underscored by the 2006 Notification. Public consultation, as it states, is “the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate”. This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. (Paras 110 to 112)

f Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. (Para 113)

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

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concerns raised by stakeholders. The duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC. The minutes of the meeting indicate that there was no fair and complete disclosure of the objections which were raised during the public hearing before EAC. There is evidently a failure in the process of applying and implementing the norms laid down in the 2006 Notification in this regard. (Paras 113 to 117)

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

H. Appraisal by EAC

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

- (i) the grant of a prior environmental clearance on stipulated terms and conditions; or
- (ii) the rejection of the application.

The recommendations made by EAC to the regulatory authority must be based on “reasons”. (Para 118)

EAC has failed to consider relevant circumstances bearing on the environmental impact of the project and has instead considered circumstances extraneous to its function. That the project proponent, according to EAC, has not concealed facts and circumstances is not reason enough to warrant a grant of an EC. Moreover, even this hypothesis is incorrect. There is no analysis of the EIA report. EAC has failed to answer to the call to its expertise. (Paras 119 to 125)

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

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

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be accepted. Consequently, a failure of due process before EAC, as in the present case, must lead to the invalidation of EC. (Para 129)

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

The failure to consider materials on a vital issue and indeed the non-consideration of vital issues raises a substantial question of law leading to the invoking of the jurisdiction of the Supreme Court under Section 22 of the NGT Act, 2010. The failure of process in the present case has been compounded by the absence of a merits review by NGT. (Paras 132 to 136)

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

The doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. (Para 140)

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

c EAC as an expert body abdicated its obligations to make an expert determination based on reasons. NGT as an adjudicatory body failed to exercise the jurisdiction entrusted to it under Section 16(h) read with Section 20 of the NGT Act, 2010 by merely deferring to the decision to recommend and grant an EC. The parameters in regard to the existence of substantial questions of law have hence been established in the classical or conventional sense of that expression. (Paras 130 to 141)

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

e J. Environmental rule of law

Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement—both in developed and developing countries alike. The environmental rule of law seeks to address this gap. (Paras 142 to 155)

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

g In the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive. (Paras 156 and 157)

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In the present case, there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. (Para 159) a

EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. (Para 160)

In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Bearing in mind the need to bring about a wholesome balance between the development of infrastructure of an airport and the preservation of the environment, time-bound directions should be issued. Bearing in view the necessity to maintain a balance between the need for an airport and environmental concerns, it would be appropriate if EAC is directed to revisit the conditions subject to which it granted its EC on the basis of the specific concerns which have been highlighted in this judgment. (Paras 158 and 161 to 167) b c

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

SS-D/62216/S

Advocates who appeared in this case :

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The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, J.—

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A. Introduction

1. An appeal was filed before the Principal Bench of the National Green Tribunal (NGT) at New Delhi challenging the grant of an environmental clearance (EC) for the development of a greenfield international airport at Mopa in Goa. NGT, by its judgment dated 21-8-2018¹ came to the conclusion that the present case “is not a case where the project compromises with the environment”. While affirming EC, NGT came to the conclusion that “further safeguards for environmental protection need to be incorporated”. NGT, accordingly, proceeded to formulate additional conditions, while affirming the grant of EC.
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¹ *Federation of Rainbow Warriors v. Union of India*, 2018 SCC OnLine NGT 831

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

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

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

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

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

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

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

3.6. A document styled as the “Airport Master Plan” dated 10-2-2012, submitted to the Public Private Partnership (PPP) cell of the Government of Goa by Ammann & Whitney, USA envisaging: “consultancy services for preparation of master plan, preliminary project report, tender document and project management services for the proposed greenfield airport and commercial/industrial and allied development near Mopa in the State of Goa”. e

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

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

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

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

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

d **8.** On 20-5-2015, the State of Goa submitted a final EIA report to MoEFCC, seeking the grant of an EC for the project. On 29-5-2015, MoEFCC communicated its approval for extending the validity of ToR until 31-5-2015. Between 24-6-2015 and 26-6-2015, EAC, at its 149th meeting, deliberated on the EIA report and sought additional information from the project proponent, inter alia, on:

- e* • 10 years' data regarding rainfall in the area;
- f* • Drawing of traffic circulation plan for smooth circulation of traffic in the area;
- Minimum 20% energy conservation measures should be adopted in incorporating provisions for use of LED, star rated ACs, and a revised energy conservation plan to be submitted;
- g* • Measures taken to comply with the CPCB guidelines formulated for noise pollution control in airport area to be submitted.”

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

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

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

10. The grant of EC was challenged before the Western Zonal Bench of NGT (Appeal No. 61 of 2015) by the Federation of Rainbow Warriors. Hanuman Laxman Aroskar also filed an appeal (Appeal No. 1 of 2016) before the Western Zonal Bench of NGT. These appeals were subsequently renumbered (Appeals Nos. 5 and 6 of 2018) before the Principal Bench of NGT at New Delhi. On 7-11-2017², NGT issued an ad interim order restraining the cutting or felling of trees in the area designated as the site of the proposed airport. On 22-11-2017³, the order of restraint was modified on the statement of the Advocate General of Goa that the State shall not cut or fell any trees, nor allow it to take place without valid permission from the lawful authority for a fortnight thereafter in order to enable the appellants to pursue their remedies. On 6-2-2018, the Deputy Conservator of Forests granted permission for felling 21,703 trees at the airport site. The appellate authority under the Goa, Daman and Diu Preservation of Trees Act, 1984 (6 of 1984) dismissed the appeal on 7-3-2018.

11. On 8-3-2018⁴, the High Court of Judicature at Bombay at its seat at Goa set aside the order of the Deputy Conservator of Forests and remanded the matter to be heard by the Principal Chief Conservator of Forests. On 2-4-2018, the Principal Chief Conservator of Forests stipulated several conditions for the cutting and the felling of trees at the site of the airport including: (i) enumeration of trees; and (ii) the plantation of ten times the number of trees felled. Upon being moved in a public interest litigation (PIL), the High Court by its order dated 25-4-2018 allowed the exercise of enumeration to be carried out. As a result, 54,676 trees were enumerated, including the 1548 trees which had been

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

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

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

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

b **12.** A miscellaneous application (MA No. 975 of 2018) was filed by the State of Goa before NGT on 2-7-2018 seeking permission for the felling of trees. By its judgment dated 21-8-2018¹, NGT disposed of both the appeals and the miscellaneous application filed by the State of Goa, upholding EC and imposing additional conditions to safeguard the environment. This Court has been informed that the felling of trees was initiated on 3-9-2018 and completed on 14-1-2019. Assailing the judgment of NGT, two appeals have been filed before this Court: one by Hanuman Laxman Aroskar (Civil Appeal No. 12251 of 2018) and the other by the Federation of Rainbow Warriors (Civil Appeal No. 1053 of 2019).

c **13.** On 18-1-2019⁵, notice was issued in the appeals and an order of status quo was passed by this Court. The appeals were admitted for hearing and final disposal.

d **B. Submissions**

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

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

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

h **16.1.** There were material concealments by the project proponent in failing to disclose that as many as 54,676 trees were required to be felled. Form 1, which was submitted by the project proponent, was silent in regard to the

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

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

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

“2.1.5. Biological environment
Construction phase
Impacts (Significance-Medium)

a

The area acquired for proposed airport has only few trees, mainly bushes. These will be cleared during site preparation.”

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

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

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

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

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

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

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

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

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

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the course of the public consultation covered a variety of environmental issues. Amongst them was the presence of perennial springs, the porous nature of the laterite plateau where permeation is a source of drainage for water collection and the existence of cashew plantations on which the livelihood of the local residents depends. Under the 2006 Notification, the State Pollution Control Board (SPCB) was required to collate the issues raised and the response of the project proponent, before submitting required documents to EAC. Before EAC, the project proponent in its presentation, indicated that the objections were only about employment opportunities. The project proponent clearly failed in its duty to appraise EAC about serious environmental concerns which were raised during the course of the public consultation.

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

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

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

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

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

b **21.1.** The submission of the appellants was not raised either in the public hearing or in the grounds urged before NGT, but was addressed in the written submissions filed before NGT and when a map of the Surveyor General of India was produced.

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

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

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

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

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

h ⁶ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267
⁷ (2011) 1 SCC 744

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

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

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

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

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

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

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

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25.3. A strict prohibition on “red category” industries.

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

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

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

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

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

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

d **27.2.** At its 151st meeting held on 7-9-2015 to 9-9-2015, EAC took note of a representation filed by the Federation of Rainbow Warriors and deferred further consideration of proposal for the grant of EC. The project proponent was called upon to submit a response to the issues raised in the representation.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) enumeration of all trees covered by the project site;
- (ii) issuance of tree felling permission by the Deputy Chief Conservator of Forests; and
- (iii) plantation of ten times the number of trees felled under the supervision of the Forest Department.

Thereafter, when the High Court was moved in a PIL, an order was passed on 13-6-2018 that the grant of permission for felling trees and the actual felling of trees will be carried out only after NGT granted permission in the pending proceedings. A miscellaneous application seeking permission for the felling of trees was instituted before NGT. In its final order dated 21-8-2018¹, NGT disposed of both the appeals as well as the miscellaneous application. Moreover, NGT has specifically dealt with the felling of trees in the course of its distinction.

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

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

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

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

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

(ii) PTB-foundations and column works; and

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

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

d **33.** The rival submissions now fall for our consideration.

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

C. 1. EIA Process

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

f **35.** The Constitution (Forty-second Amendment) Act, 1976, which came into force with effect from 3-1-1977, inserted Article 48-A to the Constitution which mandates that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51-A(g) of the Constitution places a corresponding duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm (the Stockholm Conference) in June 1972 in which India participated, Parliament enacted the Environment (Protection) Act, 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

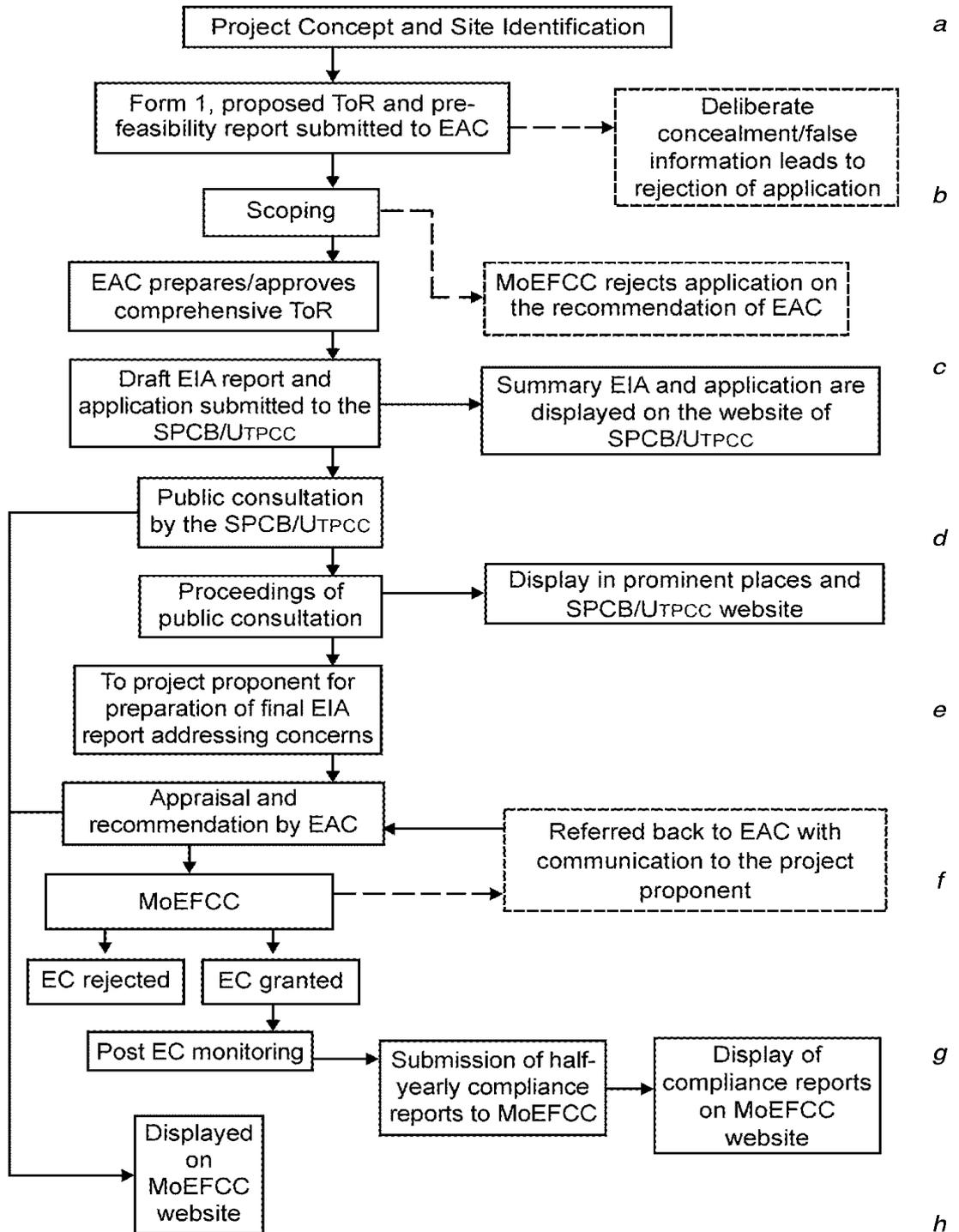
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EIA Process for Category 'A' projects



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43. Based on the spatial extent of the potential impact and the potential impacts on human health and natural and man-made resources, the 2006 Notification categorises all projects into Category 'A' and Category 'B' projects. MoEFCC in the Central Government and SEIAA at the State level constitute the regulatory authorities for the purposes of the notification. Category 'A' projects require prior environmental clearance from MoEFCC, based on the recommendation of EAC constituted by the Central Government for this purpose. Category 'B' projects will require prior environmental clearance from SEIAA, based on the recommendations of SEAC. Where no SEIAA or SEAC has been constituted, Category 'B' projects are treated as Category 'A' projects.

44. Once a prospective site has been identified by the applicant for the proposed project, all applications seeking an EC shall be made in the prescribed Form 1 and Supplementary Form 1-A⁸, if applicable. The application must be submitted prior to the commencement of any construction activity, or preparation of the land at the site. A pre-feasibility report must also be submitted with the application except in the cases of construction projects in Item 8 of the Schedule, for which a conceptual plan must be submitted. The significance of the information furnished by the applicant in Form 1 shall be explored shortly.

45. The process to obtain environmental clearance as stipulated by the notification for *new* projects⁹ comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the notification:

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

Screening

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

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

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

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Scoping

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

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Public Consultation

48. Prior to this stage, a summary EIA is prepared in the format given in Appendix IIIA on the basis of ToR furnished to the applicant. This stage involves the process “by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate”. The detailed procedure is stipulated in Appendix IV. Subject to the exceptions provided in the 2006 Notification, all Category ‘A’ and Category ‘B1’ projects shall undertake the public consultation process. This stage comprises of two components:

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

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

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

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

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

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

Appraisal

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

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- (i) Final EIA report
 - (ii) A copy of the video tape or CD of the public hearing proceedings
 - (iii) A copy of the final layout plan
 - (iv) A copy of the project feasibility report.

e **53.** The regulatory authority must examine the documents “strictly with reference to ToR” and communicate any inadequacy to EAC or SEAC, as the case may be, within 30 days of receipt of the documents. Within sixty days of the receipt of all the documents, EAC or SEAC, as the case may be, shall complete the appraisal process as prescribed in Appendix V. Within the next fifteen days, EAC or SEAC shall make categorical recommendations to the regulatory authority concerned to either grant EC on the stipulated terms and conditions or reject the application, together with reasons. The appraisal of projects which are not required to undergo the public consultation process or

f the submission of an EIA is to be carried out on the basis of the prescribed application Form 1 or Form 1-A, as applicable.

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

h the decision to the applicant within the next 30 days.

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

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

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

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

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

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- 60.** Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1-A. Crucial information regarding the particulars of the proposed project is sought to enable EAC or SEAC to prepare comprehensive ToR which the applicant is required to address during the course of the preparation of the EIA. Some of the information sought is produced thus:
- 60.1.** Construction, operation or decommissioning of the project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.).
- 60.2.** Use of natural resources for construction or operation of the project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply).
- 60.3.** Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health.
- 60.4.** Production of solid wastes during construction, operation or decommissioning.
- 60.5.** Release of pollutants or any hazardous, toxic or noxious substances to air.
- 60.6.** Generation of noise and vibration, and emissions of light and heat.
- 60.7.** Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea.
- 60.8.** Risk of accidents during construction or operation of the project, which could affect human health or the environment.
- 60.9.** Environment sensitivity which includes, amongst other things, the furnishing of the following details:
- 60.9.1.** Areas protected under international and national legislation.
- 60.9.2.** Ecologically sensitive areas.
- 60.9.3.** Areas used by protected, important or sensitive species of flora or fauna.
- 61.** Under the 2006 Notification, EC process is based on the information provided by the applicant in Form 1. That the information provided in Form 1 is crucial can be borne from the following circumstances:
- 61.1.** EAC or SEAC, as the case may be, formulates comprehensive ToRs on the basis of the information furnished in Form 1 which addresses all possible environmental concerns. It is on the basis of ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment.
- 61.2.** At the appraisal stage, the regulatory authority examines the documents submitted by the applicant “strictly with reference to ToR” and communicates any inadequacy to EAC or SEAC.

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

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

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

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

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

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C.2. Guidance Manual for Airports

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

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“Primary data through measurements and field surveys; and secondary data from secondary sources are to be collected in the study area within 10 km radius from Aerodrome Reference Point (ARP). Primary data should cover one season other than monsoon and secondary data is to cover one full year. The basis for selection of these criteria is that the aircraft gains

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

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

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

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

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

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

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

b

c

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

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

d

e

Local emissions attributed to aircraft operations at airports include oxides of nitrogen (NO_x), carbon monoxide (CO), hydrocarbons (HC), sulphur dioxide (SO₂), and particulate matter (PM 10 and PM 2.5).

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

f

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

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

- a (i) Baseline data from field observations for various terrestrial and aquatic systems are to be generated.
- (ii) Comparison of the data with authentic past records to understand changes is undertaken.
- (iii) Environmental components like land, water, flora and fauna are characterised and,
- b (iv) The impact of airport development on vegetation structure in and around project site is to be understood.

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

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

e **D. Forests**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h

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

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

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

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

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

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

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

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

E. Ecologically Sensitive Zones (ESZs)

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

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

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

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

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

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

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

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

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

<i>State</i>	<i>District</i>	<i>Taluk</i>	<i>Village Name</i>
Maharashtra	Sindhudurg	Sawantwadi	Tamboli
Maharashtra	Sindhudurg	Sawantwadi	Kumbhavade
Maharashtra	Sindhudurg	Sawantwadi	Degave
Maharashtra	Sindhudurg	Sawantwadi	Banda
Maharashtra	Sindhudurg	Sawantwadi	Padve Majgaon
Maharashtra	Sindhudurg	Sawantwadi	Ronapal
Maharashtra	Sindhudurg	Sawantwadi	Padve
Maharashtra	Sindhudurg	Sawantwadi	Dandeli
Maharashtra	Sindhudurg	Sawantwadi	Madura
Maharashtra	Sindhudurg	Sawantwadi	Dingne
Maharashtra	Sindhudurg	Sawantwadi	Aros
Maharashtra	Sindhudurg	Sawantwadi	Galel
Maharashtra	Sindhudurg	Sawantwadi	Kondure
Maharashtra	Sindhudurg	Sawantwadi	Satarada
Maharashtra	Sindhudurg	Sawantwadi	Dongarpal
Maharashtra	Sindhudurg	Sawantwadi	Sateli Tarf Soundal"

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

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

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

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

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

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

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

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

(a) Mining, quarrying and sand mining;

(b) Thermal power plants;

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

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

(e) "Red category" industries.

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

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

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

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

F. Sampling points

93. The submission of the appellants is that the Guidance Manual requires the collection of primary data through measures and field studies in the study area within 10 km radius from the ARP. Secondary data has to be collected within a 15 km aerial distance for the parameters mentioned in Column 9(III) of Form 1 of the 2006 Notification. In the present case, it was urged that not a single sampling station with reference to any of the parameters is situated in Maharashtra. As a result, no sampling sites for any of the parameters fall within 40% of the study area. Consequently, no primary data collection was done despite the carrying out of two samples in 2011 and 2014 respectively. In response to this submission, it has been urged that all sampling points were based on Para 4.1 of the Guidance Manual. As a result, it was submitted that areas within Goa and Maharashtra were studied along with impact studies. In order to assess the submission, it is necessary to refer to relevant aspects of the EIA report:

F.1. Air quality

94. In order to study the ambient air quality in terms of suspended particulate matter, respirable particulate matter, SO₂, NO_x, CO and HC, ambient air quality monitoring stations were set up at six locations. They are at Sinechaadvin, Katwal, Mopa Village, Pernem, Nagzor and Patradevi. All are in Goa. The location at Patradevi was on the border shared by Goa with Maharashtra. The study area extended to a radial distance of 10 km from the ARP. We accept the submission of the ASG that they would hence cover areas falling within both Goa and Maharashtra. Para 4.1.2 of Chapter IV of the EIA

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

F.2. Water quality

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

F.3. Noise quality

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

F.4. Flora and fauna

d 97. The EIA report indicates that the area surrounding the site for the proposed airport has dense forests¹⁰. These total up to nearly 6634.19 hectares¹¹. Ms Shenoy has urged that it is impossible that the fauna found by the project proponent through both primary sampling and secondary sources was only limited to animals such as: domestic dog, cat and cattle, common house mouse, rat and mongoose, jackal and the three striped palm squirrel. This, in her submission, is a clear indication that the EIA report is faulty and clearly incorrect.

e 98. While dealing with the above submissions, it is necessary to note that the Guidance Manual contains a specific reference to the collection of data of sensitive habitats and wild/endangered species in the project area. The Guidance Manual stipulates thus:

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

h 10 See for instance Para 2.0 of the executive summary and Para 2.3.1 of Chapter I.
11 See Para 2.3.1, Chapter II.

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

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

“I say that several recognised publications and research papers were referred to in order to verify and assess the data collected, to name a few of the publications: b

- (i) *Birds of Goa* by Heinz Lainer & Rahul Alvares;
- (ii) *The Goan Jungle Book* by Nirmal Kulkarni;
- (iii) *A Photographic Guide to Butterflies of Goa* by Parag Ragnekar; c
- (iv) *Flora of Goa, Diu, Daman, Dadra and Nagarhaveli* (Vol. 1) by R.S. Rao;
- (v) *Flora of Goa, Diu, Daman, Dadra and Nagarhaveli* (Vol. 2) by R.S. Rao;
- (vi) *Red Data Book* published by Botanical Survey of India; d
- (vii) Study materials published in Goa ENVIS Centre were also referred.”

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

“(a) A rapid survey to assess mammal presence at Barazan Plateau, Mopa, Goa, India conducted by Girish Punjabi (Wildlife Biologist) and Atul S. Borker (Full Member of IUCN/SSC Otter Specialist Group) that Schedule I species such as gaur, leopard and Indian Pangolin; Schedule II species such as giant squirrel, common palm civet; Schedule III species such as sambar, wild pig and Schedule IV species such as Indian hare, Indian porcupine. f

The report also mentions the presence of the Sawantwadi — Dodamarg wildlife corridor within the 10 km proposed project site.

(b) Report on one day survey conducted to find evidence of Otter presence at Mopa, Goa conducted by Atul Borker (Full Member of IUCN/SSC Otter Specialist Group) that found that a perennial stream on the plateau had presence of the smooth coated otter, that falls within Schedule II of the Wildlife (Protection) Act, 1972. g

(c) Report on two days’ survey to find evidence of plant and bird species at Mopa Plateau conducted by Aparna Watve (Ecologist) and Sanjay Thakur (Wildlife Biologist) that found Schedule I species such as the Indian peafowl and the Dipcadi Concanese which is critically h

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

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

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

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

F.5. Felling of trees

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

f “*The area required for proposed airport has only few trees, mainly bushes.* These will be cleared during site preparation.” (emphasis supplied)

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

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

104.1. The enumeration of all trees. a

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

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

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

105. On 6-2-2018, the Deputy Conservator of Forests had granted permission for felling of 21,703 trees. Following the dismissal of an appeal under Section 15 of the Goa, Daman and Diu Preservation of Trees Act, 1984 filed by the Federation of Rainbow Warriors, a writ petition was filed before the Bombay High Court (WP No. 1 of 2018). The High Court set aside⁴ the order of the Deputy Conservator of Forests and remanded the proceedings to the Principal Chief Conservator who passed the order which has been noted above. Following the order of the Principal Chief Conservator, 54,676 trees were enumerated. The competent authority granted permission for the felling of trees thereafter on the following dates: c

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

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

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

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

“E. *Biological environment* f

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

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

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

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

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

b **106.** We express our serious displeasure with the manner in which the EIA report made an attempt to gloss over the existence of trees. The EIA report prevaricated by recording that the area required for the proposed airport has only a few trees, mostly bushes. The EIA report states that vegetation and trees are sparse at the site. A photograph and a google map image are put forth as illustrations in Figure 2.3 of Chapter II. To realise later that the project involved the felling of 54,676 trees is indicative of the cavalier approach to the issue and a process of fact finding which is parsimonious with the truth. Post facto explanations are inadequate to deal with a failure of due process in the field of environmental governance. The State of Goa would have us gloss over the c felling of trees by submitting that 54,676 trees over a project area of 2133 ac averages out to 25 trees per acre or one tree over an area of 160 sq m. This is a fallacious approach to the issue. Mathematical averages cannot displace factual data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinised the number of trees, their nature d and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented.

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

- (i) 32,193 trees representing 59% had a girth of 30 to 50 cm;
- (ii) 19,903 trees representing 36% had a girth of 50 to 100 cm; and
- (iii) “only 2580 trees” had a girth exceeding 100 cm.

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

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

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

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

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

G. Public consultation

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

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

112. The 2006 Notification postulates:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114.8. Local plantations would be affected.

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

114.10. The Dodamarg Wildlife Sanctuary had been “sanitised” by the High Court. c

114.11. Forest clearance had not been obtained.

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

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

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

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

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

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

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

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

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

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

d **H. Appraisal by EAC**

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

- f (i) the grant of a prior environmental clearance on stipulated terms and conditions; or
(ii) the rejection of the application.

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

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

- “(i) There is a need to superimpose the layout plan showing the drainage pattern including natural drainage, construction in the area on superimposed map showing clear topography of the region;
(ii) 10 year data regarding rainfall in the area;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d 122.1. The “peculiar circumstances” of the case.

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

122.3. The “larger public interest” involved.

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

e 122.5. The project is in the public interest.

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

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

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

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

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

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

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

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

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

127. EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment. It is not bound by the analysis which is conducted in the EIA report. It is duty-bound to analyse the EIA report. Where it finds it deficient it can adopt such modalities which, in its expert decision-making capacity, are required. The reasons which are furnished by EAC constitute a live link between its processes and the outcome of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated. g
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128. Mr A.N.S. Nadkarni, learned ASG, urged that EAC had, in its 149th meeting, sought additional information on six issues. Subsequently, at its
 a 151st meeting, it deferred consideration upon the representation filed by the Federation of Rainbow Warriors and at its 152nd meeting, it analysed the response of the project proponent to the representation. Hence, EAC must be deemed to have applied its mind. This approach is completely flawed. At its 149th meeting, EAC specifically called for a clarification on six issues. The next meeting was deferred. The minutes of the 152nd meeting contain
 b no assessment of whether the clarifications which were sought by EAC had been replied to its satisfaction by the project proponent. The objection to the modalities adopted by EAC, however, are more fundamental. The minutes of the 152nd meeting indicate that EAC primarily, if not exclusively, dealt with the “pointwise clarifications” of the project proponent to the representation by the Federation of Rainbow Warriors. Dealing with a representation is not
 c exhaustive of the function of EAC. Arguably, if no representation was received, or if a representation submitted by an individual objector is found to be incorrect, that by itself is no ground to recommend an EC.

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

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

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

“**16. Tribunal to have appellate jurisdiction.**—Any person aggrieved by—

* * *

g (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the
 h Environment (Protection) Act, 1986 (29 of 1986);”

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131. Section 20 mandates that the Tribunal shall, while passing any order, decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Several decisions of this Court have given meaning to these principles¹³.

132. The decision of NGT indicates that several significant submissions were urged before it. The entire analysis by NGT is contained in one paragraph of its judgment dated 21-8-2018¹ which is extracted below: (*Federation of Rainbow Warriors case*¹, SCC OnLine NGT para 27)

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

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

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

“5. (2) A person shall not be qualified for appointment as an Expert Member, unless he—

(a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five year’s practical experience in the field of environment and

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

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

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

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

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

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

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

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

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

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

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

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14 (2013) 1 All India NGT Reporter 1
15 2014 SCC OnLine NGT 15

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

* * *

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

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

137. The learned ASG has placed reliance on the decision of this Court in *Lafarge Umiam Mining (P) Ltd. v. Union of India*¹⁶ (*Lafarge*) to contend that the failure to disclose the presence of trees should not lead to the invalidation of EC. In that case, an application was made under the 1994 Notification for the grant of an EC to a proposed limestone mining project at Nongtraï Village, East Khasi Hills District, Meghalaya. EC was granted for the project in 2001. Pursuant to a letter by the Principal Chief Conservator of Forests to MoEF drawing attention to the non-disclosure of forests, the project proponent applied for a revised EC and forest clearance under the Forest (Conservation) Act, 1980. An ex post facto EC along with forest clearance was granted in 2010. Challenging the grant of EC, it was urged that there was a failing on part of the project proponent to disclose the presence of forests on the proposed project site.

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

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

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

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

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

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

138.6. The 2006 Notification was not applicable.

16 (2011) 7 SCC 338

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

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

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

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

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

“119. ... In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint.”

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

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

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

¹⁷ (2019) 18 SCC 494 : 2019 SCC OnLine SC 322

¹⁸ 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

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

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

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J. Environmental Rule of Law

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

143. Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement — both in developed and developing countries alike¹⁹. The environmental rule of law seeks to address this gap.

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144. The environmental rule of law provides an essential platform underpinning the four pillars of sustainable development — economic, social, environmental and peace¹⁹. It imbues environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance¹⁹. The environmental rule of law becomes a priority particularly when we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, supports sustainable economic and social development, protects public health,

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¹⁹ United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y>

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a contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights¹⁹. Similarly, the rule of law in environmental matters is indispensable “for equity in terms of the advancement of the Sustainable Development Goals (SDGs), the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socioeconomic rights²⁰.”

b **145.** Amartya Sen argues for a broadening of the notion of sustainable development which is the most dominant theme of environmental literature, from a need-based standard²¹ to a standard based on freedoms²². Thus recharacterised, it encompasses the preservation, and when possible even the expansion of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar — or more — freedoms. The intertwined concepts of environmental rule of law thus further intragenerational as well as intergenerational equity.

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

g ¹⁹ United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y>

²⁰ “UN Environment, Environmental Rule of Law”. Available at <<https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0>>

h ²¹ Brundtland definition of Sustainable Development

²² Amartya Sen, “Sustainable Development and Our Responsibilities”. Available at <<http://www.comitatoscientifico.org/temi%20SD/documents/SEN%20Responsibility&SD%2010.pdf>>

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147. In 2016, the First World Environmental Law Congress, co-sponsored by the International Union for Conservation of Nature and UN Environment, adopted the IUCN World Declaration on the Environmental Rule of Law²³ which outlines 13 principles for developing and implementing solutions for ecologically sustainable development:

- (i) Obligation to Protect Nature
- (ii) Right to Nature and Rights of Nature
- (iii) Right to Environment.
- (iv) Ecological Sustainability and Resilience
- (v) In Dubio Pro Natura
- (vi) Ecological Functions of Property
- (vii) Intragenerational Equity
- (viii) Intergenerational Equity
- (ix) Gender Equality
- (x) Participation of Minority and Vulnerable Groups
- (xi) Indigenous and Tribal Peoples
- (xii) Non-regression
- (xiii) Progression

148. Dhvani Mehta's doctoral thesis²⁴ explores this idea of environmental rule of law in the Indian context by analysing the functioning of the three institutions of the Government with regard to environmental law. It develops a framework to assess whether the environmental rule of law in India is being strengthened or weakened, through an analysis of the legal instruments of each of the institutions of Government—statutes, executive orders and judicial decisions. The indicators on the basis of which this is done are:

- (a) the capacity of statutes to guide behaviour (one of the organising principles of the rule of law) by clearly articulating goals or balancing competing interests;
- (b) the ability of the executive to take flexible but reasoned decisions grounded in primary legislation; and
- (c) the ability of the judiciary to apply statutory interpretation and consistent standards of judicial review to give effect to environmental rights and principles.

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

- (i) Eradication of poverty;
- (ii) Eradication of hunger;
- (iii) Good health and well-being;

²³ IUCN, "Environmental Rule of Law". Available at <[://www.iucn.org/commissions/world-commission-environmental-law/wcel-resources/environmental-rule-law](http://www.iucn.org/commissions/world-commission-environmental-law/wcel-resources/environmental-rule-law)>

²⁴ Dhvani Mehta, *The Environmental Rule of Law in India*, University of Oxford, 2017. Available at <<https://ora.ox.ac.uk/objects/uuid:730202ce-f2c4-4d2f-9575-938a728fe82a>>

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- (iv) Quality education;
- (v) Gender equality;
- a (vi) Clean water and sanitation;
- (vii) Affordable and clean energy;
- (viii) Decent work and economic growth;
- (ix) Industry, innovation and infrastructure;
- (x) Reduced inequalities;
- b (xi) Sustainable cities and communities;
- (xii) Sustainable consumption and production;
- (xiii) Climate action;
- (xiv) Protecting life below water;
- (xv) Life on land;
- c (xvi) Peace, justice and strong institutions; and
- (xvii) Partnerships to achieve the goals.

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

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

152. The statistics on climate change indicate that:

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

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

152.3. Since 1990, global emissions of CO₂ increased by almost 50%.

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

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

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

154. On 2-10-2016, India ratified the Paris Agreement²⁵ on climate change which reaffirmed the goal of “limiting global temperature increase to well below 2°C, while pursuing efforts to limit the increase to 1.5 degrees above pre-industrial levels”. Article 5 of the Agreement encourages parties to conserve and enhance sinks and reservoirs of greenhouse gases, which include forests. Under its Nationally Determined Contributions under the Paris Agreement, India made the following three commitments²⁶:

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

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

(iii) An additional “carbon sink” of 2.5 to 3 billion tonnes of CO₂ equivalent through additional forest and tree cover will be created by 2030.

155. In March 2019, UNEP released the Global Environment Outlook themed “Healthy Planet, Healthy People”²⁷. Noting clear “links between human health and the state of the environment”, the report concludes that clean-up and efficiency improvements are not adequate to pursue the 2030 Agenda and SDGs and achieve the internationally agreed environmental goals on pollution control. Instead, “transformative change” which reconfigures basic social and production systems and structures is needed. This includes well-designed policies on institutional frameworks, social practices, cultural norms and values along with their implementation, compliance and enforcement. In this view, a systemic and integrated policy action²⁷ would ensure that a “healthy environment is a prerequisite and foundation for economic prosperity, human health and well-being”²⁷.

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

²⁵ Entered into force on 4-11-2016.

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

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

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157. The 2006 Notification must hence be construed as a significant link in India's quest to pursue SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.

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

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

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

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

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

162. Bearing in view the necessity to maintain a balance between the need for an airport and environmental concerns, we are of the view that it would be appropriate if EAC is directed to revisit the conditions subject to which it granted its EC on the basis of the specific concerns which have been highlighted in this judgment. Such an exercise primarily is for EAC to carry out in its expert decision-making capacity. EAC is entrusted with that function as an expert body. The role of judicial review is to ensure that the rule of law is observed. Hence, we propose by the directions which we will issue under Article 142 of the Constitution, to direct EAC to revisit the conditions for the grant of an EC. While doing so, it would be open to EAC to have due regard to the conditions which were incorporated in the order of NGT and to suitably modulate those conditions in pursuance of the liberty which we have preserved to it. To facilitate an expeditious decision, we propose to direct EAC to carry out this exercise in a prescribed time schedule during which period, EC shall remain suspended. We propose to direct that after EAC has formulated its views, they shall be placed before this Court in a miscellaneous application in the present proceedings, so as to enable the Court to pass final orders. The miscellaneous application may be filed either by the State of Goa as the project proponent or by MoEFCC. We clarify that no other court or tribunal shall entertain any challenge to the ultimate decision of EAC and final orders thereon shall be passed by this Court in the present proceedings. b

K. Directions c

163. We accordingly issue the following directions: d

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

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

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

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

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

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

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

164. Before we part with the present case, we consider it appropriate to record a finding on the bona fides of the appellants before this Court. It was briefly urged by the respondents that the appellants have invoked the jurisdiction of this Court based on a personal agenda and consequently, the present appeal is liable to be dismissed. This argument cannot be accepted. We accept the submission of Ms Shenoy, learned counsel appearing on behalf of the appellants, that the non-consideration of vital issues by EAC has led to the invocation of the statutory remedy available to them under Section 22 of the NGT Act, 2010. Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment. If a court comes to the finding that the appeal before it was lacking bona fides, it may issue directions which it thinks appropriate in that case. In cases concerning environmental governance, it is a duty of courts to assess the case on its merits based on the materials present before it. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow.

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

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

Civil Appeal No. 1053 of 2019

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

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(BEFORE KULDIP SINGH, S. SAGHIR AHMAD AND B.N. KIRPAL, JJ.)

a INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 664 of 1993[†], decided on April 18, 1996

b **A. Constitution of India — Arts. 32 & 226, 21, 48-A and 51-A — PIL — Ecological fragility — Non-compliance with anti-pollution laws — Govt. apathy — Orders and directions are issued by court for implementation and enforcement of the laws to protect the fundamental right to life of the people — Passing such orders and directions do not amount to usurpation of legislative or executive function — They are issued by the court in discharge of its judicial function — However, Court is not concerned with day-to-day enforcement of the law which is the function of the executive — High Courts being acquainted with the local conditions, they would be in a better position to ensure proper implementation of the law — PIL complaining ecological degradation in coastal areas — Notification issued by Central Govt. under R. 5(3)(d) of Environment Protection Rules, 1986 after detailed study of relevant issues — Non-compliance with the notification alleged and subsequent amendments to the notification challenged on ground that the same resulted in defeating the intent of the**

c **notification — Contentions directed to be raised before respective High Courts — Meanwhile no development should take place in ‘no-development zone’ in the coastal area — Environment Protection Act, 1986, S. 3(1) and (2)(v) — Environment Protection Rules, 1986, R. 5(3)(d)**

B. Ecology — Generally — Anti-pollution laws — Proper implementation and enforcement of, is of prime importance to avoid ecological degradation and its adverse effects — Jurisprudence — Law — Enforcement of

e **C. Environment Protection Rules, 1986. — R. 5(3)(d) — Central Govt.’s notification under — Presumed to have been issued after due deliberations and study — While issuing such notification Govt. should endeavour to strike a balance between ecological interests and economic, social and cultural interests — Industrial development at the cost of environmental degradation or environmental protection at the cost of industrial and economic growth not**

f **warranted**

D. Jurisprudence — Law — Object and purpose of — Non-enforcement or condonation of violation of — Propriety — Rule of law — Public Interest Litigation — Seeking enforcement of laws — Maintainability — Constitution of India, Arts. 32 & 226, 51-A and 48-A

g **E. Constitution of India — Art. 226 — PIL — High Courts must shoulder greater responsibilities in taking up local issues of which they can have closer awareness and easy monitoring such as ecological matters in their respective States in the light of law laid down by the Supreme Court — This would ensure that the orders passed are effective and complied with — Ecology — PIL — Place of filing**

h The Central Government issued a notification dated 19-2-1991 (‘the main Notification’) in exercise of the powers conferred on it by clause (d) of sub-rule (3) of Rule 5 of the Environment Protection Rules, 1986. By this notification, it declared

[†] Under Article 32 of the Constitution of India

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the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which were influenced by tidal action (in the landward side) up to 500 metres from the High Tide Line ('HTL') and the land between Low Tide Line ('LTL') and HTL as Regulation Zones. With regard to this area, it imposed, with effect from the date of the said notification, various restrictions on the setting up and expansion of industries, operation or processes etc. in the said Regulation Zones. It was clarified that for the purposes of the main Notification, HTL was defined as the line up to which the highest high tide reaches at springtime. Subsequently, a Notification dated 18-8-1994 was issued making six amendments in the main Notification. These amendments were made after the receipt of the report of a committee, headed by Mr B.B. Vohra, which had been set up by the Central Government. There is no challenge to the validity of the main Notification. A writ petition by way of public interest litigation was filed alleging that there had been blatant violation of the main notification and industries were illegally being set up, thereby causing serious damage to the environment and ecology of the area. It was also submitted that the Ministry of Environment and Forests except for issuing the main Notification, had taken no steps to follow up its own directions contained in the main Notification. The validity of the Notification dated 18-8-1994 was also challenged. The main prayer in the writ petition was that the Supreme Court should issue appropriate writ, order or direction to the respondent so as to enforce the main Notification.

Held :

The main Notification was issued under Sections 3(1) and 3(2)(v) of the Environment Protection Act, presumably after a lot of study had been undertaken by the Government. Normally, such notifications are issued after a detailed study and examination of all relevant issues. In matters relating to environment, it may not always be possible to lay down rigid or uniform standards for the entire country. While issuing the notifications like the present, the Government has to balance various interests including economic, ecological, social and cultural. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation such developmental activity is sought to be regulated. (Paras 32 and 31)

Having issued the main Notification, no follow-up action was taken either by the coastal States and Union Territories or by the Central Government. The provisions of the main Notification appear to have been ignored and, possibly violated with impunity. There has been a complete laxity in the implementation of the Act and other related statutes. (Paras 27 and 45)

Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that

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a it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations. (Para 26)

b With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public-spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. (Para 41)

c The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law for the protection of the fundamental rights of the people. Passing of appropriate orders requiring the implementation of the law cannot be regarded as the court having usurped the functions of the legislature or the executive. The orders are passed and directions are issued by the court in discharge of its judicial function, namely, to see that if there is a complaint by a petitioner regarding the infringement of any constitutional or other legal right, as a result of any wrong action or inaction on the part of the State, then such wrong should not be permitted to continue. (Paras 41 and 28)

d For effective orders to be passed, so as to ensure that there can be protection of environment along with development, it becomes necessary for the court dealing with such issues to know about the local conditions. Such conditions in different parts of the country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling

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such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by the Supreme Court, more effective implementation of the same can, in a number of cases, be effected, if the High Courts concerned assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology. (Para 42)

a

There is a likelihood that there will be instances of infringement of the main Notification and also of the Management Plans, as and when framed, taking place in different parts of the country. Instead of agitating these questions before the Supreme Court, now that the general principles have been laid down and are well-established, it will be more appropriate that action with regard to such infringement even if they relate to the violation of fundamental rights, should first be raised before the High Court having territorial jurisdiction over the area in question. It is expected that each High Court will deal with such issues urgently. Environmental law has now become a specialised field. In the decision which was taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June 1992 in which India had also participated, the States had been called upon to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages. (Para 43)

b

c

Allegations relating to infringement of any Government notification should be filed in the High Courts having territorial jurisdiction and the High Courts should issue appropriate orders and directions. (Para 43)

d

There is 6000 kms long coastline of India. It is the responsibility of the coastal States and Union Territories in which these stretches exist to see that both the notifications are complied with and enforced. Management Plans have to be prepared by the States and approved by the Central Government. If the said plans have been approved, the development can take place only in accordance therewith. Till the preparation and approval of the said plans by virtue of the provisions of the main Notification, no development in the coastal areas within the NDZ can take place. Therefore, it is in the interest of all concerned that the Management Plans are submitted and approved at the earliest. (Para 44)

e

With increasing threat to the environmental degradation taking place in different parts of the country, it may not be possible for any single authority to effectively control the same. Environmental degradation is best protected by the people themselves. In this connection, some of the non-governmental organisations (NGOs) and other environmentalists are doing singular service. Time has perhaps come when the Government can usefully draw upon the resources of such NGOs to help and assist in the implementation of the laws relating to protection of the environment. Under Section 3 of the Act, the Central Government has the power to constitute one or more authorities for the purposes of exercising and performing such powers and functions, including the power to issue directions under Section 5 of the Act of the Central Government as may be delegated to them. (Para 47)

f

Considering the fact that the Pollution Control Boards are not only overworked but simultaneously have a limited role to play insofar as it relates to controlling of pollution for the purpose of ensuring effective implementation of the notifications of 1991 and 1994, as also of the Management Plans, the Central Government should consider setting up under Section 3 of the Act, State Coastal Management Authorities in each State or zone and also a National Coastal Management Authority.

g

(Para 47)

h

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[Directions for the State and Central Governments and submission of reports passed. (Para 47)]

a *Indian Council for Enviro-Legal Action v. Union of India*, (1995) 3 SCC 77, referred to R-M/T/16136/C

Advocates who appeared in this case :

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Ms H. Wahi, P.K. Manohar, S.K. Sinha, R.K. Mehta, K.L. Taneja, C.V.S. Rao, S.K. Mehta, A.S. Bhasme, Ms M. Karanjawala, V. Krishnamurthi, Vineet Kumar, K. Ram Kumar, A. Mariarputham, R. Sasiprabhu, P.N. Puri, Kh. Nobin Singh, Ms Indu Malhotra, Ms Meenakshi Arora, Sanjay Parikh, Anip Sachthey, H.K. Puri, S.N. Bhat and Ms Ruby Ahuja, Advocates, for the Respondents.

Chronological list of cases cited on page(s)

1. (1995) 3 SCC 77, *Indian Council for Enviro-Legal Action v. Union of India* 292a

ORDER

c 1. Concern for the protection of ecology and for preventing irreversible ecological damage to the coastal areas of the country has led to the filing of the present petition under Article 32 of the Constitution of India as a public interest litigation.

d 2. The main grievance in this petition is that a notification dated 19-2-1991 declaring coastal stretches as Coastal Regulation Zones (hereinafter referred to as 'the Regulation Zones') which regulates the activities in the said zones has not been implemented or enforced. This has led to continued degradation of ecology in the said coastal areas. There is also a challenge to the validity of the notification dated 18-8-1994 whereby the first notification dated 19-2-1991 has been amended, resulting in further relaxations of the provisions of the 1991 Notification and such relaxation, it is alleged, will help in defeating the intent of the main Notification itself.

e 3. The petitioner is a registered voluntary organisation working for the cause of environment protection in India. India has a coastline running into 6000 kms which has abundance of natural endowments, geographic attractions and natural beauty. According to the petitioner, these coastal areas are highly complex and have dynamic ecosystems, sensitive to development pressures. The stresses and pressure of high population growth, non-restrained development, lack of adequate infrastructure facilities for the resident population are stated to be some of the factors responsible for the decline in environmental quality in these areas. The developmental activities in the coastal areas are stated to cause short-term and long-term physical, chemical and biological changes that will and has caused damage to flora and fauna, public health and environment. It is further alleged that as a consequence of indiscriminate industrialisation and urbanisation, without the requisite pollution control systems, the coastal waters are highly polluted.

f 4. It is further the case of the petitioner that some of the coastal areas contained extensive groundwater resources and sometimes mineral resources, while in other areas, there are iron ore, oil and gas resources and mangrove forests. As a result of the impact of tidal waves and cyclones, mangrove forests are being increasingly destroyed, while some of the major

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fishing areas in some of the coastal areas of the country are undergoing serious damage consequent to ecologically unsound development. Over-exploitation of groundwater in the coastal areas in places like Madras and Vishakhapatnam is stated to have resulted in growing intrusion of salt water from the sea to inland areas and fresh water aquifers previously used for drinking, agriculture and horticulture are getting highly damaged. Unplanned urbanisation and industrialisation in the coastal belts is stated to be causing fast disappearance of fertile agricultural lands, fruit gardens and energy plantations like casuarina trees, that serve as windbreakers and protect inland habitations from the cyclonic damages.

5. With a view to protect the ecological balance in the coastal areas, the then Prime Minister is stated to have written a letter in November 1981 to the Chief Ministers of coastal States in which she stated as under:

“The degradation and misutilization of beaches in the coastal States is worrying as the beaches have aesthetic and environmental value as well as other values. They have to be kept clear of all activities at least up to 500 metres from the water at the maximum high tide. If the area is vulnerable to erosion, suitable trees and plants have to be planted on the beaches without marring their beauty. Beaches must be kept free from all kinds of artificial development. Pollution from industrial and town wastes must also be avoided totally.”

Working groups were set up by the Ministry of Environment and Forests in 1982 to prepare environmental guidelines for development of beaches and coastal areas. In July 1983 environmental guidelines for beaches were promulgated which, inter alia, stated:

“The traditional use of sea water as a dump site from our land-derived wastes has increased the polluted loads of sea and reduced its development potentials including the economic support it provides to people living nearby. Degradation and misutilization of beaches are affecting the aesthetic and environmental loss. These could be avoided through prudent coastal development and management based on assessment of ecological values and potential damages from coastal developments.”

These guidelines further stated that “adverse direct impact” of development activities was possible within 500 metres from the high watermark or beyond two kilometres from it. The example which was given was that the sand-dunes and vegetation clearing, high density construction etc. along the coast could alter the ecological system of the area.

6. The environment guidelines for the development of beaches, inter alia, required the State Governments to prepare a status report on the obtaining situation of the coastal areas, as a prerequisite to environmental management of the area. Such a status report was required to be followed by a master plan identifying the areas required for conservation, preservation and development and other activities. A master plan so prepared would ensure a scientific assessment and development of the coastline and this

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would ultimately ensure the preservation and enforcement of the coastal eco-system.

a 7. The Ministry of Environment and Forests undertook an exercise with regard to the protection and development of the coastal areas. It invited objections against the declaration of the coastal stretches as Regulation Zones and imposing restrictions on industries, operation and processes in the Regulation Zones.

b 8. After considering all the objections, the Central Government issued a notification dated 19-2-1991 (hereinafter referred to as 'the main Notification') in exercise of the powers conferred on it by clause (*d*) of sub-rule (3) of Rule 5 of the Environment Protection Rules, 1986. By this notification, it declared the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which were influenced by tidal action (in the landward side) up to 500 metres from the High Tide Line (hereinafter referred to as 'HTL') and the land between Low Tide Line (hereinafter referred to as 'LTL') and HTL as Regulation Zones. With regard to this area, it imposed, with effect from the date of the said notification, various restrictions on the setting up and expansion of industries, operation or processes etc. in the said Regulation Zones. It was clarified that for the purposes of the main Notification, HTL was defined as the line up to which the highest high tide reaches at springtime.

d 9. The salient features of the main Notification are that a number of activities were declared as prohibited in the Regulation Zones, which are as follows:

e "(i) setting up of new industries and expansion of existing industries, except those directly related to waterfront or directly needing foreshore facilities;

(ii) manufacture or handling or storage or disposal of hazardous substances as specified in the notifications of the Government of India in the Ministry of Environment and Forests No. SO 594(E) dated 28-7-1989, SO 966(E) dated 27-11-1989 and GSR 1037(E) dated 5-12-1989;

f (iii) setting up and expansion of fish processing units including warehousing (excluding hatchery and natural fish drying permitted areas);

g (iv) setting up and expansion of units mechanisms for disposal of wastes and effluents, except facilities required for discharging treated effluents into the watercourse with approval under the Water (Prevention and Control of Pollution) Act, 1974 except for storm water drains;

(v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements; schemes shall be implemented by the authorities concerned for phasing out the existing practices, if any, within a reasonable time period not exceeding three years from the date of this notification;

h (vi) dumping of city or town wastes for the purposes of landfilling or otherwise; the existing practice, if any, shall be phased out within a

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reasonable time not exceeding three years from the date of this notification;

(vii) dumping of ash or any wastes from thermal power stations; a

(viii) land reclamation, bunding or disturbing the natural course of sea water with similar obstructions, except those required for control of coastal erosion and maintenance or clearing of waterways, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and for sweet water recharge; b

(ix) mining of sands, rocks and other substrata materials, except those rare minerals not available outside the CRZ areas;

(x) harvesting or drawal of groundwater and construction of mechanisms therefore, within 200 m of HTL; in the 200 m to 500 m zone it shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries; c

(xi) construction activities in ecologically sensitive areas as specified in Annexure I of this notification;

(xii) any construction activity between the Low Tide Line and High Tide Line except facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this notification; and d

(xiii) dressing or altering of sand-dunes, hills, natural features including landscape changes, 50 per cent of the plot size and the total height of construction shall not exceed 9 metres.”

Secondly, the main Notification provided for regulation of permissible activities. Furthermore, the coastal States and Union Territory Administrations were required to prepare, within one year from the date of the main Notification, Coastal Zone Management Plans (hereinafter referred to as ‘the Management Plans’) identifying and clarifying the Regulation Zones areas within their respective territories in accordance with the guidelines contained in the main Notification and those plans were required to be approved, with or without modification, by the Central Government, Ministry of Environment and Forests. The main Notification also stipulated that within the framework of the approved Management Plans, all developments and activities within the Regulation Zones, except the prohibited activities and those which required environment clearance from Ministry of Environment and Forests, Government of India, were to be regulated by the State Government, Union Territory Administration or the local Authority, as the case may be, in accordance with the guidelines contained in Annexures I and II of the main Notification. e

10. Anticipating that it will take time till the Management Plans are prepared and approved, the main Notification provided that till the approval of the Management Plans, “all development and activities within CRZ shall not violate the provisions of this Notification”. The State Governments and f

not violate the provisions of this Notification”. The State Governments and g

not violate the provisions of this Notification”. The State Governments and h

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Union Territory Administrations were required to ensure adherence to the provisions of the main Notification and it was provided that any violation thereof, shall be subject to the provisions of the Environment Protection Act, 1986 (hereinafter referred to as 'the Act').

11. It was also provided in clause 4 of the main Notification that the Ministry of Environment and Forests and the State Government or Union Territory, and such other authorities at the State or Union Territory levels, as may be designated for the purpose, shall be responsible for the monitoring and enforcement of the main Notification within their respective jurisdictions.

12. As already noticed, there are two annexures, namely, Annexure I and Annexure II to the main Notification. While Annexure I contains the Coastal Area Classification and Development Regulations which are for general application, Annexure II is the specific provision which contains the guidelines for development of beach resorts/hotels in the designated areas of CRZ III for temporary occupation of tourists/visitors with prior approval of the Ministry of Environment and Forests.

13. Annexure I consists of clause 6(1) which relates to the classification of Coastal Regulation Zones. The norms for regulation activities in the said zones are provided by clause 6(2) for regulating development activities. The coastal stretches within 500 metres of HTL of the landward side are classified under clause 6(1) into four categories, which are as under:

(a) Category I (CRZ I) includes the areas that are ecologically sensitive and important, such as national parks/marine parks, sanctuaries etc., areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as have been declared by the Central Government or the authorities concerned at the State/Union Territory level from time to time. In addition thereto, CRZ I also contains the area between the LTL and the HTL.

(b) Category II (CRZ II) contains the areas that have already been developed up to or close to the shore line. This is the area which is within the municipal limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains.

(c) Category III (CRZ III) is the area which was originally undisturbed and includes those areas which do not belong either to Category I or Category II. CRZ III includes coastal zone in the rural areas (developed and undeveloped) and also areas within the municipal limits or in other legally designated urban areas which are not substantially built up.

(d) Category IV (CRZ IV) contains the coastal stretches in the Andaman and Nicobar, Lakshadweep and small islands except those designated as CRZ I, CRZ II or CRZ III.

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14. Clause 6(2) of Annexure I provides for norms for regulation of activities in CRZ I, II, III and IV. With regard to CRZ I, the norms for regulation of activities do not permit new construction within 500 metres of the HTL. Furthermore, practically, no construction activity is allowed between the LTL and HTL. The norms for regulation of activities in CRZ II relate to construction or reconstruction of the buildings within the said zone.

15. With regard to CRZ III, the norms for regulation of activities, inter alia, provide that the area up to 200 metres from the HTL is to be earmarked as "No Development Zone". The only exception is that there can be repairs of existing authorised structures but, the permissible activity in this zone is for its use for agriculture, horticulture, gardens, pastures etc. The norms further provide for development of vacant plots between 200 and 500 metres of HTL in designated areas of CRZ III with prior approval of the Ministry of Environment and Forests for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines in Annexure II.

16. In CRZ IV also, detailed norms for regulation of activities are provided in the said clause 6(2) of Annexure I.

17. As already noticed, Annexure II contains the guidelines for development of beach resorts/hotels in the designated area of CRZ III for temporary occupation of tourists/visitors. The vacant area beyond 200 metres in the landward side, even if it is within 500 metres of the HTL can be used, after obtaining permission, for construction of beach resorts for tourists/visitors. There was no provision for allowing any fresh construction within 200 metres of the HTL or within the LTL and HTL. Clause 7(1) of the main Notification which comes under Annexure II contains various conditions which have to be fulfilled before approval can be granted by the Ministry of Environment and Forests for the construction of beach resorts/hotels in the designated area of CRZ III.

18. In the background of the aforesaid facts, we will now deal with the main contentions raised, namely, the non-implementation of the main Notification and the validity of the notification dated 18-8-1994 (hereinafter referred to as 'the 1994 Notification').

Re: Non-Implementation of the main Notification

19. It is the case of the petitioner that with a view to protect the ecological balance in the coastal areas, the aforesaid notification was issued by the Central Government which contained various provisions for regulating development in the coastal areas. It was contended that there had been a blatant violation of this notification and industries were illegally being set up, thereby causing serious damage to the environment and ecology of the area. It was also submitted that the Ministry of Environment and Forests except for issuing the main Notification, had taken no steps to follow up its own directions contained in the main Notification. The main prayer in the writ petition was that this Court should issue appropriate writ, order or direction to the respondent so as to enforce the main Notification.

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20. In the writ petition, specific allegations were also contained to the effect that the Ministry of Environment and Forests, Government of India

a had issued another notification dated 20-6-1991 under clause (5) of sub-section (2) of Section 3 of the Act declaring Dahanu Taluka, District Thane, Maharashtra as an ecologically fragile area.

21. The main Notification was issued so as to ensure that the development activities are consistent with the environmental guidelines for beaches and coastal areas and to impose restrictions on the setting up of

b industries which have detrimental effect on the coastal environment. This notification also required the Government of Maharashtra to prepare a master plan or regional plan for the Dahanu Taluka based on the existing land use of Dahanu within a period of one year from the notification and to get the said plan approved by the Ministry of Environment and Forests. The master plan and the regional plan was to demarcate all the existing green

c areas, orchards, tribal areas and other environmentally sensitive areas in the said Dahanu Taluka. Industries which were using chemicals above the limits/quantities prescribed by the Act or by the rules were to be considered hazardous industries. The hazardous waste was required to be disposed of in the identified areas after taking precautionary measures. This notification also required the Government of Maharashtra to constitute a monitoring

d committee to ensure the compliance or conditions mentioned in the notification in which local representatives may be included. According to the petitioner, the Maharashtra Government has not implemented the directions contained in the said notification and has permitted development activities which have resulted in new polluting industries being established in the coastal area, thereby seriously endangering the ecology. The industries

e which are operating in Dahanu are stated to be balloon-manufacturing units, buffing and chromium-plating units and chemical units. There has been a failure to make the master plan or the regional plan for the said Dahanu Taluka and indiscriminate licences have been issued and consent given to new industries by the State Government and the predominately agricultural area is slowly being converted into an industrial area in complete disregard

f of environmental laws, guidelines and notifications. There are other instances stated to be in the writ petition with relation to the Dahanu Taluka but, for the view we are taking, it is not necessary to deal with the same in any great length.

22. Notices were issued by this Court on 3-10-1994 to the respondents including the coastal States, namely, Maharashtra, Kerala, Karnataka, Orissa,

g West Bengal, Tamil Nadu, Andhra Pradesh and the Union Territory of Pondicherry. On 12-12-1994, while granting time to the respondents to file their counter-affidavits, this Court directed that “the respondent States shall not permit the setting up of any industry or construction of any type on the area at least up to 500 metres from the sea water at the maximum high tide”. Notice was also directed to issue to the State of Goa, the Union Territory of

h Daman and Diu and the islands of Andaman & Nicobar and Lakshadweep, which were added as respondents. The aforesaid interim order dated 12-12-

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1994 was slightly modified by this Court by its order dated 9-3-1995* in the following terms: (SCC pp. 77-78, para 1)

“We modify our order dated 12-12-1994 and direct that all the restrictions, prohibitions regarding construction and setting up of industries or for any other purpose contained in the notification dated 19-2-1991 issued by the Ministry of Environment and Forests, Government of India under clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 shall be meticulously followed by all the States concerned. The activities which have been declared as prohibited within the Coastal Regulation Zone shall not be undertaken by any of the respondent-States. The regulations of permissible activities shall also be meticulously followed. The restrictions imposed by the Coastal Areas Classification and Development Regulations contained in Annexure I to the abovesaid notification shall also be strictly followed by the respondent-States.”

23. According to clause 3(i) of the main Notification, the coastal States and Union Territory administrations were required to prepare the Management Plans within one year from the date of the main Notification. This was essential for the implementation of the said notification. The lack of commitment on the part of these States and administrations, towards the protection and regulation of the coastal stretches, is evident from their inaction in complying with the aforesaid statutory directive requiring the preparation of Management Plans within the specified period. In view of the fact that there had been a non-compliance with this provision, this Court on 3-4-1995 directed all the coastal States and Union Territory Administrations to frame their plans within a further period of six weeks thereof.

24. A status report was filed in court by the Union of India which shows non-compliance of clause 3(i) by practically everyone concerned. While some of the States and Union Territory Administrations submitted their plans, though belatedly, except in the case of Pondicherry, none of the other plans were approved by the Central Government. It appears that some modifications were suggested and those States and Union Territories had to resubmit their plans. Directions will have to be issued to these States and Union Territories to resubmit their plans and the Central Government will also be required to approve the resubmitted plans within a specified time. The State of Orissa had only partly complied with this Court's order dated 3-4-1995 inasmuch as the plans submitted by it were only for a small part of a coast. The State of West Bengal only submitted a preliminary concept while the States of Andhra Pradesh, Gujarat, Karnataka and Kerala did not care to submit any plans at all. Therefore, these six States namely, Orissa, West Bengal, Andhra Pradesh, Gujarat, Karnataka and Kerala have to be answerable for non-compliance with the directions issued by this Court on 3-4-1995.

* *Indian Council for Enviro-Legal Action v Union of India*, (1995) 3 SCC 77

25. Affidavits which have been filed by the respondents clearly show that all the provisions of the main Notification have not been complied with.

- a Explanations for the delay in preparation of the Management Plans and their approval have been offered, but they are far from satisfactory. If the mere enactment of the laws relating to the protection of environment was to ensure a clean and pollution-free environment, then India would, perhaps, be the least polluted country in the world. But, this is not so. There are stated to be over 200 Central and State Statutes which have at least some concern
- b with environment protection, either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environmental degradation which, on the contrary, has increased over the years. Enactment of a law, relating to protection of environment, usually provides for what activity can or cannot be done by people. If the people were to voluntarily respect such a law, and abide by it, then it would result in law being able to
- c achieve the object for which it was enacted. Where, however, there is a conflict between the provision of law and personal interest, then it often happens that self-discipline and respect for law disappears.

26. Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.

- g
- h 27. The present case also shows that having issued the main Notification, no follow-up action was taken either by the coastal States and Union Territories or by the Central Government. The provisions of the main Notification appear to have been ignored and, possibly violated with

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impunity. The coastal States and Union Territory administrations were required to prepare Management Plans within a period of one year from the date of the notification but this was not done. The Central Government was to approve the plans which were to be prepared but it did not appear to have reminded any of the coastal States or the Union Territory administrations that the plans had not been received by it. Clause 4 of the main Notification required the Central Government and the State Governments as well as Union Territory administrations to monitor and enforce the provisions of the main Notification, but no effective steps appear to have been taken and this is what led to the filing of the present writ petition. a b

28. There is no challenge to the validity of the main Notification. Counsel for all the parties are agreed that the main Notification is valid and has to be enforced. Instances have been given by the petitioner as well as some of the intervenors where in different States, infringement of the main Notification is taking place but no action has been taken by the authorities concerned. The courts are ill-equipped and it is not their function to see day-to-day enforcement of law. This is an executive function which it is bound to discharge. A public interest litigation like the present, would not have been necessary if the authorities, as well as the people concerned, had voluntarily obeyed and/or complied with the main Notification or if the authorities who were entrusted with the responsibility, had enforced the main Notification. It is only the failure of enforcement of this notification which has led to the filing of the present petition. The effort of this Court while dealing with public interest litigation relating to environmental issues, is to see that the executive authorities take steps for implementation and enforcement of law. As such the court has to pass orders and give directions for the protection of the fundamental rights of the people. Passing of appropriate orders requiring the implementation of the law cannot be regarded as the court having usurped the functions of the legislature or the executive. The orders are passed and directions are issued by the court in discharge of its judicial function, namely, to see that if there is a complaint by a petitioner regarding the infringement of any constitutional or other legal right, as a result of any wrong action or inaction on the part of the State, then such wrong should not be permitted to continue. It is by keeping the aforesaid principles in mind that one has to consider as to what directions should be issued to ensure, in the best possible manner, that the provisions of the main Notification which has been issued for preserving the coastal areas are not infringed. c d e f

Validity of notification of 1994

29. The notification dated 18-8-1994 made six amendments in the main Notification. These amendments were made after the receipt of the report of a committee, headed by Mr B.B. Vohra, which had been set up by the Central Government. The validity of the amended notification was also challenged in IA No. 19 of 1995 which was filed by three environment protection groups, namely, the Goa Foundation, Nirmal Vishwa and Indian Heritage Society (Goa Chapter). In the said application, the applicants gave a table containing the main points of the main Notification, the g h

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recommendations made by the Vohra Committee and the amendments made by amended notification of 1994. The said particulars are as follows:

	<i>"Main CRZ Notification dated 19-2-1991 issues for relaxation"</i>	<i>Vohra Committee recommendations</i>	<i>Amending notification dated 18-8-1994</i>
a	1. 200 metres from HTL is no-development zone.	Relaxation allowed rocky and hilly areas; no limit specified.	Blanket relaxation for all areas up to HTL if Central Government so desires.
b	2. No-development zone for rivers, creeks and backwaters 100 metres.	Clarification demanded about limits; no relaxation suggested.	No-development zone relaxed to 50 metres.
c	3. No levelling or digging of sand-dunes or sand.	Allows destruction of sand-dunes	No destruction of sand-dunes allowed. However, goalposts, net posts, lampposts allowed.
d	4. No-development zone area cannot be used for FSI calculations.	Recommends no-development zone area be permitted for FSI calculations.	Relevant section not amended but explanation added as an afterthought in the notification permitting no-development zone area to be included for FSI calculations.
e	5. No basements allowed area not to be included in FSI.	Basements permitted.	Basements allowed.
f	6. No fencing permitted within 200 metre-zone from HTL.	Only green fencing permitted, no barbed wire fencing allowed.	Allows green and barbed wire fencing."

g Contending that the 1994 Notification will adversely affect the environment and would lead to unscientific and unsustainable development and ecological destruction, an application was filed by the petitioner being IA No. 16 of 1995, inter alia, praying for the quashing of the said notification.

30. A reply was filed by the Union of India justifying the amendments and giving reasons for the issuance of the 1994 Notification.

h 31. While examining the validity of the 1994 Notification, it has to be borne in mind that normally, such notifications are issued after a detailed

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study and examination of all relevant issues. In matters relating to environment, it may not always be possible to lay down rigid or uniform standards for the entire country. While issuing the notifications like the present, the Government has to balance various interests including economic, ecological, social and cultural. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation that developmental activity is sought to be regulated.

32. The main Notification was issued under Sections 3(1) and 3(2)(v) of the Environment Protection Act, presumably after a lot of study had been undertaken by the Government. That such a study had taken place is evident from the bare perusal of notification itself which shows how coastal areas have been classified into different zones and the activities which are prohibited or permitted to be carried out in certain areas with a view to preserve and maintain the ecological balance.

33. According to the Union of India, while implementing the main Notification, certain practical difficulties were faced by the authorities concerned. There was a need for having sustainable development of tourism in coastal areas and that amendments were effected after giving due consideration to all relevant issues pertaining to environment protection and balancing of the same with the requirement of development. It has been specifically averred that a committee headed by Mr B.B. Vohra was set up by the Government in response to the need for examining the issues relating to development of tourism and hotel industry in coastal areas and to regulate the same keeping in view the requirements of sustainable development and the fragile coastal ecology. According to the Union of India, the Committee also included three environmentalist members who had expressed their views and that the Government had accepted the recommendations of the Vohra Committee with slight modifications. According to it, there has been no blanket relaxation in any area as alleged and adequate environmental safeguards have been provided in the 1994 Notification.

34. In this background, we now deal with each of these six amendments separately:

(i) According to the main Notification, distance of 200 metres from the HTL was a no-development zone (hereinafter referred to as 'NDZ'). The representation of the Hotel and Tourism Industry was that the

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a existing 200 metres' depth of NDZ constituted a serious handicap to the said industry competing with the beach hotels of other countries where there were no such restrictions. It was represented that a reduction of the NDZ would not be ecologically harmful and there was no convincing scientific reason for fixing 200 metres as the appropriate width for the NDZ. It was also stated before the Committee that according to its projection, the Hotel Industry in India would at the most require only about 20-30 kms of coastline for the construction of seaside resorts over the next 15 years or so. If this requirement was viewed in the context of the fact that the total coastline of the country was over 6000 kms in length, the industry represented that relaxation with regard to this limited area would not pose any big threat to the country's ecology.

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c
d 35. The Vohra Committee in its recommendations observed that certain members of the Committee had felt that a blanket provision of 200 metres in the case of sandy beaches would lead to difficulties and there should be provision for relaxation to be made in suitable cases, but the consensus that emerged was that the present regulations should not be disturbed. The Committee, however, recommended that relaxations in 200 metres' rule may be made in a case-to-case basis with regard to such stretches of the coastline which were rocky or hilly, but the relaxations should be made after carrying out necessary impact assessment studies. Furthermore, this relaxation should be made by the Ministry of Environment and Forests and not by the State Governments concerned.

e 36. In the 1994 Notification, there is a clear departure from the recommendations of the Vohra Committee. The notification now provides that for reasons to be recorded, the Central Government may permit any construction within the said 200 metres NDZ subject to such conditions and restrictions as it may deem fit.

37. In the written submissions filed by the Union of India in this Court on 29-9-1995, this amendment has been sought to be justified and explained by it in the following words:

f "As regards the developmental activities up to the High Tide Line, the Central Government may for reasons recorded in writing permit construction in any particular case taking into account the geographical features and other relevant aspects.

g This is necessary as providing of 200 metres of no-development zone all along was not possible in the coastal line in a uniform way on account of wide variations in geographical features, existing human settlements and developmental activities requiring foreshore facilities etc."

h The relaxation with regard to NDZ was sought by the Hotel and Tourism Industry and they desired concession only with regard to 20-30 kms of coastline. By the amended notification, power had been given to the Central Government to make such relaxation with regard to any part of the 6000 kms long coastline of India. The Central Government has, thus, retained the

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absolute power of relaxation of the entire 6000 kms long coastline and this, in effect, may lead to the causing of serious ecological damage as the said provision gives unbridled power and does not contain any guidelines as to how or when the power is to be exercised. The said provision is capable of abuse. The Central Government also did not confine the relaxation to the extent as specified by the Vohra Committee. No satisfactory reason has been given by the Union of India as to why it departed from the opinion of the Expert Committee and that too in such a manner that the concession which has now been given is far in excess of what was demanded by the Hotel and Tourism Industry.

38. We, accordingly, hold that the newly added proviso in Annexure II in paragraph 7 in sub-paragraph (1) (Item *i*) which gives the Central Government arbitrary, uncanalized and unguided power, the exercise of which may result in serious ecological degradation and may make the NDZ ineffective is ultra vires and is hereby quashed. No suitable reason has been given which can persuade us to hold that the enactment of such a proviso was necessary, in the larger public interest, and the exercise of power under the said proviso will not result in large-scale ecological degradation and violation of Article 21 of the citizens living in those areas.

(*ii*) The NDZ for rivers, creeks and backwaters which was 100 metres from HTL has, by the amended notification, been relaxed to 50 metres. As already seen the main Notification does not apply to all the rivers. It applies only to tidal rivers which are part of the coastal environment. It was contended that the reduction from 100 metres to 50 metres was arbitrary and was not made on any basis. It was also contended that the Vohra Committee had made no proposal for relaxation along the rivers but it merely asked for a clarification of the limits to which the control would apply since in some areas, tidal ingress could go up to 50 kms from the coastline.

39. Justifying this amendment, it was contended by the Union of India that in case of creeks, rivers or backwaters, it is not possible to have a uniform basis for demarcating NDZ. The zone shall be regulated based upon each individual case. It is no doubt true that there can be no uniform basis for demarcating NDZ and it will depend upon the requirements by each State authority concerned in their own Management Plans but no reason has been given why in relation to tidal rivers, there has been a reduction of the ban on construction from 100 metres to 50 metres. Even the Vohra Committee which had been set up to look into the demands of Hotel and Tourism Industry had not made such a proposal and, therefore, it appears to us that such a reduction does not appear to have been made for any valid reason and is arbitrary. This is more so when it has been alleged that in some areas like Goa, there are mangrove forests that need protection and which stretch to more than 100 metres from the river bank and this contention had not been denied. In the absence of any justification for this reduction being given the only conclusion which can be arrived at is that the relaxation to 50 metres has been done for some extraneous reason. It was submitted, at the time of

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arguments by the Additional Solicitor General that construction has already taken place along such rivers, creeks etc. at a distance of 50 metres and more, but no such explanation has been given in the reply affidavit. Even if this be so such reduction will permit new construction to take place and this reduction cannot be regarded as a protection only to the existing structures. In the absence of a categorical statement being made in an affidavit that such reduction will not be harmful or result in serious ecological imbalance, we are unable to conclude that the said amendment has been made in the larger public interest and is valid. This amendment is, therefore, contrary to the object of the Environment Act and has not been made for any valid reason and is, therefore, held to be illegal.

(iii) The main Notification had provided that there would be no levelling of sand-dunes or sand extraction. The Vohra Committee, however, allowed extraction of sand. This recommendation has not been accepted but the amended notification allowed the installation of goalposts or lampposts. Justifying this amendment, it was contended by the Union of India that installing such goalposts or lampposts will not result in flattening of sand-dunes and will also not have any other undesirable effect with regard to the said sand-dunes. No permanent structure for sport facilities is permitted. We do not see any illegality having been committed by allowing the goalposts, net posts and lampposts to be erected. In fact the erection of these would facilitate or lead to more enjoyment of the beaches. Therefore, the challenge to this amendment fails.

(iv) By the amended notification, the NDZ is now to be included for FSI calculations. Justifying this amendment, it was submitted by the Union of India that an explanation had been added to the effect that although no construction is allowed in NDZ, for the purpose of calculation of FSI the area of the entire plot including portions which fall within NDZ shall be taken into account. This modification has been brought in because the area in NDZ will in any case be left vacant and although this land may belong to a private owner, he has to keep it vacant. To compensate for this, he is allowed to construct a building of such FSI as permissible after taking into account the area which falls in NDZ. This, it was submitted, is based upon fair and equitable conditions and as such this would have no effect on the ecological balance in the coastal area.

40. In view of the aforesaid reasons given by the Union of India and also keeping in view the fact that a similar recommendation had also been made by the Vohra Committee, we agree with the principle that some compensation is to be allowed to the private owner whose land falls in the NDZ, but at the same time haphazard and congested construction — a pollutant in itself — cannot be permitted in any area of the city. We, therefore, modify the amendment and direct that a private owner of land in NDZ shall be entitled to take into account half of such land for the purpose

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of permissible FSI in respect of the construction undertaken by him outside the NDZ.

(v) With regard to the amendment which allows construction of the basements, it was contended that the deep foundations and structure could interfere in the coastal areas where there is an intermixture of salt and sweet aquifers. According to the Union of India, this amendment has been made on the recommendation of the Vohra Committee. It was, however, stated that the basements shall be allowed subject to the condition that the other authorities such as State Ground Water Boards will permit such construction and will issue no-objection certificate after confirming that the basement will not hamper free flow of groundwater in that area. It is, therefore, obvious that there will not be any adverse effect to the ecological balance in the area if basements are allowed to be constructed subject to the satisfaction of the authorities concerned that the same will not hamper free flow of groundwater.

(vi) The main Notification had not permitted fencing within 200 metres' zone from HTL. By the amended notification, green and barbed wire fencing within the said zone has been permitted. Challenging this amendment, it was contended that the effect of such fencing would be to prevent the public from using the beaches. Justifying this amendment, the Union of India had stated that the Vohra Committee had permitted green fencing. By the amended notification barbed fencing, in addition to green fencing, has also been allowed. The reason for this is that green and barbed fencing has been allowed so that private owners are in a position to stop encroachment on their properties. Furthermore, in the interest of security also, a private owner would like to have some kind of boundary so that his property is safe. The implication, therefore, clearly is that it is not as if public beaches will be encroached upon or fenced. The fencing is being allowed only of the privately-owned property in order to protect the same. We, however, direct that fencing should not be raised in such a manner so as to prevent access of the public to public beaches. In other words, the right of way enjoyed by the general public to those areas which they are free to enjoy, should in no way be closed, hampered or curtailed. The amendment as made, does not, in our opinion, call for any interference.

General conclusion

41. With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public-spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing

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environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court.

- a The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations
- b whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law.

- c **42.** As far as this Court is concerned, being conscious of its constitutional obligation to protect the fundamental rights of the people, it has issued directions in various types of cases relating to the protection of environment and preventing pollution. For effective orders to be passed, so as to ensure that there can be protection of environment along with development, it becomes necessary for the court dealing with such issues to know about the local conditions. Such conditions in different parts of the
- d country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to
- e shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be effected, if the High Courts concerned assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly
- f made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology.

- g **43.** There is a likelihood that there will be instances of infringement of the main Notification and also of the Management Plans, as and when framed, taking place in different parts of the country. In our opinion, instead of agitating these questions before this Court, now that the general principles have been laid down and are well-established, it will be more appropriate
 - h that action with regard to such infringement even if they relate to the violation of fundamental rights, should first be raised before the High Court having territorial jurisdiction over the area in question. We are sure and we expect that each High Court will deal with such issues urgently. Environmental law has now become a specialised field. In the decision which was taken at the United Nations Conference on Environment and
- Development held at Rio de Janeiro in June 1992 in which India had also participated, the States had been called upon to develop national laws

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regarding liability and compensation for the victims of pollution and other environmental damages.

44. There is 6000 kms long coastline of India. It is the responsibility of the coastal States and Union Territories in which these stretches exist to see that both the notifications are complied with and enforced. Management Plans have to be prepared by the States and approved by the Central Government. If the said plans have been approved, the development can take place only in accordance therewith. Till the preparation and approval of the said plans by virtue of the provisions of the main Notification, no development in the coastal areas within the NDZ can take place. Therefore, it is in the interest of all concerned that the Management Plans are submitted and approved at the earliest.

45. There has been a complete laxity in the implementation of the Act and other related statutes. Under the said Act, the Central Government has essentially been entrusted with the responsibility to enforce and implement the Act. Section 23 of the Act, however, enables the Central Government, by notification in the Official Gazette, to delegate such of its powers and functions to the State Governments or authorities. Thus, the implementation of the provisions of the Act has now essentially become the function of the State Governments. In an effort to control pollution, State Pollution Boards have also been established but the extent of its effectiveness is yet to be demonstrated. The Environment (Protection) Act, as framed, and Section 5 of the Act in particular, gives the Government extensive powers to issue directions to any person, officer or authority which they are bound to comply. The directions as issued have necessarily to be in accordance with the provisions of law and to give protection to environment.

46. As far as the implementation of the main Notification is concerned, the Vohra Committee has stated in its report that many members of the Committee expressed great concern that sufficient attention was not being paid to the enforcement of regulations. It also noted that “in the absence of anything like adequate machinery to implement the regulations, a great deal of unauthorised development is taking place on most beaches which it will be difficult if not impossible to remove in the future”. The Committee also recommended that the problems relating to the implementation of the regulations should be given high priority by the Ministry, if these are not to become a mockery.

47. With increasing threat to the environmental degradation taking place in different parts of the country, it may not be possible for any single authority to effectively control the same. Environmental degradation is best protected by the people themselves. In this connection, some of the non-governmental organisations (NGOs) and other environmentalists are doing singular service. Time has perhaps come when the Government can usefully draw upon the resources of such NGOs to help and assist in the implementation of the laws relating to protection of the environment. Under Section 3 of the Act, the Central Government has the power to constitute one or more authorities for the purposes of exercising and performing such

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powers and functions, including the power to issue directions under Section 5 of the Act of the Central Government as may be delegated to them.

a *Directions*

(1) Keeping in view the aforesaid observations in mind, we would direct that if any question arises with regard to the enforcement or implementation or infringement of the main Notification as amended by the notification of 1994, the same should be raised before and dealt with by the respective High Courts. In the present case, there were allegations of infringement having been taking place by allowing the setting up of industries in Dahanu Taluka in Maharashtra in violation of the provisions of the main Notification and which industries are stated to be causing pollution. Similarly, there were allegations of non-compliance with the provisions of law by a unit manufacturing alcohol in Pondicherry; with regard to Goa also allegations have been made. As we have already observed, it will be more appropriate if the allegations so made are dealt with by the respective High Courts, for they would be in a better position to know about and appreciate the local conditions which are prevailing and the extent of environmental damage which is being caused. We, accordingly, direct that the contentions raised in the petition regarding infringement of the main Notification and of the notification dated 20-6-1991 relating to Dahanu Taluka should be dealt with by the Bombay High Court. The High Court may issue such directions as it may deem fit and proper in order to ensure that the said notifications are effectively implemented and complied with. A copy of the writ petition along with a copy of the judgment should be sent to the High Court by the Registry for appropriate orders. As regards IAs Nos. 17-18 of 1995 relating to alcohol-manufacturing unit at Pondicherry, the said application is transferred to the Madras High Court for disposal in accordance with law.

(2) Any allegation with regard to the infringement of any of the notifications dated 19-2-1991, 20-6-1991 and 18-8-1994 be filed in the High Courts having territorial jurisdiction over the areas in respect of which the allegations are made. As far as this Court is concerned, this matter stands concluded except to examine the reports which are to be filed by all the States with regard to the approval of the Management Plans, or any classification which may be sought.

(3) Considering the fact that the Pollution Control Boards are not only overworked but simultaneously have a limited role to play insofar as it relates to controlling of pollution for the purpose of ensuring effective implementation of the notifications of 1991 and 1994, as also of the Management Plans, the Central Government should consider setting up under Section 3 of the Act, State Coastal Management Authorities in each State or zone and also a National Coastal Management Authority.

(4) The States which have not filed the Management Plans with the Central Government are directed to file the complete plans by 30-6-1996. The Central Government shall finalise and approve the said plans,

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with or without modifications within three months thereafter. It is possible that the plans as submitted by the respective State Governments and Union Territories may not be acceptable to the Ministry of Environment and Forests. Returning the said plans for modifications and then resubmission of the same may become an unnecessary, time-consuming and, perhaps, a futile exercise. In order to ensure that these plans are finalised at the very earliest, we direct that the plans as submitted will be examined by the Central Government who will inform the State Government or the Union Territory concerned with regard to any shortcomings or modifications which the Ministry of Environment and Forests may suggest. If necessary, a discussion amongst the representatives of the State Governments and the Ministry of Environment and Forests should take place and thereafter the plans should be finalised by the Ministry of Environment, if necessary, by carrying out such modifications as may be required. The decision by the Ministry of Environment and Forests in this regard shall be final and binding.

A report with regard to the submission and the finalisation of the plans should be filed in this Court and the case will be listed for noting compliance in September 1996.

(5) Pending finalisation of the plans, the interim orders passed by this Court on 12-12-1994 and 9-3-1995 shall continue to operate.

(6) Four States, namely, Andhra Pradesh, Gujarat, Karnataka and Kerala have not yet submitted their Management Plans to the Central Government. There is thus a clear non-compliance with the direction issued by this Court on 12-12-1994 and 9-3-1995. We issue notices to the Chief Secretaries of these States to explain and show cause why further appropriate action be not taken for this non-compliance. The notices are to be returnable after six weeks.

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(BEFORE K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAİK, JJ.)

CH. RAMA RAO .. Petitioner;

Versus

LOKAYUKTA AND OTHERS .. Respondents.

SLPs (C) Nos. 10754-55 of 1996[†], decided on May 9, 1996

A. Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983 (2 of 1983) — Ss. 10(1)(a), (b) & (2)(a) and 11(2) — Preliminary verification and investigation — Procedure — Affording opportunity to a public servant, held, necessary at the stage of the investigation but not at the stage of the preliminary verification — Administrative Law — Natural justice — Applicability

[†] From the Judgment and Order dated 23-4-1996 of the Andhra Pradesh High Court in WPs Nos. 8274 and 8715 of 1996

2014 SCC OnLine NGT 6972

Before the National Green Tribunal (Western Zone) Bench, Pune
(BEFORE V.R. KINGAONKAR, J.M. AND AJAY A. DESHPANDE, E.M.)

Between:

Amit Maru, 22, Opp. Block No. 4/5, Bhanjibhai Rathod Marg,
Tardeo, Tulsiwadi, Mumbai-400034 ... Applicant;

Versus

1. Secretary, Ministry of Environment & Forest Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi-110003 ... Respondents.
2. Member Secretary, National Coastal Zone Management Authority, Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi-110003 ... Respondents.
3. Secretary, Environment Department, Room No. 217, 2nd Floor, Mantralaya Mumbai-400032 ... Respondents.
4. Member Secretary Maharashtra Coastal Zone Management Authority, New Administrative Bldg. Opp. Mantralaya, Mumbai-400032 ... Respondents.
5. The Regional Director Central Groundwater Board, Central Region, N.S. Bldg. Civil Lines, Nagpur-440001. (Maharashtra) ... Respondents.
6. Central Grondwate Board State Unit Office, 217/11, Kendriya Sadan, 'B' Wing, GPOA, First Floor, Akurdi, Pune-411044 ... Respondents.
7. Member Secretary the Maharashtra Pollution Control Board Mumbai ... Respondents.
8. The Executive Engineer, Building Proposal Department (Western Suburbs) Municipal Corporation of Greater Mumbai, Purskriti Bhawan, 90-feet road, Kandivli (E), Mumbai-400101 ... Respondents.
9. Windsor Reality Pvt. Ltd. Off CST Road, Near Bandra Kurla Complex, Santacruz(E) Mumbai-400098 ... Respondents.

M.A. No. 65/2014 in Application No. 13/2014

Decided on October 1, 2014

Counsel for Applicant(s)

Mr. Aditya Pratap, a/w A.B. Walunj Advocates

Counsel for Respondent(s):

Ms. Shweta Busar, Advocate, holding for Ranjan Nehru Advocate for Respondent No.

1.

Mr. D.M. Gupte a/w Supriya Dangare Advocates for Respondent Nos. 2 to 4.

Mrs. Ujwala Pawar, DGP/Mr. A.S. Mulchandani AGP, S.S.P. Mishra, CCo, for Respondent Nos. 5, 6.

Mr. Saurabh Kulkarni, a/w Supriya Dangare Advocates for Respondent No. 7.

Mr. Sameer Khale, a/w Rahul Garg, Chirag Chavan, Makarand Rodge Advocates for Respondent No. 8

Mr. T.N. Subramoniam a/w Saket Mone, Suresh D. Shettiyar, Sunil Bhat Advocates

i/b Vidhi Partners for Respondent No. 9.

JUDGMENT

1. This is an Application filed by Project Proponent, raising preliminary objection regarding maintainability of Main Application (Application No. 13 of 2014), on the ground that said Application is barred by Limitation as well Applicant has no *locus* to file it, and hence the same is liable to be dismissed. Secondly, that Original Applicant (Amit Maru) is not an 'aggrieved person' and, therefore, such Application under Section 14(1)(2) read with Sections 15 and 18 of the National Green Tribunal Act, 2010, is not maintainable at his behest.

2. The Project Proponent (Windosor Reality Pvt. Ltd.), has come out with a case that the plans for construction of commercial building were issued by the Planning Authority on 7.7.1993. The project work was started long back. The construction work was going on for about a period almost over and above 8/10 years. The Project Proponent alleges that the building having 28 floors, 3 level podium and 2 voids, in total 33 floors, have been constructed and that by itself must be deemed to be a notice to the Applicant. So, it is not open for the Applicant now to raise such a dispute under false and frivolous allegations that 'cause of action' to file the Application has arisen first on 23rd October, 2013. The Applicant cannot raise such a dispute at a belated stage by giving go by to the specific provisions of Section 14(3) read with Section 18 of the National Green Tribunal Act, 2010. The Hon'ble Bombay High Court and Hon'ble Supreme Court interpreted the special enactments like the Arbitration Act, 1998, the Electricity Act, 2003 and held that where a statute prescribes shorter period of limitation and different scheme of limitation is provided under such a Statute, the provisions of the Limitation Act, 1963, are excluded and the Tribunal must apply the period of limitation as prescribed under the special enactment while exercising its powers. So, when the special provision is set out under Section 14(3) of the NGT Act, then time cannot be extended any more by Application of Section 5 of the Limitation Act, 1963, or any such analogues provision.

3. The jurisdiction exercised by the NGT is not equivalent to writ jurisdiction available to the Hon'ble High Court under Article 226 of the Constitution and as such declaratory relief sought by the original Applicant (Amit Maru) cannot be granted since he is not 'aggrieved person' as such and hence, cannot maintain the Application for want of *locus standi*. For this reason also, the Application is liable to be dismissed.

4. The Project Proponent would submit that the plans of the construction were sanctioned by the Planning Authority on 7.7.1993 and the construction work was undertaken before about ten (10) years of filing of the Application. It is stated that the construction work of the building was very much going on within sight of the Applicant since he is resident of nearby locality and could have knowledge of the same. It is stated that the Application is filed with ill-motive to pressurize the Project Proponent in order to shell out certain amount without any reason. In other words, it is stated that the Application is filed with a view to blackmail the Project Proponent or for some other consideration.

5. According to the Respondent No. 9, (Project Proponent) the 'cause of action' 'first arose' on 7.7.1993, when the plans for construction of commercial building were sanctioned by Municipal Corporation of Greater Mumbai. The time cannot be extended by the Tribunal beyond the prescribed period, as provided under Section 14(3) of the National Green Tribunal Act, 2010. It is alleged that the Applicant without having any *locus standi* has filed the Application by way of making fishing inquiry in the matter. On these premises, the Respondent No. 9 sought dismissal of the Main Application.

6. The Original Applicant resisted the Misc. Application. On behalf of the original Applicant, written submission is filed, in addition to the oral arguments. It is contended that the concept of 'limitation' is alien to the Environment (Protection) Act,

1986. It is further contended that the violation of Environment (Protection) Act, 1986, can be dealt with at any point of time by giving suitable directions. It is further averred that Section 5 of the Environment (Protection) Act, 1986, may be invoked by the competent Authority, as and when violation of the Environment (Protection) Act, 1986, is brought to the notice of the competent Authority. According to the original Applicant, the construction work of the Respondent No. 9, is carried out in violation of the Coastal Regulation Zone (CRZ), Notification, 2011, as well as the Environment (Protection) Act, 1986. The MCZMA has taken due action on basis of the complaint made by him on 23rd October, 2013, against gross violation of the CRZ Notification, 2011, by the Respondent No. 9. The original Applicant would submit that view taken by the Hon'ble Principal Bench, New Delhi, in *Goa Foundation v. Secretary, MoEF* (MA No. 49/2013 in Application No. 26/2012), is applicable to the facts of present case. It is further contended that the Application involves 'substantial question, relating to environment' and first 'cause of action' challenging illegality of construction work, first arose when legality of such construction work came to the notice of the Applicant. According to the Applicant, mere fact that the construction is of large scale and the building is of substantial height, will not give due notice about legality of the construction to any common man. The Applicant alleges that when the Developer makes construction in the private premises, concealing such activity from public eyes, by surrounding the site by steel sheets/shutters and get guarded it around the clock, and there is no access for inspection of the property nor any information is available about violation of Law. It is further stated that view taken by the Hon'ble Principal Bench in '*J. Mehta v. Union of India*' (Misc. Application Nos. 507, 595, 644, 649 of 2013, in Application No. 88/2013), is applicable to the facts of the present case. In view of such submissions, the original Applicant sought dismissal of the Misc. Application, whereby preliminary objections are raised by the Respondent No. 9 (Developer).

7. We have heard learned counsel for contesting parties. We have also perused the written submissions filed by them. We have carefully gone through the case laws cited by them.

8. In view of these rival submissions, following questions need to be answered:

- i) Whether the Original Application is maintainable at the instance of the Applicant or liable to be dismissed, due to absence of *locus standi*?
- ii) Whether the Original Application is barred by Limitation?

9. As far as question of *locus standi* is concerned, the Respondent No. 9, would submit that the original Applicant has filed the Application only with a view to seek fishing inquiry in the matter, without bonafides. The averments made by the Respondent No. 9, may be reproduced for the purpose of understanding the main plank of submissions in this behalf. They are:

"The Respondent No. 9 states that the Applicant has no locus standi to file the present Application as this Tribunal cannot deal with the matters as if it is public interest litigation. The Applicant is not affected by any of the acts of the Respondent No. 9, while carrying out the construction activities on the said property and hence, he is not a person aggrieved within the meaning of Section 18 of the said Act and hence has no locus to file the same. This Hon'ble Tribunal is a creation of statute for adjudicating dispute specifically provided under the said Act and cannot and does not have the power of constitutional Courts exercising their powers under Articles 226 and 32 of the Constitution of India. The Respondent No. 9 therefore, states that the Applicant is not having any locus to file the present Application."

10. Perusal of the original Application, reveals that grievance of the original Applicant is that the impugned construction activity is carried out in violation of CRZ

Notification, 2011. Not only that but the competent Authority issued stop work order of which copy is annexed along with the Application. The original Applicant may not be personally affected, being a neighbor or resident of very same locality. Still, however, the original Applicant may demonstrate as to how he has interest in the environment of maintaining the coastal stretches of Mumbai. The violation of CRZ Notification, 2011, if at all is found to have been done by the Respondent No. 9 that would give certain reasons to the Applicant to raise the environmental issues. He may not have personal cause of action. However, as a Member of the society, he may agitate the environmental issues about violation of the Laws like CRZ, in the interest of environment. At this juncture, it is not necessary to go into the details of merits of the Application. However, from the affidavit of Shri. Raju Vasave, In-charge Regional officer of the MPCB, it appears that the prosecution is initiated against the Respondent No. 9, under Section 15 of the Environment (Protection) Act, 1986, read with Environment Impact Assessment (EIA) Notification, 2006. So also the affidavit of Ajay Fulmali filed on behalf of the Respondent Nos. 3 and 4, shows that the impugned construction work *prima facie* is not in keeping with the environmental norms. Considering the *prima facie* material available on record, it is difficult to say that the Application is totally bereft of any reason and without *locus standi*.

11. Now, the term 'environment' has to be interpreted liberally. The environmental dispute cannot be cribbed, cabined or put in the small compass of 'personal disputes' or 'property disputes' or "disputed rights between two groups" or "individual rights". The damage caused to environment has to be looked from holistic angle. Any person may raise environmental dispute irrespective of his being personally affected due to the act of wrong doer/polluter or violator of environmental Law/Norms. The only barrier is that such a person shall not file the Application with malafide intention. Secondly, he shall not be totally alien. In other words, if it is demonstrated that the Applicant is a person interested in protection of environment, or at least restitution of environment, then *prima facie*, he has *locus standi* to maintain the Application.

12. We may reproduce, for the purpose of ready reference, Section 14(1) and (2) of the National Green Tribunal Act, 2010.

14. Tribunal to settle the dispute:—

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.

13. On behalf of the Respondent No. 9, it is argued that the Application cannot be termed as 'person aggrieved', so as to entertain the Application. We may point out that the expression 'person aggrieved' is used only in context of Section 16 of the NGT Act, 2010. Obviously, when any Appeal is required to be filed, then it has to be filed by a 'person aggrieved'. But, an Application can be entertained at the behest of any person, who is interested in protection, restitution or otherwise securing maintenance of environment. In any case, mere technical approach in such a case will not be appropriate. The person even though he has a legal grievance pertaining to probable adverse impact on environment, or probable adverse impact on environment, is entitled to approach the Tribunal, with such an Application, inasmuch as Section 14(1) (2) of the NGT Act, 2010 will have to be read along with Section 15 and Section 20 of the NGT Act, 2010. He/she will come within ambit of Section 2(1)(j) of the NGT Act, 2010. In our opinion, protection of environment, is related to the fundamental right guaranteed under Article 21 of the Constitution and as such, anyone who has bonafide intention to protect environment can approach the Tribunal for the purpose of

protection of such right.

14. In our opinion, *prima facie*, excessive construction without having EC, does amount to violation of the Environmental norms, at least, of the procedure to follow the Environmental norms. Section 14(1) of the National Green Tribunal Act, 2010, provides jurisdiction to the Tribunal to deal with 'substantial questions relating to environment' which also has to be read with Section 20 of the National Green Tribunal Act, 2010, even anticipated action ought to be considered as 'substantial question relating to environment'. In the present case, without EC beyond permissible limits, undertaking of huge construction involves environmental issues like use of groundwater, illegality/impermissibility of high rise building in a particular area, violation of C.R.Z. Regulations, violation of provisions of the Air Act and Water Act. The issues pertaining to car parking, use of RG area, sitting etc. which need to be thrashed out and answered appropriately. The expression 'environment' is wide enough to encompass within its fold many such things.

15. On behalf of the Respondent No. 9, learned Advocate invited our attention to the observations in case of "*Rana Sen Gupta v. (1) Union of India (2) State of West Bengal (3) Rashmi metaliks Ltd. (4) West Bengal Pollution Control Board*" (Appeal No. 54/2012). True, in the given case the Appellant was held to be a person having no locus standi to prefer the Appeal. It was held that "*the Appellant was not the 'aggrieved person' to challenge the order, which was impugned before the NGT (Principal Bench)*". However, the said case can be distinguished on the facts. Appellant Rana Sen Gupta was a person residing in village, which was allegedly impacted on account of so called activity. The allegations basically were that Rana Sen Gupta was a public spirited citizen. It was noticed, however, that there was absolutely no tangible material to start such a proclaimed status by Rana Sen Gupta. It was also noted that his previous Appeal No. 32/2011, had been dismissed. Therefore, his *locus standi* was found to be dubious. Another case relied upon by the Respondent No. 9, is of '*Ankur v. Maharashtra State Environment Impact Assessment Authority*' (Application No. 32/2012). The facts of that case are also on different footings. The Applicant alleged in the said Application that the Project Proponent had encroached upon the agricultural field of the farmers and other common land of the village. So called encroachment was in respect of agricultural land situated at village Kalane (district Sindhudurg), whereas, the Applicant's address was of Pen (district Raigad). Both these two (2) places were at a distance of 300/400 km away from each other. There was material on record to show that the Application was ill-motivated. Nothing of that sort is found on record of the present case.

16. The issue of *locus standi* of the Applicant and bar of limitation, to file the Application, will have to be considered on basis of *prima facie* material.

This Application is filed under Section 14(1), 15 and 18 of the National Green Tribunal Act, 2010. The contention of Respondent No. 9 that such huge construction could have been ordinarily noticed by any passerby is *prima facie* acceptable. The height of construction went on and on, above the average level and became so notorious that any prudent person could have noticed the same, being a sky rise construction. What the Applicant alleges in the present case is that the Respondent No. 9 made excessive construction beyond limits of the Environmental Clearance (EC) and that was not known due to lack of information in respect of original E.C.

17. In '*Goa Foundation v. Union of India*' (In Misc. Application No. 49 of 2013, Application No. 26/2012) decided on July, 18th, 2013, five(5) Members Bench of the Principal Bench, headed by the Hon'ble Chairperson, it is held that:

"25. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something. This expression is very generic in its meaning and has to be construed with reference to the

provisions of a statute and facts of a given case. It is not possible to give a meaning or define this expression with exactitude and precision."

18. According to the Respondent No. 9, reliance of the original Applicant on case of '*Goa Foundation v. Union of India*' decided by the Hon'ble Principal Bench, is misplaced. It is argued that Judgment in '*Goa Foundation*' case (supra) may not be followed. On behalf of the Respondent No. 9, it is further contended that the commercial building having 28 floors, 3 level podium, 2 voids, in all 33 floors and over a period of 8/10 years is constructed, which itself could be treated as deemed notice to the Applicant and, therefore, it is not open to him now to raise such a dispute, which is nothing but proclamation of omission and an attempt to extract easy money from the Respondent. The Respondent No. 9, therefore urges to dismiss the main Application on the ground that the Application is not maintainable for want of *locus standi*. It is contended that view taken by Hon'ble Principal Bench in "*Goa Foundation v. Union of India*" may be deviated from by. This Bench inasmuch as it is not a binding precedent to be followed by this Bench. We do not agree. Whether it is a binding precedent or not is not the question which needs to be addressed at this juncture. It is well settled principle that Judgment of a co-ordinate Bench must be duly respected by another Bench. This basic jurisprudential discipline shall be maintained to follow principle of '*stare decisis*'. Hence, we are unable to accept the contention of learned Counsel for the Respondent No. 9.

19. We cannot brush aside the purposive interpretation of expression "any person aggrieved" as used in Section 18(2)(e) of the National Green Tribunal Act, 2010. It is not referable to any person aggrieved by any kind of order as such, but may be a person aggrieved due to loss of environment, breach of environmental norms or like causes. Only barrier is that his action shall not be baseless, ill-motivated or that outcome of vendetta nor shall he be a person disinterested in such cause of environment but wants to take garb thereof for extraneous reasons. In latter cases the Application may be dismissed and the Tribunal will have to be on guard.

20. Learned Counsel for the Respondent No. 9, strenuously argued that the Application is barred by limitation, in view of the fact that 'cause of action' for filing of the Application 'first arose' on 7.7.1993, when plans for construction of commercial building were sanctioned by the MCGM. The Respondent No. 9, states that after twenty (20) years from the date of sanctioning the plan, now, filing of such Application will open up unwarranted issues, therefore the Application is totally misconceived. The Respondent No. 9, seeks to rely on the wording of Sections 14 and 15 of the National Green Tribunal Act, 2010, as well as the special provisions of Limitation provided there under. Learned counsel for the Respondent No. 9, would submit that general provision of the Limitation Act, are excluded in view of the special enactment, which provides specific provision in respect of the limitation clause and, therefore, there will be no scope for extension of limitation. It is argued that "the plain and simple language of Section 14(3) of the NGT Act, i.e. "unless it is made within a period of six months from the date, on which the cause of action for such dispute first arose", negates the principle of continuing cause of action. If the plea of continuing cause of action is accepted within the limitation, the statute would be eschewed of the important and vital words "first arose".

21. Reliance is placed on the observations in "*Aradhana Bhargav v. MoEF*" [Application No. 11 of 2013], decided by the Hon'ble Bench of NGT on 12.8.2013. The observations in relevant paragraphs of the said Judgment are as below:

"23. From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also

the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule - I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application.

24. Under Section 15 of the Act, an application for relief and compensation to the victims of pollution and other environmental damage under the enactments specified in Schedule-I or for restitution of the property damage or for restitution of environment for such area or areas, the applicant could be filed within a period of five years from the date of which the cause of action for such compensation or reliefs first arose. Also, if sufficient cause was shown, the Tribunal is empowered to condone the delay for a period not exceeding 60 days. Significant it is to note that the expression "cause of action for such dispute first arose" is employed. By employing the above expression, the legislative intent indicating that the period of limitation would commence only from the date on which the first event constituting the dispute arose, is explicit. This is not only an indication but also the caution that the later dates on which subsequent events arose should not be taken into account for computing the period of limitation.

*28. Traite law it is that the special law of limitation, in any given enactment, will always exclude the general law of limitation. The NGT Act, 2010, a special enactment specifically provides period of limitation under Section 14(2) and 15(3), as stated supra. The Principal Bench, NGT has already held in *Jesurethinam v. Ministry of Environment, Union of India*, reported in 2012 (2) FLT 811 NGT that, when a specific provision for limitation is provided under the special statute, the general provisions of the Limitation Act, 1963 are inapplicable. Hence, the Tribunal is afraid whether the theory of continuing cause of action can be made applicable to the present factual position of the case for which the specific period of limitation is available under the NGT Act, 2010.*

30. A person who wishes to invoke the jurisdiction of the Tribunal or Court has to be vigilant and conscious of his rights and should not let the time to go by not taking appropriate steps. It is true that the provisions of law of limitation have to be construed liberally but the same cannot be applied to the present facts of the case for the reasons stated above. It is true that the Tribunal must adopt a practical approach which is in consonance with the provisions of the Act providing limitation. In the instant case, the period of limitation has begun to run long back. The period of limitation once commences operating; it does not stop but continues to operate with its rigour. An interpretation accepting the continuing cause of action would frustrate the very object of the Act and the purpose of prescription of limitation. In the instant case, it is contended by the respondent project proponent that nearly 600 crores have been spent and more than 50% of the work is over, hence, the project proponent who obtained the environmental clearance in the year 1986 and has completed not less than 50% of the work by spending hundreds crores of rupees would be thrown to jeopardising his project at the long lapse of years. Needless to say, if it is allowed, it would be against the very intent of the law. Even it may be true that the applicants are aggrieved persons and it may even be true that there was violations of provisions of law but action should have been initiated within the prescribed period of limitation. In view of all the above, it can be well stated that the contentions put forth by the Learned Counsel for the applicants that the application was within time have to be rejected."

22. In case of "Aradhana Bhargava" (Supra) the challenge was to EC. That was an Appeal under Section 16 of the NGT Act, 2010. Herein, the challenge is mainly to the violations of the EC conditions. Both these matters are on different footings. We do not

find parallels between them. Hence, Judgment in "Aradhana Bhargava" case is not applicable to the facts of the present case.

23. The Counsel further seeks to rely upon observation in 'Nikunj Developers v. State of Maharashtra Environment Department' (MA No. 347/2012, arising out of Appeal No. 76/2012) decided on 14.3.2012, by the Hon'ble Principal Bench of the NGT. It has been held:

"19. From language of the above provision it is clear that the Tribunal loses jurisdiction to condone the delay if the delay is of more than 90 days. Every appeal has to be filed within 30 days from the date of communication of the order. That is, what an applicant is required to ensure before the appeal is heard on merits. However, the Tribunal has been vested with the jurisdiction to entertain the appeal which is filed after 30 days from the date of communication of an order. This power to condone the delay has a clear inbuilt limitation as it ceases to exist if the appeal is filed in excess of 60 days, beyond the prescribed period of limitation of 30 days from the date of communication of such order. To put it simply, once the period of 90 days lapses from the date of communication of the order, the Tribunal has no jurisdiction to condone the delay. The language of the provision is clear and explicit. It admits of no ambiguity and the legislative intent that Tribunal should not and cannot condone the delay in excess of 90 days in all, is clear from the plain language of the provision.

20. As stated in the cases Hiralal Ratan Lal and India Houses (supra) the period of limitation statutorily prescribed, has to be strictly adhered to and cannot be relaxed and or departed from, on equitable consideration. Further, in construing a statutory provision, the first and the foremost rule of construction is that of literary construction. We do not see any reason to expand the scope of the provision and interpret the proviso to Section 16 in the manner that Tribunal can be vested with the power of condoning the delay beyond 90 days. Such interpretation would be contrary to the specific language of the Section and would defeat the very legislative intent and object behind this provision."

24. So far as the question of limitation is concerned, we will have to examine the averments of the Applicant. The averments may or may not be proved in final analysis. Still, however, it cannot be overlooked that the construction activity is stopped by the MCGM, after the complaint was filed by the Applicant, as per order dated 6th January, 2014. According to him, the construction activity cannot be carried out in CRZ-I, area and the competent authority ought to have issued directions under Section 5 of the Environment (Protection) Act, 1986. He submits that since the competent authority, did not give any EC and the Respondent No. 9, did not obtain any permission from the MCZMA, for impugned construction for the project in question, illegal construction is ongoing activity, and can be challenged, because the 'cause of action' is still continuing. He alleges that when he got knowledge that the impugned construction was being carried out without permission of the statutory authority, though it falls in CRZ-I, area, he immediately filed complaint dated 23rd October, 2013, but no action was initiated by the MCZMA. It is for such a reason that he filed the Application and claims that it is within limitation.

25. It may be stated that originally, the MCZMA granted permission for the construction of commercial building in 1993. The sanction certificate was issued on 18.9.1997. In or about 2000, the Respondent No. 9, came into possession of land in question. On 26th December, 2001, the plans for residential building were approved by the MCGM. In October, 2005, development rights were issued for development of the property. The Respondent No. 9, obtained conveyance of the entire land and his name was mutated in the Property Register Card. The construction activity, no doubt, started long back. But the real question is whether the conditions for continuation of

construction activity were followed by the Respondent No. 9?. The Respondent No. 9, relied upon the case of "*Munnial Girijanand v. State*" (Application No. 45/2014). It was a case of *Slum Rehabilitation Area (SRA)* project which had commenced in 2002, when it was not governed by EIA Notification, 2006. The facts of that case are of altogether different from the present case. Secondly, it was found that the Applicants (Munnial and others) were litigating before different Forums, including the City Civil Court, Hon'ble High Court and Apex Court in respect of identical issue, before filing of the Application in the Tribunal under Section 14 of the NGT Act, 2010. So, it was a case of going from one Court to another for the same the same kind of relief. In "*J. Mehta v. Union of India*" (M.A. Nos. 507, 509, 644 and 649/2013, in Application No. 88/2013) of the National Green Tribunal (PB), considered the question of limitation in following way:

"53. Thus, it is clear that the cause of action should have a direct nexus with the matters relating to environment. In the present case, the respondents can hardly be heard to contend that since they have been flouting with impunity, the law, the terms and conditions of the EC for long, and therefore, every person is expected to know such violations or unauthorized use, and as such, the application would be barred by limitation. Respondent No. 9 has not come to the Tribunal with clean hands and disclosed complete details, which were exclusively within their knowledge and possession. In the normal course of business, Respondent No. 9 would have first entered into agreements with other persons for providing these premises, either on sale or lease, as the case may be. Then such buyers/lessees would start making constructional changes and provide infrastructure necessary for using the parking and services area for commercial purposes. Then alone, such persons would have started using the premises for such purposes. All these facts have been withheld by Respondent No. 9. Therefore, the Tribunal would be entitled to draw adverse inference against Respondent No. 9 in that behalf. In any case, Respondent No. 9 and other private respondents have converted the user of the premises contrary to the specified purpose and in violation of law and terms and conditions of the EC. Thus, even such an approach would support the case of the applicant and in any case the respondents cannot be permitted to take advantage of their own wrong or default.

54. The cause of action is not restricted to 'in personam' but is an action available to any person in terms of Section 14 of the NGT Act. It empowers any person aggrieved to raise a substantial question relating to environment including enforcement of any legal right relating thereto. Every citizen is entitled to a clean and decent environment in terms of Article 21 of the Constitution and the term 'cause of action first arose' must be understood in that sense and context. The applicant has been able to establish that he first came to know about the misuser and change of user, particularly with regard to adverse environmental impact, only in the middle of December, 2012 and immediately thereafter, he took steps retuning the authorities concerned to take action as per law but to no avail. Then 'he filed the present application within the prescribed period of six months. The respondents have not been able to rebut successfully the factual matrix stated by the applicant. As already stated, they have withheld relevant facts and information from the Tribunal.

55. A cause of action is a bundle of facts which should give, in its composite form, right to a plaintiff against the defendant to approach a court or Tribunal for a legal remedy or redressed of his grievance. Thus, the existence of a legal remedy to the plaintiff is a sine qua non for an actionable cause of action. In view of the above reasoning, we have no hesitation in concluding that the present application is not barred by time.

56. Lastly but most importantly, now we have to deal with the question as to

whether the breach of conditions of EC is likely to cause environmental and health hazards or not. We have already held that Respondent No. 9 has not only violated the specific terms and conditions of the EC dated 27th November, 2006 but has also miserably failed to submit an application for reappraisal of the project. Furthermore, the said Respondent No. 9 has committed breach of the bye laws, fire safety measures, Corporation laws, etc. All the public authorities have specifically taken the stand that at no point of time, did they accord any permission or sanction for conversion of the parking area for commercial purposes and its misuser or unauthorized construction. In fact, according to them, they have taken appropriate steps against Respondent No. 9 in accordance with law. We have already noticed that this Tribunal is not concerned with the violations and breaches committed by Respondent No. 9 with regard to other laws in force but for environmental laws in terms of Schedule I to the NGT Act and its adverse impact on environment and public health.

57. It has come on record that approximately 59 of commercial area has been increased by such unauthorized conversion and misuser. The terms and conditions of the EC have specifically provided that in the event of any change in the scope of the project, Respondent No. 9 was expected to take steps for reappraisal of the project and take fresh EC, which admittedly, has not been done by Respondent No. 9 despite lapse of considerable time. These violations would consequently have a direct impact on traffic congestion, ambient air quality, contamination of underground water, sewage disposal and municipal solid waste disposal besides other adverse impact on population density in the area. With the significant change of commercial area by 59, the EC itself would be substantially affected and it would be for the authorities concerned to examine whether the EC can be continued or requires to be recalled. There is a drastic change in PSY with change in sq. ft. area as the EC was not intended for such area to which Respondent No. 9 has now expanded its activity. Furthermore, assessment of water requirement is based upon the number of users and other services in the area and this substantial change has fundamentally been altered and would have drastic and adverse effects on all these aspects. The EIA Report submitted by Respondent No. 9 itself shows that these are the various aspects, the variation of which is bound to alter the entire basis for grant of the EC. For instance, the parking for 1772 cars was to be provided in the project in terms of EIA report. For this purpose, the basement, lower ground floor in one block and the multi-level car parking in the Block 2P had been provided. Major part of this area had been converted and used by Respondent No. 9 and other private respondents for commercial purposes. It is not even the case of Respondent No. 9 that the required number of cars can be parked in that building. The cars which could have been parked in the building now would have to be parked on the public roads/places leading to lowering the road capacity resulting in lowering the average speed of the vehicle, consequently increasing the air pollution."

(Emphasis by Us)

26. The term 'cause of action' is a bundle of facts. There cannot be two opinion about legal position that once the 'cause of action' starts running, then it cannot be stopped. In case of violation of Law, particularly, like CRZ Notification, violation continues, when the construction activity goes on without hindrance. As stated before, the competent authority directed the Respondent No. 9, to stop construction activity and therefore, the construction work now has come to halt. It appears *prima facie* that the question regarding alleged violation of CRZ, Notification, is yet to be determined by MCZMA. Under the circumstances, the Application cannot be held as totally barred by limitation, inasmuch as the 'cause of action' is continuous and still remains unabated. In our opinion, question of *locus* as well as question of limitation ought to be decided on case to case basis.

27. What is meaning of expression 'such disputes' in relation to Section 14(2) of the NGT Act, 2010, would depend upon facts of a particular case. One cannot be oblivious of the fact that the Legislature has purposefully used the expression 'such disputes' which imply plurality of nature of dispute, which may be raised in various kind of environmental litigations. Needless to say, it will not be possible to accept straight jacket formula for applicability of sub-section (3) of Section 14. Unless it can be clearly gathered that the dispute has origin, which could be referable to a fixed time of period due to its nature itself, counting of time will not begin from the day one of fixed starting point. Nobody will deny that once limitation period commences, then it will not be arrested in the midst thereof. Close scrutiny of sub-clause (3) of Section 14, will make it amply clear that period of limitation will commence from the 'date of cause of action' for such dispute when it 'first arose'. If this sub-clause, is properly bisected, the legal position which emerges, may be stated in following way:

- a) Filing of Application can be allowed within six months from the date of 'commencement of cause of action' for "such dispute" and,
- b) From "first date of arising of cause" of action.

28. We cannot overlook the material fact that 'first cause of action' in respect of present dispute arose when CRZ Notification's violation was noticed by the Applicant and he made complaint to the concerned Authority. It is important to note that though the MCZMA, is the Authority to take action in the matter on its own, yet failure to take such action by itself, would give rise to 'cause of action', because it is the breach of mandate under the Environment (Protection) Act, 1986, and the order issued thereunder by the MoEF, that will trigger cause of action. A copy of order dated 6th March, 2012, issued by the MoEF, shows that MCZMA, is the Authority created by MoEF, under Section 3 of the Environment (Protection) Act, 1986, to exercise powers and take certain measures for protecting and improving quality of coastal environment and preventing, abating and controlling environmental pollution in the areas of the State of Maharashtra. The relevant part of Notification dated 6th March, 2012, may be reproduced for ready reference:

II. The Authority shall have the power to take the following measures for protecting and improving the quality of the coastal environment and preventing, abating and controlling environmental pollution in areas of the State of Maharashtra; namely:

- (i) Examination of proposals for changes or modifications in classification of Coastal Regulation Zone areas and in the Coastal Zone Management Plan (CZMP) received from the Maharashtra State Government and making. Specific recommendations from Coastal Regulation Zone point of view as per the provisions of Coastal Regulation Zone notification, 2011;
- (ii) (a) inquiry into cases of alleged violation of the provisions of the said Act or the rules made there under or any other law which is relatable to the objects of the said Act and, if found necessary in a specific case, issuing directions under Section 5 of the said Act, insofar as such directions are not inconsistent with any direction issued in that specific case by the National Coastal Zone Management Authority or by the Central Government;
- (b) Review of cases involving violations of the provisions of the 'said Act and the rules made thereunder or under any other law which is relatable to the objects of the said Act, and if found necessary referring such cases, with comments for review to the National Coastal Zone Management Authority;

Provided that the cases under sub-paragraphs (ii)(a) and (ii)(b) of paragraph II only be taken up *suo motu* on the basis of complaint made by an individual or an representative body or an organization;

- (iii) filing complaints under Section 19 of the said Act, in cases of non-compliance of the directions issued by it under sub-paragraphs (i) and (ii) of

paragraph II of this Order; (iv) to take action under Section 10 of the said Act so as to verify the facts concerning the issues arising from sub-paragraphs (i) and (ii) of paragraph II of this Order.

29. A plain reading of above Notification reveals that the Authority is empowered to take action including issuing directions under Section 5 of the Environment (Protection) Act, 1986. It is obvious, therefore, that when the Authority failed to take suitable action, when CRZ violation was complained and brought to the notice of the competent Authority, the 'first cause of action' had arisen to file the present Application. Apart from that, we cannot overlook the fact that the Applicant could not have knowledge of particulars of the EC granted in favour of the Project Proponent and, therefore, could have no reason to file such Application before verification of the fact that enormous construction was carried out in breach of the EC conditions and within CRZ area.

30. Considered from the standpoint of above view, we are of the opinion that "such disputes" in the present Application arose when the MCZMA failed to issue directions under Section 5 of the Environment (Protection) Act, 1986, irrespective of knowledge that the construction activity was in breach of the CRZ Notification. We are of the opinion that the Applicant could have knowledge of the nature of initial EC granted in favour of the project Proponent. Secondly, initial construction activity was below 20,000 sq mtrs and, therefore, the Applicant might be under impression that no EC was required. However, project activity increased by leaps and bounds and, therefore, he gathered knowledge that certain illegal activity was going on. It is in the wake of such 'subsequent event' that he raked up the dispute in question. Obviously, the cause of action 'first arose' for such a dispute when knowledge of excessive project activity was gained and that Competent Authority failed to exercise powers under Section 5 of the Environment (Protection) Act, 1986, because 'cause of action' triggered for the purpose of filing this Application and hence it is within limitation.

31. In the final analysis, we hold that the present Application, in the given circumstances, is not barred by limitation, nor can be dismissed for want of '*locus standi*'. Under the circumstances, Misc. Application No. 65/204, is dismissed with no order as to costs.

The Main Application scheduled for hearing on next date.