BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

INTERLOCUTORY APPLICATION NO. 154/2019

WITH

INTERLOCUTORY APPLICATION NO. 60/2021

IN

ORIGINAL APPLICATION NO. 105/2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ... APPLICANT

VERSUS

THE PRINCIPAL SECRETARY-DOE, GOM

& OTHERS ... RESPONDENTS

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Date: 11.11.2021

Bambhire

APPLICANT

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its expiry. The startling facts which we have narrated above clearly show that the executive in Bihar has almost taken over the role of the legislature in making laws, not for a limited period, but for years together in disregard of the constitutional limitations. This is clearly contrary to the constitutional scheme and it must be held to be improper and invalid. We hope and trust that such practice shall not be continued in the future and that whenever an ordinance is made and the government wishes to continue the provisions of the ordinance in force after the assembling of the legislature, a Bill will be brought before the legislature for enacting those provisions into an Act. There must not be Ordinance-Raj in the country.

9. We must accordingly strike down the Bihar Intermediate Education Council Ordinance, 1985 which is still in operation as unconstitutional and void. Petitioner 1 has done enormous research and brought this reprehensible practice of the Government of Bihar to the notice of the court and we would therefore direct that the State of Bihar shall pay to petitioner 1 a sum of Rs 10,000 (rupees ten thousand only) as and by way of cost of the writ petitions.

— —

(1987) 1 Supreme Court Cases 395

(BEFORE P.N. BHAGWATI, C.J. AND RANGANATH MISRA, G.L. OZA, M.M. DUTT AND K.N. SINGH, JJ.)

M.C. MEHTA AND ANOTHER .. Petitioners ;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (Civil) No. 12739 of 1985†,
decided on December 20, 1986

Tort Law — Rule of strict liability — Liability of industries engaged in hazardous or dangerous activities when deaths or injuries occur on account of accident in operation of such activities — Held, liability to pay compensation to affected persons strict and absolute — Amount of compensation payable — Rule laid down in Rylands v. Fletcher not applicable in India — Constitution of India, Articles 32 and 21

Jurisprudence — Law — Should keep pace with changing socio-economic norms — Where a law of the past does not fit in the present context, Court should evolve new law — Judicial activism

Interpretation of Statutes — External aids — Foreign case-law — Supreme Court of India not bound by foreign court's decisions

Held :

The rule in **Rylands** v. **Fletcher** laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he

†Under Article 32 of the Constitution of India

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is liable to compensate for the damage caused. This rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is a statutory authority. This rule evolved in the 19th century at a time when all the developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. In a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to be carried on as part of the developmental programme, Court should not feel inhibited by this rule merely because the new law does not recognise the rule of strict and absolute liability in case of an enterprise engaged in hazardous and dangerous activity. (Para 31)

Rylands v. Fletcher, (1868) LR 3 HL 330, distinguished

Law has to grow in order to satisfy the needs of the fast-changing society and keep abreast with the economic developments taking place in the country. Law cannot afford to remain static. The Court cannot allow judicial thinking to be constricted by reference to the law as it prevails in England or in any other foreign country. Though the Court should be prepared to receive light from whatever source it comes but it has to build up its own jurisprudence. It has to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. If it is found that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, the Court should not hesitate to evolve such principle of liability merely because it has not been so done in England. (Para 31)

An enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results to anyone on account of an accident in the operation of such activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident as a part of the social cost for carrying on such activity, regardless of whether it is carried on carefully or not. Such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in **Rylands** v. **Fletcher**. If the enterprise is permitted to carry on a hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such activity as an appropriate items of its overheads. The enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. (Para 31)

The measure of compensation in these kinds of cases must be corelated

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to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise. (Para 32)

[Since the Court did not decide the question as to whether Shriram is an authority within the meaning of Article 12 so as to be subjected to Article 21, setting up of a special machinery for investigation of the claims for compensation made by those who alleged that they had been the victims of oleum gas escape was not called for. But the Delhi Legal Aid and Advice Board was directed to take up the cases of all those who claimed to have suffered on account of oleum gas and to file actions on their behalf in the appropriate court for claiming compensation against Shriram, within two months. The Delhi Administration was directed to provide the necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court will nominate one or more Judges as may be necessary for the purpose of trying such actions so that they may be expeditiously disposed of.] (Para 33)

Constitution of India — Article 32 — Scope of Court's power nnder, to devise appropriate procednres and to issue directions, orders or writs — Court competent to grant remedial assistance by way of compensation in exceptional cases — Court has incidental and ancillary power in exercise of which it can innovate new methods and strategies for securing enforcement of fundamental rights especially in PIL/SAL cases

Held :

Supreme Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the Court has the implicit power to issue whatever direction, order or writ is necessary in a given case. Article 32 lays a constitutional obligation on Supreme Court to protect the fundamental rights of the people and for that purpose Supreme Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning. (Paras 3 and 6)

The power of the Court is not only injunctive in ambit, that is preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed. (Para 6)

Under Article 32 the Court has the power to grant remedial relief which includes the power to award compensation **in appropriate cases**; it is not that in every case of breach of fundamental rights that compensation can be awarded. But a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of breach of a fundamental right that compensation may be awarded under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale of affecting the fundamental rights of a large number of persons or it should appear

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unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. (Para 6)

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389 : (1984) 2 SCR 67, (views of Bhagwati, J., as he then was), and Rudul Shah v. State of Bihar, (1983) 4 SCC 141 : AIR 1983 SC 1086 and Bhim Singh v. State of J & K, (1985) 4 SCC 677, affirmed

S.P. Gupta v. Union of India, 1981 Supp SCC 87, relied on

Constitution of India — Articles 32 and 21 — Public interest litigation — Natnre of — Earlier rulings affirmed

Constitution of India — Articles 32 and 21 — Public interest litigation — Pleadings — Hyper-technical approach should be avoided by Court — Application on behalf of oleum gas victims — Court would consider claim for compensation on their behalf even where the claim is sought for them by a PIL petitioner and not by themselves

Held :

Where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a court of law for justice, it would be open to any public-spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the Court. (Para 1)

While dealing with such applications, Court should not adopt a hyper-technical approach which would defeat the ends of justice. The applications for compensation had been made in this case for enforcement of right under Article 21 of persons affected by the oleum gas leak. Merely because the petitioner could not apply for amendment of the writ petition so as to include the claim for compensation the applications for compensation cannot be thrown out. The Court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form. (Para 1)

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : (1984) 2 SCR 67 ; S.P. Gupta v. Union of India, 1981 Supp SCC 87 and P.U.D.R. v. Union of India, (1982) 3 SCC 235 : (1983) 1 SCR 456, affirmed

Constitution of India — Article 32 — Public interest litigation — Maintainability — Letters addressed even to an individual Judge entertainable — No preferred form of address applicable — Also letters need not necessarily be supported by affidavits

Held :

Even if a letter is addressed to an individual Judge of the Court, it should be entertained, provided it is by or on behalf of a person in custody or on behalf of a woman or a child or a class of deprived or disadvantaged persons. There is no difficulty in entertaining such letters as the Court now has a PIL Cell and it is only after scrutiny by the staff members attached to this Cell that the letters are placed before the Chief Justice and under his direction, they are listed before the Court. (Para 5)

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The Court also should not insist on an affidavit as a condition for entertaining the letters as in case of such insistence the entire object and purpose of epistolary jurisdiction would be frustrated because most of the poor and disadvantaged persons will then not be able to have easy access to the Court and even the social action groups will find it difficult to approach the Court.

(Para 5)

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : (1984) 2 SCR 67, referred to

Constitution of India — Article 32 — Public interest litigation — Court's power to collect relevant material and to appoint commissions

Held :

So far as the power of the Court under Article 32 to gather relevant material bearing on the issues arising in this kind of litigation, which may be called Social Action Litigation for the sake of convenience, and to appoint commissions for this purpose, are concerned the views expressed by Bhagwati, J., as he then was, in **Bandhua Mukti Morcha**, are endorsed and fully approved.

(Para 6)

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : (1984) 2 SCR 67 (views of Bhagwati, J., as he then was), affirmed

Constitution of India — Article 12 — "Other authorities" — Private corporations — Whether and when can fall within the ambit of Article 12 — Applicability of American doctrine of State action — Industries covered by Industrial Policy Resolutions — Scope of Article 12 needs expansion to advance human rights jurisprudence

Constitution of India — Article 21 — Human rights jurisprudence — Cannot be permitted to be thwarted by status quoists on the basis of unfounded apprehensions

Interpretation of the Constitution — Creative and innovative interpretation in consonance with human rights jurisprudence commended

The question was whether Article 21 was available against Shriram which is owned by Delhi Cloth Mills Limited, a public company limited by shares, and which is engaged in an industry vital to public interest and with potential to affect the life and health of the people. It was contended that Article 21 was available, as Shriram was carrying on an industry which, according to the government's own declared industrial policies, was ultimately intended to be carried out by itself, but instead of the government immediately embarking on that industry, Shriram was permitted to carry it on under the active control and regulation of the Government. Since the government intended to ultimately carry on this industry and the mode of carrying on the industry could vitally affect public interest, the control of the government was linked to regulating that aspect of the functioning of the industry which could vitally affect public interest. Special emphasis was laid on the regulatory mechanisms provided under the Industries Development and Regulation Act, 1951 where industries are included in the schedule if they vitally affect public interest, as also under the Bombay Municipal Corporation Act, the Air and Water Pollution Control Acts and the Environment Protection Act, 1986. It was also pointed out that sizeable aid in the form of loans, land and other facilities were granted by the government to Shriram in carrying on the industry. Taking aid of the American State Action doctrine, it was also argued that private activity,

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if supported, controlled or regulated by the State may get so entwined with governmental activity as to be termed State action and it would then be subject to the same constitutional restraints on the exercise of power as the State.

Held :

From the decided cases it appears that Supreme Court has not permitted the corporate device to be utilised as a barrier ousting the constitutional control of the fundamental rights. Prima facie, when the State's power as economic agent, economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private corporation under the functional control of the State engaged in an activity which is hazardous to the health and safety of the community and is imbued with public interest and which the State ultimately proposes to exclusively run under its industrial policy, such as the fertiliser and chemical factory of Shriram, should not be subject to the same limitations. But it is not necessary to decide this question and to make any definite pronouncement upon it. (Paras 18 and 28)

Ramana Dayaram Shetty v. International Airports Authority of India, (1979) 3 SCC 489 : (1979) 3 SCR 1014 : AIR 1979 SC 1628 ; Eurasian Equipment and Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70 : (1975) 2 SCR 674 : AIR 1975 SC 266 ; Rashbihari Panda v. State of Orissa, (1969) 1 SCC 414 : (1969) 3 SCR 374 and Kasturi Lal Reddy v. State of J & K, (1980) 4 SCC 1 : (1980) 3 SCR 1338 : AIR 1980 SC 1992, relied on

The historical context in which the American doctrine of State action evolved in the United States is irrelevant for our purpose. (Para 29)

The Supreme Court of India is not bound by the American exposition of constitutional law. The provisions of the American Constitution cannot always be applied to Indian conditions or to the provisions of our Constitution. Whilst some of the principles adumbrated by the American decisions may provide a useful guide, close adherence to those principles while applying them to the provisions of our Constitution is not to be favoured because the social conditions in our country are different. (Para 29)

Ramana Dayaram Shetty v. International Airports Authority of India, (1979) 3 SCC 489 : (1979) 3 SCR 1014 : AIR 1979 SC 1628 ; Jackson v. Metropolitan Edison Company, 42 L Ed (2d) 477 ; Air India v. Nergesh Meerza, (1981) 4 SCC 335 : (1982) 1 SCR 438 : AIR 1981 SC 1829 and General Electric Company v. Martha V. Gilbert, 50 L Ed (2d) 343, relied on

However, the principle behind the doctrine of State aid, control and regulation so impregnating a private activity as to give it the colour of State action can be applied to the limited extent to which it can be Indianized and harmoniously blended with our constitutional jurisprudence. (Para 29)

Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human rights and social conscience in our corporate structure. The purpose of expansion has not been to destroy the raison d'etre of creating corporations but to advance the human rights jurisprudence. Prima facie it is not possible to accept as well-founded the apprehension that inclusion within the ambit of Article 12 and thus subjecting to the discipline of Article 21, those private corporations whose activities have the potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial

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activity. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by status quoists. (Para 30)

Ramana Dayaram Shetty v. International Airports Authority of India, (1979) 3 SCC 489 : (1979) 3 SCR 1014, referred to

[In view of paucity of time between the conclusion of the hearing and date for delivery of the judgment, the Court left the above question open for a proper and detailed consideration in future.]

R-M/7673/CL

Advocates who appeared in this case :

Petitioner in-person ;

B. Datta, Additional Solicitor-General, A.B. Divan, F.S. Nariman, B.R.L. Iyengar and Hardev Singh, Senior Advocates (Hemant Sharma, C.V.S. Rao, R.D. Aggarwal, Ms S. Relan, R.S. Sodhi, S. Sukumaran, Ravinder Narain, D.N. Mishra, Aditya Narayan, Ms Lira Goswami, S. Kochwaha, Mohan, Ravinder Bana, K.C. Dua, Mrs K. Kumaramangalam, O.C. Jain, K.R.R. Pillai, Advocates, with them), for the Respondents ;

Raju Ramachandran, Advocate, for the Delhi Legal Aid and Advice Board ;

Soli J. Sorabji, Senior Advocate, for Citizens Action Committee.

[**Ed.** : The above judgment of a Constitution Bench touches upon several important issues :

(1) Having laid down that in the matter of Public Interest Litigation/ SAL even a letter addressed to any individual Justice can be entertained, the Court has mentioned that all such letters will be processed through the Public Interest Litigation Cell in the Supreme Court and after scrutiny placed before the Chief Justice. The future of PIL/SAL then would considerably depend on the functioning of this cell. Attention must therefore be paid to the administrative structure and working of a model PIL Cell with proper setting and inputs so that similar cells could be opened in each High Court and there be uniform working amongst them. Legal aid cells can be encouraged to function as catalytic agents for PIL.

(2) The Bench has ruled for award of compensation under Article 32 in specified appropriate cases and extended it beyond the cases involving wrongful arrest and detention like *Bhim Singh*, (1985) 4 SCC 677 ; *Sebastian M. Hongray*, (1984) 3 SCC 82 and *Rudal Shah*, (1983) 4 SCC 141. It shows the continuing concern of the Court for the socially and economically disadvantaged persons. As a further step the Court has considered, without finally deciding the question, whether a private corporation is covered by Article 32. If the stand point is that as far as the hapless helpless poor and disadvantaged are concerned it matters little if the defendant corporation is private or public, what justification remains for retaining the rule of sovereign immunity where the defendant is the State. The effect of the injury is the same regardless of the status of the person or authority by whose negligence (or their servant's) it was caused. In any case the doctrine of sovereign immunity born of an imperialistic era is little suited for democratic socialist India.

(3) It is interesting to note that when the case was first heard by three judges and judgment given on the question of restarting the caustic

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chlorine plant, (1986) 2 SCC 176, no discussion was entered into regarding finding the jurisdictional basis for the Court under Article 32. Violation of Article 21 was apparently assumed or not contested and directions affecting the substantive rights of Shriram Industry were passed. The subsequent petition in (1986) 2 SCC 325 was not a review petition questioning the jurisdictional basis of the earlier order but merely one seeking clarification. Hence as such Article 32 was in fact exercised against a private corporation. It is a moot question whether by ruling that this question is being left open the present five judge bench has overruled the exercise of Article 32 against a private corporation by the three judge bench in (1986) 2 SCC 176.

(4) The Court has stated that the purport to include private corporations in Article 12 and have the matter decided within the original jurisdiction of Article 32 is to subject the activity of such private corporations "to the limitations of fundamental rights" and "to inject respect for human rights and social conscience in our corporate structure" thereby to "advance human rights jurisprudence". Can one read from this and the rest of the judgment that in "appropriate cases" the entire matter involving complex questions of fact, liability, damages and compensation would be decided by the Supreme Court in its original jurisdiction as a trial Court? While damage to life and liberty would be covered by Article 21 what about connected cases involving damage to property alone for which the right to property is no longer fundamental? Since the number of victims would be large the question of award of compensation to each in relation to the pecularities of the injury suffered by him will have to be decided. The Supreme Court may set up a special machinery for such claims but eventually it will have to oversee and decide the claims. While for a tribunal there is a mass of case-law Indian and foreign on liability/damages/compensation, there are hardly any precedents of itself for the Supreme Court of India to follow and so detailed principles would have to be innovated and applied in the first major case itself. Despite the well known backlog of cases at the Supreme Court all such cases will have to be given priority and decided immediately.

But the Court must seriously consider the question of logistics. The place of mishap may not be near the seat of the Supreme Court or any of the High Courts. From far flung areas how will the victims effectively reach the superior Courts and consult counsel at such Courts. Already the move is to decentralise justice and take it to the door steps of the victims through Lok Adalats etc. And if as against constitutional remedies, the normal statutory remedies and common law remedies available at district Court level are really found inadequate to deal with such cases, as a long term policy should not the further development of such remedies be informed and inspired by the provisions of the Constitution so that human rights jurisprudence may operate and flourish at grass root level.

In the preceding judgment in this case, (1986) 2 SCC 176, Bhagwati, C.J. had himself appointed the Chief Metropolitan Magistrate before whom claims for compensation may be filed (SCC p. 118); and in future cases the District Judge, Delhi to determine the compensation (SCC p. 200) and he even suggested the setting up of Environment Courts on regional basis with professional judge and experts and the matter to come to the Supreme Court only *by way of appeal* (SCC p. 202).

(5) The Court has taken a bold step in laying down the principle of liability for industries engaged in hazardous or inherently dangerous activities. Two aspects that seem to logically follow this onerous responsibility are:

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the freedom to choose the workers to run such an industry and the expectation of an equally responsible functioning of regulatory government agencies.

Necessarily the working of even the most sophisticated and carefully designed industrial plant eventually depends on the vigilance and care of the workers operating it. Therefore a free hand will have to be afforded to the management of such industries in the matters of selection and in exercise of discretion to dispense with services of employees it does not find responsible enough or looses confidence in. What this means is a special labour law jurisprudence in respect of hazardous and inherently dangerous industries.

Moreover all government agencies and inspectorates that carry out routine inspections and certify worthiness and fitness of an industrial plant must necessarily be held liable for criminal negligence for their acts of commission and omission if a mishap occurs. The expenditure of public money on their expert inspections is meaningless and their reports suicidal for the public if they are not reliable enough and lull any management to think all is well. The exception would be where the inherent and possible dangers of the process are kept secret by the management or are not fully disclosed to the licensing or regulatory agencies.

What has been enunciated in this case is truly a rule of accountability and so must extend to its logical conclusion to include others on whom any management would necessarily rely upon to run the industry.

(6) Can the considered opinion of the Court on the above matter of liability be regarded as obiter and therefore not binding.

Going by the past practice and the precedents, the considered opinions of the Supreme Court have been regarded as binding both by the Supreme Court itself and by the High Courts. The above question of liability in this case was "seriously debated" and hence the rule laid down must be considered as binding law within Article 141.

It is interesting to re-read *Marbury* v. *Madison*, the celebrated case on judicial review, as to what was the question for decision and what the judgment laid down and is considered an authority for. Commenting on it, Jefferson insisted that most of the opinion was "merely an *obiter* dissertation of the Chief Justice" (Dowling and Gunther: *Cases and Materials on Constitutional Law*, 7th Edn., p. 44).]

The Judgment of the Court was delivered by

BHAGWATI, C.J.—This writ petition under Article 32 of the Constitution has come before us on a reference made by a Bench of three Judges. The reference was made because certain questions of seminal importance and high constitutional significance were raised in the course of arguments when the writ petition was originally heard. The facts giving rise to the writ petition and the subsequent events have been set out in some detail in the judgment given by the Bench of three Judges on February 17, 1986[1], and it is therefore not necessary to reiterate the same. Suffice it to state that the Bench of three Judges permitted Shriram Foods and Fertiliser Industries (hereinafter

1. (1986) 2 SCC 176, as amended by order dated March 10, 1986 reported in (1986) 2 SCC 325

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referred to as Shriram) to restart its power plant as also plants for manufacture of caustic soda chlorine including its by-products and recovery plants like soap, glycerine and technical hard oil, subject to the conditions set out in the judgment. That would have ordinarily put an end to the main controversy raised in the writ petition which was filed in order to obtain a direction for closure of the various units of Shriram on the ground that they were hazardous to the community and the only point in dispute which would have survived would have been whether the units of Shriram should be directed to be removed from the place where they are presently situate and relocated in another place where there would not be much human habitation so that there would not be any real danger to the health and safety of the people. But while the writ petition was pending there was escape of oleum gas from one of the units of Shriram on December 4 and 6, 1985 and applications were filed by the Delhi Legal Aid and Advice Board and the Delhi Bar Association for award of compensation to the persons who had suffered harm on account of escape of oleum gas. These applications for compensation raised a number of issues of great constitutional importance and the Bench of three Judges therefore formulated these issues and asked the petitioner and those supporting him as also Shriram to file their respective written submissions so that the court could take up the hearing of these applications for compensation. When these applications for compensation came up for hearing it was felt that since the issues raised involved substantial questions of law relating to the interpretation of Articles 21 and 32 of the Constitution, the case should be referred to a larger Bench of five Judges and this is how the case has now come before us.

2. Mr Divan, learned counsel appearing on behalf of Shriram raised a preliminary objection that the court should not proceed to decide these constitutional issues since there was no claim for compensation originally made in the writ petition and these issues could not be said to arise on the writ petition. Mr Divan conceded that the escape of oleum gas took place subsequent to the filing of the writ petition but his argument was that the petitioner could have applied for amendment of the writ petition so as to include a claim for compensation for the victims of oleum gas but no such application for amendment was made and hence on the writ petition as it stood, these constitutional issues did not arise for consideration. We do not think this preliminary objection raised by Mr Divan is sustainable. It is undoubtedly true that the petitioner could have applied for amendment of the writ petition so as to include a claim for compensation but merely because he did not do so, the applications for compensation made by the Delhi Legal Aid and Advice Board and the Delhi Bar Association cannot be thrown out. These applications

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for compensation are for enforcement of the fundamental right to life enshrined in Article 21 of the Constitution and while dealing with such applications, we cannot adopt a hyper-technical approach which would defeat the ends of justice. This Court has on numerous occasions pointed out that where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a court of law for justice, it would be open to any public spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the court. If this Court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who cannot approach the court for justice, there is no reason why these applications for compensation which have been made for enforcement of the fundamental right of the persons affected by the oleum gas leak under Article 21 should not be entertained. The court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form. We cannot therefore sustain the preliminary objection raised by Mr Divan.

3. The first question which requires to be considered is as to what is the scope and ambit of the jurisdiction of this Court under Article 32 since the applications for compensation made by the Delhi Legal Aid and Advice Board and the Delhi Bar Association are applications sought to be maintained under that article. We have already had occasion to consider the ambit and coverage of Article 32 in the *Bandhua Mukti Morcha* v. *Union of India*[2] and we wholly endorse what has been stated by one of us namely, Bhagwati, J. as he then was in his judgment in that case in regard to the true scope and ambit of that article. It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.

2. (1984) 2 SCR 67 : (1984) 3 SCC 161 : 1984 SCC (L&S) 389

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4. Thus it was in *S.P. Gupta* v. *Union of India*[3] that this Court held that (SCC p. 210, para 17)

> where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability on socially or economically disadvantaged position, unable to approach the court for relief, any member of the public or social action group can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

This Court also held in *S.P. Gupta case*[3] as also in the *PUDR* v. *Union of India*[4] and in *Bandhua Mukti Morcha case*[2] that procedure being merely a hand-maiden of justice it should not stand in the way of access to justice to the weaker sections of Indian humanity and therefore where the poor and the disadvantaged are concerned who are barely eking out a miserable existence with their sweat and toil and who are victims of an exploited society without any access to justice, this Court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or a social action group acting *pro bono publico* would suffice to ignite the jurisdiction of this Court. We wholly endorse this statement of the law in regard to the broadening of *locus standi* and what has come to be known as epistolary jurisdiction.

5. We may point out at this stage that in *Bandhua Mukti Morcha case*[2] some of us apprehending that letters addressed to individual justices may involve the court in frivolous cases and that possibly a view could be taken that such letters do not invoke the jurisdiction of the court as a whole, observed that such letters should not be addressed to individual justices of the court but to the court or to the Chief Justice and his companion judges. We do not think that it would be right to reject a letter addressed to an individual justice of the court merely on the ground that it is not addressed to the court or to the Chief Justice and his companion judges. We must not forget that letters would ordinarily be addressed by poor and

3. 1981 Supp SCC 87
4. (1983) 1 SCR 456 : (1982) 3 SCC 235 : 1982 SCC (L&S) 275

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disadvantaged persons or by social action groups who may not know the proper form of address. They may know only a particular judge who comes from their State and they may therefore address the letters to him. If the court were to insist that the letters must be addressed to the court or to the Chief Justice and his companion judges, it would exclude from the judicial ken a large number of letters and in the result, deny access to justice to the deprived and vulnerable sections of the community. We are therefore of the view that even if a letter is addressed to an individual judge of the court, it should be entertained, provided of course it is by or on behalf of a person in custody or on behalf of a woman or a child or a class of deprived or disadvantaged persons. We may point out that now there is no difficulty in entertaining letters addressed to individual justices of the court, because this Court has a Public Interest Litigation Cell to which all letters addressed to the court or to the individual justices are forwarded and the staff attached to this cell examines the letters and it is only after scrutiny by the staff members attached to this cell that the letters are placed before the Chief Justice and under his direction, they are listed before the court. We must therefore hold that letters addressed to individual justices of the court should not be rejected merely because they fail to conform to the preferred form of address. Nor should the court adopt a rigid stance that no letters will be entertained unless they are supported by an affidavit. If the court were to insist on an affidavit as a condition of entertaining the letters the entire object and purpose of epistolary jurisdiction would be frustrated because most of the poor and disadvantaged persons will then not be able to have easy access to the court and even the social action groups will find it difficult to approach the court. We may point out that the court has so far been entertaining letters without an affidavit and it is only in a few rare cases that it has been found that the allegations made in the letters were false. But that might happen also in cases where the jurisdiction of the court is invoked in a regular way.

6. So far as the power of the court under Article 32 to gather relevant material bearing on the issues arising in this kind of litigation, which we may for the sake of convenience call social action litigation, and to appoint Commissions for this purpose is concerned, we endorse what one of us namely, Bhagwati, J. as he then was, has said in his judgment in *Bandhua Mukti Morcha case*[2]. We need not repeat what has been stated in that judgment. It has our full approval.

7. We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including

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all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide *Bandhua Mukti Morcha case*[2]. If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the court can injunct such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and *ex facie* glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. This is the principle on which this Court awarded compensation in *Rudul Shah* v. *State of Bihar*[5]. So also, this Court awarded compensation to Bhim Singh, whose fundamental right to personal liberty was grossly violated by the State of Jammu and Kashmir[6]. If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such as

5. AIR 1983 SC 1086 : (1983) 4 SCC 141 : 1983 SCC (Cri) 798
6. Bhim Singh v. State of J & K, (1985) 4 SCC 677 : 1986 SCC (Cri) 47

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to shock the conscience of the court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation.

8. The next question which arises for consideration on these applications for compensation is whether Article 21 is available against Shriram which is owned by Delhi Cloth Mills Limited, a public company limited by shares and which is engaged in an industry vital to public interest and with potential to affect the life and health of the people. The issue of availability of Article 21 against a private corporation engaged in an activity which has potential to affect the life and health of the people was vehemently argued by counsel for the applicants and Shriram. It was emphatically contended by counsel for the applicants, with the analogical aid of the American doctrine of State Action and the functional and control test enunciated by this Court in its earlier decisions, that Article 21 was available, as Shriram was carrying on an industry which, according to the government's own declared industrial policies, was ultimately intended to be carried out by itself, but instead of the government immediately embarking on that industry, Shriram was permitted to carry it on under the active control and regulation of the government. Since the government intended to ultimately carry on this industry and the mode of carrying on the industry could vitally affect public interest, the control of the government was linked to regulating that aspect of the functioning of the industry which could vitally affect public interest. Special emphasis was laid by counsel for the applicants on the regulatory mechanism provided under the Industries Development and Regulation Act, 1951 where industries are included in the schedule if they vitally affect public interest. Regulatory measures are also to be found in the Bombay Municipal Corporation Act, the Air and Water Pollution Control Acts and now the recent Environment Protection Act, 1986. Counsel for the applicants also pointed to us the sizeable aid in loans, land and other facilities granted by the government to Shriram in carrying on the industry. Taking aid of the American State Action doctrine, it was also argued before us on behalf of the applicants that private activity, if supported, controlled or regulated by the State may get so entwined with governmental activity as to be termed State action and it would then be subject to the same constitutional restraints on the exercise of power as the State.

9. On the other hand, counsel for Shriram cautioned against expanding Article 12 so as to bring within its ambit private corporations. He contended that control or regulation of a private corporation's functions by the State under general statutory law such as the Industries Development and Regulation Act, 1951 is only in exercise of police power of regulation by the State. Such regulation

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does not convert the activity of the private corporation into that of the State. The activity remains that of the private corporation ; the State in its police power only regulates the manner in which it is to be carried on. It was emphasised that control which deems a corporation, an agency of the State, must be of the type where the State controls the management policies of the Corporation, whether by sizeable representation on the board of management or by necessity of prior approval of the government before any new policy of management is adopted, or by any other mechanism. Counsel for Shriram also pointed out the inappositeness of the State action doctrine to the Indian situation. He said that in India the control and function test have been evolved in order to determine whether a particular authority is an instrumentality or agency of the State and hence 'other authority' within the meaning of Article 12. Once an authority is deemed to be 'other authority' under Article 12, it is State for the purpose of all its activities and functions and the American functional dichotomy by which some functions of an authority can be termed State action and others private action, cannot operate here. The learned counsel also pointed out that those rights which are specifically intended by the Constitution makers to be available against private parties are so provided in the Constitution specifically such as Articles 17, 23 and 24. Therefore, to so expand Article 12 as to bring within its ambit even private corporations would be against the scheme of the chapter on fundamental rights.

10. In order to deal with these rival contentions we think it is necessary that we should trace that part of the development of Article 12 where this Court embarked on the path of evolving criteria by which a corporation could be termed 'other authority' under Article 12.

11. In *Rajasthan State Electricity Board* v. *Mohan Lal*[7] this Court was called upon to consider whether the Rajasthan Electricity Board was an 'authority' within the meaning of the expression 'other authorities' in Article 12. Bhargava, J. who delivered the judgment of the majority pointed out that the expression 'other authorities' in Article 12 would include all constitutional and statutory authorities on whom powers are conferred by law. The learned Judge also said that if any body of persons has authority to issue directions, the disobedience of which would be punishable as a criminal offence, that would be an indication that the concerned authority is 'State'. Shah, J., who delivered a separate judgment agreeing with the conclusion reached by the majority, preferred to give a slightly different meaning to the expression 'other authorities'. He said that authorities, constitutional or statutory, would fall within the expression "other

7. (1967) 3 SCR 377 : AIR 1967 SC 1857 : (1968) 1 Lab LJ 257

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authorities" only if they are invested with the sovereign power of the State, namely, the power to make rules and regulations which have the force of law. The ratio of this decision may thus be stated to be that a constitutional or statutory authority would be within the expression "other authorities" if it has been invested with statutory power to issue binding directions to third parties, the disobedience of which would entail penal consequences or it has the sovereign power to make rules and regulations having the force of law.

12. This test was followed by Ray, C.J., in *Sukhdev Singh* v. *Bhagatram*[8]. Mathew, J., however, in the same case propounded a broader test. The learned Judge emphasised that the concept of 'State' had undergone drastic changes in recent years and today 'State' could not be conceived of simply as a coercive machinery wielding the thunderbolt of authority ; rather it has to be viewed mainly as a service corporation. He expanded on this dictum by stating that the emerging principle appears to be that a public corporation being an instrumentality or agency of the 'State' is subject to the same constitutional limitations as the 'State' itself. The preconditions of this are two, namely, that the corporation is the creation of the 'State' and that there is existence of power in the corporation to invade the constitutional rights of the individual. This Court in *Ramana Dayaram Shetty* v. *International Airports Authority of India*[9] accepted and adopted the rationale of instrumentality or agency of State put forward by Mathew, J., and spelt out certain criteria with whose aid such an inference could be made. However, before we come to these criteria we think it necessary to refer to the concern operating behind the exposition of the broader test by Justice Mathew which is of equal relevance to us today, especially considering the fact that the definition under Article 12 is an inclusive and not an exhaustive definition. That concern is the need to curb arbitrary and unregulated power wherever and howsoever reposed.

13. In *R.D. Shetty* v. *International Airports Authority*[9] this Court deliberating on the criteria on the basis of which to determine whether a corporation is acting as instrumentality or agency of government said that it was not possible to formulate an all inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of government and those which are not. The court said whilst formulating the criteria that analogical aid can be taken from the concept of State Action as developed in the United States wherein the US courts have

8. (1975) 1 SCC 421
9. (1979) 3 SCR 1014 : (1979) 3 SCC 489 : AIR 1979 SC 1628

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suggested that a private agency if supported by extraordinary assistance given by the State may be subject to the same constitutional limitations as the State. It was pointed out that the State's general common law and statutory structure under which its people carry on their private affairs, own property and enter into contracts, each enjoying equality in terms of legal capacity, is not such assistance as would transform private conduct into State Action. "But if extensive and unusual financial assistance is given and the purpose of the government in giving such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of the government." (SCC p. 508, para 15)

14. On the question of State control, the court in *R.D. Shetty case*[9] clarified that some control by the State would not be determinative of the question, since the State has considerable measure of control under its police power over all types of business organisations. But a finding of State financial support plus an unusual degree of control over the management and policies of the corporation might lead to the characterisation of the operation as State Action.

15. Whilst deliberating on the functional criteria namely, that the corporation is carrying out a governmental function, the court emphasised that classification of a function as governmental should not be done on earlier day perceptions but on what the State today views as an indispensable part of its activities, for the State may deem it as essential to its economy that it own and operate a railroad, a mill or an irrigation system as it does to own and operate bridges, street lights or a sewage disposal plant. The Court also reiterated in *R.D. Shetty case*[9] what was pointed out by Mathew, J. in *Sukhdev* v. *Bhagatram*[8] that "institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions". (1975) 1 SCC 421 at 454 (para 96) quoted in (1979) 3 SCC at 509, para 16

16. The above discussion was rounded off by the Court in *R.D. Shetty case*[9] by enumerating the following five factors namely, (1) financial assistance given by the State and magnitude of such assistance, (2) any other form of assistance whether of the usual kind or extraordinary, (3) control of management and policies of the corporation by the State — nature and extent of control, (4) State conferred or State protected monopoly status, and (5) functions carried out by the corporation, whether public functions closely related to

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governmental functions, as relevant criteria for determining whether a corporation is an instrumentality or agency of the State or not, though the court took care to point out that the enumeration was not exhaustive and that it was the aggregate or cumulative effect of all the relevant factors that must be taken as controlling.

17. The criteria evolved by this Court in *R.D. Shetty case*[9] were applied by this Court in *Ajay Hasia* v. *Khalid Mujib*[10] where it was further emphasised that : (SCC pp. 731-32, para 7)

> Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. Now it is obvious that the government may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions.... It is really the government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the government...(for), If the government acting through its officers is subject to certain constitutional limitations, it must follow *a fortiorari* that the government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations.

On the canon of construction to be adopted for interpreting constitutional guarantees the Court pointed out : (SCC p. 733, para 7)

> ...constitutional guarantees...should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the government or through the corporate personality of which the government is acting, so as to subject the government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental Rights.

In this case the court also set at rest the controversy as to whether the manner in which a corporation is brought into existence had any relevance to the question whether it is a State instrumentality or agency. The Court said that it is immaterial for the purpose of determining whether a corporation is an instrumentality or agency of the State or

10. (1981) 2 SCR 79 : (1981) 1 SCC 722 : 1981 SCC (L&S) 258

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not whether it is created by a statute or under a statute : (SCC p. 737, para 11)

> The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute.

It would come within the ambit of Article 12, if it is found to an instrumentality or agency of the State on a proper assessment of the relevant factors.

18. It will thus be seen that this Court has not permitted the corporate device to be utilised as a barrier ousting the constitutional control of the fundamental rights. Rather the Court has held :[11] (SCC p. 480, para 55)

> It is dangerous to exonerate corporations from the need to have constitutional conscience ; and so, that interpretation, language permitting, which makes governmental agencies, whatever their mien amenable to constitutional limitations must be adopted by the court as against the alternative of permitting them to flourish as an *imperium in imperio*.

19. Taking the above exposition as our guideline, we must now proceed to examine whether a private corporation such as Shriram comes within the ambit of Article 12 so as to be amenable to the discipline of Article 21.

20. In order to assess the functional role allocated to private corporation engaged in the manufacture of chemicals and fertilisers, we need to examine the Industrial policy of the government and see the public interest importance given by the State to the activity carried on by such private corporation.

21. Under the Industrial Policy Resolution, 1956 industries were classified into three categories having regard to the part which the State would play in each of them. The first category was to be the exclusive responsibility of the State. The second category comprised those industries which would be progressively State owned and in which the State would therefore generally take the initiative in establishing new undertakings but in which private enterprise would also be expected to supplement the effort of the State by promoting and developing undertakings either on its own or with State participation.

11. Som Prakash Rekhi v. Union of India, (1981) 2 SCR 111 : (1981) 2 SCC 449 : 1981 SCC (L&S) 200

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The third category would include all the remaining industries and their future development would generally be left to the initiative and enterprise of the private sector. Schedule B to the Resolution enumerated the industries.

22. Appendix I to the Industrial Policy Resolution, 1948 dealing with the problem of State participation in industry and the conditions in which private enterprise should be allowed to operate stated that there can be no doubt that the State must play a progressively active role in the development of industries. However under the present conditions, the mechanism and resources of the State may not permit it to function forthwith in industry as widely as may be desirable. The policy declared that for some time to come, the State could contribute more quickly to the increase of national wealth by expanding its present activities wherever it is already operating and by concentrating on new units of production in other fields.

23. On these considerations the government decided that the manufacture of arms and ammunition, the production and control of atomic energy and the ownership and management of railway transport would be the exclusive monopoly of the Central Government. The establishment of a new undertakings in coal, iron and steel, aircraft manufacture, ship-building, manufacture of telephone, telegraph and wireless apparatus and mineral oils were to be the exclusive responsibility of the State except where in national interest the State itself finds it necessary to secure the co-operation of private enterprise subject to control of the Central Government.

24. The policy resolution also made mention of certain basic industries of importance the planning and regulation of which by the Central Government was found necessary in national interest. Among the eighteen industries so mentioned as requiring such Central control, heavy chemicals and fertilisers stood included.

25. In order to carry out the objective of the Policy Resolution the Industries (Development and Regulation) Act of 1951 was enacted which, according to its objects and reasons, brought under Central control the development and regulation of a number of important industries the activities of which affect the country as a whole and the development of which must be governed by economic factors of all India import. Section 2 of the Act declares that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. Chemicals and Fertilisers find a place in the First Schedule as items 19 and 18 respectively.

26. If an analysis of the declarations in the Policy Resolutions

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and the Act is undertaken, we find that the activity of producing chemicals and fertilisers is deemed by the State to be an industry of vital public interest, whose public import necessitates that the activity should be ultimately carried out by the State itself, though in the interim period with State support and under State control, private corporations may also be permitted to supplement the State effort. The argument of the applicants on the basis of this premise was that in view of this declared industrial policy of the State, even private corporations manufacturing chemicals and fertilisers can be said to be engaged in activities which are so fundamental to the society as to be necessarily considered government functions. (*Sukhdev* v. *Bhagatram*[8], *R.D. Shetty*[9] and *Ajay Hasia*[10].)

27. It was pointed out on behalf of the applicants that as Shriram is registered under the Industries Development and Regulation Act, 1951, its activities are subject to extensive and detailed control and supervision by the government. Under the Act a licence is necessary for the establishment of a new industrial undertaking or expansion of capacity or manufacture of a new article by an existing industrial undertaking carrying on any of the scheduled industries included in the First Schedule of the Act. By refusing licence for a particular unit, the government can prevent over concentration in a particular region or over-investment in a particular industry. Moreover, by its power to specify the capacity in the licence it can also prevent over-development of a particular industry if it has already reached target capacity. Section 18-G of the Act empowers the Government to control the supply, distribution, price etc. of the articles manufactured by a scheduled industry and under Section 18-A government can assume management and control of an industrial undertaking engaged in a scheduled industry if after investigation it is found that the affairs of the undertaking are being managed in a manner detrimental to public interest and under Section 18-AA in certain emergent cases, takeover is allowed even without investigation. Since Shriram is carrying on a scheduled industry, it is subject to this stringent system of registration and licensing. It is also amenable to various directions that may be issued by the government from time to time and it is subject to the exercise of the powers of the government under Sections 18-A, 18-AA and 18-G.

28. Shriram is required to obtain a licence under the Factories Act and is subject to the directions and orders of the authorities under the Act. It is also required to obtain a licence for its manufacturing activities from the Municipal authorities under the Delhi Municipal Act, 1957. It is subject to extensive environment regulation under the Water (Prevention and Control of Pollution) Act, 1974 and as the factory is situated in an air pollution control area, it is also subject

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to the regulation of the Air (Prevention and Control of Pollution) Act, 1981. It is true that control is not exercised by the government in relation to the internal management policies of the company. However, the control is exercised on all such activities of Shriram which can jeopardize public interest. This functional control is of special significance as it is the potentiality of the fertilizer industry to adversely affect the health and safety of the community and its being impregnated with public interest which perhaps dictated the policy decision of the government to ultimately operate this industry exclusively and invited functional control. Along with this extensive functional control, we find that Shriram also receives sizeable assistance in the shape of loans and overdrafts running into several crores of rupees from the government through various agencies. Moreover, Shriram is engaged in the manufacture of caustic soda, chlorine etc. Its various units are set up in a single complex surrounded by thickly populated colonies. Chlorine gas is admittedly dangerous to life and health. If the gas escapes either from the storage tank or from the filled cylinders or from any other point in the course of production, the health and well-being of the people living in the vicinity can be seriously affected. Thus Shriram is engaged in an activity which has the potential to invade the right to life of large sections of people. The question is whether these factors are cumulatively sufficient to bring Shriram within the ambit of Article 12. Prima facie it is arguable that when the State's power as economic agent, economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights. (Vide *Eurasian Equipment and Chemicals Ltd.* v. *State of W.B.*[12]; *Rashbihari Panda* v. *State of Orissa*[13]; *R.D. Shetty* v. *International Airports Authority*[9] and *Kasturi Lal Reddy* v. *State of J & K*[14]), why should a private corporation under the functional control of the State engaged in an activity which is hazardous to the health and safety of the community and is imbued with public interest and which the State ultimately proposes to exclusively run under its industrial policy, not be subject to the same limitations. But we do not propose to decide this question and make any definite pronouncement upon it for reasons which we shall point out later in the course of this judgment.

29. We were, during the course of arguments, addressed at great length by counsel on both sides on the American doctrine of State action. The learned counsel elaborately traced the evolution of this doctrine in its parent country. We are aware that in America since the Fourteenth Amendment is available only against the State, the courts in order to thwart racial discrimination by private parties,

12. (1975) 2 SCR 674 : (1975) 1 SCC 70 : AIR 1975 SC 266
13. (1969) 3 SCR 374 : (1969) 1 SCC 414
14. (1980) 3 SCR 1338 : (1980) 4 SCC 1 : AIR 1980 SC 1992

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devised the theory of State action under which it was held that wherever private activity was aided, facilitated or supported by the State in a significant measure, such activity took the colour of State action and was subject to the constitutional limitations of the Fourteenth Amendment. This historical context in which the doctrine of State action evolved in the United States is irrelevant for our purpose especially since we have Article 15(2) in our Constitution. But it is the principle behind the doctrine of State aid, control and regulation so impregnating a private activity as to give it the colour of State action that is of interest to us and that also to the limited extent to which it can be Indianized and harmoniously blended with our constitutional jurisprudence. That we in no way consider ourselves bound by American exposition of constitutional law is well demonstrated by the fact that in *R.D. Shetty*[9] this Court preferred the minority opinion of Douglas, J. in *Jackson* v. *Metropolitan Edison Company*[15] as against the majority opinion of Rehnquist, J. And again in *Air India* v. *Nergesh Meerza*[16] this Court whilst preferring the minority view in *General Electric Company* v. *Martha V. Gilbert*[17] said that the provisions of the American Constitution cannot always be applied to Indian conditions or to the provisions of our Constitution and whilst some of the principles adumbrated by the American decisions may provide a useful guide, close adherence to those principles while applying them to the provisions of our Constitution is not to be favoured, because the social conditions in our country are different.

30. Before we part with this topic, we may point out that this Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human rights and social conscience in our corporate structure. The purpose of expansion has not been to destroy the *raison d'etre* of creating corporations but to advance the human rights jurisprudence. Prima facie we are not inclined to accept the apprehensions of learned counsel for Shriram as well founded when he says that our including within the ambit of Article 12 and thus subjecting to the discipline of Article 21, those private corporations whose activities have the potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial activity. Whenever a new advance is made in the field of human rights, apprehension is always expressed by the status quoists that it will create enormous difficulties in the way of smooth functioning of the system and affect its stability. Similar apprehension was voiced when this Court in *R.D. Shetty case*[9] brought public sector corporations within the scope

15. 42 L Ed (2d) 477
16. (1982) 1 SCR 438 : (1981) 4 SCC 335 : 1981 SCC (L&S) 599
17. 50 L Ed (2d) 343

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and ambit of Article 12 and subjected them to the discipline of fundamental rights. ' Such apprehension expressed by those who may be affected by any new and innovative expansion of human rights need not deter the court from widening the scope of human rights and expanding their reach and ambit, if otherwise it is possible to do so without doing violence to the language of the constitutional provision. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by status quoists. But we do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of Article 12, because we have not had sufficient time to consider and reflect on this question in depth. The hearing of this case before us concluded only on December 15, 1986 and we are called upon to deliver our judgment within a period of four days, on December 19, 1986. We are therefore, of the view that this is not a question on which we must make any definite pronouncement at this stage. But we would leave it for a proper and detailed consideration at a later stage if it becomes necessary to do so.

31. We must also deal with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in *Rylands* v. *Fletcher*[18] apply or is there any other principle on which the liability can be determined. The rule in *Rylands* v. *Fletcher*[18] was evolved in the year 1866 and it provides that a person who for his own purposes brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's wilful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority.

18. (1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1

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Vide *Halsbury's Laws of England*, vol. 45, para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry as part of the developmental programme, this rule evolved in the 19th century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule laid down in *Rylands* v. *Fletcher*[18] as developed in England recognises certain limitations and exceptions, we in India must hold back our hands and not venture to evolve a new principle of liability since English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concommitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must

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be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in *Rylands* v. *Fletcher*[18].

32. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be corelated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

33. Since we are not deciding the question as to whether Shriram is an authority within the meaning of Article 12 so as to be subjected to the discipline of the fundamental right under Article 21, we do

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not think it would be justified in setting up a special machinery for investigation of the claims for compensation made by those who allege that they have been the victims of oleum gas escape. But we would direct the Delhi Legal Aid and Advice Board to take up the cases of all those who claim to have suffered on account of oleum gas and to file actions on their behalf in the appropriate court for claiming compensation against Shriram. Such actions claiming compensation may be filed by the Delhi Legal Aid and Advice Board within two months from today and the Delhi Administration is directed to provide the necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court will nominate one or more judges as may be necessary for the purpose of trying such actions so that they may be expeditiously disposed of. So far as the issue of relocation and other issues are concerned the writ petition will come up for hearing on February 3, 1987.

(1987) 1 Supreme Court Cases 422

(BEFORE A.P. SEN AND B.C. RAY, JJ.)

J.B. CHOPRA AND OTHERS .. Petitioners;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Special Leave Petition No. 7991 of 1986†, decided on December 19, 1986

Administrative Tribunals Act, 1985 — Sections 14(1), 28 and 29(2) — Central Administrative Tribunal have jurisdiction to decide constitutionality of statutes, statutory rules, regulations or notifications

Held:

The Administrative Tribunal being a substitute of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Articles 14 and 16(1). Therefore, the Tribunal had authority or jurisdiction to strike down the impugned notification dated March 15, 1980 purporting to amend Rule 4 of the Central Hindi Directorate (Class III and Class IV) Posts Recruitment Rules, 1961 as being wholly mala fide, arbitrary and irrational and thus offending Articles 14 and 16(1) (Para 2)

S.P. Sampath Kumar v. *Union of India*, (1987) 1 SCC 124: (1987) 2 ATC 82, *applied*

SLP dismissed R-M/7663/CA

Advocates who appeared in this case:

V.C. Mahajan, Senior Advocate, (*Mrs. Urmila Kapoor*, Advocate, with him), for the Petitioners;

N.S. Rao, Senior Advocate, (*M/s. Ashok K. Srivastava* and *Ms. S. Relan*, Advocates, with him), for the Respondents.

The Order of the Court was delivered by

A.P. SEN, J.—In this special leave petition a question was raised regarding the authority and jurisdiction of the Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 to strike down as consti-

†From the Judgment and Order dated May 29, 1986 of the Central Administrative Tribunal, Principal Bench, Delhi in C.W.P. No. 277/80 in T.A. No. 599/85.

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view that the conduct of the election in the circumstances was not valid in law.

5. Though the learned counsel for the appellant seeks to rely upon Rule 14-A of the Punjab Gram Panchayat Election Rules, we do not think that the facts of the case fall in any of the grounds enumerated in that rule. She cannot file an election petition equally. However, in view of the facts stated above, it being a case of unlawful prevention of the appellant from contesting the election, the election to the office of Sarpanch held is clearly in violation of the law. Therefore, the election of the 7th respondent as Sarpanch is set aside. He may, however, continue till the re-poll is held. The authorities are directed to conduct the election according to the rules within four weeks from the date of the receipt of this order.

6. The appeal is allowed. Writ is issued accordingly. No costs.

(1996) 3 Supreme Court Cases 212

(BEFORE B.P. JEEVAN REDDY AND B.N. KIRPAL, JJ.)

INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION AND OTHERS .. Petitioners;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petitions (C) No. 967 of 1989 with Nos. 94 of 1990, 824 of 1993 and 76 of 1994†, decided on February 13, 1996

A. **Constitution of India — Arts. 32, 21, 48-A and 51-A(g) — PIL — Petition alleging environmental pollution caused by private industrial units — Maintainability — Writ petition filed by an environmentalist organisation, not for issuance of writ, order or direction against such units but against Union of India, State Govt. and State Pollution Board concerned to compel them to perform their statutory duties on ground that their failure to carry on such duties violated rights guaranteed under Art. 21 of the residents of the affected area — Held, maintainable — Court can, after ascertaining that the alleged industrial units were responsible for causing ecological fragility in the area, direct the authorities concerned to perform their statutory duties — Environment (Protection) Act, 1986, Ss. 3, 4, 5 — Water (Prevention and Control of Pollution) Act, 1974, Ss. 24(1), 25(1) (as amended by Act 53 of 1988), 33, 33-A (as introduced by Act 53 of 1988) — Air (Prevention and Control of Pollution) Act, 1981 — Hazardous Wastes (Management and Handling) Rules, 1989**

B. **Constitution of India — Arts. 32, 21, 48-A, 51-A(g) — Environmental pollution — Compensation — Imposition of cost of remedial measures — Principles of Strict Liability and Polluter Pays — Applicability — Hazardous and inherently dangerous activity carried on by industrial units — Principle laid down by Supreme Court in *Oleum Gas Leak case* regarding strict and absolute liability of such units to compensate to persons adversely affected thereby, held, not obiter but binding — Rule in *Rylands* v. *Fletcher*, which is**

† Under Article 32 of the Constitution of India

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subject to exceptions of 'foreseeability' and 'non-natural user', not suitable for Indian conditions and hence not applicable — Discharge of highly toxic effluents viz. waste water and sludge, both iron-based and gypsum-based, from respondents' chemical factories manufacturing 'H' Acid, poisoning earth, underground water, wells, agriculture and other vegetation and rendering the village, where the factories located, ecologically fragile — Respondents operating contrary to law without obtaining clearances from authorities concerned and also disobeying orders of authorities as well as of Supreme Court — Respondents alone found to be responsible for such extensive damages — Held on facts, principles of Strict Liability and Polluter Pays applicable — Power of Central Govt. to direct such industries to defray costs for undertaking remedial measures implicit under Ss. 3 and 4 of Environment (Protection) Act — Determination of the amount required for carrying out the remedial measures, recovery/realisation thereof and undertaking such measures are functions of Central Govt. — Court can therefore issue appropriate directions to the Central Govt. to invoke and exercise the powers under Ss. 3 and 4 of the said Act — Environment (Protection) Act, 1986, Ss. 3 to 5 — Water (Prevention and Control of Pollution) Act, 1974, Ss. 24(1), 25(1) (as amended by Act 53 of 1988), 33, 33-A (as introduced by Act 53 of 1988) — Air (Prevention and Control of Pollution) Act, 1981 — Hazardous Wastes (Management and Handling) Rules, 1989 — Tort

C. **Constitution of India — Art. 32 — PIL — Reports submitted by experts pursuant to court's orders — Absence of opportunity to respondents to cross-examine the experts — Plea regarding raised at very late stage, unacceptable**

The units/factories of Respondents 4 to 8, located in an industrial complex in village Bichhri in Udaipur (Rajasthan), were all chemical industries and were controlled by the same group of individuals. Respondent 4 started producing in 1987 certain chemicals like Oleum (concentrated form of sulphuric acid) and Single Super Phosphate. Respondent 5 (Silver Chemicals) and Respondent 8 (Jyoti Chemicals) commenced production of 'H' acid. Respondents 6 and 7 were producing fertilizers and a few other products. The respondents had not obtained the requisite clearances/consents/licences; nor did they install any equipment for treatment of highly toxic effluents discharged by them. 'H' acid was meant for export exclusively. Its manufacture gives rise to enormous quantities of highly toxic effluents — in particular, iron-based and gypsum-based sludge — which if not properly treated, pose grave threat to Mother Earth. It poisons the earth, the water and everything that comes in contact with it. The chemicals produced by Respondents 5 and 8 gave birth to about 2400-2500 MT of highly toxic sludge (iron-based sludge and gypsum-based sludge) besides other pollutants. Since the toxic untreated waste waters were allowed to flow out freely and because the untreated toxic sludge was thrown in the open in and around the complex, the toxic substances percolated deep into the bowels of the earth polluting the aquifers and the subterranean supply of water. The water in the wells and the streams turned dark and dirty rendering it unfit for human consumption, unfit for cattle to drink and for irrigating the land. The soil became polluted rendering it unfit for cultivation, the mainstay of the villagers. It spread diseases, death and disaster in the village and the surrounding areas. The villagers then rose in virtual revolt leading to the imposition of Section 144 CrPC by the District Magistrate in the area. It was averred by the respondents that both the units, Silver Chemicals and Jyoti Chemicals had stopped manufacturing 'H' acid since January 1989 were closed. Yet the consequences of their action remained — the sludge, the long-lasting damage to earth, to underground water, to human beings, to cattle and the village economy. An environmentalist organisation filed the present

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writ petition before the Supreme Court by way of social action litigation, complaining precisely of the above situation and requesting for appropriate remedial action. Pursuant to notice issued by the Supreme Court, the Government of India, Government of Rajasthan, Rajasthan Pollution Control Board (RPCB) and Respondents 4 to 8 filed counter-affidavits. The Court by its order dated 11-12-1989 requested the National Environmental Engineering Research Institute (NEERI) to study the situation in and around Bichhri village and submit their report "as to the choice and scale of the available remedial alternatives". From the affidavits of the parties, various orders of the Court, technical reports and other data, it was found that out of 2440 tonnes of sludge, about 720 tonnes had been stored in the pits provided by the respondents. The remaining sludge was still there either within the area of the complex of the respondents or outside their complex. With a view to conceal it from the eyes of the inspection teams and other authorities, the respondents dispersed it all over the area and covered it with earth. In some places, the sludge was lying in mounds. The units continued to function even after and in spite of the closure orders of the RPCB. They never did carry out the orders of the Supreme Court fully (e.g., entombing the sludge), nor did they fulfil the undertaking given by them to the court (in the matter of removal of sludge and de-watering of the wells). In spite of repeated reports of officials and expert bodies, they persisted in their illegal course of action in a brazen manner exhibiting their contempt for law, for the lawful authorities and the courts. Allowing the writ petition with costs

Held :

The contention that the respondents being private corporate bodies and not 'State' within the meaning of Article 12, a writ petition under Article 32 would not lie against them, cannot be accepted. If the Supreme Court finds that the Government/authorities concerned have not taken the action required of them by law and that their inaction is jeopardising the right to life of the citizens of this country or of any section thereof, it is the duty of the Supreme Court to intervene. If it is found that the respondents are flouting the provisions of law and the directions and orders issued by the lawful authorities, the Court can certainly make appropriate directions to ensure compliance with law and lawful directions made thereunder. This is a social action litigation on behalf of the villagers whose right to life, is invaded and seriously infringed by the respondents as is established by the various reports of the experts called for, and filed before, the Court. If an industry is established without obtaining the requisite permission and clearances and if the industry is continued to be run in blatant disregard of law to the detriment of life and liberty of the citizens living in the vicinity, the Supreme Court has power to intervene and protect the fundamental right to life and liberty of the citizens of this country. (Para 54)

The contention of respondents that the reports submitted by various expert bodies could not be relied upon by the Court in absence of opportunity to cross-examine the experts cannot be accepted. These reports were called by the Court and several orders passed on the basis of those reports. It was never suggested on behalf of offending industrial units (Respondents 4 to 8) that unless they are permitted to cross-examine the experts or the persons who made those reports, their reports cannot be acted upon. This objection, urged at this late stage of proceedings — after a lapse of several years — is wholly unacceptable. The persons who made the said reports are all experts in their field and under no obligation either to the State Pollution Control Board or for that matter to any other person or industry. It is in view of their independence and competence that their reports were relied upon and made the basis of passing orders by the Supreme Court from time to time. (Para 54)

Relying on the reports submitted by the National Environmental Engineering Research Institute by the Central team (experts from the Ministry of Environment

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and Forests, Government of India) and the Rajasthan PCB, it must be held that the respondents alone were responsible for all the damage to the soil, to the underground water and to the village in general. (Paras 54 and 57)

[*See also* 'Conclusions' at para 69]

The question is whether and to what extent can the respondents be made responsible for defraying the cost of remedial measures in these proceedings under Article 32. (Para 57)

Any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. According to the rule laid down by the Constitution Bench of the Supreme Court in *Oleum Gas Leak case*, once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity *irrespective* of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. In the words of the Constitution Bench, such an activity "... can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not". The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise (carrying on the hazardous or inherently dangerous activity) alone has the resource to discover and guard against hazards or dangers — and not the person affected *and* the practical difficulty (on the part of the affected person) in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise. The Bench also observed that such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in *Rylands* v. *Fletcher*. The twin tests laid down in *Rylands* v. *Fletcher* — apart from the proof of damage to the plaintiff by the act/negligence of the defendants — which must be satisfied to attract its rule are 'foreseeability' and 'non-natural' user of the land. The observation of Ranganath Misra, C.J. in his concurring opinion in *Union Carbide Corpn. case* that the view declared in *Oleum* was only obiter cannot be accepted. It does not appear to be unnecessary for the purposes of that case. Thus the law stated by the Supreme Court in *Oleum Gas Leak case* is by far the more appropriate one — apart from the fact that it is binding. (Paras 65, 58 and 62)

M.C. Mehta v *Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37, *affirmed*

Rylands v. *Fletcher*, (1868) LR 3 HL 330 : (1861-73) All ER Rep 1, *disapproved*

Union Carbide Corpn. v. *Union of India*, (1991) 4 SCC 584, paras 14 and 15, *overruled on this aspect*

Cambridge Water Co. Ltd. v. *Eastern Counties Leather, plc*, (1994) 2 WLR 53 : (1994) 1 All ER 53; *Burnie Port Authority* v. *General Jones Pty Ltd.*, (1994) 68 Aus LJ 331, *considered*

Pravinbhai Jashbhai Patel v. *State of Gujarat*, (1995) 2 GLR 1210 : (1995) 2 GLH 352, *referred to*

Ballard v. *Tomlinson*, (1885) 29 Ch D 115 : (1881-5) All ER Rep 688, *cited*

The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" principle. According to this principle, the responsibility for repairing the damage is that of the offending industry. (Para 67)

Carolyn Shelbourn: "*Historic Pollution — Does the Polluter Pay*"? — Journal of Planning and Environmental Law, Aug. 1974 issue), *approved*

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Read with the wide definition of 'environment' in Section 2(*a*), Sections 3 and 5 clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for for the above purpose. Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 4. (Para 60)

In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilise the amount so recovered for carrying out remedial measures. The Supreme Court can certainly give directions to the Central Government or its delegate to take all such measures, if in a given case the Court finds that such directions are warranted. Therefore, appropriate directions can be given by the Court to the Central Government to invoke and exercise those powers with such modulations as are called for in the facts and circumstances of this case. (Paras 60 and 66)

Indian Council for Enviro-Legal Action v. *Union of India*, (1995) 3 SCC 77 : (1995) 5 Scale 578, *relied on*

Further, in this case, there is a clear violation of law and disobedience to the orders of the Supreme Court apart from the orders of the lawful authorities. In this respect it is distinct from *Oleum Gas Leak case*. The Supreme Court has to ensure the observance of law and of its orders as a part of enforcement of fundamental rights That power cannot be disputed. If so, the Court is competent to make orders necessary for a full and effective implementation of its orders — and that includes the imposition and recovery of cost of all measures including remedial measures. (Para 60)

However, in all the circumstances, it is appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment (Protection) Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, the Rajasthan Pollution Control Board or such other agency or authority, as they think fit. It is but appropriate that an estimate of the cost of remedial measures be made now with notice to the respondents, which amount should be paid to Central Government and/or recovered from them by the Central Government. Other directions are also called for in the light of the facts and circumstances mentioned above. (Paras 67 and 68)

[*See* 'Directions' in para 70]

Suggested Case Finder Search Text :

(1) environment or ecology or pollution or (hazardous near substance*)

Search again.

(compensation or costs or directions)

(2) (pil or "public interest litigation") (standing or maintainabl*)

(3) (rylands or "strict liability") not criminal

D. **Constitution of India — Arts. 32 and 21, 48-A & 51-A(g) — PIL — Environmental pollution — Central Govt. directed to consider and examine the advisability of treating chemical industries as a category apart for scrutinising their establishments and functioning more rigorously and allowing these industries to be established in arid area (most of them being water-intensive industries); establishment of environment courts; strengthening the**

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environment protection machinery both at the Centre and the States and providing them more teeth; personal accountability of the industrial units for their lapses and negligence and formation of environmental audit directed to be considered and examined by Central Govt. — Environment (Protection) Act, 1986, Ss. 3 to 5 [Paras 70(4), (6) and (7)]

E. **Constitution of India — Art. 32 — PIL — Costs — Actions of voluntary bodies in furtherance of public interest deserve encouragement — Hence while allowing the public interest writ petition respondents directed to pay Rs 50,000 by way of costs to the petitioner — Supreme Court Rules, 1966, Or. 41**

(Para 71)

R-M/15795/C

Advocates who appeared in this case :

Altaf Ahmed, Additional Solicitor General, Harish N. Salve, K.N. Bhat and P.P. Malhotra, Senior Advocates (M.C. Mehta, Ms Seema Midha, K.R.R. Pillai, P.R. Seetharaman, R.P. Wadhwani, K.S. Rohtagi, M.K. Aggarwal, Ms Aparna Rohtagi, Mukul Mudgal, Aruneshwar Gupta, S.B. Wad, Surya Kant, Ms Sushma Suri and Wasim A. Qadri, Advocates, with them) for the appearing parties.

Chronological list of cases cited ***in para(s)***

1 (1995) 3 SCC 77 : (1995) 5 Scale 578, *Indian Council for Enviro-Legal Action* v. *Union of India* 43, 60

2. (1995) 2 GLR 1210 : (1995) 2 GLH 352, *Pravinbhai Jashbhai Patel* v. *State of Gujarat* 4, 46

3. (1994) 2 WLR 53 : (1994) 1 All ER 53, *Cambridge Water Co. Ltd.* v. *Eastern Counties Leather, plc* 63

4. (1994) 68 Aus LJ 331, *Burnie Port Authority* v *General Jones Pty Ltd.* 64

5 (1991) 4 SCC 584, *Union Carbide Corpn.* v. *Union of India* 46, 59

6. (1987) 1 SCC 395 : 1987 SCC (L&S) 37, *M.C. Mehta* v. *Union of India* 38, 43, 46, 58, 59, 60, 61, 65, 66, 69

7 (1885) 29 Ch D 115 : (1881-5) All ER Rep 688, *Ballard* v. *Tomlinson* 63

8. (1868) LR 3 HL 330 : (1861-73) All ER Rep 1, *Rylands* v. *Fletcher* 58, 59, 61, 63, 64

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J.—

Writ Petition (C) No. 967 of 1989

1. This writ petition filed by an environmentalist organisation brings to light the woes of people living in the vicinity of chemical industrial plants in India. It highlights the disregard, nay, contempt for law and lawful authorities on the part of some among the emerging breed of entrepreneurs, taking advantage, as they do, of the country's need for industrialisation and export earnings. Pursuit of profit has absolutely drained them of any feeling for fellow human beings — for that matter, for anything else. And the law seems to have been helpless. Systemic defects? It is such instances which have led many people in this country to believe that disregard of law pays and that the consequences of such disregard will never be visited upon them — particularly, if they are men with means. Strong words indeed — but nothing less would reflect the deep sense of hurt, the hearing of this case has instilled in us. The facts of the case will bear out these opening remarks.

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2. Bichhri is a small village in Udaipur District of Rajasthan. To its north is a major industrial establishment, Hindustan Zinc Limited, a public sector concern. That did not affect Bichhri. Its woes began somewhere in 1987 when the fourth respondent herein, Hindustan Agro Chemicals Limited started producing certain chemicals like Oleum (said to be the concentrated form of sulphuric acid) and Single Super Phosphate. The real calamity occurred when a sister concern, Silver Chemicals (Respondent 5), commenced production of 'H' acid in a plant located within the same complex. 'H' acid was meant for export exclusively. Its manufacture gives rise to enormous quantities of highly toxic effluents — in particular, iron-based and gypsum-based sludge — which if not properly treated, pose grave threat to Mother Earth. It poisons the earth, the water and everything that comes in contact with it. Jyoti Chemicals (Respondent 8) is another unit established to produce 'H' acid, besides some other chemicals. Respondents 6 and 7 were established to produce fertilizers and a few other products.

3. All the units/factories of Respondents 4 to 8 are situated in the same complex and are controlled by the same group of individuals. All the units are what may be called "chemical industries". The complex is located within the limits of Bichhri village.

4. Because of the pernicious wastes emerging from the production of 'H' acid, its manufacture is stated to have been banned in the western countries. But the need of 'H' acid continues in the West. That need is catered to by the industries like the Silver Chemicals and Jyoti Chemicals in this part of the world. (A few other units producing 'H' acid have been established in Gujarat, as would be evident from the decision of the Gujarat High Court in *Pravinbhai Jashbhai Patel* v. *State of Gujarat*[1], a decision rendered by one of us, B.N. Kirpal, J. as the Chief Justice of that Court.) Silver Chemicals is stated to have produced 375 MT of 'H' acid. The quantity of 'H' acid produced by Jyoti Chemicals is not known. It says that it produced only 20 MT, as trial production, and no more. Whatever quantity these two units may have produced, it has given birth to about 2400-2500 MT of highly toxic sludge (iron-based sludge and gypsum-based sludge) besides other pollutants. Since the toxic untreated waste waters were allowed to flow out freely and because the untreated toxic sludge was thrown in the open in and around the complex, the toxic substances have percolated deep into the bowels of the earth polluting the aquifers and the subterranean supply of water. The water in the wells and the streams has turned dark and dirty rendering it unfit for human consumption. It has become unfit for cattle to drink and for irrigating the land. The soil has become polluted rendering it unfit for cultivation, the mainstay of the villagers. The resulting misery to the villagers needs no emphasis. It spread disease, death and disaster in the village and the surrounding areas. This sudden degradation of earth and water had an echo in Parliament too. An Hon'ble Minister said, action was

1 (1995) 2 GLR 1210 (1995) 2 GLH 352

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being taken, but nothing meaningful was done on the spot. The villagers then rose in virtual revolt leading to the imposition of Section 144 CrPC by the District Magistrate in the area and the closure of Silver Chemicals in January 1989. It is averred by the respondents that both the units, Silver Chemicals and Jyoti Chemicals have stopped manufacturing 'H' acid since January 1989 and are closed. We may assume it to be so. Yet the consequences of their action remain — the sludge, the long-lasting damage to earth, to underground water, to human beings, to cattle and the village economy. It is with these consequences that we are to contend with in this writ petition.

5. The present social action litigation was initiated in August 1989 complaining precisely of the above situation and requesting for appropriate remedial action. To the writ petition, the petitioner enclosed a number of photographs illustrating the enormous damage done to water, cattle, plants and to the area in general. A good amount of technical data and other material was also produced supporting the averments in the writ petition.

Counter-affidavits of the Respondents

6. On notice being given, counter-affidavits have been filed by the Government of India, Government of Rajasthan, Rajasthan Pollution Control Board (RPCB) and Respondents 4 to 8. Since the earliest *counter-affidavit* in point of time is that of RPCB, we shall refer to it in the first instance. It was filed on 26-10-1989. The following are the averments:

(*a*) Re Hindustan Agro Chemicals Limited (R-4): The unit obtained "No Objection Certificate" from the PCB for manufacturing sulphuric acid and alumina sulphate. The Board granted clearance subject to certain conditions. Later "No Objection Certificate" was granted under the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and Air (Prevention and Control of Pollution) Act, 1981 (Air Act), again subject to certain conditions. However, this unit changed its product without clearance from the Board. Instead of sulphuric acid, it started manufacturing Oleum and Single Super Phosphate (SSP). Accordingly, consent was refused to the unit on 16-2-1987. Directions were also issued to close down the unit.

(*b*) Re Silver Chemicals (R-5): This unit was promoted by the fourth respondent without obtaining "No Objection Certificate" from the Board for the manufacture of 'H' acid. The waste water generated from the manufacture of 'H' acid is highly acidic and contains very high concentration of dissolved solids along with several dangerous pollutants. This unit was commissioned in February 1988 without obtaining the prior consent of the Board and accordingly, notice of closure was served on 30-4-1988. On 12-5-1988, the unit applied for consent under Water and Air Acts which was refused. The Government was requested to issue directions for cutting off the electricity and water

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to this unit but no action was taken by the Government. The unit was found closed on the date of inspection, viz., 2-10-1989.

(*c*) Re Rajasthan Multi Fertilizers (R-6): This unit was installed without obtaining prior "No Objection Certificate" from the Board and without even applying for consent under Water and Air Acts. Notice was served on this unit on 20-2-1989. In reply whereto, the Board was informed that the unit was closed since last three years and that electricity has also been cut off since 12-2-1988.

(*d*) Re Phosphates India (R-7): This unit was also established without obtaining prior "No Objection Certificate" from the Board nor did it apply for consent under the Water and Air Acts. When notice dated 20-2-1989 was served upon this unit, the Management replied that this unit was closed for a long time.

(*e*) Re Jyoti Chemicals (R-8): This unit applied for "No Objection Certificate" for producing ferric alum. "No Objection Certificate" was issued imposing various conditions on 8-4-1988. The "No Objection Certificate" was withdrawn on 30-5-1988 on account of non-compliance with its conditions. The consent applied for under Water and Air Acts by this unit was also refused. Subsequently, on 9-2-1989, the unit applied for fresh consent for manufacturing 'H' acid. The consent was refused on 30-5-1989. The Board has been keeping an eye upon this unit to ensure that it does not start the manufacture of 'H' acid. On 2-10-1989, when the unit was inspected, it was found closed.

7. The Board submitted further (in its counter-affidavit) that the sludge lying in the open in the premises of Respondents 4 to 8 ought to be disposed of in accordance with the provisions contained in the Hazardous Wastes (Management and Handling) Rules, 1989 framed under Environment (Protection) Act, 1986. According to the Board, the responsibility for creating the said hazardous situation was squarely that of Respondents 4 to 8. The Board enclosed several documents to its counter in support of the averments contained therein.

8. *The Govt. of Rajasthan filed its counter-affidavit* on 20-1-1990. It made a curious statement in para 3 to the following effect:

> "(T)hat the State Government is *now* aware of the pollution of underground water being caused by liquid effluents from the firms arrayed as Respondents 4 to 8 in the writ petition. Therefore, the State Government has initiated action through the Pollution Control Board to check further spread of pollution."

The State Government stated that the water in certain wells in Bichhri village and some other surrounding villages has become unfit for drinking by human beings and cattle, though in some other wells, the water remains unaffected.

9. *The Ministry of Environment and Forests, Government of India filed its counter* on 8-2-1990. In their counter, the Government of India stated that Silver Chemicals was merely granted a Letter of Intent but it never applied

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for conversion of the Letter of Intent into industrial licence. Commencing production before obtaining industrial licence is an offence under Industries (Development and Regulation) Act, 1951. So far as Jyoti Chemicals is concerned, it is stated that it has not approached the Government at any time even for a Letter of Intent. The Government of India stated that in June 1989, a study of the situation in Bichhri village and some other surrounding villages was conducted by the Centre for Science and Environment. A copy of their report is enclosed to the counter. The report states the consequences emanating from the production of 'H' acid and the manner in which the resulting wastes were dealt with by Respondents 4 to 8 thus:

> "The effluents are very difficult to treat as many of the pollutants present are refractory in nature. Setting up such highly polluting industry in a critical groundwater area was essentially ill-conceived. The effluents seriously polluted the nearby drain and overflowed into Udaisagar main canal, severely corroding its cement-concrete lined bed and banks. The polluted waters also seriously degraded some agricultural land and damaged standing crops. On being ordered to contain the effluents, the industry installed an unlined holding pond within its premises and resorted to spraying the effluent on the nearby hill slope. This only resulted in extensive seepage and percolation of the effluents into groundwater and their spread down the aquifer. Currently about 60 wells appear to have been significantly polluted but every week a few new wells, down the aquifer start showing signs of pollution. This has created serious problems for water supply for domestic purposes, cattle-watering crop irrigation and other beneficial uses, and it has also caused human illness and even death, degradation of land and damage to fruit, trees and other vegetation. There are serious apprehensions that the pollution and its harmful effects will spread further after the onset of the monsoon as the water percolating from the higher parts of the basin moves down carrying the pollutants lying on the slopes — in the holding pond and those already underground."

10. Each of the *Respondents 4 to 8 filed separate counter-affidavits*. All the affidavits filed on behalf of these respondents are sworn to by Lt. Gen. M.L. Yadava, who described himself as the President of each of these units. In the counter-affidavit filed on behalf of the fourth respondent, it is stated that it is in no way responsible for the situation complained of. It is engaged in the manufacture of sulphuric acid and had commenced its operations on 6-1-1987. It has been granted "No Objection Certificates" from time to time. The consent obtained from RPCB is valid up to 15-8-1988. Application for extension of consent has already been filed. This counter-affidavit was filed on 18-1-1990.

11. In the counter-affidavit filed on behalf of the fifth respondent (Silver Chemicals), it is stated that the manufacture of 'H' acid which was commenced in February 1988 has been completely stopped after January 1989. The respondent is fully conscious of the need to conserve and protect

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environment and is prepared fully to cooperate in that behalf. It is ready to comply with any stipulations or directions that may be made for the purpose. It, however, submitted that the real culprit is Hindustan Zinc Limited. The Archaeological Department of the Government of Rajasthan had issued environmental clearance for its unit (rather surprising statement). "No Objection Certificates" had also been issued by the Executive Engineer (Irrigation), Udaipur Division and the Wild Life Warden. So far as the requirement of 'consent' under Water and Air Acts is concerned, it merely stated that it had applied for it. Its closure in January 1989 was on account of promulgation of an order under Section 144 CrPC by the District Magistrate in view of widespread agitation by the villagers against its functioning.

12. In the counter-affidavit filed on behalf of the sixth respondent (Rajasthan Multi Fertilizers), it is stated that it commenced production on 14-3-1982 and closed down in December 1985. Electrical connection to it was disconnected on 13-2-1988. It was submitted that since it is a small-scale industry, no consent was asked for from anyone. It denied that it was causing any pollution, either ground, air or water.

13. In the counter-affidavit filed on behalf of the seventh respondent (Phosphates India), it is stated that this unit commenced production on 15-5-1988 but was closed on and with effect from 1-9-1988 for want of support from the Central Government in the form of subsidies. It submitted that it has merged with the fourth respondent in 1987-88.

14. In the counter-affidavit filed on behalf of the eighth respondent (Jyoti Chemicals), it is stated that it has no electrical connection, that it had commenced production in April 1987 and closed down completely in January 1989. It is stated that the unit produced 'H' acid to an extent of 20 MT as a trial measure for one month with the permission of the Industries Department. It is no longer manufacturing 'H' acid and, therefore, is not responsible for causing any pollution. It is further submitted that it is a small-scale industry and was registered with the District Industry Centre, Udaipur for the manufacture of ferric alum and 'H' acid. It began its operation simultaneously with the fifth respondent, Silver Chemicals, and several of the clearances are common to both, as both of them are located together. The trial production of 'H' acid, it is stated, took place in January 1987.

15. *Hindustan Zinc Limited* was impleaded as the ninth respondent at the instance of Respondents 4 to 8. It has *filed a counter-affidavit* denying that it is responsible in any manner for causing any pollution in Bichhri village or the surrounding areas. According to it, its plants are situated downstream, towards north of Bichhri village. We do not think it necessary to refer to this affidavit in any detail inasmuch as we are not concerned, in this writ petition, with the pollution, if any, caused by the ninth respondent in other villages but only with the pollution caused by Respondents 4 to 8 in Bichhri or surrounding villages.

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Orders passed and steps taken during the period 1989-1992

16. The first considered order made, after hearing the parties, by this Court is of 11-12-1989. Under this order, the court requested the National Environmental Engineering Research Institute (NEERI) to study the situation in and around Bichhri village and submit their report "as to the choice and scale of the available remedial alternatives". NEERI was requested to suggest both short-term and long-term measures required to combat the hazard already caused. Directions were also made for *supply of drinking water* to affected villages by the State of Rajasthan. The RPCB was directed to make available to the court the Report it had prepared concerning the situation in Bichhri village.

17. On the next date of hearing, i.e., 5-3-1990, the court took note of the statements made on behalf of Respondents 4 to 8 that they have completely stopped the manufacture of 'H' acid in their plants and that they did not propose to resume its manufacture. The court also took note of the petitioner's statement that though the manufacture of 'H' acid may have been stopped, a large quantity of highly dangerous effluent waste/sludge has accumulated in the area and that unless properly treated, stored and removed, it constitutes a serious danger to the environment. Directions were given to the RPCB to arrange for its transportation, treatment and safe storage according to the technically accepted procedures for disposal of chemical wastes of that kind. All reasonable expenses for the said operation were to be borne by Respondents 4 to 8 (hereinafter referred to in this judgment as the 'respondents'). So far as the polluted water in the wells was concerned, the court noted the offer made by the learned counsel for the respondents that they will themselves undertake the de-watering of the wells. The RPCB was directed to inspect and indicate the number and location of the wells to be de-watered.

18. The matter was next taken up on 4-4-1990. It was brought to the notice of the court that no meaningful steps were taken for removing the sludge as directed by this Court in its order dated 5-3-1990. Since the monsoon was about to set in, which would have further damaged the earth and water in the area, the court directed the respondents to immediately remove the sludge from the open spaces where it was lying and store it in safe places to avoid the risk of seepage of toxic substances into the soil during the rainy season. The respondents were directed to complete the task within five weeks therefrom.

19. It is not really necessary to refer to the contents of the various orders passed in 1990 and 1991, i.e., subsequent to the order dated 4-4-1990 for the present purposes. Suffice it to say that the respondents did not comply with the direction to store the sludge in safe places. The de-watering of wells did not prove possible. There was good amount of bickering between the respondents on one side and the RPCB and the Ministry of Environment and Forests on the other. They blamed each other for lack of progress in the

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matter of removal of sludge. Meanwhile, years rolled by and the hazard continued to rise. NEERI submitted an interim report. (We are, however, not referring to the contents of this interim report inasmuch as we would be referring to the contents of the final report presently after referring to a few more relevant orders of this Court.)

20. On 17-2-1992, this Court passed a fairly elaborate order observing that Respondents 5 to 8 are responsible for discharging the hazardous industrial wastes; that the manufacture of 'H' acid has given rise to huge quantities of iron sludge and gypsum sludge — approximately 2268 MT of gypsum-based sludge and about 189 MT of iron-based sludge; that while the respondents blamed Respondent 9 as the main culprit, Respondent 9 denied any responsibility therefor. The immediate concern, said the Court, was the appropriate remedial action. The report of the RPCB presented a disturbing picture. It stated that the respondents have deliberately spread the hazardous material/sludge all over the place which has only heightened the problem of its removal and that they have failed to carry out the order of this Court dated 4-4-1990. Accordingly, the court directed the Ministry of Environment and Forests, Government of India to depute its experts immediately to inspect the area to ascertain the existence and extent of gypsum-based and iron-based sludge, to suggest the handling and disposal procedures and to prescribe a package for its transportation and safe storage. The cost of such storage and transportation was to be recovered from the respondents.

21. Pursuant to the above order, a team of experts visited the area and submitted a report along with an affidavit dated 30-3-1992. The report presented a highly disturbing picture. It stated that the sludge was found inside a shed and also at four places outside the shed but within the premises of the complex belonging to the respondents. It stated further that sludge has been mixed with soil and at many places it is covered with earth. A good amount of sludge was said to be lying exposed to sun and rain. The report stated:

> "Above all, the extent of pollution in groundwater seems to be very great and the entire aquifer may be affected due to the pollution caused by the industry. The organic content of the sludge needs to be analysed to assess the percolation property of the contents from the sludge. It is also possible that the iron content in the sludge may be very high which may cause the reddish colouration. As the mother liquor produced during the process (with pH-1) was highly acidic in nature and was indiscriminately discharged on land by the unit, it is possible that this might have eroded soil and caused the extensive damage. It is also possible that the organic contents of the mother liquor would have gone into soil with water together with the reddish colour."

The report also suggested the mode of disposal of sludge and measures for reconditioning the soil.

22. In view of the above report, the court made an order on 6-4-1992 for entombing the sludge under the supervision of the officers of the Ministry of

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Environment and Forests, Government of India. Regarding revamping of the soil, the court observed that for this purpose, it might become necessary to stop or suspend the operation of all the units of the respondent but that, the court said, requires to be examined further.

23. The work of entombment of sludge again faced several difficulties. While the respondents blamed the government officers for the delay, the government officials blamed the said respondents of non-cooperation. Several orders were passed by this Court in that behalf and ultimately, the work commenced.

Orders passed in 1993, filing of Writ Petition (C) No. 76 of 1994 by Respondent 4 and the orders passed therein

24. With a view to find out the connection between the wastes and sludge resulting from the production of 'H' acid and the pollution in the underground water, the court directed on 20-8-1993, that samples should be taken of the entombed sludge and also of the water from the affected wells and sent for analysis. Environment experts of the Ministry of Environment and Forests were asked to find out whether the pollution in the well water was on account of the said sludge or not. Accordingly, analysis was conducted and the experts submitted the Report on 1-11-1993. Under the heading 'Conclusion', the report stated:

> "5.0 *Conclusion*
>
> 5.1 On the basis of the observations and analysis results, it is concluded beyond doubt that the sludge inside the entombed pit is the contaminated one as evident from the number of parameters analysed.
>
> 5.2 The groundwater is also contaminated due to discharge of H-acid plant effluent as well as H-acid sludge/contaminated soil leachates as shown in the photographs and also supported by the results. The analysis results revealed good correlation between the colour of well water and H-acid content in it. The analysis results show high degree of impurities in sludge/soil and also in well water *which is a clear indication of contamination of soil and groundwater due to disposal of H-acid waste.*"

The report which is based upon their inspection of the area in September 1993 revealed many other alarming features. It represents a commentary on the attitude and actions of the respondents. In para 2, under the heading "Site Observations and Collection of Sludge/Contaminated Soil Samples", the following facts are stated:

> "2.1. The Central team, during inspection of the premises of M/s HACL, observed that *H-acid sludge (iron/gypsum) and contaminated soil are still lying at different places, as shown in Fig. 1, within the industrial premises* (Photograph 1) which are the leftovers. The area, where the solar evaporation pond was existing with H-acid sludge dumped here and there, was observed to have been levelled with borrowed soil (Photograph 2). It was difficult to ascertain whether the

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sludge had been removed before filling. However, there are visual evidences of contaminated soil in the area.

2.2 As reported by the Rajasthan Pollution Control Board (RPCB) representatives, *about 720 tonnes out of the total contaminated soil and sludge scraped from the sludge dump sites is disposed of in six lined entombed pits* covered by lime/flyash mix, brick soling and concrete (Photographs 3 and 4). *The remaining scraped sludge and contaminated soil was lying near the entombed pits for want of additional disposal facility*. However, during the visit, the left over sludge and contaminated soil could not be traced at site. Inspection of the surrounding area revealed that *a huge heap of foreign soil of 5 metre height (Photograph 5) covering a large area, as also indicated in Fig. 1, was raised on the slopy ground at the foothill within the industry premises.* The storm water run-off pathway over the area showed indication of H-acid sludge leachates coming out of the heap. Soil in the area was sampled for analysis.

2.3 *M/s HACL has a number of other industrial units which are operating within the same premises without valid consents* from the Rajasthan Pollution Control Board (RPCB). These plants are sulphuric acid (H_2SO_4), fertilizer (SSP) and vegetable oil extraction. *The effluent of these units are not properly treated and the untreated effluent particularly from the acid plant is passing through the sludge dump area playing havoc* (Photograph 7). The final effluent was collected at the outlet of the factory premises during operation of these units, at the time of groundwater monitoring in September 1993, by the RPCB. Its quality was observed to be highly acidic (pH: 1.08, Conductivity: 37,100 mg/l, SO_4: 21,000 mg/l, Fe: 392 mg/l, COD: 167 mg/l) which was also revealed in the earlier visits of the Central teams. However, these units were not in operation during the present visit."

Under para 4.2.1, the report stated inter alia:

"The sludge samples from the surroundings of the (presently non-existent) solar evaporation and the contaminated soil due to seepage from the newly raised dump site also exhibited very high values of the above-mentioned parameters. This revealed that the contaminated soil is buried under the new dump found by the team."

25. So much for the waste disposal by the respondents and their continuing good conduct! To the same effect is the report of the RPCB which is dated 30-10-1993.

26. In view of the aforesaid reports, all of which unanimously point out the consequences of the 'H' acid production, the manner in which the highly corrosive waste water (mother liquor) and the sludge resulting from the production of 'H' acid was disposed of and the continuing discharge of highly toxic effluents by the remaining units even in the year 1993, the authorities (RPCB) passed orders closing down, in exercise of their powers under Section 33-A of the Water Act, the operation of the Sulphuric Acid

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Plant and the solvent extraction plant including oil refinery of the fourth respondent with immediate effect. Orders were also passed directing disconnection of electricity supply to the said plants. The fourth respondent filed Writ Petition (C) No. 76 of 1994 in this Court, under Article 32 of the Constitution, questioning the said orders in January 1994. The main grievance in this writ petition was that without even waiting for the petitioner's (Hindustan Agro Chemicals Limited) reply to the show-cause notices, orders of closure and disconnection of electricity supply were passed and that this was done by the RPCB with a mala fide intent to cause loss to the industry. It was also submitted that sudden closure of its plants is likely to result in disaster and, may be, an explosion and that this consideration was not taken into account while ordering the closure. In its Order dated 7-3-1994, this Court found some justification in the contention of the industry that the various counter-affidavits filed by the RPCB are self-contradictory. The Board was directed to adopt a constructive attitude in the matter. By another order dated 18-3-1994, the RPCB was directed to examine the issue of grant of permission to restart the industry or to permit any interim arrangement in that behalf. On 8-4-1994, a 'consent' order was passed whereunder the industry was directed to deposit a sum of Rupees sixty thousand with RPCB before 11-4-1994 and the RPCB was directed to carry on the construction work of storage tank for storing and retaining ten days' effluents from the Sulphuric Acid Plant. The construction of temporary tank was supposed to be an interim measure pending the construction of an ETP on permanent basis. The order dated 28-4-1994 noted the report of the RPCB stating that the construction of temporary tank was completed on 26-4-1994 under its supervision. The industry was directed to comply with such other requirements as may be pointed out by RPCB for prevention and control of pollution and undertake any work required in that behalf forthwith. Thereafter, the matter went into a slumber until 13-10-1995.

NEERI Report

27. At this juncture, it would be appropriate to refer to the report submitted by NEERI on the subject of "Restoration of Environmental Quality of the affected area surrounding Village Bichhri due to past Waste Disposal Activities". This report was submitted in April 1994 and it states that it is based upon the study conducted by it during the period November 1992 to February 1994. Having regard to its technical competence and reputation as an expert body on the subject, we may be permitted to refer to its report at some length.

28. At p. 7, the report mentions the industrial wastes emerging from the manufacture of 'H' acid. It reads:

> "Solid wastes generated from H-acid manufacturing process are:
>
> Gypsum sludge produced during the neutralisation of acidic solution with lime after nitration stage (around 6 tonnes/tonne of H-acid manufactured)

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Iron sludge produced during the reduction stage (around 0.5 tonnes/tonne of H-acid manufactured)

Gypsum sludge contains mostly calcium sulphate along with sodium salts and organics. Iron sludge constitutes unreacted iron powder, besides ferric salts and organics.

It is estimated that, for each tonne of H-acid manufactured, about 20 m^3 of highly corrosive waste water was generated as mother liquor, besides the generation of around 2.0 m^3 of wash water. The mother liquor is characterised by low pH (around 2.0) and high concentration of total dissolved solids (80-280 g/L). High COD of the waste water (90 g/L) could be attributed to organics formed during various stages of manufacture. These include naphthalene trisulphonic acid, nitro naphthalene sulphonic acid, Koch acid and H-acid, besides several other intermediates."

29. At pp. 8 and 9, the report describes the manner in which the sludge and other industrial wastes were disposed of by the respondents. It states inter alia:

"The total quantities of waste water and that of sludge generated were around 8250 m^3 and 2440 tonnes respectively for a production of 375 tonnes by M/s Silver Chemicals Ltd. and M/s Jyoti Chemicals Ltd....

Majority of sludge brought back from disposal sites located outside the plant was transferred inside a covered shed.

The sludge lying in the plant premises was entombed in the underground pit by RPCB as per the directions of the Hon'ble Supreme Court. It may be mentioned that *only 720 MT of sludge out of the estimated quantity of 2440 MT could be entombed as the capacity of the underground tanks provided by the industry for the purpose was only to that extent.*

Remaining sludge and sludge-mixed soil were, however, present in the plant premises as these could not be transferred into underground tanks. It has also been observed that only sludge above the soil was removed from the six sites and transferred to the plant site. Sub-surface soil of these sites appears to have been contaminated as the soil has reddish colour akin to that of the sludge.

A fertilizer plant (single superphosphate), a sulphuric acid plant and an oil extraction and oil refining plant were in operation in the same premises where H-acid was earlier manufactured. *The acidic waste water (around pH 1.0) presently generated from these units was flowing over the abandoned dump site. This leaches the sludge-mixed soil from the abandoned dump site and the contaminated water flows by gravity towards east and finds its way into a nullah flowing through the compound and conveys the contaminated water to an irrigation canal which originates from Udaisagar Lake (Pate 1.4).*" (emphasis added)

30. At p. 10, the report mentions the six dump sites outside the 'H' acid plant premises where the sludge was lying in the open. At pp. 26 and 27, the

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report states on the basis of VES investigations that while certain wells were found contaminated, others were not. At p. 96, the report states thus:

"DAMAGE TO CROPS AND TREES

The field surveys in contaminated fields *in Zones I and II showed that no crops were coming in the fields particularly in low-lying areas.* On some elevated areas, crops like jowar, maize were growing; however the growth and yield were very poor.

Further it was also observed that even trees like eucalyptus planted in contaminated fields show leaf burning and stunted growth. Many old trees which were badly affected due to contamination are still growing under stress conditions as a result of soil contamination.

The top soils at the old dump sites outside the plant premises are still contaminated and require de-contamination before the land is used for other purposes.

It was observed that even after the operation of hauling the sludge back to the industry premises, some sludge-mixed soil was still lying in the premises of a primary school (Table 1.1), which needs de-contamination."

31. In Chapter 6, the report mentions the remedial measures. Para 6.1, titled INTRODUCTION, states:

"As could be seen from the data reported in Chapters 4 and 5, *the groundwater and soils within 2 kms from the plant have been contaminated.* After critically scrutinising the data, it was concluded that there is an *urgent need to work out a de-contamination strategy* for the affected area. This strategy includes the de-contamination of the soil, contaminated groundwater and abandoned dump sites. This chapter details the remedial measures that can be considered for implementation to restore the environmental quality of the affected area."

32. The chapter then sets out the various remedial measures, including land treatment, soil washing, revegetation, control over the flow of the contaminated water to adjoining lands through canals, leaching of soluble salts, design of farm to development of agro-forestry and/or forestry plantation with salt tolerant crops/plants and groundwater de-contamination. Inter alia, the report states:

"The entire contaminated area comprising of 350 ha of contaminated land and six abandoned dump sites outside the industrial premises has been found to be ecologically fragile due to reckless past disposal activities practised by M/s Silver Chemicals Ltd. and M/s Jyoti Chemicals Ltd. Accordingly, it is suggested that the whole of the contaminated area be developed as a green belt at the expense of M/s Hindustan Agrochemicals Ltd. during the monsoon of 1994."

33. Under para 6.3.2, the report suggests "De-contamination Alternatives for Groundwater" including bioremediation, degradation of H-

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acid by *Azotobacter Vinelandii*, isolation of bacterial population from H-acid contaminated soil and several other methods.

34. Under para 6.4.2, the report mentions the several de-contamination alternatives including containment of contaminated soil, surface control, groundwater control, leachate collection and treatment, gas migration control and direct waste treatment.

35. At pp. 157 and 158, the report mentions the continuing discharge of effluents in an illegal and dangerous manner. It reports:

> "It was also observed by NEERI's team during the current study that the industry *has not provided adequate effluent treatment facilities* and the waste waters (pH<1.5) from the existing plants (sulphuric acid, fertilizer, and oil extraction) are being discharged, without treatment, on land within the plant premises. This indiscriminate and wilful disposal activity is *further aggravating the contamination problem in the area. Acidic effluent leaches the pollutants from the dumped sludge and the contaminated soil and facilitates their penetration through the ground* and thereby increasing the concentration of sulphates and dissolved solids in groundwater. *What is most serious is the fact that the industry produced chlorosulfonic acid for a few months during late 1992 which is a hazardous and toxic substance as per MEF Notification* titled 'Manufacture, Storage and Import of Hazardous Chemical Rules, 1989' and even floated public shares for the manufacture of this obnoxious chemical. *The production was however ceased due to the intervention of the Rajasthan Pollution Control Board in December 1992 as the industry was operating without obtaining site clearance, No Objection Certificate (NOC)/Consent from the concerned appropriate regularity (regulatory?) authorities and without providing for any pollution-control measures.* It is, therefore, essential for M/s Hindustan Agrochemicals Ltd. to comply with these requirements for carrying out the present industrial activities. *The abatement of further contamination warrants the closure of all industrial operations till an appropriate effluent treatment plant is installed,* and certified by RPCB for its functionality in keeping with the provisions of Water Act."

The report adds:

> "The Industry management in the past (during 1988-89) has shown scant respect for Pollution Control and Environment Protection Acts. Not only this, the management *continues industrial activity producing obnoxious waste waters and dumping the same without any treatment, contaminating land and groundwater without any concern for ecology and public health.* It is necessary that the provisions of relevant legislations are imposed on the industry to avoid environmental damage and harm to public welfare." (emphasis added)

36. We do not think that the above report requires any emphasis at our hands. It speaks for itself — and it speaks volumes of the "high regard" the respondents have for law!

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37. From p. 179 onwards, the report refers to the damage to the crops and the land and to the psychological and mental torture inflicted upon the villagers by the respondents and suggests that the principle of "Polluter Pays" should be applied in this case inasmuch as "*the incident involved deliberate release of untreated acidic process waste water and negligent handling of waste sludge knowing fully well the implication of such acts*". The report suggests that compensation should be paid under two heads, viz., (*a*) for the losses due to damage and (*b*) towards the cost of restoration of environmental quality. It then works out the total cost of restoration of environmental quality at Rs 3738.5 lakhs — i.e., Rs 37.385 crores.

38. Para 7.4 states the conclusions flowing from the material in Chapter 6 thus:

> "The cost of damage to be disbursed to the affected villagers is estimated at Rs 342.8 lakhs and remediation of impacted well waters and soil at Rs 3738.5 lakhs. This cost needs to be borne by the management of the industry in keeping with the Polluter Pays principle and the doctrine of Strict/Absolute liability, as applied to Shri Ram Food and Fertilizers Industry in the case of *Oleum leak*[2] in 1985."

Report of RPCB submitted in January 1996 during the final hearing of these matters

39. When all these matters were posted before the court on 13-10-1995, we realised that the matter requires to be heard on a priority basis. Having regard to the voluminous data gathered by this Court and the several orders passed from time to time, the matter was listed for regular hearing. We heard all the parties at length on 10th, 11th, 16th and 17th January, 1996. We have been taken through the voluminous record. Submissions have also been made on the questions of law arising herein.

40. At the end of the first day of regular hearing, we made an order calling upon the RPCB to send a team of high officials to the spot and report to us the latest position on the following aspects:

> (*i*) Whether the factories of Silver Chemicals, Rajasthan Multi Fertilizers and Jyoti Chemicals are still working and whether the machinery installed in the said plant is still existing? (This information was required to check the statement of the respondents that the said units are lying closed since last several years.)
>
> (*ii*) To report whether the factory or factories of Respondent 4, Hindustan Agrochemicals Limited, are working and if they are working, what are the products being manufactured by them? The Board was also directed to report whether the seventh respondent, Phosphate India, which was said to have merged with the fourth respondent, is having a separate factory and if so, what is being produced therein?

2 *M C Mehta* v *Union of India*, (1987) 1 SCC 395 1987 SCC (L&S) 37

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(*iii*) The approximate quantity of sludge — whether "iron sludge" or "gypsum sludge" — lying in the area. The report was to indicate what quantity was entombed pursuant to the orders of this Court and whether any further sludge was lying in the area or in the premises of the respondents' complex, its approximate quantity and the time, effort and cost required to remove the same.

(*iv*) The Board was also to take samples of the water in wells and tanks in the area and have them analysed and tell us whether it is fit for drinking by cattle and/or fit for irrigation purposes.

41. Accordingly, the RPCB officials visited the site and have filed a report dated 16-1-1996 along with an affidavit. The report discloses the following facts:

(1) The two units, Silver Chemicals and Jyoti Chemicals, do not exist now. There is no machinery. A godown and a Ferric Alum Plant have been constructed at the site of the said plant. The Ferric Alum Plant was not in operation at the time of inspection though plant and machinery for manufacturing it was found installed therein. Certain old stock of Ferric Alum was also found lying within the plant premises.

(2) Hindustan Agrochemicals Limited (R-4) has seven industrial plants, viz., Rajasthan Multi Fertilizers [manufacturing Granulated Single Super Phosphate (GSSP)], a Sulphuric Acid Plant, a Chlorosulphonic Acid Plant, Edible Oil Solvent Extraction Plant, Edible Oil Refinery and a Ferric Alum Plant (known as M/s Jyoti Chemicals), all of which are located within the same premises. All these seven plants were found not operating on the date of inspection by the RPCB officials though in many cases the machinery and the other equipment was in place.

So far as the sludge still remaining in the area is concerned, the report stated:

"3. Village Bichhri and other adjoining areas were visited by the undersigned officials to know whether gypsum and iron sludge is still lying in the aforesaid area. In area adjoining the irrigation canal, sludge mixed with soil were found on an area of about 3000 sq.ft. The area was covered with foreign soil. Sample of the sludge-mixed soil was collected for the perusal of the Hon'ble Court. Entire premises of M/s Hindustan Agrochemicals Ltd. was also inspected and sludge mixed with soil was observed in a large area. It was further observed that fresh soil in the varying depth has been spread over in most of the area. In view of the fact that sludge was mixed with the soil and difficult to separate out of the soil it is very difficult to estimate the exact quantity of the sludge required to be removed. Samples of sludge mixed with soil were collected from different parts of this area after serving due notices under Environment Protection Act, 1986."

So far as the water in the wells was concerned, the report mentioned that they took samples from the wells from Bichhri and other surrounding villages, i.e., from thirty-two different locations and that water in sixteen

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locations was found to "contain colour of varying intensities ranging from very dark brown to light pink which apparently shows that these wells/handpumps are still polluted".

42. Shri K.N. Bhat, learned counsel for the respondents, however, submitted that the RPCB officials have throughout been hostile to the respondents and that, therefore, the reports submitted by them should not be acted upon. He also submitted that respondents have had no opportunity to file objections to the said report or to produce material to contradict the statements made therein. While taking note of these submissions, we may, however, refer to the letter dated 13-1-1996 written by the fourth respondent to the RPCB. In this letter, the particulars of the stocks remaining in each of its seven plants are mentioned along with the date of the last production in each of those plants. The last dates of production are the following: Sulphuric Acid Plant — 10-11-1995, SSP Plant (Phosphate India) — 11-11-1995, GSSP Plant (Rajasthan Multi Fertilizers) — 7-7-1995, Solvent Extraction Plant and Refinery — 2-12-1993, Jyoti Chemicals — October 1990 and Chlorosulphonic Acid Plant — 29-9-1995. It is worthy of note that these dates are totally at variance with the dates of closure mentioned in the counter-affidavits filed by these units in 1990-91.

Contentions of the parties

43. Shri M.C. Mehta, learned counsel appearing for the petitioner, brought to our notice the several reports, orders and other material on record. He submitted that the abundant material on record clearly establishes the culpability of the respondents for the devastation in Village Bichhri and surrounding areas and their responsibility and obligation to properly store the remaining sludge, stop discharge of all untreated effluents by taking necessary measures and defray the total cost required for remedial measures as suggested by NEERI (Rupees forty crores and odd). Learned counsel suggested that in view of the saga of repeated and continuous violation of law and lawful orders on the part of the respondents, they must be closed forthwith. So far as the legal propositions are concerned, the learned counsel relied strongly upon the Constitution Bench decision in *M.C. Mehta* v. *Union of India* (*Oleum Gas Leak case*[2]) as well as the recent order of this Court in *Indian Council for Enviro-Legal Action* v. *Union of India*[3]. Learned counsel also invited our attention to quite a few foreign decisions and text books on the subject of environment. Shri Altaf Ahmad, the learned Additional Solicitor General appearing for the Union of India, also stressed the need for urgent appropriate directions to mitigate and remedy the situation on the spot in the light of the expert reports including the one made by the Central team of experts.

44. The learned counsel for the State of Rajasthan, Shri Aruneshwar Gupta, expressed the readiness of the State Government to carry out and

3 (1995) 3 SCC 77 (1995) 5 Scale 578

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enforce such orders as this Court may think fit and proper in the circumstances.

45. Shri K.B. Rohatgi, learned counsel for the RPCB, invited our attention to the various orders passed, action taken, cases instituted and reports submitted by the Board in this matter. He submitted that until recently the Board had no power to close down any industry for violation of environmental laws and that after conferment of such power, they did pass orders of closure. He denied the allegations of mala fides or hostile intent on the part of the Board towards the respondents. Learned counsel lamented that despite its best efforts, the Board has not yet been successful in eradicating the pollution in the area and hence asked for stringent orders for remedying the appalling conditions in the village due to the acts of the respondents.

46. Shri K.N. Bhat, learned counsel for the respondents, made the following submissions:

(1) The respondents are private corporate bodies. They are not 'State' within the meaning of Article 12 of the Constitution. A writ petition under Article 32 of the Constitution, therefore, does not lie against them.

(2) The RPCB has been adopting a hostile attitude towards these respondents from the very beginning. The reports submitted by it or obtained by it are, therefore, suspect. The respondents had no opportunity to test the veracity of the said reports. If the matter had been fought out in a properly constituted suit, the respondents would have had an opportunity to cross-examine the experts to establish that their reports are defective and cannot be relied upon.

(3) Long before the respondents came into existence, Hindustan Zinc Limited was already in existence close to Bichhri village and has been discharging toxic untreated effluents in an unregulated manner. This had affected the water in the wells, streams and aquifers. This is borne out by the several reports made long prior to 1987. Blaming the respondents for the said pollution is incorrect as a fact and unjustified.

(4) The respondents have been cooperating with this Court in all matters and carrying out its directions faithfully. The report of the RPCB dated 13-11-1992 shows that the work of entombment of the sludge was almost over. The report states that the entire sludge would be stored in the prescribed manner within the next two days. In view of this report, the subsequent report of the Central team, RPCB and NEERI cannot be accepted or relied upon. There are about 70 industries in India manufacturing 'H' acid. Only the units of the respondents have been picked upon by the Central and State authorities while taking no action against the other units. Even in the matter of disposal of sludge, the directions given for its disposal in the case of other units are not as stringent as have been prescribed in the case of respondents. The decision of the Gujarat High Court in *Pravinbhai Jashbhai Patel*[1] shows

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that the method of disposal prescribed there is different and less elaborate than the one prescribed in this case.

(5) The reports submitted by the various so-called expert committees that sludge is still lying around within and outside the respondents' complex and/or that the toxic wastes from the Sulphuric Acid Plant are flowing through and leaching the sludge and creating a highly dangerous situation is untrue and incorrect. The RPCB itself had constructed a temporary ETP for the Sulphuric Acid Plant pursuant to the orders of this Court made in Writ Petition (C) No. 76 of 1994. Subsequently, a permanent ETP has also been constructed. There is no question of untreated toxic discharges from this plant leaching with sludge. There is no sludge and there is no toxic discharge from the Sulphuric Acid Plant.

(6) The case put forward by the RPCB that the respondents' units do not have the requisite permits/consents required by the Water Act, Air Act and the Environment (Protection) Act is again unsustainable in law and incorrect as a fact. The respondents' units were established before the amendment of Section 25 of the Water Act and, therefore, did not require any prior consent for their establishment.

(7) The proper solution to the present problem lies in ordering a comprehensive judicial enquiry by a sitting Judge of the High Court to find out the causes of pollution in this village and also to recommend remedial measures and to estimate the loss suffered by the public as well as by the respondents. While the respondents are prepared to bear the cost of repairing the damage, if any, caused by them, the RPCB and other authorities should be made to compensate for the huge losses suffered by the respondents on account of their illegal and obstructionist policy adopted towards them.

(8) The decision in *Oleum Gas Leak case*[2] has been explained in the opinion of Ranganath Misra, C.J., in the decision in *Union Carbide Corpn.* v. *Union of India*[4]. The law laid down in *Oleum Gas Leak case*[2] is at variance with the established legal position in other Commonwealth countries.

47. Shri Bhat suggested that in the larger interests of environment, industry and public, this Court may direct the Government of India to constitute, by proper legislation, environment courts all over the country — which courts alone should be empowered to deal with such cases, to give appropriate directions including orders of closure of industries wherever necessary, to make necessary technical and scientific investigations, to suggest remedial measures and to oversee their implementation. Proceedings by way of a writ in this Court under Article 32 or in the High Court under Article 226, the learned counsel submitted, are not appropriate to deal with such matters, involve as they do several disputed questions of fact and technical issues.

4 (1991) 4 SCC 584

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48. Before we proceed to deal with the submissions of the learned counsel, it would be appropriate to notice the relevant provisions of law.

Relevant statutory provisions

49. Article 48-A is one of the Directive Principles of State Policy. It says that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51-A sets out the fundamental duties of the citizens. One of them is "(*g*) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;"

50. The problem of increasing pollution of rivers and streams in the country — says the Statement of Objects and Reasons appended to the Bill which became the Water (Prevention and Control of Pollution) Act, 1974 — attracted the attention of the State legislatures and Parliament. They realised the urgency of ensuring that domestic and industrial effluents are not allowed to be discharged into water courses without adequate treatment and that pollution of rivers and streams was causing damage to the country's economy. A committee was set up in 1962 to draw a draft enactment for prevention of water pollution. The issue was also considered by the Central Council of Local Self-Government in September 1963. The Council suggested the desirability of having a single enactment for the purpose. A Draft Bill was prepared and sent to various States. Several expert committees also made their recommendations meanwhile. Since an enactment on the subject was relatable to Entry 17 read with Entry 6 of List II in the Seventh Schedule to the Constitution — and, therefore, within the exclusive domain of the States — the State Legislatures of Gujarat, Kerala, Haryana and Mysore passed resolutions as contemplated by Article 252 of the Constitution enabling Parliament to make a law on the subject. On that basis, Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974. (The State of Rajasthan too passed the requisite resolution.) Section 24(1) of the Water Act provides that:

> "24. (1) Subject to the provisions of this section,—
>
> (*a*) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well...."

Section 25(1), before it was amended by Act 53 of 1988, provided that:

> "25. (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well or begin to make any new discharge of sewage or trade effluent into a stream or well."

As amended by Act 53 of 1988, Section 25 now reads:

> "25. (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

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

(*b*) bring into use any new or altered outlets for the discharge of sewage; or

(*c*) begin to make any new discharge of sewage...."

(It is stated that the Rajasthan Assembly passed resolution under Article 252 of the Constitution adopting the said Amendment Act vide Gazette Notification dated 9-5-1990.) Section 33 empowers the Pollution Control Board to apply to the court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class, to restrain any person causing pollution if the said pollution is likely to prejudicially affect water in a stream or a well. Section 33-A, which has been introduced by Amendment Act 53 of 1988, empowers the Board to order the closure of any industry and to stop the electricity, water and any other service to such industry if it finds such a direction necessary for effective implementation of the provisions of the Act. Prior to the said Amendment Act, the Pollution Control Board had no such power and the course open to it was to make a recommendation to the Government to pass appropriate orders including closure.

51. The Air (Prevention and Control of Pollution) Act, 1981 contains similar provisions.

52. In the year 1986, Parliament enacted a comprehensive legislation, Environment (Protection) Act. The Act *defines 'environment'* to include "water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property". The preamble to the Act recites that the said Act was made pursuant to the decisions taken at the United Nations Conference on Human Environment held at Stockholm in June 1972 in which India also participated. Section 3 empowers the Central Government "*to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment* and preventing, controlling and abating environmental pollution". Sub-section (2) elucidates the several powers inhering in the Central Government in the matter of protection and promotion of environment. Section 5 empowers the Central Government to issue appropriate directions to any person, officer or authority to further the objects of the enactment. Section 6 confers rule-making power upon the Central Government in respect of matters referred to in Section 3. Section 7 says that "no person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed".

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53. The Central Government has made the Hazardous Wastes (Management and Handling) Rules, 1989 in exercise of the power conferred upon it by Section 6 of the Environment (Protection) Act prescribing the manner in which the hazardous wastes shall be collected, treated, stored and disposed of.

Consideration of the submissions

54. Taking up the objections urged by Shri Bhat first, we find it difficult to agree with them. This writ petition is not really for issuance of appropriate writ, order or directions against the respondents but is directed against the Union of India, Government of Rajasthan and RPCB to compel them to perform their statutory duties enjoined by the Acts aforementioned on the ground that their failure to carry out their statutory duties is seriously undermining the right to life (of the residents of Bichhri and the affected area) guaranteed by Article 21 of the Constitution. If this Court finds that the said authorities have not taken the action required of them by law and that their inaction is jeopardising the right to life of the citizens of this country or of any section thereof, it is the duty of this Court to intervene. If it is found that the respondents are flouting the provisions of law and the directions and orders issued by the lawful authorities, this Court can certainly make appropriate directions to ensure compliance with law and lawful directions made thereunder. This is a social action litigation on behalf of the villagers of Bichhri whose right to life, as elucidated by this Court in several decisions, is invaded and seriously infringed by the respondents as is established by the various reports of the experts called for, and filed before, this Court. If an industry is established without obtaining the requisite permission and clearances and if the industry is continued to be run in blatant disregard of law to the detriment of life and liberty of the citizens living in the vicinity, can it be suggested with any modicum of reasonableness that this Court has no power to intervene and protect the fundamental right to life and liberty of the citizens of this country. The answer, in our opinion, is self-evident. We are also not convinced of the plea of Shri Bhat that RPCB has been adopting a hostile attitude towards his clients throughout and, therefore, its contentions or the reports prepared by its officers should not be relied upon. If the respondents establish and operate their plants contrary to law, flouting all safety norms provided by law, the RPCB was bound to act. On that account, it cannot be said to be acting out of animus or adopting a hostile attitude. Repeated and persistent violations call for repeated orders. That is no proof of hostility. Moreover, the reports of RPCB officials are fully corroborated and affirmed by the reports of the Central team of experts and of NEERI. We are also not prepared to agree with Shri Bhat that since the report of NEERI was prepared at the instance of RPCB, it is suspect. This criticism is not only unfair but is also uncharitable to the officials of NEERI who have no reason to be inimical to the respondents. If, however, the actions of the respondents invite the concern of the experts and if they depict the correct situation in their reports, they cannot be accused of any bias. Indeed, it is this Court that asked NEERI to suggest remedial measures and it is in compliance with

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those orders that NEERI submitted its interim report and also the final report. Similarly, the objection of Shri Bhat that the reports submitted by the NEERI, by the Central team (experts from the Ministry of Environment and Forests, Government of India) and RPCB cannot be acted upon is equally unacceptable. These reports were called by this Court and several orders passed on the basis of those reports. It was never suggested on behalf of Respondents 4 to 8 that unless they are permitted to cross-examine the experts or the persons who made those reports, their reports cannot be acted upon. This objection, urged at this late stage of proceedings — after a lapse of several years — is wholly unacceptable. The persons who made the said reports are all experts in their field and under no obligation either to the RPCB or for that matter to any other person or industry. It is in view of their independence and competence that their reports were relied upon and made the basis of passing orders by this Court from time to time.

55. Now coming to the question of alleged pollution by Hindustan Zinc Limited (R-9), it may be that Respondent 9 is also responsible for discharging untreated effluents at one or the other point of time but that is not the issue we are concerned with in these writ petitions. These writ petitions are confined to the pollution caused in Bichhri village on account of the activities of the respondent. No report among the several reports placed before us in these proceedings says that Hindustan Zinc Limited is responsible for the pollution at Bichhri village. Shri Bhat brought to our notice certain reports stating that the discharges from Hindustan Zinc Limited were causing pollution in certain villages but they are all downstream, i.e., to the north of Bichhri village and we are not concerned with the pollution in those villages in these proceedings. The bringing in of Hindustan Zinc Limited in these proceedings is, therefore, not relevant. If necessary, the pollution, if any, caused by Hindustan Zinc Limited can be the subject-matter of a separate proceeding.

56. We may now deal with the contentions of Shri Bhat based upon the affidavit of RPCB dated 13-11-1992 which has been repeatedly and strongly relied upon by the learned counsel in support of his submission that the entire sludge has been properly stored by or at the expense of his clients. It is on the basis of this affidavit that Shri Bhat says that the subsequent reports submitted showing the existence of sludge within and outside their complex should not be accepted or acted upon. Let us turn to the affidavit of RPCB dated 13-11-1992 and see how far does it support Shri Bhat's contention. It is in para 2(*b*) that the sentence, strongly relied upon by Shri Bhat occurs, viz., "remaining work is likely to be completed by 15-11-1992". For a proper appreciation of the purport of the said sentence, it would be appropriate to read the entire para 2(*b*), which is to the following effect:

> "(*b*) that all the six tanks have been entombed with brick toppings. Roofing is complete on all tanks which have also been provided with proper outlets for the exit of gases which may form as a result of possible chemical reactions in the sludge mass. The tanks have also been

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provided with reinforced concrete to prevent drooping of the roof. Remaining work is likely to be completed by 15-11-1992."

We find it difficult to read the said sentence as referring to the storage of the remaining about 1700 MT of sludge. When the storage of 720 MT itself took up all the six tanks provided by the respondent, where was the remaining 1700 tonnes stored? Except relying upon the said sentence repeatedly, Shri Bhat has not been able to tell us where this 1700 MT has been stored, whether in tanks and if so, who constructed the tanks and when and how were they covered and sealed. He is also not able to tell us on what dates the remaining sludge was stored. It is evident that the aforesaid sentence occurring in clause 2(*b*) refers to the proper sealing and completion of the said tanks wherein 720 MT of sludge was stored. If, in fact, the said 1700 MT has also been entombed, it was not difficult for the respondents to give the particulars of the said storage. We are, therefore, unable to agree with Shri Bhat that the subsequent reports which repeatedly and uniformly speak of the presence of sludge within and outside the complex of the respondents should not be accepted. It may be recalled that the report of the team of Central experts was submitted on 1-11-1993 based upon the inspection made by them in September/October 1993. To the same effect is the affidavit of RPCB dated 30-10-1993 and the further affidavit dated 1-12-1993. These reports together with the report of NEERI clearly establish that huge quantities of sludge were still lying around either in the form of mounds or placed in depressions, or spread over the contiguous areas and covered with local soil to conceal its existence. It is worth reiterating that the said sludge is only part of the pernicious discharges emanating from the manufacture of 'H' acid. The other part, which is unfortunately not visible now (except in its deleterious effects upon the soil and underground water) is the "mother liquor" produced in enormous quantities which has either flowed out or percolated into the soil.

57. So far as the responsibility of the respondents for causing the pollution in the wells, soil and the aquifers is concerned, it is clearly established by the analysis report referred to in the report of the Central experts' team dated 1-11-1993 (p. 1026 of Vol. II). Indeed, number of orders passed by this Court, referred to hereinbefore, are premised upon the finding that the respondents are responsible for the said pollution. It is only because of the said reason that they were asked to defray the cost of removal and storage of sludge. It is precisely for this reason that, at one stage, the respondents had also undertaken the de-watering of polluted wells. Disclaiming the responsibility for the pollution in and around Bichhri village, at this stage of proceedings, is clearly an afterthought. We accordingly hold and affirm that the respondents alone are responsible for all the damage to the soil, to the underground water and to Village Bichhri in general, damage which is eloquently portrayed in the several reports of the experts mentioned hereinabove. NEERI has worked out the cost for repairing the damage at more than Rupees forty crores. Now, the question is

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whether and to what extent can the respondents be made responsible for defraying the cost of remedial measures in these proceedings under Article 32. Before we advert to this question, it may perhaps be appropriate to clarify that so far as removal of remaining sludge and/or the stoppage of discharge of further toxic wastes are concerned, it is the absolute responsibility of the respondents to store the sludge in a proper manner (in the same manner in which 720 MT of sludge has already been stored) and to stop the discharge of any other or further toxic wastes from its plants including Sulphuric Acid Plant and to ensure that the wastes discharged do not flow into or through the sludge. Now, turning to the question of liability, it would be appropriate to refer to a few decisions on the subject.

58. In *Oleum Gas Leak case*[2], a Constitution Bench discussed this question at length and held thus: (SCC pp. 420-21, paras 31-32)

> "We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. ... We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such

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hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in *Rylands* v. *Fletcher*[5].

We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

59. Shri Bhat, however, points out that in the said decision, the question whether the industry concerned therein was a 'State' within the meaning of Article 12 and, therefore, subject to the discipline of Part III of the Constitution including Article 21 was left open and that no compensation as such was awarded by this Court to the affected persons. He relies upon the observations in the concurring opinion of Ranganath Misra, C.J., in *Union Carbide Corpn.*[4] The learned Chief Justice referred in the first instance, to the propositions enunciated in *Oleum Gas Leak case*[2] and then made the following observations in paras 14 and 15: (SCC pp. 607-08)

"14. In *M.C. Mehta case*[2], no compensation was awarded as this Court could not reach the conclusion that Shriram (the delinquent company) came within the meaning of 'State' in Article 12 so as to be liable to the discipline of Article 21 and to be subjected to a proceeding under Article 32 of the Constitution. Thus what was said was essentially obiter.

15. The extracted part of the observations from *M.C. Mehta case*[2] perhaps is a good guideline for working out compensation in the cases to which the ratio is intended to apply. The statement of the law ex facie makes a departure from the accepted legal position in *Rylands* v. *Fletcher*[5]. We have not been shown any binding precedent from the American Supreme Court where the ratio of *M.C. Mehta decision*[2] has in terms been applied. In fact Bhagwati, C.J. clearly indicates in the judgment that his view is a departure from the law applicable to western countries."

60. The majority judgment delivered by M.N. Venkatachaliah, J. (on behalf of himself and two other learned Judges) has not expressed any opinion on this issue. We on our part find it difficult to say, with great respect to the learned Chief Justice, that the law declared in *Oleum Gas Leak case*[2] is obiter. It does not appear to be unnecessary for the purposes of that case. Having declared the law, the Constitution Bench directed the parties and other organisations to institute actions on the basis of the law so

5 (1868) LR 3 HL 330 : (1861-73) All ER Rep 1

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declared.** Be that as it may, we are of the considered opinion that even if it is assumed (for the sake of argument) that this Court cannot award damages against the respondents in these proceedings that does not mean that the Court cannot direct the Central Government to determine and recover the cost of remedial measures from the respondents. Section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government (or its delegate, as the case may be) to "*take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment...*". Section 5 clothes the Central Government (or its delegate) with the power to issue directions for achieving the objects of the Act. Read with the wide definition of 'environment' in Section 2(*a*), Sections 3 and 5 clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilise the amount so recovered for carrying out remedial measures. This Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case this Court finds that such directions are warranted. We find that similar directions have been made in a recent decision of this Court in *Indian Council for Enviro-Legal Action*[3]. That was also a writ petition filed under Article 32 of the Constitution. Following is the direction:

> "It appears that the Pollution Control Board had identified as many as 22 industries responsible for the pollution caused by discharge of their effluents into Nakkavagu. They were responsible to compensate to farmers. It was the duty of the State Government to ensure that this amount was recovered from the industries and paid to the farmers."

** A distinction between the *Oleum Gas Leak case* and the present case may be noticed That was not a case where the industry was established or was being operated contrary to law as in the present case That was also not a case where the orders of lawful authorities and courts were violated with impunity as in this case. In this case, there is a clear violation of law and disobedience to the orders of this Court apart from the orders of the lawful authorities The facts stated above and findings recorded by us hereinafter bear it out. This Court has to ensure the observance of law and of its orders as a part of enforcement of fundamental rights That power cannot be disputed If so, a question may arise why is this Court not competent to make orders necessary for a full and effective implementation of its orders — and that includes the imposition and recovery of cost of all measures including remedial measures Above all, the Central Government has the power under the provisions of Sections 3 and 5 of the Environment (Protection) Act, 1986 to levy and recover the cost of remedial measures — as we shall presently point out If the Central Government omits to do that duty, this Court can certainly issue appropriate directions to it to take necessary measures. Is it not open to the court, in an appropriate situation, to award damages against private parties as part of relief granted against public authorities This is a question upon which we do not wish to express any opinion in the absence of a full debate at the Bar

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It is, therefore, idle to contend that this Court cannot make appropriate directions for the purpose of ensuring remedial action. It is more a matter of form.

61. Shri K.N. Bhat submitted that the rule of absolute liability is not accepted in England or other Commonwealth countries and that the rule evolved by the House of Lords in *Rylands* v. *Fletcher*[5] is the correct rule to be applied in such matters. Firstly, in view of the binding decision of this Court in *Oleum Gas Leak case*[2], this contention is untenable, for the said decision expressly refers to the rule in *Rylands*[5] but refuses to apply it saying that it is not suited to the conditions in India. Even so, for the sake of completeness, we may discuss the rule in *Rylands*[5] and indicate why that rule is inappropriate and unacceptable in this country. The rule was first stated by Blackburn, J. (Court of Exchequer Chamber) in the following words: (All ER p. 7)

> "We think that the true rule of law is that the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or perhaps, that the escape was the consequence of vis major, or the act of God; ... and it seems but reasonable and just that the neighbour who has brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows will be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property."

62. The House of Lords, however, added a rider to the above statement, viz., that the user by the defendant should be a "non-natural" user to attract the rule. In other words, if the user by the defendant is a natural user of the land, he would not be liable for damages. Thus, the twin tests — apart from the proof of damage to the plaintiff by the act/negligence of the defendants — which must be satisfied to attract this rule are 'foreseeability' and 'non-natural' user of the land.

63. The rule in *Rylands*[5] has been approved by the House of Lords in the recent decision in *Cambridge Water Co. Ltd.* v. *Eastern Counties Leather, plc*[6]. The plaintiff, Cambridge Water Company, was a statutory corporation engaged in providing public water supply within a certain area including the city of Cambridge. It was lifting water from a bore well situated at some distance from Sawstyn. The defendant-Company Eastern Leather, was having a tannery in Sawstyn. Tanning necessarily involves degreasing of pelts. For that purpose, the defendant was using an organo chlorine called PCE. PCE was stored in a tank in the premises of the defendant. The plaintiff's case was that on account of the PCE percolating into the ground, the water in its well became contaminated and unfit for human consumption

6 (1994) 2 WLR 53 · (1994) 1 All ER 53

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and that on that account it was obliged to find an alternative source at a substantial cost. It sued the defendant for the resulting damages. The plaintiff based his claim on three alternative grounds, viz., negligence, nuisance and the rule in *Rylands*[5]. The trial Judge (High Court) dismissed the action in negligence and nuisance holding that the defendant could not have reasonably foreseen that such damage could occur to the plaintiff. So far as the rule in *Rylands*[5] was concerned, the trial Judge held that the user by the defendant was not a non-natural user and hence, it was not liable for damages. On appeal, the Court of Appeal declined to decide the matter on the basis of the rule in *Rylands*[5]. It relied strongly upon the ratio in *Ballard* v. *Tomlinson*[7] holding that no person having a right to use a common source is entitled to contaminate that source so as to prevent his neighbour from having a full value of his right of appropriation. The Court of Appeal also opined that the defendant's use of the land was not a natural use. On appeal by the defendant, the House of Lords allowed the appeal holding that *foreseeability* of the harm of the relevant type by the defendant was a pre-requisite to the right to recover damages both under the heads of *nuisance* and also under the rule in *Rylands*[5] and since that was not established by the plaintiff, it has to fail. The House of Lords, no doubt, held that the defendant's use of the land was a non-natural use *but dismissed the suit*, as stated above, *on the ground that the plaintiff has failed to establish that pollution of their water supply by the solvent used by the defendant in his premises was in the circumstances of the case foreseeable by the defendant.*

64. The Australian High Court has, however, expressed its disinclination to treat the rule in *Rylands*[5] as an independent head for claiming damages or as a rule rooted in the law governing the law of nuisance in *Burnie Port Authority* v. *General Jones Pty Ltd.*[8] The respondent, General Jones Limited, had stored frozen vegetables in three cold storage rooms in the building owned by the appellant, Burnie Port Authority (Authority). The remaining building remained under the occupation of the Authority. The Authority wanted to extend the building. The extension work was partly done by the Authority itself and partly by an independent contractor (Wildridge and Sinclair Pty. Ltd.). For doing its work, the contractor used a certain insulating material called EPS, a highly inflammable substance. On account of negligent handling of EPS, there was a fire which inter alia damaged the rooms in which General Jones had stored its vegetables. On an action by General Jones, the Australian High Court held by a majority that the rule in *Rylands*[5] having attracted many difficulties, uncertainties, qualifications and exceptions, should now be seen, for the purposes of Australian Common Law, as absorbed by the principles of ordinary *negligence*. The Court held further that under the rules governing negligence, if a person in control of a premises, introduces a dangerous substance to carry on a dangerous activity, or allows another to do one of those things, owes a duty of reasonable care to

7 (1885) 29 Ch D 115 · (1881-5) All ER Rep 688
8 (1994) 68 Aus LJ 331

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avoid a reasonably foreseeable risk of injury or damage to the person or property of another. In a case where a person or the property of that other is lawfully in a place outside the premises, the duty of care varies in degree according to the magnitude of the risk involved and extends to ensuring that such care is taken. Applying the said principle, the court held that the authority allowed the independent contractor to introduce or retain a dangerous substance or to engage in a dangerous activity in its premises which substance and activity caused a fire that destroyed the goods of General Jones. The evidence, the court held, established that the independent contractor's work was a dangerous activity in that it involved real and foreseeable risk of a serious conflagration unless special precautions were taken. In the circumstances, it was held that *the authority owed a non-delegable duty of care to General Jones to ensure that its contractor took reasonable steps to prevent the occurrence of a fire and the breach of that duty attracted liability pursuant to the ordinary principles of negligence for the damage sustained by the respondent.*

65. On a consideration of the two lines of thought (one adopted by the English courts and the other by the Australian High Court), we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. We are convinced that the law stated by this Court in *Oleum Gas Leak case*[2] is by far the more appropriate one — apart from the fact that it is binding upon us. (We have disagreed with the view that the law stated in the said decision is *obiter*.) According to this rule, once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity *irrespective* of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. In the words of the Constitution Bench, such an activity: (SCC p. 421, para 31)

> "... can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not".

The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise (carrying on the hazardous or inherently dangerous activity) alone has the resource to discover and guard against hazards or dangers — and not the person affected *and* the practical difficulty (on the part of the affected person) in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise.

66. Once the law in *Oleum Gas Leak case*[2] is held to be the law applicable, it follows, in the light of our findings recorded hereinbefore, that Respondents 4 to 8 are absolutely liable to compensate for the harm caused by them to the villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area (by affected area, we mean the area of about 350 ha indicated in the sketch at

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p. 178 of NEERI report) and also to defray the cost of the remedial measures required to restore the soil and the underground water sources. Sections 3 and 4 of Environment (Protection) Act confers upon the Central Government the power to give directions of the above nature and to the above effect. Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 4 which are couched in very wide and expansive language. Appropriate directions can be given by this Court to the Central Government to invoke and exercise those powers with such modulations as are called for in the facts and circumstances of this case.

67. The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" principle.[9]

> "The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The 'Polluter Pays' principle was promoted by the Organisation for Economic Cooperation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on Government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialised society. Since then there has been considerable discussion of the nature of the Polluter Pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactorily agreed.
>
> Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme [(1987) OJC 328/1] makes it clear that 'the cost of preventing and eliminating nuisances must in principle be borne by the polluter', and the Polluter Pays principle has now been incorporated into the European Community Treaty as part of the new articles on the environment which were introduced by the Single European Act of 1986. Article 130-R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the community, and that action is to be based on three principles: the need

9 (*Historic Pollution — Does the Polluter Pay?* by Carolyn Shelbourn — Journal of Planning and Environmental Law, Aug 1974 issue)

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for preventive action; the need for environmental damage to be rectified at source; and that the polluter should pay."

Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment (Protection) Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, RPCB or such other agency or authority, as they think fit.

68. The next question is what is the amount required for carrying out the necessary remedial measures to repair the damage and to restore the water and soil to the condition it was in before the respondents commenced their operations. The report of NEERI has worked out the cost at more than Rupees forty crores. The estimate of cost of remedial measures is, however, not a technical matter within the expertise of NEERI officials. Moreover, the estimate was made in the year 1994. Two years have passed by since then. Situation, if at all, must have deteriorated further on account of the presence of — and dispersal of the sludge — in and around the complex of the respondents by them. They have been discharging other toxic effluents from their other plants, as reported by NEERI and the Central team. It is but appropriate that an estimate of the cost of remedial measures be made now with notice to the respondents, which amount should be paid to Central Government and/or recovered from them by the Central Government. Other directions are also called for in the light of the facts and circumstances mentioned above.

Conclusions

69. From the affidavits of the parties, orders of this Court, technical reports and other data, referred to above (even keeping aside the latest report of the RPCB), the following facts emerge:

(I) Silver Chemicals (R-5) and Jyoti Chemicals (R-8) had manufactured about 375 MT of 'H' acid during the years 1988-89. This had given rise to about 8250 m^3 of waste water and 2440 tonnes of sludge (both iron-based and gypsum-based). The waste water had partly percolated into the earth in and around Bichhri and part of it had flowed out. Out of 2440 tonnes of sludge, about 720 tonnes has been stored in the pits provided by the respondents. The remaining sludge is still there either within the area of the complex of the respondents or outside their complex. With a view to conceal it from the eyes of the inspection teams and other authorities, the respondents have dispersed it all over the area and covered it with earth. In some places, the sludge is lying in mounds. The story of entombing the entire quantity of sludge is untrue.

The units manufacturing 'H' acid — indeed most of the units of the respondents — had started functioning, i.e., started manufacturing

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various chemicals without obtaining requisite clearances/consents/ licences. They did not instal any equipment for treatment of highly toxic effluents discharged by them. They continued to function even after and in spite of the closure orders of the RPCB. They never did carry out the orders of this Court fully, (e.g., entombing the sludge) nor did they fulfil the undertaking given by them to the court (in the matter of removal of sludge and de-watering of the wells). In spite of repeated reports of officials and expert bodies, they persisted in their illegal course of action in a brazen manner, which exhibits their contempt for law, for the lawful authorities and the courts.

(II) That even after the closure of 'H' acid plant, the fourth respondent had not taken adequate measures for treating the highly toxic waste water and other wastes emanating from the Sulphuric Acid Plant. The untreated highly toxic waste water was found — by NEERI as well as the Central team — flowing through the dumps of iron/gypsum sludge creating a highly potent mix. The letter of the fourth respondent dated 13-1-1996, shows that the Sulphuric Acid Plant was working till 10-11-1995. An assertion is made before us that permanent ETP has also been constructed for the Sulphuric Acid Plant in addition to the temporary tank which was constructed under the orders of this Court. We express no opinion on this assertion, which even if true, is valid only for the period subsequent to April 1994.

(III) The damage caused by the untreated highly toxic wastes resulting from the production of 'H' acid — and the continued discharge of highly toxic effluent from the Sulphuric Acid Plant, flowing through the sludge (H-acid waste) — is indescribable. It has inflicted untold misery upon the villagers and long lasting damage to the soil, to the underground water and to the environment of that area in general. The report of NEERI contains a sketch, at p. 178, showing the area that has been adversely affected by the production of 'H' acid by the respondents. The area has been divided into three zones on the basis of the extent of contamination. A total area of 350 ha has become seriously contaminated. The water in the wells in that area is not fit for consumption either by human beings or cattle. It has seriously affected the productivity of the land. According to NEERI report, Rupees forty crores is required for repairing the damage caused to men, land, water and the flora.

(IV) This court has repeatedly found and has recorded in its orders that it is the respondents who have caused the said damage. The analysis reports obtained pursuant to the directions of the court clearly establish that the pollution of the wells is on account of the wastes discharged by Respondents 4 to 8, i.e., production of 'H' acid. The report of the environment experts dated 1-11-1993 has already been referred to hereinbefore. Indeed, several orders of this Court referred to *supra* are also based upon the said finding.

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(V) Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2(*a*) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct and/or carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The principle "Polluter Pays" has gained almost universal recognition, apart from the fact that it is stated in absolute terms in *Oleum Gas Leak case*[2]. The law declared in the said decision is the law governing this case.

Directions

70. Accordingly, the following directions are made:

1. The Central Government shall determine the amount required for carrying out the remedial measures including the removal of sludge lying in and around the complex of Respondents 4 to 8, in the area affected in Village Bichhri and other adjacent villages, on account of the production of 'H' acid and the discharges from the Sulphuric Acid Plant of Respondents 4 to 8. Chapters VI and VII in NEERI report (submitted in 1994) shall be deemed to be the show-cause notice issued by the Central Government proposing the determination of the said amount. Within six weeks from this day, Respondents 4 to 8 shall submit their explanation, along with such material as they think appropriate in support of their case, to the Secretary, Ministry of Environment and Forests, Government of India, (MEF). The Secretary shall thereupon determine the amount in consultation with the experts of his Ministry within six weeks of the submission of the explanation by the said respondents. The orders passed by the Secretary, (MEF) shall be communicated to Respondents 4 to 8 — and all concerned — and shall also be placed before this Court. Subject to the orders, if any, passed by this Court, the said amount shall represent the amount which Respondents 4 to 8 are liable to pay to improve and restore the environment in the area. For the purpose of these proceedings, the Secretary, (MEF) and Respondents 4 to 8 shall proceed on the assumption that the affected area is 350 ha, as indicated in the sketch at p. 178 of NEERI report. In case of failure of the said respondents to pay the said amount, the same shall be recovered by the Central Government in accordance with law. The factories, plant, machinery and all other immovable assets of Respondents 4 to 8 are attached herewith. The amount so determined and recovered shall be utilised by the MEF for carrying out all necessary remedial measures to restore the soil, water sources and the environment in general of the affected area to its former state.

2. On account of their continuous, persistent and insolent violations of law, their attempts to conceal the sludge, their discharge of toxic

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effluents from the Sulphuric Acid Plant which was allowed to flow through the sludge, and their non-implementation of the orders of this Court — all of which are fully borne out by the Expert Committee's reports and the findings recorded hereinabove — Respondents 4 to 8 have earned the dubious distinction of being characterised as "rogue industries". They have inflicted untold misery upon the poor, unsuspecting villagers, de-spoiling their land, their water sources and their entire environment — all in pursuance of their private profit. They have forfeited all claims for any consideration by this Court. Accordingly, we herewith order the closure of all the plants and factories of Respondents 4 to 8 located in Bichhri village. The RPCB is directed to seal all the factories/units/plants of the said respondents forthwith. So far as the Sulphuric Acid Plant is concerned, it will be closed at the end of one week from today, within which period Respondent 4 shall wind down its operations so as to avoid risk of any untoward consequences, as asserted by Respondent 4 in Writ Petition (C) No. 76 of 1994. It is the responsibility of Respondent 4 to take necessary steps in this behalf. The RPCB shall seal this unit too at the end of one week from today. The reopening of these plants shall depend upon their compliance with the directions made and obtaining of *all* requisite permissions and consents from the relevant authorities. Respondents 4 to 8 can apply for directions in this behalf after such compliance.

3. So far as the claim for damages for the loss suffered by the villagers in the affected area is concerned, it is open to them or any organisation on their behalf to institute suits in the appropriate civil court. If they file the suit or suits in *forma pauperis*, the State of Rajasthan shall not oppose their applications for leave to sue in *forma pauperis*.

4. The Central Government shall consider whether it would not be appropriate, in the light of the experience gained, that chemical industries are treated as a category apart. Since the chemical industries are the main culprits in the matter of polluting the environment, there is every need for scrutinising their establishment and functioning more rigorously. No distinction should be made in this behalf as between a large-scale industry and a small-scale industry or for that matter between a large-scale industry and a medium-scale industry. All chemical industries, whether big or small, should be allowed to be established only after taking into consideration all the environmental aspects and their functioning should be monitored closely to ensure that they do not pollute the environment around them. It appears that most of these industries are water-intensive industries. If so, the advisability of allowing the establishment of these industries in arid areas may also require examination. Even the existing chemical industries may be subjected to such a study and if it is found on such scrutiny that it is necessary to take any steps in the interests of environment, appropriate directions in that behalf may be issued under Sections 3 and 5 of the

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Environment Act. The Central Government shall ensure that the directions given by it are implemented forthwith.

5. The Central Government and the RPCB shall file quarterly reports before this Court with respect to the progress in the implementation of Directions 1 to 4 aforesaid.

6. The suggestion for establishment of environment courts is a commendable one. The experience shows that the prosecutions launched in ordinary criminal courts under the provisions of the Water Act, Air Act and Environment Act never reach their conclusion either because of the workload in those courts or because there is no proper appreciation of the significance of the environment matters on the part of those in charge of conducting of those cases. Moreover, any orders passed by the authorities under Water and Air Acts and the Environment Act are immediately questioned by the industries in courts. Those proceedings take years and years to reach conclusion. Very often, interim orders are granted meanwhile which effectively disable the authorities from ensuring the implementation of their orders. All this points to the need for creating environment courts which alone should be empowered to deal with all matters, civil and criminal, relating to environment. These courts should be manned by legally trained persons/judicial officers and should be allowed to adopt summary procedures. This issue, no doubt, requires to be studied and examined in depth from all angles before taking any action.

7. The Central Government may also consider the advisability of strengthening the environment protection machinery both at the Centre and the States and provide them more teeth. The heads of several units and agencies should be made personally accountable for any lapses and/or negligence on the part of their units and agencies. The idea of an environmental audit by specialist bodies created on a permanent basis with power to inspect, check and take necessary action not only against erring industries but also against erring officers may be considered. The idea of an environmental audit conducted periodically and certified annually, by specialists in the field, duly recognised, can also be considered. The ultimate idea is to integrate and balance the concern for environment with the need for industrialisation and technological progress.

71. Respondents 4 to 8 shall pay a sum of Rupees fifty thousand by way of costs to the petitioner which had to fight this litigation over a period of over six years with its own means. Voluntary bodies, like the petitioner, deserve encouragement wherever their actions are found to be in furtherance of public interest. The said sum shall be deposited in this Court within two weeks from today. It shall be paid over to the petitioner.

72. Writ Petition (C) No. 967 of 1989 is allowed with the above directions with costs as specified hereinabove.

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Writ Petition (C) No. 76 of 1994

73. In view of the decision in Writ Petition (C) No. 967 of 1989, the writ petition is dismissed.

74. No costs.

Writ Petition (C) No. 94 of 1990

75. In view of the decision in Writ Petition (C) No. 967 of 1989, no separate orders are necessary in this petition. The writ petition is accordingly dismissed.

76. No costs.

Writ Petition (C) No. 824 of 1993

77. In view of the decision in Writ Petition (C) No. 967 of 1989, no separate orders are necessary in this petition. The writ petition is accordingly dismissed.

78. No costs.

(1996) 3 Supreme Court Cases 253

(BEFORE K. RAMASWAMY AND G.B. PATTANAIK, JJ.)

RITESH R. SAH .. Petitioner;

Versus

DR Y.L. YAMUL AND OTHERS .. Respondents.

Writ Petition (C) No. 693 of 1995†, decided on February 15, 1996

A. **Universities — Medical colleges — Admission — Reservation — Candidates belonging to reserved category, who could be admitted on the basis of open merit, should be treated as open category candidates for the purpose of computing percentage of reservation — But they should be given option for admission to graduate or postgraduate course in colleges where seats kept reserved for reserved category and thereafter less meritorious reserved category candidates should be considered for admission in whichever colleges reserved seats are available — They would also be entitled to the concessions or scholarships and other benefits according to Govt. rules or instructions — Constitution of India, Art. 15(4)**

B. **Universities — Medical colleges — Admission — Denial of — Relief — Supreme Court modifying rule thereby providing for admission against reserved seats even of such candidates who were otherwise eligible to be admitted against open seats — But admissions for the session being already over, Court's interference with such admissions not necessary — But petitioner, who had been wrongly denied admission on the basis of that rule, being the single applicant before the Court, direction issued for his admission in any college where reserved seat still available and if no seat available then by increasing one seat in any such college since the State itself had given such admission to a candidate in another case**

Respondents 5 to 36 belonging to the reserved category though could have been admitted on the basis of marks secured in open merit, yet they were admitted as

† Under Article 32 of the Constitution of India

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(1996) 5 Supreme Court Cases 281

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

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

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 of 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 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

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 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

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

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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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)

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)

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)

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)

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)

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)

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)

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)

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. (Para 47)

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

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

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

ORDER

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.

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.

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.

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.

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.

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.

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:

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

(*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;

(*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;

(*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

(*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.

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

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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 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 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 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 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 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 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, 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 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

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

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.

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.

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

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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:

	"Main CRZ Notification dated 19-2-1991 issues for relaxation	*Vohra Committee recommendations*	*Amending notification dated 18-8-1994*
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.
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.
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.
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.
5.	No basements allowed area not to be included in FSI.	Basements permitted.	Basements allowed.
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."

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.

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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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.

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.

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:

> "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.
>
> 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."

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. 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.

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 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 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 made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology.

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 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.

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. PATTANAIK, 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

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(1996) 5 Supreme Court Cases 647

(BEFORE KULDIP SINGH, FAIZAN UDDIN AND K. VENKATASWAMI, JJ.)

VELLORE CITIZENS' WELFARE FORUM .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 914 of 1991†, decided on August 28, 1996

A. Constitution of India — Arts. 32, 21, 47, 48-B, 51-A(g) — Environmental pollution by tannery industries — While the industries are vital for country's development, but having regard to pollution caused by them, principle of Sustainable Development has to be adopted as a balancing concept — Precautionary Principle and Polluter Pays Principle acceptable as part of the law of the country and should be implemented — Precautionary environmental measures should be taken by State Govt. and statutory authorities and lack of scientific certainty cannot be a ground for postponing such measures where there are serious threats to ecology — Onus on polluter industries to prove that their actions were environmentally benign — Polluter industries liable to pay compensation to individuals affected as well as to make good the ecological damage — Discharge of untreated effluent by tanneries in State of T.N. rendering river water unfit for human consumption, contaminating the subsoil water and spoiling the physico-chemical properties of the soil making it unfit for agricultural purposes — Held, such industries cannot be permitted to continue their operation unless they set up pollution control devices — Such industries liable to compensate for the past pollution generated by them — Pollution fine of Rs 10,000 imposed on each tannery — Amount to be deposited in Environment Protection Fund which shall be utilised for compensating the affected persons and restoring the ecological balance — Environment (Protection) Act, 1986 — Ecology — Damage to — Compensation

B. Ecology — Environment (Protection) Act, 1986 — S. 3(3) — Authority under — Directed to be constituted by Central Govt. before 30-9-1996 — Authority to be headed by a retired High Court Judge — Authority to have all powers necessary to deal with the situation created by the polluting industries — Authority also to implement the Precautionary Principle and the principle of Polluter Pays — Authority to compute compensation payable by the polluting industries to individuals affected and that payable for restoring the damage it caused to the environment — Authority also to frame a scheme in consultation with expert bodies like NEERI, Central Board and State Board for reversing the ecological damage and environmental pollution

C. Constitution of India — Arts. 32, 226 & 21 — PIL — Ecology — Green Bench — Environmental pollution caused by tanneries in State of T.N. — Suitable directions issued by Supreme Court — However, instead of itself monitoring the matter any further Madras High Court advised to constitute a Green Bench to deal with all the environmental matters — Such Green Benches already functioning in some other High Courts

D. International Law — Customary international law — If not contrary to the municipal law, deemed to be incorporated in domestic law

E. Judicial activism — Inaction on the part of the Govt. to set up regulatory/adjudicatory statutory authorities as directed by the Act makes it imperative for the Court to pass suitable necessary directions

† Under Article 32 of the Constitution of India

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Held :

Though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues it has no right to destroy the ecology, degrade the environment and pose as a health-hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry. (Para 9)

The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists. (Para 10)

"The Precautionary Principle" and "the Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" — in the context of the municipal law — means:

(*i*) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(*ii*) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

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

"The Polluter Pays Principle" has been held to be a sound principle. The "Polluter Pays Principle" as interpreted by the Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject. In view of the constitutional and statutory provisions it must be held that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country. (Paras 11 to 14)

Indian Council for Enviro-Legal Action v. *Union of India*, (1996) 3 SCC 212 : JT (1996) 2 SC 196, *relied on*

Even otherwise, once these principles are accepted as part of the customary international law there would be no difficulty in accepting them as part of the domestic law. The rules of customary international law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. (Para 15)

A.D.M. v. *Shivakant Shukla*, (1976) 2 SCC 521 : AIR 1976 SC 1207; *Jolly George Varghese* v. *Bank of Cochin*, (1980) 2 SCC 360 : AIR 1980 SC 470; *Gramophone Co. of India Ltd.* v. *Birendra Bahadur Pandey*, (1984) 2 SCC 534 : 1984 SCC (Cri) 313 : AIR 1984 SC 667, *relied on*

The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the

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inalienable common law right of clean environment. Our legal system having been founded on the British common law the right of a person to a pollution-free environment is a part of the basic jurisprudence of the land. (Paras 16 and 17)

Commentaries on the Laws of England of Sir William Blackstone Vol. III, Fourth Edn. published in 1876. Chapter XIII, *relied on*

The Environment Act contains useful provisions for controlling pollution. The main purpose of the Act is to create an authority or authorities under Section 3(3) of the Act with adequate powers to control pollution and protect the environment. It is a pity that till date no authority has been constituted by the Central Government. The work which is requiredy to be done by an authority in terms of Section 3(3) read with other provisions of the Act is being done by the Supreme Court and the other courts in the country. It is high time that the Central Government realises its responsibility and statutory duty to protect the degrading environment in the country. If the conditions in the five districts of Tamil Nadu, where tanneries are operating, are permitted to continue then in the near future all rivers/canals shall be polluted, underground waters contaminated, agricultural lands turned barren and the residents of the area exposed to serious diseases. It is, therefore, necessary for the Supreme Court to direct the Central Government to take immediate action under the provisions of the Environment Act. (Para 20)

There are more than 900 tanneries operating in the five districts of Tamil Nadu. Some of them may, by now, have installed the necessary pollution control measures; they have been polluting the environment for over a decade and in some cases even for a longer period. The Supreme Court has in various orders indicated that these tanneries are liable to pay pollution fine. The polluters must compensate the affected persons and also pay the cost of restoring the damaged ecology. (Para 21)

The Board has the power under the Environment Act and the Rules to lay down standards for emissions or discharge of environmental pollutants. Rule 3(2) of the Rules even permits the Board to specify more stringent standards from those provided under the Rules. The NEERI having justified the standards stipulated by the Board, it is directed that these standards are to be maintained by the tanneries and other industries in the State of Tamil Nadu. (Para 24)

[Keeping in view the above position the Supreme Court gave specific directions in para 25.]

However, it is not necessary for the Supreme Court to monitor these mattes any further. The Madras High Court would be in a better position to monitor these matters hereinafter. Therefore, the Chief Justice of the Madras High Court is directed to constitute a Special Bench — "Green Bench" — to deal with this case and other environmental matters. However, it would be open to the Bench to pass any appropriate order/orders keeping in view the directions issued by "Green Benches" already functioning in Calcutta, Madhya Pradesh and some other High Courts.

(Para 26)

R-M/T/16616/C

Advocates who appeared in this case :

R. Mohan, V.A. Bobde, Kapil Sibal, M.R. Sharma, V.C. Mahajan and S.S. Ray, Senior Advocates (K.R.R Pillai, M.C. Mehta, Ms Seema Midha, V.G. Pragasam, Vijay Panjwani, S. Sukumaran, Sudhir Walia, A.T.M. Sampath, M.S. Dahiya, Sudhir Walia, Roy Abraham, Sm. Baby Krishna, P. Sukumar, Praveen Kumar, Romesh C. Pathak, M.A. Krishnamoorthy, V. Krishnamurthi, Ms Anil Katiyar, Ms Indra Sawhney, Deepak Divan, S.M. Jadhav, A.V. Rangam, Zafarullah Khan, Shahid Rizvi, Shakil Ahmed Syed, Jaideep Gupta and Sanjay Hegde, Advocates, with them) for the appearing parties.

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

1. (1996) 3 SCC 212 : JT (1996) 2 SC 196, *Indian Council for Enviro-Legal Action* v. *Union of India* 658*g-h*
2. (1984) 2 SCC 534 : 1984 SCC (Cri) 313 : AIR 1984 SC 667, *Gramophone Co. of India Ltd.* v *Birendra Bahadur Pandey* 660*e*
3. (1980) 2 SCC 360 : AIR 1980 SC 470, *Jolly George Varghese* v. *Bank of Cochin* 660*d-e*
4. (1976) 2 SCC 521 : AIR 1976 SC 1207, *A.D.M.* v. *Shivakant Shukla* 660*d-e*

The Judgment of the Court was delivered by

KULDIP SINGH, J.— This petition — public interest — under Article 32 of the Constitution of India has been filed by Vellore Citizens' Welfare Forum and is directed against the pollution which is being caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. It is stated that the tanneries are discharging untreated effluent into agricultural fields, roadsides, waterways and open lands. The untreated effluent is finally discharged in River Palar which is the main source of water supply to the residents of the area. According to the petitioner the entire surface and subsoil water of River Palar has been polluted resulting in non-availability of potable water to the residents of the area. It is stated that the tanneries in the State of Tamil Nadu have caused environmental degradation in the area. According to the preliminary survey made by the Tamil Nadu Agricultural University Research Centre, Vellore nearly 35,000 hectares of agricultural land in the tanneries belt has become either partially or totally unfit for cultivation. It has been further stated in the petition that the tanneries use about 170 types of chemicals in the chrome tanning processes. The said chemicals include sodium chloride, lime, sodium sulphate, chlorium (*sic*) sulphate, fat, liquor, ammonia and sulphuric acid besides dyes which are used in large quantities. Nearly 35 litres of water is used for processing one kilogram of finished leather, resulting in dangerously enormous quantities of toxic effluents being let out in the open by the tanning industry. These effluents have spoiled the physico-chemical properties of the soil and have contaminated groundwater by percolation. According to the petitioner an independent survey conducted by Peace Members, a non-governmental organisation, covering 13 villages of Dindigul and Peddiar Chatram Anchayat Unions, reveals that 350 wells out of total of 467 used for drinking and irrigation purposes have been polluted. Women and children have to walk miles to get drinking water. Legal Aid and Advice Board of Tamil Nadu requested two lawyers namely, M.R. Ramanan and P.S. Subramanium to visit the area and submit a report indicating the extent of pollution caused by the tanneries. Relevant part of the report is as under:

> "As per the Technical Report dated 28-5-1983 of the hydrological investigations carried out in Solur village near Ambur it was noticed that 176 chemicals including acids were contained in the tannery effluents. If 40 litres of water with chemicals are required for one kilo of leather, with the production of 200 tons of leather per day at present and likely to

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be increased multifold in the next four to five years with the springing up of more tanneries like mushroom in and around Ambur town, the magnitude of the effluent water used with chemicals and acids let out daily can be shockingly imagined. ... The effluents are let out from the tanneries in the nearby lands, then to Goodar and Palar rivers. The lands, the rivulet and the river receive the effluents containing toxic chemicals and acids. The subsoil water is polluted ultimately affecting not only arable lands, wells used for agriculture but also drinking-water wells. The entire Ambur town and the villages situated nearby do not have good drinking water. Some of the influential and rich people are able to get drinking water from a far-off place connected by a few pipes. During rainy days and floods, the chemicals deposited into the rivers and lands spread out quickly to other lands. The effluents thus let out affect cultivation; either crops do not come up at all or if produced the yield is reduced abnormally too low. ... The tanners have come to stay. The industry is a foreign exchange earner. But one moot point is whether at the cost of the lives of lakhs of people with increasing human population the activities of the tanneries should be encouraged on monetary considerations. We find that the tanners have absolutely no regard for the healthy environment in and around their tanneries. The effluents discharged have been stored like a pond openly in most of the places adjacent to cultivable lands with easy access for the animals and the people. The Ambur Municipality, which can exercise its powers as per the provisions of the Madras District Municipalities Act, 1920 (5 of 1920) more particularly under Sections 226 to 231, 249 to 253 and 338 to 342 seems to be a silent spectator. Probably it does not want to antagonise the highly influential and stupendously rich tanners. The powers given under Section 63 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) have not been exercised in the case of tanneries in Ambur and the surrounding areas."

2. Along with the affidavit dated 21-7-1992 filed by Deputy Secretary to Government, Environment and Forests Department of Tamil Nadu, a list of villages affected by the tanneries has been attached. The list mentions 59 villages in the three divisions of Thirupathur, Vellore and Ranipet. There is acute shortage of drinking water in these 59 villages and as such alternative arrangements were being made by the Government for the supply of drinking water.

3. In the affidavit dated 9-1-1992 filed by Member Secretary, Tamil Nadu Pollution Control Board (the Board), it has been stated as under:

"It is submitted that there are 584 tanneries in North Arcot Ambedkar District vide Annexures 'A' and 'D', out of which 443 tanneries have applied for consent of the Board. The Government were concerned with the treatment and disposal of effluent from tanneries. The Government gave time up to 31-7-1985 to tanneries to put up Effluent Treatment Plant (ETP). So far 33 tanneries in North Arcot

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Ambedkar District have put up Effluent Treatment Plants. The Board has stipulated standards for the effluent to be disposed of by the tanneries."

4. The affidavits filed on behalf of the State of Tamil Nadu and the Board clearly indicate that the tanneries and other polluting industries in the State of Tamil Nadu are being persuaded for the last about 10 years to control the pollution generated by them. They were given option either to construct common effluent treatment plants for a cluster of industries or to set up individual pollution control devices. The Central Government agreed to give substantial subsidy for the construction of Common Effluent Treatment Plants (CETPs). It is a pity that till date most of the tanneries operating in the State of Tamil Nadu have not taken any step to control the pollution caused by the discharge of effluent. This Court on 1-5-1995 passed a detailed order. In the said order this Court noticed various earlier orders passed by this Court and finally directed as under:

> "Mr R. Mohan, the learned Senior Counsel for the Tamil Nadu Pollution Control Board, has placed before us a consolidated statement dividing the 553 industries into three parts. The first part in Statement 1 and the second part in Statement 2 relate to those tanneries who have set up the Effluent Treatment Plants either individually or collectively to the satisfaction of the Tamil Nadu Pollution Control Board. According to the report placed on the record by the Board, these industries in Statements 1 and 2 have not achieved the standard or have not started functioning to the satisfaction of the Board. So far as the industries in Statements 1 and 2 are concerned, we give them three months' notice from today to complete the setting up of Effluent Treatment Plant (either individually or collectively) failing which they shall be liable to pollution fine on the basis of their past working and also liable to be closed. We direct the Tamil Nadu Pollution Control Board to issue individual notices to all these industries within two weeks from today. The Board is also directed to issue a general notice on three consecutive days in a local newspaper which has circulation in the district concerned.
>
> So far as the 57 tanneries listed in Statement III (including 12 industries who have filed writ petition, numbers of which have been given above) are concerned, these units have not installed and commissioned the Effluent Treatment Plants despite various orders issued by this Court from time to time. Mr R. Mohan, the learned Senior Counsel appearing for Tamil Nadu Pollution Control Board, states that the Board has issued separate notices to these units directing them to set up the Effluent Treatment Plants. Keeping in view the fact that this Court has been monitoring the matter for the last about four years and various orders have been issued by this Court from time to time, there is no justification to grant any further time to these industries. We, therefore, direct the 57 industries listed hereunder to be closed with immediate effect. ... We direct the District Collector and the Senior Superintendent of Police of the district to have our orders complied with

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immediately. Both these officers shall file a report in this Court within one week of the receipt of the order.

We give opportunity to these 57 industries to approach this Court as and when any steps towards the setting up of Effluent Treatment Plants and their commissioning have been taken by these industries. If any of the industries wish to be relocated to some other area, they may come out with a proposal in that respect."

5. On 28-7-1995 this Court suspended the closure order in respect of seven industries mentioned therein for a period of eight weeks. It was further observed as under:

"Mr G. Ramaswamy, the learned Senior Advocate appearing for some of the tanneries in Madras, states that the setting up of the Effluent Treatment Plants is progressing satisfactorily. According to him several lakhs have already been spent and in a short time it would start operating. Mr Mohan, the learned counsel for the Tamil Nadu Pollution Control Board, states that the team of the Board will inspect the project and file a report by 3-8-1995."

6. This Court on 8-9-1995 passed the following order:

"The Tamil Nadu Pollution Control Board has filed its report. List No. I relates to about 299 industries. It is stated by Mr G. Ramaswamy, Mr Kapil Sibal and Mr G.L. Sanghi, the learned Senior Advocates appearing for these industries, that the setting up of the projects is in progress. According to the learned counsel Tamil Nadu Leather Development Corporation (TALCO) is in charge of the project. The learned counsel state that the project shall be completed in every respect within 3 months from today. The details of these industries and the projects undertaken by TALCO as per List No. I are as under. ... We are of the view that it would be in the interest of justice to give a little more time to these industries to complete the project. Although the industries have asked for three months' time, we give them time till 31-12-1995. We make it clear that in case the projects are not completed by that time, the industries shall be liable to be closed forthwith. Apart from that, these industries shall also be liable to pollution fine for the past period during which they had been operating.

We also take this opportunity to direct TALCO to take full interest in these projects and have the projects completed within the time granted by us.

Mr Kapil Sibal, the learned counsel appearing for the tanneries, stated that Council for Indian Finished Leather Manufacturers' Export Association is a body which is collecting 5 per cent on all exports. This body also helps the tanneries in various respects. We issue notice to the Association to be present in this Court and assist this Court in all the matters pertaining to the leather tanneries in Madras. Mr Sampath takes notice.

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So far as List No. II is concerned, it relates to about 163 tanneries (except M/s Vibgyor Tanners & Co., Kailasagiri Road, Mittalam-635 811, Ambur (via). The Pollution Control Board has inspected all these tanneries and placed its report before us. According to the report most of these tanneries have not even started primary work at the spot. Some of them have not even located the land. The tanneries should have themselves set up the pollution control devices right at the time when they started working. They have not done so. They are not even listening to various orders passed by this Court from time to time during the last more than 2 years. It is on the record that these tanneries are polluting the area. Even the water around the area where they are operating is not worth drinking. We give no further time to these tanneries. We direct all the following tanneries which are numbering about 162 to be closed with immediate effect."

It may be mentioned that this Court suspended the closure orders in respect of various industries from time to time to enable the said industries to install the pollution control devices.

7. This Court by the order dated 20-10-1995 directed the National Environmental Engineering Research Institute, Nagpur (NEERI) to send a team of experts to examine, in particular, the feasibility of setting up of CETPs for cluster of tanneries situated at different places in the State of Tamil Nadu where the work of setting up of the CETPs has not started and also to inspect the existing CETPs including those where construction work was in progress. NEERI submitted its first report on 9-12-1995 and the second report on 12-2-1996. This Court examined the two reports and passed the following order on 9-4-1996:

"Pursuant to this Court's order dated December 15, 1995, NEERI has submitted Final Examination Report dated February 12, 1996 regarding CETPs constructed/under construction by the tanneries in various districts of the State of Tamil Nadu. A four-member team constituted by the Director, NEERI inspected the CETPs from January 27, 1996 to February 12, 1996. According to the report, at present, 30 CETP sites have been identified for tannery clusters in the five districts of Tamil Nadu viz., North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. All the 30 CETPs were inspected by the team. According to the report, only 7 CETPs are under operation, while 10 are under construction and 13 are proposed. The following 7 CETPs are under operation:

1. M/s TALCO Ranipet Tannery Effluent Treatment Co. Ltd., Ranipet, District North Arcot Ambedkar.

2. M/s TALCO Ambur Tannery Effluent Treatment Co. Ltd., Thuthipet Sector, Ambur, District North Arcot Ambedkar.

3. M/s TALCO Vaniyambadi Tanners Enviro Control Systems Ltd., Vaniyambattu, Vaniyambadi, District North Arcot.

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4. M/s Pallavaram Tanners Industrial Effluent Treatment Co., Chrompet Area, District Chengai MGR.

5. M/s Ranipet SIDCO Finished Leather Effluent Treatment Co. Pvt. Ltd., Ranipet, District North Arcot Ambedkar.

6. M/s TALCO Vaniyambadi Tanners Enviro Control Systems Ltd., Udayendiram, Vaniyambadi, District North Arcot Ambedkar.

7. M/s TALCO Pernambut Tannery Effluent Treatment Co. Ltd., Bakkalapalli, Pernambut, District North Arcot Ambedkar.

The CETPs mentioned at Sl. Nos. 5, 6 and 7 were commissioned in January 1996 and were on the date of report passing through stabilization period. The report indicates that so far as the above CETPs are concerned, although there is improvement in the performance, they are still not operating at their optimal level and are not meeting the standards as laid down by the Ministry of Environment and Forests and the Tamil Nadu Pollution Control Board for inland surface water discharge. The NEERI has given various recommendations to be followed by the above-mentioned units. We direct the units to comply with the recommendations of NEERI within two months from today. The Tamil Nadu Pollution Control Board shall monitor the directions and have the recommendations of the NEERI complied with. So far as the three units which are under stabilization are concerned, the NEERI Team may inspect the same and place a final report before this Court within the period of two months.

Apart from the tanneries which are connected with the above-mentioned 7 units, there are large number of other tanneries operating in the 5 districts mentioned above which have not set up any satisfactory pollution control devices. Mr Mohan, the learned counsel for the Tamil Nadu Pollution Control Board, states that notices were issued to all those tanneries from time to time directing them to set up the necessary pollution control devices. It is mandatory for the tanneries to set up the pollution control devices. Despite notices it has not been done. This Court has been monitoring these matters for the last about 4 years. There is no awakening or realisation to control the pollution which is being generated by these tanneries.

The NEERI has indicated the physico-chemical characteristics of groundwater from dug wells near tannery clusters. According to the report, water samples show that well waters around the tanneries are unfit for drinking. The report also shows that the quality of water in Palar river downstream from the place where effluent is discharged is highly polluted. We, therefore, direct that all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. which are not connected with the seven CETPs mentioned above, shall be closed with immediate effect. None of these tanneries shall be permitted to operate till the time the CETPs are constructed to the satisfaction of the Tamil Nadu Pollution Control

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Board. We direct the District Magistrate and the Superintendent of Police of the area concerned, to have all these tanneries closed with immediate effect. Mr Mehta has placed on record the report of Tamil Nadu Pollution Control Board. In Statement I of the Index, there is a list of 30 industries which have also not been connected with any CETPs. According to the report, these industries have not, till date set up pollution control devices. We direct the closure of these industries also. List is as under. ... The Tamil Nadu Pollution Control Board has filed another report dated January 18, 1996 pertaining to 51 tanneries. There is dispute regarding the permissible limit of the quantity of total dissolved solids (TDS). Since the NEERI Team is visiting these tanneries, they may examine the TDS aspect also and advise this Court accordingly. Meanwhile, we do not propose to close any of the tanneries on the ground that it is discharging more than 2001 TDS.

The report indicates that except the 17 units, all other units are non-complaint units in the sense that they are not complying with the BOD standards. Excepting these 17 industries, the remaining 34 tanneries listed hereunder are directed to be closed forthwith. ... We direct the District Magistrate and the Superintendent of Police of the area concerned to have all these industries mentioned above closed forthwith. The tanneries in the 5 districts of Tamil Nadu referred to in this order have been operating for a long time. Some of the tanneries are operating for a period of more than two decades. All this period, these tanneries have been polluting the area. Needless to say that the total environment in the area has been polluted. We issue show-cause notice to these industries through their learned counsel who are present in Court, why they be not subjected to heavy pollution fine. We direct the State of Tamil Nadu through the Industry Ministry, the Tamil Nadu Pollution Control Board and all other authorities concerned and also the Government of India through the Ministry of Environment and Forests, not to permit the setting up of further tanneries in the State of Tamil Nadu.

Copy of this order be communicated to the authorities concerned within three days. To come up for further consideration after the replies to the show-cause. There are a large number of tanneries in the State of Tamil Nadu which have set up individual pollution control devices and which according to the Tamil Nadu Pollution Control Board are operating satisfactorily. The fact, however, remains that all these tanneries are discharging the treated effluents within the factory precincts itself. We direct NEERI Team which is visiting this area to find out as to whether the discharge of the effluent on the land within the factory premises is permissible environmentally. *M/s Nandeem Tanning Company, Valayampet Vaniyambadi* is one of such industries. Copy of the report submitted by the Tamil Nadu Pollution Control Board be forwarded to the NEERI. NEERI may inspect this industry within ten days and file a report in this Court. Copy of this order be communicated to NEERI.

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Matters regarding distilleries in the State of Tamil Nadu

The Tamil Nadu Pollution Control Board has placed on record the factual report regarding 6 distilleries mentioned in page 4 of the Index of its Report dated April 5, 1996. The learned counsel for the Board states that the Board shall issue necessary notices to these industries to set up pollution control devices to the satisfaction of the Board, failing which these distilleries shall be closed. The Pollution Control Board shall place a status report before this Court."

The NEERI submitted two further reports on 1-5-1996 and 11-6-1996 in respect of CETPs set up by various industries. The NEERI reports indicate that the physico-chemical characteristics of groundwater from dug wells in Ranipet, Thuthipeth, Valayambattu, Vaniyambadi and various other places do not conform to the limits prescribed for drinking purposes.

8. This Court has been monitoring this petition for almost five years. The NEERI, Board and the Central Pollution Control Board (Central Board) have visited the tanning and other industries in the State of Tamil Nadu several times. These expert bodies have offered all possible assistance to these industries. The NEERI reports indicate that even the seven operational CETPs are not functioning to its satisfaction. NEERI has made several recommendations to be followed by the operational CETPs. Out of the 30 CETP sites which have been identified for tannery clusters in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R., 7 are under operation, 10 are under construction and 13 are proposed. There are a large number of tanneries which are not likely to be connected with any CETP and are required to set up pollution control devices on their own. Despite repeated extensions granted by this Court during the last five years and prior to that by the Board the tanneries in the State of Tamil Nadu have miserably failed to control the pollution generated by them.

9. It is no doubt correct that the leather industry in India has become a major foreign exchange earner and at present Tamil Nadu is the leading exporter of finished leather accounting for approximately 80 per cent of the country's export. Though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues it has no right to destroy the ecology, degrade the environment and pose as a health-hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry.

10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known

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as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history — deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists.

11. Some of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" — in the context of the municipal law — means:

(*i*) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(*ii*) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

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

12. "The Polluter Pays Principle" has been held to be a sound principle by this Court in *Indian Council for Enviro-Legal Action* v. *Union of India*[1]. The Court observed: (SCC p. 246, para 65)

1 (1996) 3 SCC 212 : JT (1996) 2 SC 196

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"... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country".

The Court ruled that: (SCC p. 246, para 65)

"... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity *irrespective* of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays Principle" as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

13. The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(*g*) of the Constitution are as under:

"47. *Duty of the State to raise the level of nutrition and the standard of living and to improve public health.*—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

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

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

Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the

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Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

14. In view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.

15. Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H.R. Khanna's opinion in *A.D.M.* v. *Shivakant Shukla*[2], *Jolly George Varghese case*[3] and *Gramophone Co. case*[4].

16. The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstone's commentaries on the Laws of England (*Commentaries on the Laws of England of Sir William Blackstone*) Vol. III, fourth edition published in 1876. Chapter XIII, "Of Nuisance" depicts the law on the subject in the following words:

> "Also, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if one's neighbour sets up and exercises any offensive trade; as a tanner's, a tallow-chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, 'sic utere tuo, ut alienum non leadas'; this

2 (1976) 2 SCC 521 : AIR 1976 SC 1207

3 *Jolly George Varghese* v. *Bank of Cochin*, (1980) 2 SCC 360 : AIR 1980 SC 470

4 *Gramophone Co of India Ltd* v *Birendra Bahadur Pandey*, (1984) 2 SCC 534 : 1984 SCC (Cri) 313 : AIR 1984 SC 667

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therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in one's immediate neighbourhood may be a nuisance.

... With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to another's meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one's neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of 'doing to others, as we would they should do unto ourselves'."

17. Our legal system having been founded on the British common law the right of a person to a pollution-free environment is a part of the basic jurisprudence of the land.

18. The Statement of Objects and Reasons to the Environment Act, inter alia, states as under:

"The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food-chains, growing risks of environmental accidents and threats to life-support systems. The world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972. The Government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident.

Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build-up of hazardous substances especially new chemicals in the environment, are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long-term requirements of environmental safety and to give direction to, and coordinate a system of speedy and adequate response to emergency situations threatening the environment.

In view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable coordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate

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powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening the environment and deterrent punishment to those who endanger human environment, safety and health."

Sections 3, 4, 5, 7 and 8 of the Environment Act which are relevant are as under:

"3. *Power of Central Government to take measures to protect and improve environment.*—(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely—

(*i*) coordination of actions by the State Governments, officers and other authorities—

(*a*) under this Act, or the rules made thereunder; or

(*b*) under any other law for the time being in force which is relatable to the objects of this Act;

(*ii*) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(*iii*) laying down standards for the quality of environment in its various aspects;

(*iv*) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(*v*) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(*vi*) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(*vii*) laying down procedures and safeguards for the handling of hazardous substances;

(*viii*) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(*ix*) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

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(*x*) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(*xi*) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(*xii*) collection and dissemination of information in respect of matters relating to environmental pollution;

(*xiii*) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(*xiv*) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

4. *Appointment of officers and their powers and functions.*—(1) Without prejudice to the provisions of sub-section (3) of Section 3, the Central Government may appoint officers with such designations as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.

(2) The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government or, if so directed by that Government, also of the authority or authorities, if any, constituted under sub-section (3) of Section 3 or of any other authority or officer.

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

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

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

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

7. *Persons carrying on industry, operation, etc., not to allow emission or discharge of environmental pollutants in excess of the standards*.—No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

8. *Persons handling hazardous substances to comply with procedural safeguards*.—No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed."

19. Rules 3(1), 3(2) and 5(1) of the Environment (Protection) Rules, 1986 (the Rules) are as under:

"3. *Standards for emission or discharge of environmental pollutants*.—(1) For the purposes of protecting and improving the quality of the environment and preventing and abating environmental pollution, the standards for emission or discharge of environmental pollutants from the industries, operations or processes shall be as specified in Schedules I to IV.

3. (2) Notwithstanding anything contained in sub-rule (1), the Central Board or a State Board may specify more stringent standards from those provided in Schedules I to IV in respect of any specific industry, operation or process depending upon the quality of the recipient system and after recording reasons therefor in writing.

5. *Prohibition and restriction on the location of industries and the carrying on of processes and operations in different areas*.—(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas—

(*i*) Standards for quality of environment in its various aspects laid down for an area.

(*ii*) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.

(*iii*) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(*iv*) The topographic and climatic features of an area.

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(*v*) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.

(*vi*) Environmentally compatible land use.

(*vii*) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(*viii*) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(*ix*) Proximity to human settlements.

(*x*) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area."

20. It is thus obvious that the Environment Act contains useful provisions for controlling pollution. The main purpose of the Act is to create an authority or authorities under Section 3(3) of the Act with adequate powers to control pollution and protect the environment. It is a pity that till date no authority has been constituted by the Central Government. The work which is required to be done by an authority in terms of Section 3(3) read with other provisions of the Act is being done by this Court and the other courts in the country. It is high time that the Central Government realises its responsibility and statutory duty to protect the degrading environment in the country. If the conditions in the five districts of Tamil Nadu, where tanneries are operating, are permitted to continue then in the near future all rivers/canals shall be polluted, underground waters contaminated, agricultural lands turned barren and the residents of the area exposed to serious diseases. It is, therefore, necessary for this Court to direct the Central Government to take immediate action under the provisions of the Environment Act.

21. There are more than 900 tanneries operating in the five districts of Tamil Nadu. Some of them may, by now, have installed the necessary pollution control measures; they have been polluting the environment for over a decade and in some cases even for a longer period. This Court has in various orders indicated that these tanneries are liable to pay pollution fine. The polluters must compensate the affected persons and also pay the cost of restoring the damaged ecology.

22. Mr M.C. Mehta, the learned counsel for the petitioner has invited our attention to the notification GOMs No. 213 dated 30-3-1989 which reads as under:

"In the government order first read above, the Government have ordered, among other things, that no industry causing serious water

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pollution should be permitted within one kilometre from the embankments of rivers, streams, dams, etc. and that the Tamil Nadu Pollution Control Board should furnish a list of such industries to all local bodies. It has been suggested that it is necessary to have a sharper definition for water sources so that ephemeral water collections like rainwater ponds, drains, sewerages (bio-degradable) etc. may be excluded from the purview of the above order. The Chairman, Tamil Nadu Pollution Control Board has stated that the scope of the government order may be restricted to reservoirs, rivers and public drinking-water sources. He has also stated that there should be a complete ban on location of highly polluting industries within 1 kilometre of certain water sources.

2. The Government have carefully examined the above suggestions. The Government impose a total ban on the setting up of the highly polluting industries mentioned in Annexure I to this order within one kilometre from the embankments of the water sources mentioned in Annexure II to this order.

3. The Government also direct that under any circumstances if any highly polluting industry is proposed to be set up within one kilometre from the embankments of the water sources other than those mentioned in Annexure II to this order, the Tamil Nadu Pollution Control Board should examine the case and obtain the approval of the Government for it."

Annexure I to the notification includes distilleries, tanneries, fertilizer, steel plants and foundries as the highly polluting industries. We have our doubts whether the above-quoted government order is being enforced by the Tamil Nadu Government. The order has been issued to control pollution and protect the environment. We are of the view that the order should be strictly enforced and no industry listed in Annexure I to the order should be permitted to be set up in the prohibited area.

23. The learned counsel for the tanneries raised an objection that the standard regarding total dissolved solids (TDS) fixed by the Board was not justified. This Court by the order dated 9-4-1996 directed the NEERI to examine this aspect and give its opinion. In its report dated 11-6-1996 NEERI has justified the standards stipulated by the Board. The reasoning of the NEERI given in its report dated 11-6-1996 is as under:

"The total dissolved solids in ambient water have physiological, industrial and economic significance. The consumer's acceptance of mineralized water decreases in direct proportion to increased mineralization as indicated by Bruvold (1). High total dissolved solids (TDS), including chlorides and sulphates, are objectionable due to possible physiological effects and mineral taste that they impart to water. High levels of total dissolved solids produce laxative/cathartic/purgative effect in consumers. The requirement of soap and other detergents in household and industry is directly related to water hardness as brought

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out by DeBoer and Larsen (2). High concentration of mineral salts, particularly sulphates and chlorides, are also associated with costly corrosion damage in wastewater treatment systems, as detailed by Patterson and Banker (3). Of particular importance is the tendency of scale deposits with high TDS thereby resulting in high fuel consumption in boilers.

The Ministry of Environment and Forests (MEF) has not categorically laid down standards for inland surface water discharge for total dissolved solids (TDS), sulphates and chlorides. The decision on these standards rests with the respective State Pollution Control Boards as per the requirements based on local site conditions. The standards stipulated by the TNPCB are justified on the afore-referred considerations.

The prescribed standards of the TNPCB for inland surface water discharge can be met for tannery wastewaters cost effectively through proper implant control measures in tanning operation, and rationally designed and effectively operated wastewater treatment plants (ETPs and CETPs). Tables 3 and 5 depict the quality of groundwater in some areas around tanneries during peak summer period (3-6-1996 to 5-6-1996). Table 8 presents the data collected by TNPCB at individual ETPs indicating that TDS, sulphates and chloride concentrations are below the prescribed standards for inland surface water discharge. The quality of ambient waters needs to be maintained through the standards stipulated by TNPCB."

24. The Board has the power under the Environment Act and the Rules to lay down standards for emissions or discharge of environmental pollutants. Rule 3(2) of the Rules even permits the Board to specify more stringent standards from those provided under the Rules. The NEERI having justified the standards stipulated by the Board, we direct that these standards are to be maintained by the tanneries and other industries in the State of Tamil Nadu.

25. Keeping in view the scenario discussed by us in this judgment, we order and direct as under:

1. The Central Government shall constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The authority shall be headed by a retired Judge of the High Court and it may have other members — preferably with expertise in the field of pollution control and environment protection — to be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under Section 5 of the Environment Act and for taking measures with respect to the matters referred to in clauses (*v*), (*vi*), (*vii*), (*viii*), (*ix*), (*x*) and (*xii*) of sub-section (2) of Section 3. The Central Government shall constitute the authority before September 30, 1996.

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2. The authority so constituted by the Central Government shall implement the "Precautionary Principle" and the "Polluter Pays Principle". The authority shall, with the help of expert opinion and after giving opportunity to the polluters concerned assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

3. The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from whom the amount is to be recovered, the amount to be recovered from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collectors/District Magistrates of the area concerned. The Collector/District Magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families.

4. The authority shall direct the closure of the industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him. This shall be in addition to the recovery from him as arrears of land revenue.

5. An industry may have set up the necessary pollution control device at present but it shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the residents of the area.

6. We impose pollution fine of Rs 10,000 each on all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. The fine shall be paid before October 31, 1996 in the office of the Collector/District Magistrate concerned. We direct the Collectors/District Magistrates of these districts to recover the fines from the tanneries. The money shall be deposited, along with the compensation amount recovered from the polluters, under a separate head called "Environment Protection Fund" and shall be utilised for compensating the affected persons as identified by the authorities and also for restoring the damaged environment. The pollution fine is liable to be recovered as arrears of land revenue. The tanneries which fail to deposit the amount by October 31, 1996 shall be closed forthwith and shall also be liable under the Contempt of Courts Act, 1971.

7. The authority, in consultation with expert bodies like NEERI, Central Board, Board shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollution in the State of Tamil Nadu. The scheme/schemes so framed shall be executed by the State Government under the supervision of the Central Government. The

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expenditure shall be met from the "Environment Protection Fund" and from other sources provided by the State Government and the Central Government.

8. We suspend the closure orders in respect of all the tanneries in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. We direct all the tanneries in the above five districts to set up CETPs or Individual Pollution Control Devices on or before November 30, 1996. Those connected with CETPs shall have to install in addition the primary devices in the tanneries. All the tanneries in the above five districts shall obtain the consent of the Board to function and operate with effect from December 15, 1996. The tanneries who are refused consent or who fail to obtain the consent of the Board by December 15, 1996 shall be closed forthwith.

9. We direct the Superintendent of Police and the Collector/District Magistrate/Deputy Commissioner of the district concerned to close all those tanneries with immediate effect who fail to obtain the consent from the Board by the said date. Such tanneries shall not be reopened unless the authority permits them to do so. It would be open to the authority to close such tanneries permanently or to direct their relocation.

10. Government Order No. 213 dated March 30, 1989 shall be enforced forthwith. No new industry listed in Annexure I to the notification shall be permitted to be set up within the prohibited area. The authority shall review the cases of all the industries which are already operating in the prohibited area and it would be open to the authority to direct the relocation of any of such industries.

11. The standards stipulated by the Board regarding total dissolved solids (TDS) and approved by the NEERI shall be operative. All the tanneries and other industries in the State of Tamil Nadu shall comply with the said standards. The quality of ambient waters has to be maintained through the standards stipulated by the Board.

26. We have issued comprehensive directions for achieving the end result in this case. It is not necessary for this Court to monitor these matters any further. We are of the view that the Madras High Court would be in a better position to monitor these matters hereinafter. We, therefore, request the Chief Justice of the Madras High Court to constitute a Special Bench "Green Bench" to deal with this case and other environmental matters. We make it clear that it would be open to the Bench to pass any appropriate order/orders keeping in view the directions issued by us. We may mention that "Green Benches" are already functioning in Calcutta, Madhya Pradesh and some other High Courts. We direct the Registry of this Court to send the records to the Registry of the Madras High Court within one week. The High Court shall treat this matter as a petition under Article 226 of the Constitution of India and deal with it in accordance with law and also in terms of the directions issued by us. We give liberty to the parties to approach the High Court as and when necessary.

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27. Mr M.C. Mehta has been assisting this Court to our utmost satisfaction. We place on record our appreciation for Mr Mehta. We direct the State of Tamil Nadu to pay Rs 50,000 towards legal fees and other out of pocket expenses incurred by Mr Mehta.

(1996) 5 Supreme Court Cases 670

(BEFORE B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.)

P. KANNADASAN AND OTHERS .. Appellants/ Petitioners;

Versus

STATE OF T.N. AND OTHERS .. Respondents.

Civil Appeals No. 9847 of 1996 with Nos. 9849, 9780-81, 9905, 9851, 9906-07, 9777, W.Ps. Nos. 269 of 1995, 270 of 1994, 9908-09, 9850, 9778, 9910, 408, 9911-13 of 1996, 518, 9914-15 of 1996, 688 of 1992, 9848, 9774-76, 9916 and 9917 of 1996†, decided on July 26, 1996

A. **Mines and Minerals — Cess and Other Taxes on Minerals (Validation) Act, 1992 — S. 2(1), (2) & (3) and the Sch. — Validity — State laws imposing cess or other taxes on minerals found by the Supreme Court/High Courts to be beyond the legislative competence of the State Legislature — Provision in S. 2 validating such State laws, held, not beyond the legislative competence of Parliament — Contention that the said provision sought to overturn the judicial decisions, repelled — Constitution of India, Arts. 245 & 246, 265 and Sch. VII List I Entries 54 & 97 & List II Entries 23 and 50 — Statute Law — Validating statute — Constitutional law — Separation of powers — Words and phrases — "Checks and balances" — Mines and Minerals (Regulation and Development) Act, 1957, Ss. 2, 9 & 9-A and Sch. II — Panchayats and Zila Parishads — T.N. Panchayats Act, 1958 (35 of 1958), S. 115 — Tax — Cess**

B. **Mines and Minerals — Cess and Other Taxes on Minerals (Validation) Act, 1992 — S. 2(1) and the Sch. — Validity — State laws imposing cess or other taxes on minerals found by the Supreme Court/High Courts to be beyond the legislative competence of the State Legislature — Provision in S. 2(1) validating such State laws from the date on which they were enacted by the State Legislature concerned, held, not bad for retrospectivity — Statute law — Validating statute — Statute validating a tax retrospectively — Validity — Taxation — Taxing statutes — Retrospective validation of an invalid taxing statute — Taxing Statutes — Constitution of India, Art. 265**

C. **Interpretation of the Constitution — Final arbiter on, held, is the Supreme Court — Constitution of India, Arts. 141, 32 and 136 — Interpretation of the Constitution**

Certain States had enacted statutes imposing a local cess on minerals which were annulled by the Supreme Court/High Courts for want of legislative competence. Therefore, Parliament enacted the Cess and Other Taxes on Minerals (Validation) Act, 1992 deeming such Acts, including Tamil Nadu Panchayats Act, 1958, Section 115, always to have been valid as if enacted by Parliament. The 1992

† From the Judgment and Order dated 27-6-1994 of the Madras High Court in WP No 14178 of 1989

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(1999) 6 Supreme Court Cases 464

(BEFORE S.B. MAJMUDAR AND D.P. WADHWA, JJ.)

M.I. BUILDERS PVT. LTD. .. Appellant;

Versus

RADHEY SHYAM SAHU AND OTHERS .. Respondents.

Civil Appeals Nos. 9323-25 of 1994†, decided on July 26, 1999

A. **Constitution of India — Arts. 14, 21, 298 & 299 and 136 — Distribution of State largesse — Disposal of municipal property — *Municipal Corporation's agreement with private builder* — Wednesbury unreasonableness — Public purpose and public interest — Municipal Corporation's action contrary to — Park of historical importance (Jhandewala Park, Lucknow) located in congested commercial-cum-residential area (Aminabad) handed over by the Corporation to a private builder (appellant) under an agreement for construction of an air-conditioned underground shopping complex (Palika Bazar) on the pretext of decongesting the area without inviting tender and without obtaining any project report — Decision of the Corporation and procedure adopted by it in entrusting the project to the builder contrary to statutory provisions — *Decision not an informed objective decision* — Maintenance of the park because of its historical importance and environmental necessity being a public purpose, decision was also prejudicial to the public purpose — Corporation's agreement with the builder totally one-sided in favour of builder — Pursuant to the agreement Corporation divested of its control over the park — Held, Corporation's action unreasonable, arbitrary, unfair and opposed to public policy, public interest and public trust doctrine — An example of bad governance — Judicial review therefore called for — Construction being unauthorised and illegal it must be demolished irrespective of whatever expenditure incurred by the builder — Since statute also requires the Corporation to provide parking lots, a portion of the construction can be converted into underground parking lot — Directions issued accordingly — Municipalities — U.P. Municipal Corporation Act, 1959 (2 of 1959) — Town Planning — U.P. Regulation of Buildings Operations Act, 1958 (34 of 1958) — U.P. Urban Planning and Development Act, 1973 (11 of 1973) — U.P. Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 (55 of 1975) — Doctrines — *Doctrine of public trust***

B. **Town Planning — Unauthorised construction — Court should order demolition of such construction even though builder invested considerable amount — This dictum is almost bordering rule of law — Exercise of judicial discretion in moulding the relief is not called for in such cases as that would encourage and perpetuate the illegality — Enquiry should be ordered to find how unauthorised construction came about and to bring the offenders to book — Public Accountability — Constitution of India, Art. 136 — Relief — Judicial process — Exercise of judicial discretion has to be in accordance with law and set legal principles**

† From the Judgment and Order dated 23-8-1994 of the Allahabad High Court in WPs Nos. 39, 92 and 94 of 1994

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On 6-7-1993 notice was issued for meeting of Lucknow Nagar Mahapalika, also called Nagar Nigam or Corporation, for 12-7-1993 with agenda including "other subjects, subject to the permission of Presiding Officer". In the meeting under that head a resolution was passed constituting a High Power Committee under the Chairmanship of Nagar Pramukh and delegating it the Mahapalika's rights of disposal, allotment, transfer etc. of its properties and of finalising the conditions of allotment and agreement etc. The High Power Committee in its meeting took decision about construction of an underground air-conditioned shopping complex (Palika Bazar) in Jhandewala Park (also known as Aminuddaula Park), a park of historical importance situated in the heart of Aminabad, a bustling commercial-cum-residential locality in the city of Lucknow. The park acquired by the State Government in the year 1913 was given to the Mahapalika for its management. The project was decided to be got executed by the appellant builder, M.I. Builders Pvt. Ltd. The draft of the contract to be entered into between the Mahapalika and M.I. Builders was also approved. Under clause (2) of the agreement it was for the builder to make a construction at its own cost and then to realise the cost with profit not exceeding more than 10% of the investment in respect of each shop. It was not ascertainable as to how much cost the builder was likely to incur and how long it would continue to be in possession of the shopping complex. Full freedom had been given to the builder to lease out the shops as per its own terms and conditions to persons of its choice on behalf of the Mahapalika and the Mahapalika was bound by these terms and conditions. The builder had also been given the right to sign the agreement on behalf of the Mahapalika on the terms and conditions which the builder might deem fit and proper. The builder was only required to give a copy of the agreement to the Mahapalika after its execution and both the Mahapalika and the builder would remain bound by the terms of that agreement. Since there was no project report it was not known as to how many shops the builder would construct and of what sizes. The Mahapalika was allowed to charge Rs 5000 per shop for every second and subsequent transfer of shops by the builder but what amount was to be charged for the first transfer or subsequent transfers was left to the sole discretion of the builder. By the construction it became more like a terrace park; certainly a park of a different nature. By construction of underground shopping complex irreversible changes were made.

The decision of the High Power Committee was put before the Executive Committee and the General Body of the Mahapalika for the purpose of "information" and both these bodies stamped their approval. There were, however, six recitals to the agreement dated 4-11-1993 which cannot be correlated to any discussion in any of the meetings of the Mahapalika, the Executive Committee or the High Power Committee. Thereupon three writ petitions were filed in the High Court against the decision of the Mahapalika permitting the appellant to construct the underground shopping complex in the Park and the agreement dated 4-11-1993. The High Court by a common judgment held that the Mahapalika's decision was illegal, arbitrary and unconstitutional. The High Court set aside and quashed the relevant resolutions of the Mahapalika permitting such construction and also the agreement dated 4-11-1993. Writ of mandamus was issued to the Mahapalika to restore back the park to its original position within a period of three months from the date of the judgment and till that was done, to take adequate safety measures and to provide

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necessary safeguard and protection to the public, the users of the park. The appellant as well as the Mahapalika filed appeals before the Supreme Court. However, the appeals by the Mahapalika were subsequently allowed to be withdrawn by order dated 6-2-1997. The Mahapalika also revoked the sanctioned building plans. During the course of hearing of the writ petitions when the High Court had directed maintenance of status quo, only digging in some part of the park had been done and there was no construction. When the matter came before the Supreme Court, it passed an order on 14-10-1994 directing "that the appellant shall be permitted to construct an underground shopping complex by raising its own funds without collecting any additional funds from individuals or concerns to whom the promise of allotment of shop is made". The appellant was directed to file an undertaking in the Court to the above effect as also to the effect that "if the Court directs removal of the shopping complex in the event of failure of the appeals, the shopping complex will have to be removed at the appellant's cost without claiming anything in return". It is contended by the appellant that after the aforesaid interim order, it got necessary building plans sanctioned by the Mahapalika and started construction. The respondents, however, filed an application complaining that the construction was in violation of the building plans and was also against the provisions of the U.P. Urban Planning and Development Act, 1973. To ascertain the nature of construction being carried out at that time the Supreme Court appointed a Local Commissioner. These applications were then disposed of. By a subsequent order dated 7-5-1997 the Court stopped further construction. Dismissing the appeals of the builder with costs and agreeing with the conclusions of the High Court, the Supreme Court

Held:

There are two distinct areas of challenge in the present case — (*1*) the agreement is a fraud on power, prime land has been given for a song by the Mahapalika. The fact that the scheme was so lucrative could be seen from the fact that all the shops less 5% were booked within six days of the advertisement appearing in December 1993. Public interest and the public exchequer have been sacrificed. The Mahapalika is divested of its control over the project though notionally not for ever but the builder, on the other hand, has control over the project for all times to come, and (*2*) construction is in contravention of the provisions of law as contained in the Development Act. The project has been entrusted to the builder in violation of the provisions of the Act. The decision taken by the Mahapalika was not on proper consideration and was not an informed objective decision. Judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. The High Court rightly exercised its power of judicial review in the present case. It has examined the manner in which the decision was made by the Mahapalika. The second principle laid down in *Tata Cellular case*, (1994) 6 SCC 651 applies in all respects. The High Court held that the maintenance of the park because of its historical importance and environmental necessity was in itself a public purpose and, therefore, the construction of an underground market in the garb of decongesting the area was wholly contrary and prejudicial to the public purpose. By allowing the construction the Mahapalika had deprived its residents as also others of the quality of life to which they were entitled under the Constitution and the Act. The agreement smacks of arbitrariness, unfairness and favouritism. The

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agreement was opposed to public policy. It was not in public interest. The whole process of law was subverted to benefit the builder. The Mahapalika and its officers forgot their duty towards the citizens and acted in a most brazen manner. (Paras 71 and 69)

Tata Cellular v. *Union of India*, (1994) 6 SCC 651, *followed*

The competence of M/s M.I. Builders to undertake the project is not doubted when now it is seen that proper construction has been made but before taking the decision to award the contract to it nobody knew its credentials. The question is why was it not necessary to invite tenders for the project of such a high cost? Why was it thought that it was only M.I. Builders in the country who could undertake the job? Why was the project report not obtained to know the cost of the project? Why could it not be thought that there could be any other person who could undertake the job at a lesser cost and in an equally competent manner? Public interest has certainly been given a go-by. There was some undercurrent flowing to award the contract to M.I. Builders. In these circumstances, the dictum contained in *Kasturi Lal Lakshmi Reddy case* becomes inapplicable. No advantage can be drawn by the builder from the decision of the Supreme Court in *G.B. Mahajan case* as here the whole process of awarding contract to M.I. Builders has been gone through in an unabashed manner and in flagrant violation of law with the sole purpose of conferring benefit on it. (Para 72)

Kasturi Lal Lakshmi Reddy v. *State of J&K*, (1980) 4 SCC 1; *G.B. Mahajan* v. *Jalgaon Municipal Council*, (1991) 3 SCC 91, *distinguished*

No consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. (Para 73)

In this case the builder got an interim order from the Supreme Court and on the strength of that order got sanction of the plan from the Mahapalika and no objection from LDA. It has no doubt invested considerable amount on the construction which is 80% complete and by any standard is a first class construction. Why should the builder take such a risk when the interim order was specific that the builder will make construction at its own risk and will not claim any equity if the decision in the appeal goes against it? The builder is not an innocent player in this murky deal when it was able to get the resolutions of the Mahapalika in its favour and the impugned agreement executed. Now, construction of shops will bring in more congestion and with that the area will get more polluted. Any commercial activity now in this unauthorised construction will put additional burden on the locality. The primary concern of the Court is to eliminate the negative impact the underground shopping complex will have on the environmental conditions in the area and the congestion that will aggravate on account of increased traffic and people visiting the complex.

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There is no alternative to this except to dismantle the whole structure and restore the park to its original condition leaving a portion constructed for parking as required under clause (*ix-a*) of Section 114 of the U.P. Municipal Corporation Act, 1959. (Paras 74 and 80)

While directing demolition of unauthorised construction, the Court should also direct an enquiry as to how the unauthorised construction came about and to bring the offenders to book. It is not enough to direct demolition of unauthorised construction, where there is clear defiance of law. In the present case, but for the observation of the High Court, the Supreme Court would certainly have directed an enquiry to be made as to how the project was conceived and how the agreement dated 4-11-1993 came to be executed. (Para 81)

There are four blocks under construction. In Block 1 there are shops at the level minus 9'6". In Block 2 there are shops on the upper basement level 9'6". There is no lower basement level. The third block is currently designed to have shops at the upper basement level and parking at the lower basement level. The upper basement level can be converted to have parking at that level too since the structural configuration will permit the same. The fourth block is only partially developed with just a separate ramp going down to the first basement level and a few columns with their foundations standing from the lower basement level. This fourth block is currently dug up. (Paras 75 to 79)

Following directions are therefore issued:

1. Blocks 1, 2 and 4 of the underground shopping complex shall be dismantled and demolished and on these places the park shall be restored to its original shape.

2. In Block 3 partition walls and if necessary columns in the upper basement shall be removed and this upper basement shall be converted into a parking lot. Flooring should be laid at the lower basement level built to be used as a parking lot. Ramp shall be constructed adjacent to Block 3 to go to upper and lower basement levels for the purpose of parking of vehicles. Further to make Block 3 functional as a separate unit walls shall be constructed between Block 2 and Block 3 and also Block 3 and Block 4.

3. Dismantling and demolishing of these structures in Blocks 1, 2 and 4 and putting Block 3 into operation for parking shall be done by the Mahapalika at its own cost. Necessary services like sanitation, electricity etc. in Block 3 shall be provided by the Mahapalika.

4. The Mahapalika shall be responsible for maintaining the park and Block 3 for parking purposes in a proper and efficient manner.

5. M.I. Builders Pvt. Ltd., the appellant, is divested of any right, title or interest in the structure built by it under or over the park. It shall have no claim whatsoever against the Mahapalika or against any other person or authority.

6. Block 3 shall vest in the Mahapalika free from all encumbrances. Licence of M.I. Builders to enter into the park and the structure built therein is cancelled of which possession is restored to the Mahapalika with immediate effect. No obstruction or hindrance shall be caused to the Mahapalika by anyone in discharge of its functions as directed by this order.

7. Restoration of the park and operation of Block 3 for parking purposes shall be completed by the Mahapalika within a period of 12 months from today and the report filed in the Registry of this Court. (Para 82)

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Ramana Dayaram Shetty v. *International Airport Authority of India*, (1979) 3 SCC 489; *CST* v. *Thomas Stephen and Co. Ltd.*, (1988) 2 SCC 264, 266 : 1988 SCC (Tax) 190; *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388; *Sachidanand Pandey* v. *State of W.B.*, (1987) 2 SCC 295; *Rashbihari Panda* v. *State of Orissa*, (1969) 1 SCC 414; *State of Haryana* v. *Jage Ram*, (1983) 4 SCC 556; *Ram and Shyam Co.* v. *State of Haryana*, (1985) 3 SCC 267; *Chenchu Rami Reddy* v. *Govt. of A.P.*, (1986) 3 SCC 391; *Badri Prasad* v. *Nagarmal*, AIR 1959 SC 559 : 1959 Supp (1) SCR 769, 774; *K. Ramadas Shenoy* v. *Chief Officers, Town Municipal Council*, (1974) 2 SCC 506 : (1975) 1 SCR 680, 685; *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577, 582; *Pleasant Stay Hotel* v. *Palani Hills Conservation Council*, (1995) 6 SCC 127, 139; *Cantonment Board, Jabalpur* v. *S.N. Awasthi*, 1995 Supp (4) SCC 595, 596; *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*, (1991) 3 SCC 341; *G.N. Khajuria (Dr)* v. *Delhi Development Authority*, (1995) 5 SCC 762; *Manju Bhatia* v. *New Delhi Municipal Council*, (1997) 6 SCC 370 : JT (1997) 5 SC 574; *Ram Awatar Agarwal* v. *Corpn. of Calcutta*, (1999) 6 SCC 532; *Short* v. *Poole Corpn.*, 1926 Ch 66 : 1925 All ER Rep 74; *Rhyl Urban District Council* v. *Rhyl Amusements Ltd.*, (1959) 1 All ER 257 at 264 I (Ch D): 1959 (1) WLR 465 at 472, *referred to*

Suggested Case Finder Search Text (*inter alia*) :

(1)	largess* or park or parks
(2)	construction (unauthorised or illegal)

C. Municipalities — U.P. Municipal Corporation Act, 1959 (2 of 1959) — S. 114 — Obligatory duties of Corporation — Corporation allowing a builder to construct an underground shopping complex in a park — Held, S. 114 violated because of non-compliance with obligatory duty to maintain parks — However, the underground construction can be converted into a parking lot which being also an obligatory duty of the Corporation — But that can be done only after proper consideration of relevant factors such as the locality, its population etc. — Town Planning — U.P. Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 (55 of 1975)

D. Municipalities — Parks — Municipal Corporation's duty to maintain — Public trust doctrine — Applicability — Corporation is trustee for proper maintenance of parks — Corporation allowing a builder to construct an underground shopping complex in a park — Held, thereby true nature of the park destroyed and consequently the public trust doctrine as expounded in *Span Resorts case* violated — Doctrine a part of Indian law and has grown from Art. 21 — Constitution of India, Art. 21 — Ecology — Doctrines — Public trust doctrine — Town Planning — U.P. Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 (55 of 1975)

Held :

By allowing underground construction the Mahapalika has deprived itself of its obligatory duties to maintain the park as required under Section 114 of the U.P. Municipal Corporation Act, 1959. But then one of the obligatory functions of the Mahapalika under Section 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing an underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done. (Para 50)

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The Mahapalika is the trustee for the proper management of the park. When the true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by the Supreme Court in *Span Resort case*. Public trust doctrine is part of Indian law. This public trust doctrine in our country has grown from Article 21 of the Constitution. (Paras 50 and 51)

M.C. Mehta v. *Kamal Nath (Span Resort case)*, (1997) 1 SCC 388, *followed*

Illinois Central Railroad Co. v. *Illinois*, 146 US 387 : 36 L Ed 1018 (1892), *referred to*

Environmental Law and Policy: Nature, Law, and Society by Plater Abrams Goldfarb (*American Casebook Series, 1992*) under the Chapter on Fundamental Environmental Rights, in Section 1 (*The Modern Rediscovery of the Public Trust Doctrine*), *referred to*

Thus by allowing construction of underground shopping complex in the park the Mahapalika has violated not only Section 114 of the Act but also the public trust doctrine. (Para 52)

Suggested Case Finder Search Text (*inter alia*) :

"public trust" doctrine

E. **Municipalities — U.P. Municipal Corporation Act, 1959 (2 of 1959) — Ss. 91, 119 and 105 — Meetings and delegation of function — Notice issued on July 6 for meeting of the Corporation on July 12 — Agenda of the meeting including "Other subjects, subject to the permission of Presiding Officer" — Under that topic Corporation deciding to constitute a High Power Committee under the chairmanship of Nagar Pramukh and to delegate its functions to the Committee — Committee in its meeting deciding to hand over a park of historical importance situated in a congested commercial-cum-residential area to a builder for construction of an underground shopping complex in it — Decision of the High Power Committee placed before Executive Committee and general body for information and both the bodies giving their approval — Held, constitution of High Power Committee and delegation of function were wholly illegal — Such an important project which involved crores of rupees could not have been considered under the topic "other subjects" — There was also no material to support discussion on the subject of construction of underground complex — Entire process was violative of mandatory provisions of Ss. 91 and 119 and was not mere irregularity so as to be protected under S. 105**

Held :

There is no authority with the Mahapalika to constitute a High Power Committee and to delegate its functions to that Committee. There was no agenda at any time in any of the meetings of the Mahapalika for consideration of the underground shopping complex. Such an important matter, where the cost of the project was likely to run into crores of rupees, could not have been considered under the topic "Other Subjects, Subject to the Permission of the Presiding Officer". The Corporations had no time to apply their minds. When the agenda did not include the subject of construction of underground shopping complex nor was there any material to support the discussion on the subject of construction of underground shopping complex it could not have been considered in the meetings of the Mahapalika and the Executive Committee. There were no proposals, no documents, no plan, no study, no project report or feasibility report on the basis of which the Mahapalika could have given a green signal for construction of the underground shopping complex. There was no discussion and no informed decision. The Mahapalika completely abdicated its

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functions. In the present case it is not mere irregularity or defect in the procedure so as to be protected under Section 105 of the Act but the whole procedure is in clear breach of Sections 91 and 119 of the Act which are mandatory.

(Paras 53 and 54)

Myurdhwaj Coop. Group Housing Society Ltd. v. *Presiding Officer, Delhi Coop. Tribunal*, (1998) 6 SCC 39, *distinguished*

F. **Municipalities — U.P. Municipal Corporation Act, 1959 (2 of 1959) — S. 136(2) — Requirement to obtain sanction of State Govt. in case estimated cost of project approved by Corporation exceeds Rs 10 lakhs — Applies not only where the project cost was to be incurred by the Corporation but irrespective of who incurs the cost in the first instance**

G. **Municipalities — U.P. Municipal Corporation Act, 1959 (2 of 1959) — Ss. 131, 132, 133 and 136 — Contract — Wednesbury unreason-ableness — Agreement entered into by Corporation with a private builder for construction of an underground shopping complex in a park of historical importance situated in the heart of a congested commercial-cum-residential area — Thereby land of immense value handed over to the builder for a song in violation of public trust doctrine and master plan of the city — Agreement wholly one-sided in favour of the builder completely ousting the Corporation — Terms of the agreement such that no person of ordinary prudence shall ever enter into such an agreement — Agreement also in violation of provisions of the Act — Held, agreement illegal, unreasonable, atrocious, irrational and arbitrary — Constitution of India, Art. 14 — Administrative Law — Judicial review — Wednesbury unreasonableness**

H. **Interpretation of Statutes — Subsidiary rules — Mandatory or directory — When statute specifically provides that a body corporate has to act in a particular manner and in no other manner, it is a mandatory provision which has to be strictly complied with — This principle is applicable to meetings of Municipal Corporation and execution of contracts on its behalf — Municipalities — Meetings**

I. **Evidence Act, 1872 — S. 115 — Estoppel — There is no estoppel against a statute**

Held:

The agreement dated 4-11-1993 was not executed as required by Section 133 of the Act. (Para 56)

Further, though the estimated cost of the project approved by Mahapalika was more than Rs 10 lakhs, no sanction of the State Govt., as required under Section 136(2), was obtained. The submission that this provision would apply only if the project cost was to be incurred by the Mahapalika cannot be accepted. It is the cost of the project that matters and not who incurs the cost in the first instance. The agreement dated 4-11-1993 is, therefore, not a valid contract and not binding on the Mahapalika. As held in *H.S. Rikhy case* where a statute makes a specific provision that a body corporate has to act in a particular manner and in no other, that provision of law being mandatory and not directory has to be strictly followed. This principle will apply both as regards holding of meeting of the Mahapalika and execution of contract on its behalf. This judgment is also an authority for the proposition that there is no estoppel against a statute.

(Para 56)

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H.S. Rikhy (Dr) v. *New Delhi Municipal Committee*, AIR 1962 SC 554, *followed*

Not only the clauses of the agreement are unreasonable for the Mahapalika but they are atrocious. No person of ordinary prudence shall ever enter into such an agreement. A trustee, which the Mahapalika is, has to be more cautious in dealing with its properties. Valuable land in the heart of a commercial area has been handed on a platter to the builder for it to exploit and to make runaway profits. The agreement is completely one-sided favouring the builder. A land of immense value has been handed over to it to construct an underground shopping complex in violation of the public trust doctrine and the Master Plan for the city of Lucknow. The Master Plan of the city of Lucknow could not have envisaged Jhandewala Park as a site available for commercial exploitation considering the density and congestion in the area. The Mahapalika has no right to step in even if there is any violation by the builder of the terms of the agreement or otherwise. The Mahapalika, though considered to be the owner of the land, is completely ousted and divested of the land for a period which is not definite and which depends wholly on the discretion of the builder. It cannot be said that the construction of the underground shopping complex is by the builder as an agent of the Mahapalika. The concept of agency is totally missing in the present case. Rather the deal is from principal to principal. The agreement dated 4-11-1993 is not a valid one. The agreement defies logic. It is outrageous. It crosses all limits of rationality. The Mahapalika has certainly acted in a fatuous manner in entering into such an agreement. (Paras 57, 58, 61 to 63 and 59)

Wade on Administrative Law, 7th Edn., p. 399, *relied on*

Akadasi Padhan v. *State of Orissa*, AIR 1963 SC 1047 : 1963 Supp (2) SCR 691, 722; *W. (an infant), Re*, 1971 AC 682 : (1971) 2 All ER 49, *relied on*

Suggested Case Finder Search Text (*inter alia*) :

wednesbury

J. Municipalities — U.P. Municipal Corporation Act, 1959 (2 of 1959) — Ss. 128 and 129 — Applicability — Where Corporation grants licence to a builder to construct an underground shopping complex of a permanent nature and to hold on to the same for an indefinite period and then under an agreement authorises the builder to lease out the shops on the Corporation's behalf, held, the transaction will fall within the expression "otherwise dispose of any interest in the property" in S. 128 — Hence Ss. 128 and 129 will be attracted — On facts, the agreement contravened Ss. 128 and 129

K. Easements Act, 1882 — Ss. 60(b) and 62(f) — Revocability of licence — Licence granted by Municipal Corporation to a builder to construct an underground shopping complex in a park — It being a work of permanent character for execution of which the builder having incurred expenses, the licence would be irrevocable under S. 60(b) — But licence was to be deemed to be revoked under S. 62(f) when as per agreement, licensee will recover his full costs plus the agreed percentage of profit on the investment made by him

Held :

Granting licence to the builder to construct underground shopping complex of a permanent nature and to hold on to the same for a period which is not definite and then under the impugned agreement authorising the builder to lease out the shops on behalf of the Mahapalika, is a dubious method adopted to

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subvert the provisions of Section 128 which apply as well in the case of lease and thus the transaction will also be covered by the expression "otherwise dispose of any interest in the property". It is, therefore, difficult to accept the argument of the builder that the transaction is outside Section 128 of the Act. (Para 68)

Licence has been granted to the builder to enter upon the park and to execute a work of permanent character and incur expenses in the execution of the work, thus making the licence irrevocable, under Section 60(*b*) of the Easements Act. However, the licence is deemed to be revoked under Section 62(*f*) of the Easements Act after the happening of a certain event which in this case is when the builder has recovered the whole of his investment plus 10% of the profit. When this purpose is achieved by the licensee is anybody's guess. Not only that, the licensee, i.e., the builder is then authorised to lease out the shops so constructed on behalf of the Mahapalika. The result would be that to the builder the provisions of Section 129 of the Act cannot be thus made applicable. The provisions of Section 129 of the Act have, therefore, been flouted. The impugned agreement dated 4-11-1993 is bad having been executed also in contravention of the requirement of Section 129 of the Act. (Paras 67 and 68)

Chevalier I.I. Iyyappan v. *Dharmodayam Co.*, AIR 1966 SC 1017 : (1963) 1 SCR 85, *relied on*

Suggested Case Finder Search Text (*inter alia*) :

licence revok*

L. **Town Planning — U.P. Urban Planning and Development Act, 1973 (11 of 1973) — Ss. 14 & 3(e) — Development by builder — Construction of underground shopping complex in a park — Sanction of the building plan not obtained from the Development Authority — Held, construction was illegal**

Held :

When the "development" is by the builder the provisions of Section 14 of the Development Act would apply. There is no sanction of the building plan of the underground shopping complex by LDA. Construction is, therefore, per se illegal. Even after the interim order of the Supreme Court allowing construction, plans were not got sanctioned from LDA, which would be the authority under the Development Act. Sanction of the building plan by the Mahapalika would, therefore, be meaningless. Even then, there were no sanctioned drawings. (Para 61)

Suggested Case Finder Search Text (*inter alia*) :

building* sanction

M. **Practice and Procedure — Estoppel — Municipal Corporation being a continuing body it can be estopped from changing its stand — But where the Corporation, finding that it acted against statutory provisions, changes its stand in accordance with the law, estoppel will not operate against it — Evidence Act, 1872, S. 115**

Held :

Action of the Mahapalika in agreeing to the construction of underground shopping complex in contravention of the provisions of the Act and then entering into an agreement with the builder against settled norms was wholly illegal and has been held to be so by the High Court. No doubt the Mahapalika is a continuing body and it will be estopped from changing its stand in the given

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case. But when the Mahapalika finds that its action was contrary to the provisions of law by which it was constituted there could certainly be no impediment in its way to change its stand. There cannot be any estoppel operating against the Mahapalika. (Para 66)

Union of India v. *Anglo Afghan Agencies Ltd.*, AIR 1968 SC 718 : (1968) 2 SCR 366; *Ganges Mfg. Co.* v. *Souruymull*, ILR (1880) 5 Cal 669, 678 : 5 CLR 533, *distinguished*

Suggested Case Finder Search Text (*inter alia*) :

estoppel (contrary or breach or violat*)

N. **Administrative Law — Judicial review — Action of State or its instrumentality, which is illegal, in contravention of prescribed procedure, unreasonable, irrational or mala fide, is open to judicial review — Bad governance sets bad example — Court can interfere in such cases — Constitution of India, Arts. 226, 32 and 136**

Held :

Every decision of the authority except the judicial decision is amenable to judicial review and reviewability of such a decision cannot now be questioned. However, a judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. Bad governance sets a bad example. That is what exactly happened in the present case. (Para 59)

State of Bombay v. *Laxmidas Ranchhoddas*, AIR 1952 Bom 468, 475 (para 12) : 54 Bom LR 681, *approved*

In the present case a decision to construct underground shopping complex by M.I. Builders had already been taken and the whole process was gone into to confer undue benefit on M.I. Builders and the bogie of congestion was introduced to justify the action of the Mahapalika. It is wholly illegal and smacks of arbitrariness, unreasonableness and irrationality. It is a case where the High Court rightly interfered in exercise of its powers of judicial review keeping in view the principles laid down by this Court in *Tata Cellular case*. (Paras 64 and 59)

Tata Cellular v. *Union of India*, (1994) 6 SCC 651, *applied*

R-M/ATZ/21379/C

Suggested Case Finder Search Text (*inter alia*) :

"administrative law" judicial review

Advocates who appeared in this case :

M.L. Verma, Arun Jaitley, Dushyant Dave, G.L. Sanghi and Raju Ramachandran, Senior Advocates (Ms Nisha Bagchi, Vikas Mehta, Ms Indu Malhotra, S.V. Deshpande, Ashok Srivastava, Pradeep Misra, R.C. Verma, C. Sidharatha, M.K. Srivastava, A.K. Goel, Additional Advocate General for U.P., R.B. Misra, Kamlendra Misra and Uday Umesh Lalit, Advocates, with them) for the appearing parties.

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

1. (1999) 6 SCC 532, *Ram Awatar Agarwal* v. *Corpn. of Calcutta* 510*a-b*, 514*d*
2. (1998) 6 SCC 39, *Myurdhwaj Coop. Group Housing Society Ltd.* v. *Presiding Officer, Delhi Coop. Tribunal* 519*a*
3. (1997) 6 SCC 370 : JT (1997) 5 SC 574, *Manju Bhatia* v. *New Delhi Municipal Council* 510*a-b*, 514*a*
4. (1997) 1 SCC 388, *M.C. Mehta* v. *Kamal Nath* 506*e*, 506*f*, 517*b-c*
5. (1995) 6 SCC 127, 139, *Pleasant Stay Hotel* v. *Palani Hills Conservation Council* 510*a*, 511*g*

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6. (1995) 5 SCC 762, *G.N. Khajuria (Dr)* v. *Delhi Development Authority* 510*a*, 513*a-b*
7. (1995) 2 SCC 577, 582, *Virender Gaur* v. *State of Haryana* 510*a*, 511*a-b*
8. 1995 Supp (4) SCC 595, 596, *Cantonment Board, Jabalpur* v. *S.N. Awasthi* 510*a*, 512*e*
9. (1994) 6 SCC 651, *Tata Cellular* v. *Union of India* 482*b-c*, 500*a-b*, 523*a-b*, 528*b-c*
10. (1991) 3 SCC 341, *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra* 510*a*, 512*f*
11. (1991) 3 SCC 91, *G.B. Mahajan* v. *Jalgaon Municipal Council* 498*f-g*, 529*a*
12. (1988) 2 SCC 264, 266 : 1988 SCC (Tax) 190, *CST* v. *Thomas Stephen and Co. Ltd.* 498*e-f*
13. (1987) 2 SCC 295, *Sachidanand Pandey* v. *State of W.B.* 507*b-c*
14. (1986) 3 SCC 391, *Chenchu Rami Reddy* v. *Govt. of A.P.* 507*e-f*
15. (1985) 3 SCC 267, *Ram and Shyam Co.* v. *State of Haryana* 507*e-f*
16. (1983) 4 SCC 556, *State of Haryana* v. *Jage Ram* 507*e-f*
17. (1980) 4 SCC 1, *Kasturi Lal Lakshmi Reddy* v. *State of J&K* 494*g*, 507*e-f*, 528*g-h*
18. (1979) 3 SCC 489, *Ramana Dayaram Shetty* v. *International Airport Authority of India* 495*d*, 507*e*
19. (1974) 2 SCC 506 : (1975) 1 SCR 680, 685, *K. Ramadas Shenoy* v. *Chief Officers, Town Municipal Council* 509*g-h*, 510*b*
20. 1971 AC 682 : (1971) 2 All ER 49, *W. (an infant), Re* 521*d*
21. (1969) 1 SCC 414, *Rashbihari Panda* v. *State of Orissa* 507*e*
22. AIR 1968 SC 718 : (1968) 2 SCR 366, *Union of India* v. *Anglo Afghan Agencies Ltd.* 497*b*, 497*d*, 525*f*
23. AIR 1966 SC 1017 : (1963) 1 SCR 85, *Chevalier I.I. Iyyappan* v. *Dharmodayam Co.* 526*a-b*
24. AIR 1963 SC 1047 : 1963 Supp (2) SCR 691, 722, *Akadasi Padhan* v. *State of Orissa* 505*d-e*, 505*e*, 524*a*
25. AIR 1962 SC 554, *H.S. Rikhy (Dr)* v. *New Delhi Municipal Committee* 504*a*, 520*b-c*
26. AIR 1959 SC 559 : 1959 Supp (1) SCR 769, 774, *Badri Prasad* v. *Nagarmal* 509*f-g*
27. (1959) 1 All ER 257 at 264 I (Ch D): 1959 (1) WLR 465 at 472, *Rhyl Urban District Council* v. *Rhyl Amusements Ltd.* 498*f*
28. AIR 1952 Bom 468, 475 (para 12) : 54 Bom LR 681, *State of Bombay* v. *Laxmidas Ranchhoddas* 523*b-c*, 523*c*
29. 1926 Ch 66 : 1925 All ER Rep 74, *Short* v. *Poole Corpn.* 522*a*
30. 146 US 387 : 36 L Ed 1018 (1892), *Illinois Central Railroad Co.* v. *Illinois* 517*g-h*
31. ILR (1880) 5 Cal 669, 678 : 5 CLR 533, *Ganges Mfg. Co.* v. *Sourujmull* 497*b-c*, 497*c*, 525*f-g*

The Judgment of the Court was delivered by

D.P. WADHWA, J.— These appeals are directed against the judgment dated 23-8-1994 of a Division Bench of the High Court of Judicature at Allahabad (Lucknow Bench). By a common judgment in three writ petitions, the High Court speaking through Shobha Dixit, J. held that the decision of the Lucknow Nagar Mahapalika ("the Mahapalika" for short), also now called the Nagar Nigam or the Corporation, permitting M.I. Builders Pvt. Ltd. (the appellant herein) to construct an underground shopping complex in Jhandewala Park (also known as Aminuddaula Park) situated at Aminabad Market, Lucknow, was illegal, arbitrary and unconstitutional. The High Court set aside and quashed the relevant resolutions of the Mahapalika permitting such construction and also the agreement dated 4-11-1993 entered into between the Mahapalika and the appellant for the purpose. Writ of

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mandamus was issued to the Mahapalika to restore back the park to its original position within a period of three months from the date of the judgment and till that was done, to take adequate safety measures and to provide necessary safeguard and protection to the public, the users of the park. The High Court had noticed that the fact that the park was of historical importance was not denied by the Mahapalika and also the fact that preservation or maintenance of the park was necessary from the environmental angle and that the only reason advanced by the Mahapalika for construction of the underground commercial complex was to ease the congestion in the area. The High Court, however, took judicial notice of the conditions prevailing at Aminabad Market. It said it was so crowded that it was bursting from all its seams. Construction of the underground shopping complex in question would only complicate the situation and that the present scheme would further congest the area. It said that the public purpose, which is alleged to be served by construction of the underground commercial complex, seemed totally illusory.

2. Aggrieved by the impugned judgment of the High Court, the appellant has come to this Court. The Mahapalika also felt aggrieved and filed appeals (Civil Appeals Nos. 9326-28 of 1994) but these appeals by the Mahapalika were subsequently allowed to be withdrawn by order dated 6-2-1997. There is controversy as to how the Mahapalika which had earlier justified its action later turned round and sought to withdraw the appeals. The order allowing withdrawal of the appeals by the Mahapalika is as under:

"IAs Nos. 10 to 12

in

Civil Appeals Nos. 9326-28 of 1994

Nagar Mahapalika Appellant;

Versus

Radhey Shyam Sahu & others Respondents.

ORDER

Taken on board.

The learned counsel for the appellant seeks leave to withdraw the appeals and states that Mr S.V. Deshpande who appears for the other side has no objection to the withdrawal. The appeals will, therefore, stand disposed of as withdrawn with no order as to costs.

sd/-
..., CJI

New Delhi, sd/-
6-2-1997 ..., J."

3. The Mahapalika also cancelled the building plans. This action of the Mahapalika was the subject-matter of criticism by the appellant as to how a duly sanctioned plan could be revoked without any notice to the appellant. We may, at this stage, itself reproduce the relevant portion of the resolution

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dated 6-8-1996 of the Mahapalika for withdrawal of its appeals which is as under:

"The Lucknow Bench of Hon'ble High Court of Allahabad has declared the agreement dated 4-11-1993 executed between the Nagar Mahapalika, Lucknow and M.I. Builders, Karamat Market, Lucknow in respect of construction of underground Palika Bazar and multi-storeyed parking on Jhandewala Park Aminabad, Lucknow as invalid and not in the public interest vide their judgment dated 23-8-1994.

The Hon'ble High Court rendered the abovesaid judgment by accepting the writ petitions preferred by several elected Sabhasads of the then Nagar Mahapalika and the citizens.

On the directions of the then Nagar Pramukh Shri Akhilesh Das, who wanted to cause undue profit to M.I. Builders against the interest of the Nagar Mahapalika now the Nagar Nigam, Lucknow, the citizens of Lucknow, the Nagar Nigam, Lucknow filed Special Leave Petitions Nos. 17223-25 of 1994 in the Hon'ble Supreme Court against the judgment of the Hon'ble High Court.

It is proposed that in the interest of the citizens of Lucknow and the Lucknow Nagar Nigam the pending Special Leave Petitions Nos. 17223-25 of 1994 in the Hon'ble Supreme Court be withdrawn and the Nagar Nigam, Lucknow be further directed to oppose the special leave petition filed by M/s M.I. Builders in the Hon'ble Supreme Court against the judgment dated 23-8-1994 of Lucknow Bench of Hon'ble High Court of Allahabad.

Unanimously decided that the aforesaid resolution be passed and accordingly the action may be taken."

4. The letter revoking the sanctioned building plans is dated 17-4-1997 and is as under:

"To,
M/s M.I. Builders (P) Ltd.,
Karamat Market,
Nishatganj, Lucknow.

Sir,

Vide this office letter No. 223/Sa.Sa.A./95 dated 23-1-1995 the building plans for construction of underground shopping and parking complex at Jhandewala Park, Aminabad were sanctioned.

After taking legal advice by the Hon'ble Nagar Pramukh from the standing counsel of the Nagar Nigam and Additional Advocate General the earlier sanctioned building plans have been revoked vide order dated 17-4-1997. As such these have no legal sanctity.

Please be informed.

Yours faithfully,
sd/-
S.K. Gupta,
Mukhya Nagar Adhikari.

17-4-1997

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Copy to:

The Vice Chairman, Lucknow Development Authority, for information.

sd/-
S.K. Gupta,
Mukhya Nagar Adhikari."

5. There were three writ petitions before the High Court and during the course of hearing of those petitions the High Court had directed maintenance of status quo. At that time, it would appear that only digging in some part of the park had been done and there was no construction. When the matter came before this Court, by order dated 14-12-1994 the Court passed the following order:

"Exemption from filing official translation is allowed.

Liberty to add the omitted parties in the cause title.

Leave granted.

We have heard counsel on the question of grant of interim relief.

Printing dispensed with.

The operation of the impugned order of the High Court is stayed on the following conditions:

Taking all the facts and circumstances into consideration and having regard to the fact that it may not be possible for this Court to hear the appeal within a short time having regard to the pressure of work and pendency of old cases, we direct that the appellant shall be permitted to construct an underground shopping complex by raising its own funds without collecting any additional funds from individuals or concerns to whom the promise of allotment of shop is made. To clarify the matter, we say that the funds can be raised from agencies other than those to whom the shops are ultimately allotted. It will be made clear to the agencies from whom the funds are raised that they will not be entitled to allotment of shops. The appellant will maintain accounts and file an undertaking to the above effect in this Court within two weeks from today. In addition the undertaking will contain a statement to the effect that in the event the appeals fail, the appellant will not raise questions as to equity or the ground on its having invested a huge amount and will be totally amenable to such directions and orders that this Court may make in regard to the maintenance or otherwise of the shopping complex. In other words, if the Court directs removal of the shopping complex in the event of failure of the appeals, the shopping complex will have to be removed at the appellant's cost without claiming anything in return. The construction will be so carried out that the open space will remain available for the public and the entire complex will be so constructed that it will be an underground one except for the ingress and egress

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portions of the complex. The total area to be constructed on the surface of the plot shall not exceed 10% of the plot.

SLPs (C) Nos. 17223-25 of 1994

Exemption from filing official translation is allowed.

Leave granted.

Tag on with appeals arising from SLPs (C) Nos. 16907-09 of 1994 in which interim orders have already been made."

6. It is contended by the appellant that after the aforesaid interim order, it got necessary building plans sanctioned by the Mahapalika and started construction. The respondents, however, filed an application complaining that the construction was in violation of the building plans and was also against the provisions of the U.P. Urban Planning and Development Act, 1973 (for short "the Development Act"). To ascertain the nature of construction being carried out at that time this Court appointed a Local Commissioner. These applications were then disposed of by passing the following order:

"*IAs Nos. 10-12*

The Commissioner, Mr Justice Loomba, a retired Judge of the High Court of Allahabad has, pursuant to this Court's order, submitted his Report dated 15-2-1996. In para 3 of the Report he identifies the points on which the Report was required and then proceeds to indicate the actual physical condition in regard to the construction of the market and states that the entire market is being constructed underground and not above the ground and that the total area on the surface of the market for the ingress and egress (with *chabutras*) and light purposes etc. does not exceed 10 per cent of the plot and is about 9.74 per cent of the area in which the market is being constructed. He, however, notes that the level of the park at the periphery appears to be higher than the estimated average level of the original park by about 3.21 feet = 3 feet 2.5 inches as worked out on the basis of available old signs and that the same does not appear to be in any manner offensive and is of no consequence. He also points out that the park made on the market area is and will be available for the public in the form of park less the structures made on the surface, which as pointed out above, does not exceed the permissible limit of 10 per cent of the total plot area. He also states that the chabutras constructed on the back of the structures will also be available to the public and may serve as benches in the park. In view of this Report which precisely indicates the actual physical condition existing on the date of the Report and the plan appended thereto which shows beyond any manner of doubt that the entire construction is underground, the total surface area does not exceed the permissible limit of 10 per cent and the raising of the height on the periphery is of no consequence because it does not in any manner affect the surface area. We, therefore, accept the Report of the learned Judge and see no merit in these IAs."

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7. The Court, however, did not go into other issues raised in the applications. By a subsequent order dated 7-5-1997 the Court stopped further construction.

8. Before we consider the details of the case we may note in brief the contentions of the parties:

The petitioners (now the respondents) in the writ petitions submitted that the park was not only of great historical significance but its maintenance was necessary from the environmental point of view as mandated by law. Admittedly, the park is the only open space in the Aminabad Market, which is an overcrowded commercial and residential area of the city. Possession of the park was handed over to the appellant (M.I. Builders) in violation of the provisions of law to construct an underground shopping complex and underground parking with the ostensible purpose of decongesting the area. It is not that the encroachers would be removed from the area as the underground shops were not allotted to any one of them. They would nevertheless remain at the places occupied by them. Challenge to the action of the Mahapalika in allowing construction was on the grounds:

1. It was against the public purpose to construct an underground market in the garb of decongesting the area of the encroachers to destroy a park of historical importance and of environmental necessity. It would be in breach of Articles 21, 49, 51-A(*g*) of the Constitution as the existing park which is the only open space in the busiest commercial area in the heart of the city of Lucknow can be destroyed and the citizens, particularly the residents of the area, would be deprived of the quality of life to which they are entitled under the law and to maintain ecology of the area.

2. It is in violation of the statutory provisions as contained in the U.P. Nagar Mahapalika Adhiniyam, 1959 (now called the Uttar Pradesh Municipal Corporation Adhiniyam, 1959 — by amending Act 12 of 1994) (for short "the Act"), the U.P. Regulation of Buildings Operations Act, 1958 (for short "the Building Act"), the Uttar Pradesh Urban Planning and Development Act, 1973 (for short "the Development Act") and also the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 (for short "the Parks Act").

3. No tenders were invited by the Mahapalika before entering into the agreement with the builder. This was against the established procedure and thus it acted arbitrarily in the matter of disposing and dealing with its immovable property which was of immense value. The agreement is wholly one-sided and gives undue advantage to the builder at the cost of the Mahapalika.

4. The agreement between the Mahapalika and the builder smacks of arbitrariness, is unfair and gives undue favour to the builder and this was done with mala fide motives of personal gain by the authorities of the Mahapalika particularly the Mukhya Nagar Adhikari (Chief Executive Officer) and the Adhyaksh (the Mayor).

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5. The resolution of the Mahapalika by which it has agreed to enter into the agreement with the builder was against the provisions of the Act which were mandatory.

6. The whole action of the Mahapalika was against public interest. The Lucknow Development Authority (for short LDA) which was constituted under the Development Act and was responsible for development in the area which would mean construction of the underground shopping complex and underground parking lot was sidelined and no sanction was obtained from the Vice-Chairman in accordance with the provisions of the Development Act.

9. The builder as well as the Mahapalika filed their respective counter-affidavits in the High Court opposing the writ petitions. No counter-affidavit was filed either by the State or by LDA though they were parties in the writ petitions. The Chief Executive Officer and the Mayor were impleaded by name as the respondents in the writ petitions and allegations of mala fides and favouritism made against them but none of them chose to file any counter-affidavit controverting those allegations. In the High Court a very strange scenario emerged and that was that though the stand of the Mahapalika and LDA as spelled out from the documents was at variance with each other, yet both were represented by one counsel. The builder was represented by the Advocate General of the State while the State was represented by its Standing Counsel. Before us though the Mahapalika earlier supported the builder as noted above and also filed appeals against the impugned judgment but subsequently it reversed its stand, withdrew its appeals and filed an affidavit supporting the impugned judgment of the High Court. The State Government and LDA also filed their affidavits supporting the judgment of the High Court with full vigour though as seen earlier before the High Court they were just mute spectators. We may also note that in reply to the applications IAs Nos. 10 and 11 in this Court the Mahapalika lent its support to the builder. This action of the Mahapalika changing its stand midstream was subjected to severe criticism by the appellant and it was stated that there was estoppel by deed in the case and the Mahapalika could not go back on its earlier stand.

10. The impugned judgment has been challenged by the builder on the following grounds:

(*a*) There was no disposal of the property by the Mahapalika in favour of the builder and therefore the provisions of Section 128 of the Act were inapplicable. Even assuming it was so, the provisions of Sections 129 and 132 of the Act stood complied with.

(*b*) There was no arbitrariness or unreasonableness vitiating the agreement between the Mahapalika and the builder particularly in view of the express finding of the High Court that there was no lack of bona fides and that it was not disputed that the builder was competent to execute the job. This was having regard to special features of the construction and further on account of the fact that no party had come

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forward at any time to execute the project. In such a situation omission to invite tenders would not vitiate the agreement particularly when the proposal for construction of the project by the builder was widely known.

(*c*) In view of its stand before the High Court and in the special leave petition of the builder and its own appeals filed in this Court it is not open to the Mahapalika to advance any contention or take a stand contrary to what had been taken earlier.

(*d*) The High Court exceeded its jurisdiction as it did not apply the correct parameters of its power of judicial review as laid by this Court in *Tata Cellular* v. *Union of India*[1] and other cases and the High Court went wrong in going into the question of expediency and wisdom of the proposed project.

(*e*) The Mahapalika could not revoke the building plan without notice to the builder and without hearing it in the matter.

11. This last submission we need not go into — the question if cancellation of the sanctioned building plans by the Mahapalika was valid — as that was not the issue before the High Court.

12. The Mahapalika is a body corporate constituted under the Act. The Act provides for various functions of the Mahapalika and how these are to be performed. Its various authorities are described in Section 5 which is as under:

"5. *Corporation authorities*.—The Corporation authorities charged with carrying out the provisions of this Act for each city shall be—

(*a*) the Corporation;

(*aa*) the Ward Committees;

(*b*) an Executive Committee of the Corporation;

(*bb*) the Nagar Pramukh;

(*c*) a Development Committee of the Corporation;

(*d*) a Mukhya Nagar Adhikari 'and an Apar Mukhya Nagar Adhikari' appointed for the Corporation under this Act; and

(*e*) in the event of the Corporation establishing or acquiring electricity supply or public transport undertaking or other public utility services, such other committee or committees of the Corporation as the Corporation may with the previous sanction of the State Government establish with respect thereto."

13. Chapter II provides for constitution of various committees and Chapter III for proceedings of the Mahapalika, Executive Committee, Development Committee and other committees. In view of the applicability of the Development Act, 1973, the Executive Committee of the Mahapalika has ceased to be in operation to that extent. Under Section 91 falling in this chapter, a list of the business to be transacted at every meeting except an adjourned meeting, shall be sent to each member of the Mahapalika or of

1 (1994) 6 SCC 651

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other committees at least ninety-six hours in the case of a meeting of the Corporation before the date fixed for the meeting and seventy-two hours in the case of a meeting of any such committee and

"no business, except as provided in sub-section (2), shall be brought or transacted at any meeting other than a business of which notice has been given".

Sub-section (2) is as under:

"91. (2) Any member of the Corporation or of a committee referred to in sub-section (1), as the case may be, may send or deliver to the Mukhya Nagar Adhikari notice of any resolution with a copy thereof proposed to be moved by him at any meeting of which notice has been sent under sub-section (1). The notice shall be sent or delivered at least forty-eight hours in the case of a meeting of the Corporation and twenty-four hours in the case of a meeting of any committee before the date fixed for the meeting and thereupon the Mukhya Nagar Adhikari shall with all possible despatch cause to be circulated such resolution to every member in such manner as he may think fit. Any resolution so circulated may, unless the meeting otherwise decides, be considered and disposed of thereat."

14. Under Section 95 of the Act, the Mahapalika may from time to time by special resolution constitute a special committee to enquire into and report upon any matter connected with its powers, duties or functions. Every such special committee shall conform to any instruction that may be given to it by the Mahapalika. The report of the special committee shall, as soon as may be practicable, be laid before the Mahapalika which may thereupon take such action as it thinks fit or may refer back the matter to the special committee for such further investigation and report as it may direct. Section 97 provides for constitution of sub-committees by the Executive Committee or any committee appointed under clause (*e*) of Section 5 and any such sub-committee shall possess such powers and perform such duties and functions as the committee appointing it may from time to time delegate or confer. Section 105 of the Act provides that no act done or proceedings taken under this Act shall be called in question in any court on the ground merely of any defect or irregularity in procedure not affecting the substance. Under Section 119 of the Act falling under Chapter V which prescribes the duties and powers of the Mahapalika and its authorities, there is provision for delegation of functions which we reproduce, in relevant part, as under:

"119. *Delegation of functions.*—(1) Subject to the other provisions of this Act and the rules thereunder and subject to such conditions and restrictions as may be specified by the Corporation—

(*a*) the Corporation may delegate to the Executive Committee or to the Mukhya Nagar Adhikari any of its functions under this Act other than those specified in Part A of Schedule I;"

15. It is not necessary to refer to Part A of Schedule I mentioned in Section 119 as none of the functions of the Corporation on which there is prohibition has been delegated. Under Section 119, reproduced above, delegation can only be to the Executive Committee or to the Mukhya Nagar Adhikari and to no other person or authority or committee. Sections 421, 422

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and 423 of the Act were referred to contend that it is only for the Mahapalika itself to establish private markets. These sections fall in Chapter XVI dealing with regulation of markets, slaughterhouses, certain trades and acts, etc.

16. Chapter VI of the Act deals with property and contracts. Under Section 125 falling in this chapter, the Mahapalika has power to acquire, hold and dispose of property or any interest therein whether within or without the limits of the city. Under sub-section (3) of Section 125 any immovable property which may be transferred to the Corporation by the Government shall be held by it, subject to such conditions including resumption by the Government on the occurrence of a specified contingency and shall apply to such purpose as the Government may impose or specify while making the transfer. Section 128 deals with power of the Mahapalika to dispose of the property. As to what are the provisions governing disposal of property these are mentioned in Section 129. Sections 128 and 129, in relevant part, are as under:

"128. *Power to dispose of property.*—(1) The Corporation shall, for the purpose of this Act, and subject to the provisions thereof and rules made thereunder, have power to sell, let on hire, lease, exchange, mortgage, grant or otherwise dispose of any property or any interest therein acquired by or vested in the Corporation under this Act:

Provided that no property transferred to the Corporation by the Government shall be sold, let on hire, exchanged or mortgaged or otherwise conveyed in any manner contrary to the terms of the transfer except with the prior sanction of the State Government.

129. *Provisions governing disposal of property.*—With respect to the disposal of property belonging to the Corporation the following provisions shall have effect, namely:

(1) Every disposal of property belonging to the Corporation shall be made by the Mukhya Nagar Adhikari on behalf of the Corporation.

(2) * * *

(3) The Mukhya Nagar Adhikari may with the sanction of the Executive Committee dispose of by sale, letting out on hire or otherwise any moveable property belonging to the Corporation, of which the value does not exceed five thousand rupees; and may with the like sanction grant a lease of any immovable property belonging to the Corporation, including any such right as aforesaid, for any period exceeding one year or sell or grant a lease in perpetuity of any immovable property belonging to the Corporation the value of premium whereof does not exceed fifty thousand rupees or the annual rental whereof does not exceed three thousand rupees.

(4) The Mukhya Nagar Adhikari may with the sanction of the Corporation lease, sell, let out on hire or otherwise convey any property, moveable or immovable, belonging to the Corporation.

(5) * * *

(6) The sanction of the Executive Committee or of the Corporation under sub-section (3) or sub-section (4) may be given either generally or in any class of cases or specially in any particular case.

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(7) The aforesaid provisions of this section and the provisions of the rules shall apply to every disposal of property belonging to the Corporation made under or for any purposes of this Act."

17. Sections 131, 132 (in relevant part) and 133 prescribe the manner of execution of contract and these are as under:

"131. *Powers of Corporation to the making of contracts.*—Subject to the provisions of this Act, the Corporation shall have power to enter into contracts which may be necessary or expedient under or for any purposes of this Act.

132. *Certain provisions relating to the execution of contracts.*—(1) All contracts referred to in Section 131 including contracts relating to the acquisition and disposal of immovable property or any interest therein made in connection with the affairs of the Corporation under this Act, shall be expressed to be made, for and on behalf of the Corporation, and all such contracts and all assurances of property made in exercise of that power shall be executed, for and on behalf of the Corporation, by the Mukhya Nagar Adhikari or by such other officer of the Corporation as may be authorised in writing by the Mukhya Nagar Adhikari either generally or for any particular case or class of cases.

(2)-(3) * * *

(4) No contract involving an expenditure exceeding five lakh rupees shall be made by Mukhya Nagar Adhikari unless it has been sanctioned by the Corporation.

(5)-(6) * * *

133. *Manner of execution.*—(1) Every contract entered into by the Mukhya Nagar Adhikari on behalf of the Corporation shall be entered into in such manner and form as would bind him if it were made on his own behalf and may in like manner and form be varied or discharged:

Provided that—

(*a*) the common seal of the Corporation shall be affixed to every contract which, if made between private persons, would require to be under seal, and

(*b*) every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding two thousand and five hundred rupees shall be in writing, shall be sealed with the seal of the Corporation and shall specify—

(*i*) the work to be done or the materials or goods to be supplied as the case may be;

(*ii*) the price to be paid for such work, materials or goods; and

(*iii*) the time or times within which the contract or specified portion thereof shall be carried out.

(2) The common seal of the Corporation shall remain in the custody of the Mukhya Nagar Adhikari and shall not be affixed to any contract or other instrument except in the presence of a Sabhasad, who shall attach his signature to the contract or instrument in token that the same was sealed in his presence.

(3) The signature of the said Sabhasad shall be distinct from the signature of any witness to the execution of such contract or instrument.

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(4) No contract executed otherwise than as provided in the section shall be binding on the Corporation."

18. The relevant part of Section 136 on which some arguments were addressed, is reproduced hereunder:

"136. *Estimates exceeding rupees fifty thousand.*—(1) Where a project is framed for the execution of any work or series of works the entire estimated cost of which exceeds fifty thousand rupees—

(*a*) the Mukhya Nagar Adhikari shall cause a detailed report to be prepared including such estimates and drawings as may be requisite and forward the same to the Executive Committee who shall submit the same before the Mahapalika with its suggestions, if any;

(*b*) the Mahapalika shall consider the report and the suggestions and may reject the project or may approve it either in its entirety or subject to modifications."

[By the amending Act 12 of 1994 w.e.f. 30-5-1994 the amounts in sub-sections (1) and (2) of Section 136 are now respectively 5 lakhs and 10 lakhs† of rupees.]

19. Part IX of the Constitution was inserted by the Constitution (74th Amendment) Act, 1992. Article 243-W under this part prescribes the powers, authorities and responsibilities of municipalities etc. It provides, in relevant part, that the legislature of a State may, by law, endow the committee or the municipality such powers and authority with respect to performance of functions and the implementation of schemes as may be entrusted to it including those matters listed in the Twelfth Schedule. If we refer to the Twelfth Schedule, Entries 8, 12 and 17 would be relevant and are as under:

"8. Urban forestry, protection of the environment and promotion of ecological aspects.

* * *

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

* * *

17. Public amenities including street lighting, parking lots, bus-stops and public conveniences."

20. Keeping this aspect in view, the Act was amended and some of the relevant duties of the Mahapalika, which are obligatory as given in Section 114, are as under:

"114. *Obligatory duties of the Corporation.*—It shall be incumbent on the Corporation to make reasonable and adequate provision, by any means or measures which it is lawfully competent to it to use or to take, for each of the following matters, namely,—

* * *

(*viii*) guarding from pollution water used for human consumption and preventing polluted water from being so used;

(*ix*) the lighting of public streets, Corporation markets and public buildings and other public places vested in the Corporation;

† **Ed.**: Substitution in sub-section (2) was made by U.P. Act 3 of 1987, S. 8

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(*ix-a*) the construction and maintenance of parking lots, bus-stops and public conveniences;

* * *

(*xxx*) planting and maintaining trees on roadsides and other public places;

* * *

(*xxxiii-a*) promoting urban forestry and ecological aspects and protection of the environment;

* * *

(*xli*) providing urban amenities and facilities such as parks, gardens and playgrounds."

21. The Development Act is in force and it is not disputed that the whole of the city of Lucknow has been declared as development area within the meaning of Section 3 of this Act. "Development" is defined in clause (*e*) of Section 2 of the Act and it is as under:

"2. (*e*) 'development', with its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land, and includes redevelopment;"

22. The Lucknow Development Authority (LDA) has been constituted under Section 4 of the Development Act. Chapter III of the Development Act provides for preparation of Master Plan and zonal development plan for the development area. Section 13 provides for the procedure for amendment of the Master Plan or zonal development plan. Section 14 provides for development of land in development area and this section is as under:

"14. *Development of land in the developed area.*—(1) After the declaration of any area as development area under Section 3, no development of land shall be undertaken or carried out or continued in that area by any person or body (including a department of Government) unless permission for such development has been obtained in writing from the Vice-Chairman in accordance with the provisions of this Act.

(2) After the coming into operation of any of the plans in any development area no development shall be undertaken or carried out or continued in that area unless such development is also in accordance with such plans.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the following provisions shall apply in relation to development of land by any department of any State Government or the Central Government or any local authority—

(*a*) when any such department or local authority intends to carry out any development of land it shall inform the Vice-Chairman in writing of its intention to do so, giving full particulars thereof, including any plans and documents, at least 30 days before undertaking such development;

(*b*) in the case of a department of any State Government or the Central Government, if the Vice-Chairman has no objection it should inform such department of the same within three weeks from the date of receipt by it under clause (*a*) of the department's intention, and if the

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Vice-Chairman does not make any objection within the said period the department shall be free to carry out the proposed development;

(*c*) where the Vice-Chairman raises any objection to the proposed development on the ground that the development is not in conformity with any Master Plan or zonal development plan prepared or intended to be prepared by it, or on any other ground, such department or the local authority, as the case may be, shall—

(*i*) either make necessary modifications in the proposal for development to meet the objections raised by the Vice-Chairman; or

(*ii*) submit the proposals for development together with the objections raised by the Vice-Chairman to the State Government for decision under clause (*d*);

(*d*) the State Government, on receipt of proposals for development together with the objections of the Vice-Chairman, may either approve the proposals with or without modifications or direct the department or the local authority, as the case may be, to make such modifications as proposed by the Government and the decision of the State Government shall be final;

(*e*) the development of any land begun by any such department or subject to the provisions of Section 59 by any such local authority before the declaration referred to in sub-section (1) may be completed by that department or local authority with compliance with the requirement of sub-sections (1) and (2)."

23. The Development Act also contains provision for penalties and the power of LDA to demolish buildings and to stop development in case of contravention of the provisions of this Act. When the Development Act is in operation, then under Section 59 of this Act, certain functions of the U.P. Municipal Corporation Act, 1959 become inoperative so far as these are relevant for the purpose:

"59. *Repeal etc., and Savings.*—(1)(*a*) The operation of clause (*c*) of Section 5, Sections 54, 55 and 56, clause (*xxxiii*) of Section 114, sub-section (3) of Section 117, clause (*c*) of sub-section (1) of Section 119...."

24. The provisions of the U.P. Regulation of Buildings Operation Act, 1958 also become inoperative by virtue of Section 59 of the Development Act.

25. The Parks Act provides for preservation and regulation of parks, playgrounds and open spaces in the State of Uttar Pradesh. The Parks Act applies to an area included in every Nagar Mahapalika under the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959. It is not disputed that this Act is now in force (w.e.f. 1-2-1995). Park has been defined in clause (*b*) of Section 2 of the Act to mean a piece of land on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden with trees, plants or flower beds or as a lawn or as a meadow and maintained as a place for the resort of the public for recreation, air or light. The Act provides for maintenance of parks and prohibits construction of building, except with the

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previous sanction of the authority concerned, which is likely to affect the utility of the park.

26. As to how the impugned agreement dated 4-11-1993 came to be executed between the Mahapalika and the builder we now consider the proceedings of the Mahapalika, the Executive Committee and its sub-committee called the High Power Committee.

27. On 6-7-1993 notice was issued for meeting of the Mahapalika for 12-7-1993 with the following agenda:

"*1.* Discussions on the accepted proposals passed by the Executive Committee on 27-5-1993 and 27-6-1993.

2. Discussions on the various proposals.

3. Other subjects, subject to the permission of Presiding Officer."

There were no details regarding Agenda Item 3, which, it is said, pertained to Palika Bazaar, i.e., the underground shopping complex. On that day the following resolution constituting the High Power Committee for disposal of the properties of the Mahapalika was passed under the aforesaid Agenda Item 3:

"The full details, maps, conditions of allotment in respect of Shri Rafi Ahmad Kidwai Nagar Yojna and Rajajipuram Vistar Yojna may be prepared at the earliest. And for this act a committee may be constituted under the chairmanship of the Nagar Pramukh in which two Hon'ble Sabhasad and three officers be appointed. For nominating the members, the Nagar Pramukh may be authorised. The powers of disposing of the entire land, allotment and transfer in respect of both the schemes shall be vested in the above Committee.

It was also decided that the Committee constituted under the chairmanship of the Nagar Pramukh shall have the rights of disposing of all the properties, allotment, transfer etc. situated within the limits of the Nagar Mahapalika and the above Committee shall have the right to give the final shape to the conditions of allotment and agreement etc. In this manner this sub-committee is authorised to exercise the aforementioned rights of the Mahapalika conditions of allotment and agreement etc. In this manner this sub-committee is authorised to exercise the aforementioned rights of the Mahapalika."

28. Meeting of the High Power Committee so constituted under the aforesaid resolution of the Mahapalika, was held on 13-10-1993 and was adjourned to 19-10-1993. In the meeting of the High Power Committee held on 19-10-1993, presided over by Mr Akhilesh Das, Nagar Pramukh as Chairman, there is discussion regarding construction of the underground air-conditioned Palika Bazaar at Aminabad Jhandewala Park on the lines of Palika Bazaar in New Delhi. It was recorded that the Vice-Chairman, Lucknow Development Authority by his Letter No. 279/Architect dated 16-10-1993 intimated that as per the Master Plan, the land use of Aminabad Jhandewala Park is commercial. The draft of the contract to be entered into

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between the Mahapalika and M.I. Builders was approved. The minutes ended with the recording as under:

"Amended and final draft of the contract was read by the advocate before the Committee. On this, the opinion of the members was asked for by the Chairman on which all the members were unanimous and that all the members after discussing over the suggestions and conditions set out by the Mahapalika advocate took this decision that the prescribed project may be got executed by M.I. Builders Pvt. Ltd. And the Mukhya Nagar Adhikari should be authorised for conducting all the forthcoming actions and formalities.

The Hon'ble Chairman also directed that the entire proceedings may be presented for information in the meeting of the Executive Committee dated 20-10-1993 and meeting of the Mahapalika house held on 21-10-1993.

sd/-	sd/-
B.K. Singh Yadav,	Sushil Dubey,
Sabhasad,	Member.
Mukhya Nagar Adhikari,	
Member.	
sd/-	sd/-
G.C. Goyal,	D.K. Doal,
Architect,	Member,
Member.	U.P. Nagar Adhikari.
sd/-	sd/-
Akhilesh Das,	Laxmi Narain,
Nagar Pramukh,	Sabhasad,
Chairman of the Committee.	Member."

29. In view of the directions of the High Power Committee the matter was placed before the Executive Committee on 20-10-1993 which passed the following resolution:

"RESOLUTION NO. 85

As per the decision taken in the meeting dated 12-7-1993 of the Mahapalika, sub-committee constituted under the chairmanship of the Hon'ble Nagar Pramukh was entrusted with the powers of developing, leasing and to transfer the immovable property of the Mahapalika. In exercise of these powers, the sub-committee, keeping in view the grave problem of encroachment and parking in Aminabad submitted the proposal of the Hon'ble Members namely Shri Kalraj Misra (President Bhartiya Janta Party U.P.) and Shri Ejaz Rizvi, Ex-Minister for the construction of an air-conditioned Palika Bazaar and parking place in Jhandewala Park (Aminabad Park) on the pattern of Delhi Bazaar, with a parking place for about 1000 vehicles through M/s M.I. Builders Pvt.

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Ltd. presented before the Executive Committee for information which was welcomed by all and the proposal was approved."

30. Thereafter, the matter came to be placed before the Mahapalika in its meeting dated 21-10-1993 and the following minutes were recorded:

"In view of the decision taken by the General House of the Mahapalika dated 12-7-1993, a sub-committee under the chairmanship of the Mayor was entrusted to transfer, to develop and to give on lease immovable properties of the Mahapalika. In exercise of these powers, the sub-committee, keeping in view the grave problem of encroachment and parking in Aminabad submitted the proposal of Shri Kalraj Misra (President), Bhartiya Janta Party U.P. and Shri Ejaz Rizvi (Ex-Minister) for construction of an air-conditioned Palika Bazaar and parking place in Jhandewala Park (Aminuddaula Park) on the pattern of Delhi (air-conditioned) Palika Bazaar and a parking in which there should be a provision for parking of about 1000 vehicles through M.I. Builders Pvt. Ltd. presented before the House for information which was welcomed and a unanimous resolution was passed and the Nagar Pramukh was congratulated for this important work."

31. It will be advantageous to reproduce the impugned agreement dated 4-11-1993, which is executed between the Mahapalika and the builder:

"WHEREAS, Party 1 is an absolute owner of the plot of land situated at Aminabad popularly known as Jhandewala Park measuring about 2,45,000 sq. ft and bounded as below:

NORTH — Chhedilal Dharamshala Road.

SOUTH — Ganga Prasad Road.

EAST — Road locating Central Bank of India.

WEST — Road locating Hyder Hussain building.

More specifically mentioned in the site plan attached herewith.

WHEREAS, Party 1 is a body constituted under the U.P. Nagar Mahapalika Adhiniyam (Act 2 of 1959), managing the parks, roads streetlights and other such maintenance of amenities in the city.

WHEREAS, owing to high increase in urban population (according to 1991 census, Lucknow urban agglomeration has a population of 16,69,204) because of the migratory character of rural population to urban areas which is too congested due to overflow of population, the city is also being faced overwhelmingly with day-to-day problem of encroachment causing much of acrimony perpetrating high guilts and discreet errors.

WHEREAS, Party 1 remained ever conscious to keep the city hygienically sound free from all adverse effects but the problem of encroachment is no less than a headache for the Lucknow Nagar Mahapalika which has emerged like a growing nightmare and become unmanageable for the Lucknow Nagar Mahapalika owing to its limited and scanty resources and flow of supplementary income. The eagerness

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of the Nagar Mahapalika to maintain proper roads, construction of new roads with streetlighting and the cleanliness drive during monsoon for removing sand and silt from the *nallahs* is too often inadequately met by the Local Bodies Department of the Government as the schedule of new demands for providing requisite funds is not available timely as well as sufficiently. This is one of the major hindrances in keeping the functioning of the Lucknow Nagar Mahapalika at a low ebb.

WHEREAS, considering the above points M/s M.I. Builders Private Limited had prepared a viable and constructive proposal keeping in view the interest of the Lucknow Nagar Mahapalika in all respects and the same was submitted to the Lucknow Nagar Mahapalika as it dealt exhaustively with the benefits that will be oriented after its implementation to the Lucknow Nagar Mahapalika as well as to the Lucknow populace. The proposal was found beneficial to the Nagar Mahapalika Lucknow as well as to the general public. The proposal which will be known as PALIKA BAZAAR if given affect will be a source of control over the traffic and will reduce the congestion in the vicinity.

WHEREAS, the aforesaid proposal was accepted by the Lucknow Nagar Mahapalika in its meeting thereby procuring a no-objection certificate from the Lucknow Development Authority under Section 14 of the Urban Building Planning and Development Act, 1973 for constructing the PALIKA BAZAAR on the land mentioned above 279/vastuvid dated 16-10-1993.

NOW this agreement witnesseth as under:

1. That Party 2 shall construct the said PALIKA BAZAAR according to the plan (attached herewith) with respect to which no-objection certificate has been obtained by Party 1 from the prescribed authority.

2. That PALIKA BAZAAR shall be constructed by Party 2 at his own cost and Party 2 shall be entitled to realise the cost of construction with reasonable profit which in any case shall not be more than 10% with respect to each shop as may be fixed by Party 2 in lieu of construction and when the project of Palika Bazaar is completed and cost of construction has been realised the "PALIKA BAZAAR" shall be handed over to the Lucknow Nagar Mahapalika as its owner.

3. That Party 2 shall also provide air-conditioning facility in the PALIKA BAZAAR at his own cost as well as the installation of the plant and construction of the infrastructure in this regard.

4. That Party 2 shall have the right to fix the amount of cost of construction while the rent of the shops shall be at the rate of Rs 2.50p. only per sq. ft and 50p. will be charged as lease rent as 1/5th of the rent of covered area and Rs 300 per shop for maintenance subject to enhancement of the air-conditioning plant, maintenance of the complex as well as the electric charges.

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5. That Party 2 shall be at liberty to lease out the shops as per its own terms and conditions to the persons of their choice on behalf of Party 1 which shall be binding on Party 1 but the conditions as mentioned in para 4 as aforesaid in this agreement regarding rent shall remain in force.

6. That Party 2 shall also have the right to sign the agreement if necessary on behalf of Party 1 as the person authorised by Party 1 on the terms and conditions which Party 2 may deem fit and proper and the copy of the agreement shall be given to Party 1 after its execution and the terms of the deed shall be binding upon both the parties of this deed provided Party 2 executes only that much of agreement which number of shops are available in Palika Bazaar and in any case shall not exceed the same but the rent of the shops shall remain the same as mentioned above.

7. That the construction of PALIKA BAZAAR shall start within three months from the date of registration of this agreement and shall be completed within three years from the date of its start.

8. That Party 2 shall have the right to publicise the project and take advances from the buyers and to give them proper allotment receipts.

9. That Party 1 shall cooperate in all manner in the constructional work activities of Party 2 and shall extend all its cooperation and help as and when needed by Party 2 from time to time.

10. That Party 1 shall be responsible for helping and assisting Party 2 in completing the project and Party 1 shall also be exclusively responsible for getting the electric sewer and water connection from the department concerned for the above project at the cost of Party 2.

11. That Party 1 shall help Party 2 in getting the project completed and meeting all the needs and requirements in completing the project.

12. That in case there is any obstruction from the Mahapalika or legal proceedings resulting in the non-completion or carrying out of the constructional work of the project resulting in the non-completion or stoppage of the work, Party 1 shall be responsible for all the losses and damages that may accrue to Party 2.

13. That Party 2 shall not allot the 5% shops before completion of parking and other services of the complex to ensure the proper compliance with the agreement and further ensure the quality of construction.

14. That Party 2 shall give the bank a guarantee of Rs 25,00,000 (Rs twenty-five lakhs) for its performance within 3 months from the date of registration of this agreement but this clause is subject to all necessary cooperation of Party 1.

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15. That Party 1 shall charge Rs 5000 per shop for every second and subsequent transfer of the shops.

16. That after the completion of the project Party 2 shall hand over the entire documents in original to Party 1 for keeping the final records.

17. That in case of any disputes or differences arising out of the project between the parties to the agreement, the same shall be referred for arbitration to the mutually appointed arbitrator who shall in all cases be the retired Justice of Hon'ble High Court or its equivalent and his award shall be binding upon both the parties.

18. That the agreement between Party 2 and the shopkeeper shall be duly approved by the Nagar Mahapalika Lucknow and Party 2 has made that agreement available to Party 1 and Party 1 has approved the said agreement.

19. That all the legal expenses in executing this agreement shall be borne only by Party 2.

IN WITNESS WHEREOF, the parties of this deed have signed the deed on the day and the year mentioned hereinbelow in the presence of the following witnesses and the terms of this agreement shall be binding upon the legal heirs, successors, assignees and legal representatives.

Lucknow	sd/-
dated:	Party 1
4-11-1993.	for M.I. Builders Pvt. Ltd.
WITNESSES	sd/-
Managing Director	Party 2
1. sd/-	Drafted by:
2. sd/-	sd/-
	Arvind Razdan
	(Advocate)
	Civil Court, Lucknow"

32. Mr Soli Sorabjee, learned counsel for the builder submitted that the agreement was not against public interest and could not have been revoked by the Mahapalika. He said the petitioners in the writ petitions did not bring forward any contractor who could say that he was more competent than M.I. Builders to execute the job and at a cost less than that to be incurred by M.I. Builders. He said the case of the builder was covered by a judgment of this Court in *Kasturi Lal Lakshmi Reddy* v. *State of J&K*[2]. In this case the State of J&K awarded a contract to the second respondent for tapping of 10 to 12 lakh blazes annually for extraction of resin from the inaccessible chir forests in the State for a period of 10 years. This was in accordance with the policy of the State Government and it was agreed upon that a part of resin so extracted would be delivered to the State for running the State-owned

2 (1980) 4 SCC 1

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industry and the rest would be retained by the second respondent for establishing and running its own factory in the State. The petitioners in the writ petition assailed the order of the State Government on the following main three grounds: (SCC pp. 10-11, para 9)

> "*9.* (*A*) That the order is arbitrary, mala fide and not in public interest, inasmuch as a huge benefit has been conferred on the 2nd respondents at the cost of the State.
>
> (*B*) The order creates monopoly in favour of the 2nd respondents who are a private party and constitute unreasonable restriction on the right of the petitioners to carry on tapping contract business under Article 19(1)(*g*) of the Constitution.
>
> (*C*) The State has acted arbitrarily in selecting the 2nd respondents for awarding tapping contract, without affording any opportunity to others to compete for obtaining such contract and this action of the State is not based on any rational or relevant principle and is, therefore, violative of Article 14 of the Constitution as also of the rule of administrative law which inhibits arbitrary action by the State."

33. This Court, after examining the whole facts of the case and applying the parameters laid down in *Ramana Dayaram Shetty* v. *International Airport Authority of India*[3] negatived all the pleas raised by the petitioners. Referring to its earlier decision in *International Airport Authority of India case*[3] this Court had observed that there are two limitations imposed by law which structure and control the discretion of the Government in giving largesse. The first is in regard to the terms on which largesse may be granted and the other is in regard to the persons who may be recipients of such largesse. Then the Court said as under: (SCC pp. 11-12, para 11)

> "*11.* So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largesse. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it likes in granting largesse such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a

3 (1979) 3 SCC 489

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contract or leases out or otherwise deals with its property or grants any other largesse, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid."

The Court said that the State of J&K, in view of its policy of industrialisation, was interested in the setting up of the factory by the second respondents, particularly since the second respondents had two factories for manufacture of resin, turpentine oil and other derivatives and they possessed a large experience in the processing of resin and reprocessing of resin, turpentine oil and other derivatives. The Court considered the nature of the contract and observed that it was obvious that, in view of the policy of the State Government, no resin would be auctioned in the open market and in this situation, it would be totally irrelevant to import the concept of market price with reference to which the adequacy of the price charged by the State to the second respondents could be judged. If the State was simply selling resin, there could be no doubt that the State must endeavour to obtain the highest price subject, of course, to any other overriding considerations of public interest and in that event, its action in giving resin to a private individual at a lesser price would be arbitrary and contrary to public interest. But, where the State has, as a matter of policy, stopped selling resin to outsiders and decided to allot it only to industries set up within the State for the purpose of encouraging industrialisation, there could be no scope for complaint that the State was giving resin at a lesser price than that which could be obtained in the open market. The yardstick of price in the open market would be wholly inept because in view of the State policy, there would be no question of any resin being sold in the open market.

34. After examining this judgment it is difficult to appreciate the argument of Mr Sorabjee as to how the principles laid in this case can be applicable to the present case.

35. To substantiate his argument that there was "estoppel by pleading" against the Mahapalika Mr Sorabjee referred to the stand of the Mahapalika as reflected in the proceedings before the High Court as well as in this Court. It was also pointed out that in the counter-affidavit filed by the State Government in the High Court it supported the builder. There was no "disposal of property" by the Mahapalika within the meaning of Section 128 of the Act. Resolution of the Mahapalika to enter into the agreement with the builder was validly passed. The project was the brainchild of M.I. Builders and the nature of the transaction was such that it was unconventional and there is no universal rule that tender be invited in every case. There was no secrecy. Everything was done in the open and discussed freely at various stages. In the affidavit dated 8-1-1994 of Mr B.K. Singh, Chief Executive Officer of the Mahapalika filed in the High Court he had explained why it was necessary to have the project executed in order to avoid congestion in Aminabad commercial area. In the affidavit dated 19-10-1995 of Mr T.K. Doval, Upnagar Adhikari which was filed in answer to IAs Nos. 10-12 of 1995, complaining breach of this Court's order dated 14-12-1994, again the

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earlier stand of the Mahapalika was reaffirmed. Mr Sorabjee criticised the action of the Mahapalika in withdrawing its appeals in this Court on 6-2-1997 on mere mentioning in the Court. He said the plan, which had been sanctioned by order dated 23-1-1995, was revoked illegally on 17-4-1997 without any notice to the builder. There is, however, resolution of the Mahapalika dated 6-8-1996 filed by Mr S.K. Gupta, Mukhya Nagar Adhikari of the Mahapalika opposing the present appeals by the builder. The Mahapalika took a somersault and gave a complete go-by to its earlier stand. That there could be estoppel by pleadings reference was made to a decision of this Court in *Union of India* v. *Anglo Afghan Agencies Ltd.*[4] approving the earlier decision of the Calcutta High Court in *Ganges Mfg. Co.* v. *Sourujmull*[5] (ILR at p. 678). Mr Sorabjee said a party could not change its stand even if it was legally wrong in its earlier stand as otherwise it could be a negation of everything.

36. In *Ganges Mfg. Co.* v. *Sourujmull*[5] a Division Bench of the Calcutta High Court held that:

> "A man may be estopped not only from giving particular evidence, but from doing any act or relying upon any particular argument or contention, which the rules of equity and good conscience prevent him from using as against his opponent."

37. In *Union of India* v. *Anglo Afghan Agencies Ltd.*[4] in a certain scheme called the Export Promotion Scheme incentives were provided to the exporters for woollen goods. M/s Indo-Afghan Agencies Ltd. exported woollen goods to Afghanistan of FOB value of over Rs 5 crores. The Deputy Director in the Office of the Textile Commissioner, Bombay, issued to them an import entitlement certificate for about Rs 2 crores only. When representations were made to the Government for grant of import entitlement certificate for full FOB value, it produced no response and writ petition under Article 226 of the Constitution was filed in the High Court. The High Court allowed the writ petition. In the appeal filed by the Union of India to this Court various contentions were raised. This Court said:

> "Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen."

And further:

> "The defence of executive necessity was not relied upon in the present case in the affidavit filed on behalf of the Union of India. It was also not pleaded that the representation in the Scheme was subject to an implied term that the Union of India will not be bound to grant the import certificate for the full value of the goods exported if they deem it

4 AIR 1968 SC 718 : (1968) 2 SCR 366
5 ILR (1880) 5 Cal 669, 678 : 5 CLR 533

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inexpedient to grant the certificate. We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set-up, no person may be deprived of his right or liberty except in due course of and by authority of law: if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law — common or statute — the courts will be competent to, and indeed would be bound to, protect the rights of the aggrieved citizen."

It was also held:

"We hold that the claim of the respondents is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it. On the facts proved in this case, no ground has been suggested before the Court for exempting the Government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation."

38. Mr Sorabjee then referred to Section 128 of the Act and to the expression "disposal" and also to Sections 129(4), 131 and 132 of the Act. According to him there was no disposal of any property and no interest in the land had been transferred by the Mahapalika to the builder. In this connection reference was made to the agreement dated 4-11-1993. Reference was also made to the counter-affidavit filed earlier by Mr B.K. Singh, Mukhya Nagar Adhikari, wherein he had stated that the property vested in the Mahapalika and that there was no disposal or transfer of any interest in the property to the builder. As to what is meant by the expression "disposed of" reference was made to another decision of this Court in *CST* v. *Thomas Stephen and Co. Ltd.*[6] (SCC at p. 266). This judgment was of course in the context of sale of goods. Reference was also made to a decision at 1959 (1) WLR 465 at 472‡ to contend that "disposal" means disposal absolutely.

39. If it was necessary to call tender reference was made to a decision of this Court in *G.B. Mahajan* v. *Jalgaon Municipal Council*[7] where tender was invited to construct the building but authority was given to the developer to grant occupancy rights. In this case, this Court considered the scope of judicial review in the case of contractual transaction of the Government, its policy decision and the right of the Government on its instrumentality to evolve any method for execution of the project. In this case the respondent Jalgaon Municipal Council entered into a contract with a private developer/builder for construction of a commercial complex. The project

6 (1988) 2 SCC 264, 266 : 1988 SCC (Tax) 190

‡ *Rhyl Urban District Council* v. *Rhyl Amusements Ltd.*, (1959) 1 All ER 257 at 264-I (Ch D): 1959 (1) WLR 465 at 472

7 (1991) 3 SCC 91

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contemplated its execution by the developer on a self-financing basis subject to handing over the administrative building of the complex to the Municipal Council free of cost and allotting some shops at a fixed rate/free of cost to certain specified persons while having the right to dispose of the remaining accommodation at its own discretion and to retain the premia received by way of reimbursement of its financial outlays plus profits. The execution of the project was challenged on the ground that it was unconventional and thus untenable. This Court said that the Government or its instrumentality have policy option to adopt any method or technique for management of the project provided the same is within the constitutional and legal limits. This Court held that the project was not ultra vires the powers of the Municipal Council and such a case was not open to judicial review. The following main contentions were raised apprising the project: (SCC Headnote)

"(*a*) That the scheme of financing of the project was unconventional and was not one that was, as a matter of policy, open and permissible to a governmental authority. The Municipal Authority could either have put up the construction itself departmentally or awarded the execution of the whole project to a building contractor. The method of financing and execution of the project are ultra vires the powers of the Municipal Authority under the Act.

(*b*) That the terms of the agreement with the developer that the latter be at liberty to dispose of the occupancy rights in the commercial complex in such manner and on such terms as it may choose would amount to an impermissible delegation of the statutory functions of the Municipal Council under Section 272 of the Act to the developer.

(*c*) That the project, in effect, amounted to and involved the disposal of municipal property by way of a long-term lease with rights of sub-letting in favour of the developer violative of Section 92 of the 'Act'.

(*d*) That the scheme is arbitrary and unreasonable and is violative of Article 14 of the Constitution. The project is patently one intended to and does provide for an unjust enrichment of Respondent 6 at public expense."

40. This Court negatived all these contentions. It said that the project, otherwise legal, does not become any the less permissible by reason alone that the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. This Court did not find any violation of any provisions of the Maharashtra Municipalities Act, 1965 governing the Municipal Council. On the question of reasonableness this Court said that a thing is not unreasonable in the legal sense merely because the court thinks it is unwise. Then this Court said: (SCC Headnote)

"The contention regarding impermissible delegation is not tenable. The developer to the extent he is authorised to induct occupiers in respect of the area earmarked for him merely exercises, with the consent of the Municipal Council, a power to substitute an occupier in his own place.

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This is not impermissible when it is with the express consent of the Municipal Council. It would be unduly restrictive of the statutory powers of the local authority if a provision enabling the establishment of markets and disposal of occupancy rights therein are hedged in by restrictions not found in the statute."

41. Reference was then made to a decision of this Court in *Tata Cellular* v. *Union of India*[1] where this Court considered the scope of judicial review and adduced the following principles: (SCC pp. 687-88, para 94)

"*94.* (*1*) The modern trend points to judicial restraint in administrative action.

(*2*) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(*3*) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(*4*) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(*5*) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(*6*) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

42. Lastly, Mr Sorabjee said that after this Court allowed the builder to construct, in upholding the judgment of the High Court, equities would have to be balanced. Of course, it would be a different matter if the appeals were to be allowed, he said.

43. Fifty prospective allottees of the shops, who had made payment to M.I. Builders for allotment of shops before the High Court granted order of stay, filed an application in this Court seeking permission to intervene in these appeals. We heard Mr Salve, learned Senior Counsel who appeared for them. We record his submissions as under:

1. It is not in the public interest to dismantle the shops if the Court ultimately upholds the judgment of the High Court.

2. Advertisement was made by the builder on 24-12-1993 offering to allot the shops and required each of the prospective allottees to pay

1 (1994) 6 SCC 651

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Rs 25,000 with an application for allotment. 500 such applications were received out of which 380 applications were accompanied with a cheque of Rs 25,000 each. The remaining 120 prospective allottees deposited the amount of Rs 25,000 each by means of cash. When, however, possession of the area was handed over to the builder it was found that it was less than that agreed earlier and that the total number of shops to be constructed would be now 263 in number. Shops were of two sizes of 10 x 15 ft and 10 x 20 ft.

3. Question raised now is: if by putting in possession any interest in land was created in favour of the builder? Could it be said that there was a charge created in favour of the builder on the property including the land and the structure built upon it till the builder got the whole of the amount invested by it plus 10% of the profit over and above that? No interest in the land was created in favour of the builder. The agreement was something like a lien on a property of an unpaid creditor as understood in law. The builder in that situation would have the right to possession till it was paid its dues. As per the terms of the contract the builder would retain the property by way of security till it was paid but it could not claim to have any interest in the property. It is like an unpaid creditor. When the term "disposed of" is used it means that the full title had passed but when we say any interest in the property is passed then we mean a slice of that title has passed.

4. The agreement though is silent as to what is the legal right of the builder on the land, it grants merely a right to the builder to enter upon the land and to build upon it as per its terms. The provisions of Section 128 of the Act are not attracted.

5. It is a moot point if in a public interest litigation the petitioner can tell the court to consider a document whether it is favourable or not. The court cannot use a magnifying glass to see whether any interest had been created and then to strike down the agreement being violative of Section 128 of the Act. Ultimately it boils down to the intention of the parties otherwise it will be straining the point too far which is not permissible.

6. If this Court decides to uphold the judgment of the High Court the applicants would request that the relief be moulded. In public law relief can be moulded even where the court finds irregularity or illegality to deny relief. That can be done under Article 142 of the Constitution. After all what the High Court has found was that the resolution was not properly considered before passing the same; that the requirements of the provisions of Sections 128 and 129 of the Act were not adhered to; and that the tenders were not invited in order to favour the builder.

7. It is not the case of the writ petitioners that any extraordinary advantage was conferred on the builder or that funds of the taxpayers have been drained out. If it was a hospital or an industry or a dangerous building it would be imperative that the building be pulled down but here construction is made underground to remove congestion and the only

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complaint of the petitioners was that it would create more congestion. Therefore, a mere irregularity or even illegality would not result in destroying the construction, particularly, when there is no clear finding of any mala fide by the High Court. It is not that any other builder has been aggrieved by the action of the Mahapalika and had come forward to complain. In fact one of the persons who himself is a party to the resolution was one of the petitioners. In the administrative law there is an authority that relief could be moulded. There is no affidavit of the Lucknow Development Authority that building was in any way dangerous. The shopping complex and the parking lot, which has been built upon, is for public good and an order of demolition would not be in the general public interest. Discretion should be used not to invalidate the whole process even if the provisions of Sections 128 and 129 were violated. Some mechanism could be evolved so that fair price for the shops and use of the parking lot is fixed and the case of every prospective allottee could be examined and so also perhaps the terms of the agreement between the builder and the Mahapalika. It would be an extraordinary order if demolition is ordered.

44. Reference was made to *Wade on Administrative Law*, 7th Edn., p. 720 and to *de Smith on Judicial Review of Administrative Action*, 5th Edn., p. 271 to support the contention that relief could be moulded in law. In Wade's treatise the following part is relevant:

> "The freedom with which the court can use its discretion to mould its remedies to suit special situations is shown by two decisions already encountered. One was the case where the House of Lords refused mandamus to a police probationer wrongly induced to resign, although he made out a good case for that remedy, in order not to usurp the powers of the Chief Constable, and instead granted him an unusual form of declaration to the effect that he was entitled to the remedies of unlawful removal from office except for reinstatement. The other was the case of the Takeover Panel, where in fact no relief was granted but the Court of Appeal explained the novel way in which remedies should be employed in future cases, with the emphasis on declaration rather than certiorari and on 'historic rather than contemporaneous' relief. The same freedom to mould remedies exists in European community law, where the European Court of Justice may declare non-retroactivity when holding some act or regulation to be void."

In de Smith it is as under:

> "The principle that failure to observe formal or procedural rules in the administrative process may be venial if no substantial prejudice has been caused to those immediately affected now appears in a number of statutory contexts, but it is too early to say that it has established itself as a general principle of law in contexts where the enabling Act is silent on the point, though some of the cases on the effect of disregarding statutory time-limits point vaguely in this direction.

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Administrative inconvenience

Is administrative inconvenience a proper reason for rebutting the presumption that a decision which violates a statutory provision is unlawful (and therefore that the provision is, in the circumstances not 'mandatory')? Administrative inconvenience is an accepted criterion in relation to remedies provided by the courts in judicial review. For example, where a series of commercial transactions have been undertaken in reliance upon the impugned decision the court may, in its discretion, fail to quash that decision in view of the administrative chaos that would result from such a remedy. Judicial discretion is employed here to balance fairness to the individual against the general public interest. The task, however, of deciding the force of a statutory provision does not involve judicial discretion. It involves the faithful construction of the objects and purposes of an act of Parliament in the context of the particular decision. Although aspects of public policy may play a part in this exercise, it would be wrong of the courts to impute any general implication that Parliament may intend administrative inconvenience to excuse in advance the violation of its statutes. Such an implication invites careless administration and assumes that the legislature would too easily excuse a breach of its statutes. It is suggested, therefore, that administrative inconvenience is not normally a proper criterion to guide the question of whether a statutory provision is 'mandatory'."

45. Mr Sorabjee and Mr Salve were opposed by a formidable cohort of lawyers. Mr N.M. Ghatate appeared for the Corporators who filed writ petition in the High Court and were present themselves in the meetings of the Mahapalika on 12-7-1993 and 21-10-1993; Mr G.L. Sanghi appeared for the Mahapalika; Mr Adarsh Goel for the State of U.P.; Mr Arun Jaitley for LDA; and Mr Dushyant Dave for Amrit Puri, who had separately filed the writ petition. Their submissions can be summarised as under:

1. There was no proper convening of the meetings of the Executive Committee and the Mahapalika, which granted approval to the construction of underground shopping complex. There was also no such agenda in the meeting of the Mahapalika. Constitution of the High Power Committee by the Mahapalika was itself not legal. Regulations had been framed under the Act for conduct of the meetings. Under Section 91 of the Act the requirement is four days' notice for the General Body meeting of the Mahapalika and three days' notice for the meeting of the Executive Committee. Regulation 7 prescribes as to how the business of the meeting is to be conducted, as to which item is to be taken up first and the rest in seriatim. Regulation 7(*f*) requires that resolution of the Executive Committee should be separately circulated to the members and the business respecting that should not be transacted in the heading "Any Other Business with Permission of the Chair". Under Regulation 30 it is necessary for a resolution to be valid that there should be a proposer and a seconder.

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2. The impugned agreement was not executed as per the requirement of Section 133 of the Act and on that account it is not binding on the Mahapalika. Reliance was placed on a decision of this Court in *H.S. Rikhy (Dr)* v. *New Delhi Municipal Committee*[8]. In this case the question for consideration before this Court was whether the provisions of Section 8 of the Delhi and Ajmer Rent Control Act, 1952 (the Rent Act) applied to the transactions between the appellants and the New Delhi Municipal Committee (the Committee) constituted under the Punjab Municipal Act, 1911. The Committee had constructed a market and allotted the shops and flats by inviting tenders in pursuance of an advertisement. On an application filed under Section 8 of the Rent Act by an allottee, an objection was raised by the Committee that there was no relationship of landlord and tenant between the parties. The High Court held that there was no relationship of landlord and tenant between the parties inasmuch as there was no "letting", there being no properly executed lease. In coming to the conclusion that there was no valid lease between the parties, the High Court relied upon the provisions of Section 47 of the Punjab Municipal Act. The High Court negatived the contention that the Committee was estopped from questioning the status of the applicants as tenants, having all along admittedly accepted rent from them. On an appeal against the judgment of the High Court to this Court, it was held that use of the term "rent" cannot preclude the landlord from pleading that there was no relationship of landlord and tenant. The question must, therefore, depend upon whether or not there was a relationship of landlord and tenant in the sense that there was a transfer of interest by the landlord in favour of the tenant. This Court said that in its opinion the Rent Act applied only that species of "letting" by which the relationship of landlord and tenant is created, that is to say, by which an interest in the property, however limited in duration, is created. This Court referred to the provisions of Section 47 of the Punjab Municipal Act which is as under:

> "47. (1) Every contract made by or on behalf of the Committee of any Municipality of the First Class whereof the value or amount exceeds one hundred rupees, and every contract made by or on behalf of the Committee of any Municipality of the Second and Third Class whereof the value or amount exceeds fifty rupees, shall be in writing, and must be signed by two members, of whom the President or a Vice-President shall be one, and countersigned by the Secretary:
>
> Provided that, when the power of entering into any contract on behalf of the Committee has been delegated under the last foregoing section, the signature or signatures of the member or members to whom the power has been delegated shall be sufficient.
>
> (2) Every transfer of immovable property belonging to any committee must be made by an instrument in writing, executed by the

8 AIR 1962 SC 554

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President or Vice-President, and by at least two other Members of Committee, whose execution thereof shall be attested by the Secretary.

(3) No contract or transfer of the description mentioned in this section executed otherwise than in conformity with the provisions of this section shall be binding on the Committee."

This Court said that in order that the transfer of the property in question should be binding on the Committee, it was essential that it should have been made by an instrument in writing, executed by the President or the Vice-President and at least two other members of the Committee, and the execution by them should have been attested by the Secretary and if these conditions are not fulfilled, the contract of transfer shall not be binding on the Committee. It was observed that the provisions of Section 47(3) are mandatory and not merely directory. Finally considering the argument that the Committee is estopped by its conduct from challenging the enforceability of the contract this Court said:

> "The answer to the argument is that where a statute makes a specific provision that a body corporate has to act in a particular manner, and in no other, that provision of law being mandatory and not directory, has to be strictly followed."

3. It was the appellant, the builder, who was building the underground shopping complex. It was not undertaking the construction as an agent of the Mahapalika. In this connection reference was made to a decision of this Court in *Akadasi Padhan* v. *State of Orissa*[9] (SCR at p. 722). It was, therefore, mandatory that the building plan be approved by LDA.

In *Akadasi Padhan* v. *State of Orissa*[9] the State of Orissa acquired a monopoly in the trade of kendu leaves. Prior to this the petitioner used to carry on extensive trade in the sale of kendu leaves. He filed a petition under Article 32 of the Constitution complaining restrictions put on his fundamental rights. In the course of discussion this Court said: (SCR Headnote)

> "When the State carries on any trade, business or industry it must inevitably carry it on either departmentally or through its officers appointed for that purpose. In the very nature of things, the State cannot function without the help of its servants or employees and that inevitably introduces the concept of agency in a narrow and limited sense. There are some trades or businesses in which it may be inexpedient to undertake the work of trade or business departmentally or with the assistance of State servants. In such cases, it is open to the State to employ the services of agents, provided the agents work on behalf of the State and not for themselves."

9 AIR 1963 SC 1047 : 1963 Supp (2) SCR 691, 722

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The Court then said:

> "It is true that an agent is entitled to commission in commercial transactions, and so, the fact that a person earns commission in transactions carried on by him on behalf of another would not destroy his character as that other person's agent. Cases of del credere agents are not unknown to commercial law. But we must not forget that we are dealing with agency which is permissible under Article 19(6)(*ii*), and as we have already observed, agency which can be legitimately allowed under Article 19(6)(*ii*) is agency in the strict and narrow sense of the term; it includes only agents who can be said to carry on the monopoly at every stage on behalf of the State for its benefit and not for their own benefit at all. All that such agents would be entitled to would be remuneration for their work as agents. That being so, the extended meaning of the word 'agent' in a commercial sense on which the learned Attorney General relies is wholly inapplicable in the context of Article 19(6)(*ii*)."

4. The Mahapalika had disposed of the land in favour of the builder in contravention of the provisions relating to disposal of property under Sections 128 and 129 of the Act. If the substance of the impugned agreement is looked into it is the transfer of interest in land by the Mahapalika to the builder.

5. Even Section 128 of the Act was not applicable as the land was a park which could not be disposed of by the Mahapalika. As a matter of fact the Mahapalika was the trustee of the park and the doctrine of public trust, which was applicable in India as held by this Court in *M.C. Mehta* v. *Kamal Nath*[10] (known as *Span case*) was applicable to the park in question. The Mahapalika, therefore, could only manage the park and could not alienate it or convert it into something different from the park. The park was held by the Mahapalika on trust for the citizens of Lucknow.

In *M.C. Mehta* v. *Kamal Nath*[10] the case which is also known as "*Span Resorts case*" owned by Span Motels Pvt. Ltd., this Court observed, that public trust doctrine, as discussed in the judgment, is a part of the law of the land. The Court gave various directions even cancelling the lease granted in favour of the Motel and directing the Motel to pay compensation by way of cost for restitution of the environment and ecology of the area. The judgment was cited to reaffirm the argument for preservation of ecology, which is an important factor in preserving Jhandewala Park.

6. Section 114 of the Act provides for obligatory duties of the Mahapalika and one such obligatory function is to maintain public places, parks and to plant trees. This cannot now be done as the park has been dug and construction made underground. By allowing underground construction the Mahapalika has deprived itself of its obligatory duties

10 (1997) 1 SCC 388

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which cannot be permitted. Irreversible changes have been made. Qualitatively it may still be a park but it is a park of a different nature inasmuch as trees cannot be planted. Now it is like a terrace park. Though the Park Act came into operation w.e.f. 1-2-1995 and the construction of the underground shopping complex had started in January 1995 after the interim order of this Court but since the construction was made subject to the final order of this Court the provisions of the Park Act will have to be considered while deciding the matter.

7. Contract of such a magnitude could not have been awarded to the builder without calling for tenders. There was no ground to depart from the settled norms. Decision of this Court in *Sachidanand Pandey* v. *State of W.B.*[11] is no authority for the proposition that it was not necessary to invite tenders. That was a case relating to development of tourism industry in the State of West Bengal. The case did not lay any rule but was an exception thereto. In that case a lease was granted by the State Government to the Taj Group of Hotels for construction of a five star hotel. This was challenged on various grounds in a writ petition filed under the banner of PIL. The writ petition was dismissed by the learned Single Judge of the High Court. On appeal, the Division Bench confirmed the judgment of the learned Single Judge. The matter then came to this Court under Article 136 of the Constitution and leave was granted. One of the questions raised was regarding the lease which was granted by the State Government without inviting tenders or holding a public auction. This Court posed the question if in pursuing the socio-economic objective, the State is bound to invite tenders or hold a public auction. The Court referred to various judgments of this Court in *Rashbihari Panda* v. *State of Orissa*[12]; *R.D. Shetty* v. *International Airport Authority of India*[3]; *Kasturi Lal Lakshmi Reddy* v. *State of J&K*[2]; *State of Haryana* v. *Jage Ram*[13]; *Ram and Shyam Co.* v. *State of Haryana*[14]; and *Chenchu Rami Reddy* v. *Govt. of A.P.*[15] Then this Court observed as under: (SCC p. 330, paras 40-41)

> "*40.* On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established. State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is

11 (1987) 2 SCC 295
12 (1969) 1 SCC 414
3 (1979) 3 SCC 489
2 (1980) 4 SCC 1
13 (1983) 4 SCC 556
14 (1985) 3 SCC 267
15 (1986) 3 SCC 391

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considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.

41. Applying these tests, we find it is impossible to hold that the Government of West Bengal did not act with probity in not inviting tenders or in not holding a public auction but negotiating straightway at arm's length with the Taj Group of Hotels."

This Court also found that on the commercial and financial aspect of the lease even on a prima facie view, there appears to be nothing wrong or objectionable in the "net sales" method. The "net sales" method is a fairly well-known method adopted in similar situations. It is profit-oriented and appears to be in the best interest of the Government of West Bengal.

8. There was collusion among certain members of the Mahapalika, its officers and the builder. Even the conduct of the lawyer of the Mahapalika was commented upon adversely. It was not necessary for the Mahapalika to file a separate appeal against the impugned judgment of the High Court. These members of the Mahapalika equated themselves with the builder. The lawyer of the Mahapalika drafted the agreement dated 4-11-1993 between the Mahapalika and the builder. He also filed special leave petitions on behalf of the Mahapalika which have since been withdrawn. All the fees of the lawyer of the Mahapalika for attending the meetings of the Mahapalika, drafting the agreement, preparing special leave petitions, etc. were paid by the builder though that was shown to be done at the instance of the Mahapalika. There is on the record of the Mahapalika a letter of the builder that there was a collusion among the Mahapalika, the builder, the lawyers and the officers of the Mahapalika, the Architect of the Mahapalika, who approved the layout plan and was also the Architect of LDA. After the layout plan was submitted to LDA the Architect of the Mahapalika himself okayed the layout plan as Architect of LDA, which was then approved by the Vice-Chairman of LDA.

9. A body corporate cannot be made to remain bound by its earlier decision if that decision is found to be contrary to law. There could not be any estoppel against the statute particularly when the whole project is against public interest. The State Government was right in changing its stand. The State Government considered the whole matter and on the representations received from the public decided to accept the judgment of the High Court.

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10. The agreement is a fraud on the power of the Mahapalika. Prime land has been given to the builder for a song. The fact that the scheme was so lucrative could be seen that all shops to be constructed less 5% were booked within six days of the advertisement appearing in December 1993. Public interest and public exchequer have been sacrificed. The Mahapalika divested itself of its control over the project. The agreement is wholly one-sided favouring the builder. It is unjust, unreasonable and irrational.

11. The builder had already collected Rs 25,000 from each of the prospective allottees at the time of registration when it was originally planned to construct 500 shops. There were no building plans in existence. Collecting of this amount by the builder is of no consequence in deciding the present appeals. It is now stated that 263 shops had been constructed though the builder collected earnest money for 500 shops. In spite of the judgment of the High Court the builder did not care to refund the earnest money so collected. Its conduct does not entitle it to any consideration. No proper study was undertaken before the Mahapalika granted its approval for construction of the underground shopping complex. There were no building plans when the agreement was entered into.

12. The narrow consideration that a few crores of rupees have been spent on the construction cannot come into consideration when the construction is in clear violation of the Act, the Development Act and Article 21 of the Constitution. That crores of rupees have been spent is an argument which is advanced in every other case of unauthorised construction.

13. There is no alternative to the construction which is unauthorised and illegal and is to be dismantled. The whole structure built is in contravention of the provisions of law as contained in the Development Act. The decision to award contract and the agreement itself was unreasonable. The construction of the underground shopping complex, if allowed to stand, would perpetuate an illegality. The Mahapalika could not be allowed to benefit from the illegality. A decision of this Court in *Badri Prasad* v. *Nagarmal*[16] (SCR at p. 774) was referred to, to contend that the Court could not exclude from its consideration a public statute and since the construction of the underground shopping complex was wholly illegal it had to be dismantled. No question of moulding a relief can arise as the builder made the construction on the basis of the interim order of this Court and at its own risk. Various decisions of this Court in support of these contentions where demolition of unauthorised construction was ordered, were referred to, these being (1) *K. Ramadas Shenoy* v. *Chief Officers, Town Municipal Council*[17] (SCR at p. 685);

16 AIR 1959 SC 559 : 1959 Supp (1) SCR 769, 774
17 (1974) 2 SCC 506 : (1975) 1 SCR 680, 685

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(2) *Virender Gaur* v. *State of Haryana*[18] (SCC at p. 582); (3) *Pleasant Stay Hotel* v. *Palani Hills Conservation Council*[19] (SCC at p. 139); (4) *Cantonment Board, Jabalpur* v. *S.N. Awasthi*[20] (SCC at p. 596); (5) *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*[21]; (6) *G.N. Khajuria (Dr)* v. *Delhi Development Authority*[22]; (7) *Manju Bhatia* v. *New Delhi Municipal Council*[23]; and (8) an unreported decision of this Court in *Ram Awatar Agarwal* v. *Corpn. of Calcutta*[24].

In *K. Ramadas Shenoy* v. *Chief Officers, Town Municipal Council*[17] the respondent was granted by a resolution of the Municipal Committee to construct a cinema theatre at a place where the earlier respondent was granted licence for the construction of Kalyan Mantap-cum-Lecture Hall. In a petition under Article 226 of the Constitution the High Court held that the cinema theatre could not be constructed in a place other than specified localities without proper sanction but since the third respondent had spent a large sum of money it did not quash the impeached resolution of the Municipal Committee. The appellant contended before this Court that the Town Planning Scheme forbade the cinema building at the place asked for and, therefore, the resolution of the Municipal Committee was invalid. This Court observed as under: (SCC pp. 513-14, paras 28-29)

> "*28.* An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The Scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the Scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the courts will quash orders passed by Municipalities in such cases.
>
> *29.* The Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The Scheme here is for the benefit of the

18 (1995) 2 SCC 577, 582
19 (1995) 6 SCC 127, 139
20 1995 Supp (4) SCC 595, 596
21 (1991) 3 SCC 341
22 (1995) 5 SCC 762
23 (1997) 6 SCC 370 : JT (1997) 5 SC 574
24 (1999) 6 SCC 532
17 (1974) 2 SCC 506 : (1975) 1 SCR 680, 685

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public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction."

In *Virender Gaur* v. *State of Haryana*[18] the Municipal Committee, Thanesar, District Kurukshetra in the State of Haryana framed a Town Planning Scheme, which was sanctioned by the Government. In the Scheme certain land vested in the Municipality. The State Government sanctioned allotment of that land to the Punjab Samaj Sabha on payment of a price at the rates specified therein. When the Punjab Samaj Sabha after getting sanction started construction the appellants filed writ petition in the Punjab and Haryana High Court, which was, however, dismissed. It was submitted before this Court that the purpose of the Scheme was to reserve the land in question for open spaces for the better sanitation, environment and the recreational purposes of the residents in the locality and that the Government had no power to lease out the land to the Punjab Samaj Sabha. Reversing the judgment of the High Court this Court said that after the writ petition was filed by the appellants the Punjab Samaj Sabha instead of awaiting the decision on merits proceeded with the construction in post-haste and expended the money on the construction. "Therefore", the Court said (at SCC pp. 583-84, para 12)

> "we do not think that it would be a case to validate the actions deliberately chosen, as a premium, in not granting the necessary relief. It was open to the Punjab Samaj Sabha to await the decision and then proceed with the construction. Since the writ petition was pending, it was not open to them to proceed with the construction and then to plead equity in their favour. Under these circumstances, we will not be justified in upholding the action of the State Government or the Municipality in allotting the land to Punjab Samaj Sabha to the detriment of the people in the locality and in gross violation of requirements of the Scheme. Any construction made by Punjab Samaj Sabha should be pulled down and it must be brought back to the condition in which it existed prior to allotment. The Municipality is directed to pull down the construction within four weeks from today. They should place the report on the file of the Registry of the action taken in the matter".

In *Pleasant Stay Hotel* v. *Palani Hills Conservation Council*[19] the question was whether the impugned government orders were lawfully and validly made and, if so, whether they could regularise the unauthorised construction. The High Court quashed the impugned government orders and issued certain directions. This Court observed as

18 (1995) 2 SCC 577, 582
19 (1995) 6 SCC 127, 139

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under and then referred the matter to the High Court for certain clarifications: (SCC p. 139, para 28)

> "In our considered opinion the most eloquent and patent fact that must tilt the scale in this dispute in favour of the Council is that the Hotel has admittedly made a residential construction of seven floors even though their sanctioned plan was only for two floors. That necessarily means that five floors of the building have been constructed illegally and unauthorisedly. It is not surprising therefore that the entire endeavour of the Hotel now is to protect the two floors constructed above the road level and to yield to any workable formula. It is in that context that the Hotel, without prejudice to its rights and contentions, had suggested that the entire structure of seven floors might be allowed to remain and, for that purpose it was prepared to give an undertaking that they would not use the five floors below the road level for any residential purpose but utilise it only for keeping air-conditioning plant and other attendant purposes for running the Hotel on the two floors above the road level. The Council, however, vehemently opposed the above suggestion on the ground that acceptance thereof would mean giving judicial imprimatur to utter and flagrant breach of statutory provisions to which the Hotel resorted to in spite of repeated opportunities given and reminders issued to retrace their steps and any sympathy shown to the Hotel would be wholly misplaced. We need not, however, dilate on this aspect of the matter as it appears to us that there is some confusion as to the nature of the above-quoted direction, given by the High Court and it requires to be clarified."

In *Cantonment Board, Jabalpur* v. *S.N. Awasthi*[20] this Court observed that construction made in contravention of law would not be a premium to extend equity so as to facilitate violation of the mandatory requirements of law. Here the Cantonment Board had granted permission for construction of a building which was later on cancelled as the resolution of the Board granting permission was suspended by the GOC-in-Chief.

In *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*[21] this Court came down heavily on the housing society which made construction in violation of the Floor Space Index. This Court said that such unlawful construction was made by the Housing Board in clear and flagrant violation and disregard of FSI and upheld the order of demolition of eight floors as ordered by the Bombay Municipal Corporation. While dismissing the special leave petition this Court observed as under: (SCC pp. 345-46, para 7)

> "Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of

20 1995 Supp (4) SCC 595, 596
21 (1991) 3 SCC 341

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unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and bye-laws are made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits."

In *Dr G.N. Khajuria* v. *Delhi Development Authority*[22] the appellants were some of the residents of Sarita Vihar Colony, developed by the Delhi Development Authority (DDA). It was contended that DDA permitted a nursery school to be opened in a certain park in complete violation of the provisions of the Delhi Development Act, 1957. After considering the provisions of the Delhi Development Act and the Master and Zonal Development Plans this Court said that the site at which the school was allowed to be opened was a park. It further held that it was not open to DDA to carve out any space meant for a park for a nursery school. This Court said that the allotment for opening the nursery school was misuse of power and it cancelled the allotment. This Court observed that the construction put up by the allottee, even though permanent, was of no relevance as the same has been done on a plot of land allotted to it in contravention of law. As to the submission that dislocation from the present site would cause difficulty to the tiny tots, this Court said that the same has been advanced only to get sympathy from the Court inasmuch as the children, for whom the nursery school is meant, would travel to any other nearby place where such a school would be set up by the allottee or by any other person. Six months' time was granted to the allottee to make alternative arrangements as it thinks fit to shift the school so that the children are not put to any disadvantageous position. Then, this Court observed as under: (SCC p. 766, para 10)

> "*10.* Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officer of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot-free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who

22 (1995) 5 SCC 762

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made the hay when the sun shined, retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite."

In *Manju Bhatia* v. *New Delhi Municipal Council*[23] the builder, after obtaining requisite sanction to build 8 floors, constructed more floors, sold the flats and gave possession to the respective buyers. Subsequently it was found that the builder constructed the building in violation of the building regulations and consequently the flats on the top four floors were ordered to be demolished. The demolition was challenged in the High Court by way of a writ petition, which was dismissed. Special leave to appeal to this Court was also dismissed. The question before this Court was whether the appellants, who had purchased the flats without the builder informing them of the illegal construction, should be compensated for the loss suffered by them. The High Court in the impugned judgment directed the return of the amount plus the escalation charges. All this was on a suit brought by the appellants. This Court noticed that the escalated price as on the date was around Rs 1.5 crores per flat. Taking into consideration the totality of the circumstances this Court directed the builder to pay Rs 60 lakhs including the amount paid by the allottees.

In an unreported decision of this Court in *Ram Awatar Agarwal* v. *Corpn. of Calcutta*[24] an unauthorised construction in the city of Calcutta was allowed to be demolished by the Corporation of Calcutta. It was a multi-storeyed building. The Court observed as under:

> "We share the feeling of the Deputy City Architect when he states in para 18 of his affidavit that this is a case in which an unscrupulous builder took advantage of the Court's order up to a point of time and after he failed in the legal process up to this Court the tenants were set up to delay the inevitable and thus in this matter the unauthorised structure, hazardous and unsafe, has stood all these years. We have, therefore, no manner of doubt that this is a case in which exemplary costs should be awarded."

46. At the conclusion of the arguments and in order to decide the matter fully and finally but without prejudice to the respective contentions of the parties, we wanted to know the nature of construction so far as carried out; the cost thereof; the area meant for shopping and parking separately; and if the plans were in accordance with the Development Act and Rules. This was particularly so when by an interim order of this Court construction was allowed though with certain clear stipulations.

47. Prof. T.S. Narayanaswamy, Ex-Head of the Department of Building Engineering and Management, School of Planning and Management, New Delhi was appointed as Local Commissioner for the purpose. He was asked to report on the following aspects of the construction:

23 (1997) 6 SCC 370 : JT (1997) 5 SC 574
24 (1999) 6 SCC 532

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"*1.* What is the extent of construction put up by the appellant underground in the aforesaid part?

2. What is the nature of the said construction?

3. What cost can be said to have been incurred by the appellant in the construction uptil now?

4. What further costs, if any, are required to be incurred for completion of the project with parking provisions?

5. What will be the extent of the cost required to be incurred if the structures existing on the spot are required to be demolished and the land is to be restored to its original position?

6. Whether the present structures are put up by the appellant in accordance with the building plans sanctioned by the Nagar Nigam?

7. Whether the present structures comply with the building requirements as per the provisions governing the Lucknow Development Authority?

8. Whether the structures existing on the spot are safe and sound and not likely to create any health hazard, if they are allowed to be retained on spot?

9. Whether the existing structures with suitable alterations can be used for parking of vehicles and/or for putting up other amenities like public convenience etc.?

10. If the land earmarked for parking in the building plans submitted to the Nagar Nigam by the appellant, and which land is dug up at present, is restored to its original position, is it feasible to use the existing structures for parking of vehicles and for putting up other amenities?

11. What are the existing general conditions of the locality and the area around the park?"

48. It is not necessary to examine the report of the Local Commissioner in detail except to note that:

1. extent of work carried out is approximately 80% of the civil and structural work, about 30% of the finishing work and 20% of the services' support work;

2. it is a "first class" permanent construction;

3. cost of construction of the work so far executed is approximately Rs 3.52 crores and the cost of work still to be done is approximately Rs 2.97 crores;

4. dismantling of the construction so far made and restoration of the park would cost Rs 98,10,181 less Rs 22,19,550 salvage value;

5. though there is a letter of approval of confirmation having been given, there are no sanctioned drawings (the Chief Architect of the Mahapalika said that sanctioned drawings were "missing" from his files);

6. the Lucknow Development Authority (LDA) did not play any role in sanctioning the project except the layout plan (Layout plan was

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forwarded to LDA by the Chief Architect of the Mahapalika who was also officiating as the Chief Architect of LDA at that time. In other words, the approval of the layout at the LDA level was recommended by the same person who forwarded it from the Mahapalika.);

7. the Master Plan could not have envisaged the park as a site available for commercial exploitation, given the density and congestion of the surrounding area;

8. structure as designed is safe from the structural engineering viewpoint;

9. air pollution levels of the park and the surrounding areas would go up by a substantial amount as a result of underground shopping complex-cum-parking; and

10. there is a lot of crowding during day hours (9.00 a.m. to 6.00 p.m.) leading to generally slow movement of traffic and occasional traffic hold-ups. A high decibel level thanks to vehicles and moving people and vendors. A lot of solid waste collection at the end of the day and generally a high level of pollution as a result.

By and large the report of Prof. Narayanaswamy has found acceptance by all the parties.

49. Mr M.L. Verma, learned Senior Advocate who appeared for M.I. Builders after the report of Prof. Narayanaswamy, submitted that the report of the Local Commissioner insofar as it gives the cost incurred on the constructions is not correct and so also the cost required to be incurred for completion of the project. His argument was that the cost so far incurred was in fact more than what the Local Commissioner said and that the cost required for completion of the project was less than that arrived at by the Local Commissioner. We, however, do not find merit in his submission as we find that the Local Commissioner has applied the same principles while arriving at the cost so far incurred and the cost to be incurred for completion of the project. We, therefore, accept the report of the Local Commissioner in its entirety. But to what effect we shall presently see.

50. Jhandewala Park, the park in question, has been in existence for a great number of years. It is situated in the heart of Aminabad, a bustling commercial-cum-residential locality in the city of Lucknow. The park is of historical importance. Because of the construction of underground shopping complex and parking it may still have the appearance of a park with grass grown and path laid but it has lost the ingredients of a park inasmuch as no plantation now can be grown. Trees cannot be planted and rather while making underground construction many trees have been cut. Now it is more like a terrace park. Qualitatively it may still be a park but it is certainly a park of a different nature. By construction of underground shopping complex irreversible changes have been made. It was submitted that the park was acquired by the State Government in the year 1913 and was given to the Mahapalika for its management. This has not been controverted. Under Section 114 of the Act it is the obligatory duty of the Mahapalika to maintain

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public places, parks and plant trees. By allowing underground construction the Mahapalika has deprived itself of its obligatory duties to maintain the park which cannot be permitted. But then one of the obligatory functions of the Mahapalika under Section 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing an underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done. The Mahapalika is the trustee for the proper management of the park. When the true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by this Court in *Span Resort case*[10]. Public trust doctrine is part of Indian law. In that case the respondent who had constructed a motel located at the bank of River Beas interfered with the natural flow of the river. This Court said (at SCC p. 413, para 35) that the issue presented in that case illustrated

> "the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change".

51. In the treatise *Environmental Law and Policy: Nature, Law, and Society* by Plater Abrams Goldfarb (American Casebook Series, 1992) under the Chapter on Fundamental Environmental Rights, in Section 1 (*The Modern Rediscovery of the Public Trust Doctrine*) it has been noticed that "long ago there developed in the law of the Roman Empire a legal theory known as the 'doctrine of the public trust' ". In America public trust doctrine was applied to public properties, such as shore lands and parks. As to how that doctrine works it was stated:

> "The scattered evidence, taken together, suggests that the idea of a public trusteeship rests upon three related principles. First, that certain interests 'like the air and the sea' have such importance to the citizenry as a whole that it would be unwise to make them the subject of private ownership. Second, that they partake so much of the bounty of nature, rather than of individual enterprise, that they should be made freely available to the entire citizenry without regard to economic status. And, finally, that it is the principal purpose of a Government to promote the interests of the general public rather than to redistribute public goods from broad public uses to restricted private benefit...."

With reference to a decision in *Illinois Central Railroad Co.* v. *Illinois*[25] it was stated that

10 *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388
25 146 US 387 : 36 L Ed 1018 (1892)

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"the Court articulated in that case the principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable scepticism upon any governmental conduct which is calculated either to reallocate the resource to more restricted uses or to subject public uses to the self-interest of private parties".

This public trust doctrine in our country, it would appear, has grown from Article 21 of the Constitution.

52. Thus by allowing construction of underground shopping complex in the park the Mahapalika has violated not only Section 114 of the Act but also the public trust doctrine.

53. If we now refer to the provisions of law relating to notice of meetings and business of the Mahapalika and its committees it is apparent that these provisions were not adhered to. There is no authority with the Mahapalika to constitute a High Power Committee and to delegate its functions to that High Power Committee. There was no agenda at any time in any of the meetings of the Mahapalika for consideration of the underground shopping complex. There were no proposals, no documents, no plan, no study, no project report or feasibility report on the basis of which the Mahapalika could have given a green signal for construction of the underground shopping complex. There was no discussion and no informed decision. The Mahapalika completely abdicated its functions. The Mahapalika delegated its functions to the High Power Committee in contravention of the Act. Constitution of the High Power Committee itself was wholly illegal. The High Power Committee took the decision to hand over the park to the builder for construction of the underground shopping complex and also approved the terms of the agreement dated 4-11-1993. The decision of the High Power Committee was put before the Executive Committee and the General Body of the Mahapalika for the purpose of "information" and both these bodies stamped their approval. As noted above there was no agenda for consideration of these resolutions of the Executive Committee of the Mahapalika. The Corporators had no time to apply their minds. Such an important matter, where the cost of the project was likely to run into crores of rupees, could not have been considered under the topic "Other Subjects, Subject to the Permission of the Presiding Officer". Section 105 of the Act protects any act done or proceeding taken on account of any defect or irregularity in procedure not affecting the substance. In the present case it is not mere irregularity or defect in the procedure but the whole procedure is in clear breach of Sections 91 and 119 of the Act which are mandatory.

54. The law mandates that not only the notice of the date and the time of the meeting but the notice of the business to be transacted at such meeting should be given at least 4 clear days before the date of the meeting for the Mahapalika and 3 days for the Executive Committee. When the agenda did not include the subject of construction of underground shopping complex nor was there any material to support the discussion on the subject of

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construction of underground shopping complex it could not have been considered in the meetings of the Mahapalika and the Executive Committee.

55. In *Myurdhwaj Coop. Group Housing Society Ltd.* v. *Presiding Officer, Delhi Coop. Tribunal*[26] the appellant was a housing cooperative society registered under the Delhi Cooperative Societies Act, 1972 and the Delhi Cooperative Societies Rules, 1973. In the meeting of the General Body of the Society, it was decided that only those who have deposited minimum amount specified by the general meeting would be allotted flats and the others would be accommodated on the flats to be constructed on the additional land in Phase II construction. Respondent 3 who was one of the original members of the Society challenged the decision of the general meeting. One of the contentions raised was that decision of the General Body which relegated her and other such members to Phase II was not on the agenda. This Court said a General Body can always with the approval of the House in the meeting of its members take up any other matter not covered by the agenda on that account and that no illegality could be held. This Court also observed that Section 28 of the Delhi Cooperative Societies Act, 1972 vests final authority in the General Body of a cooperative society. It has wide powers including residuary power except those not delegated to any other authority under the Act, the rules and its bye-laws. In other words, its power, if any, is only restricted by the Act, the rules, the bye-laws and any order having force of law. This decision is of no help to the appellant as in the present case we are considering the statutory provisions for holding the meetings of the Mahapalika and the Executive Committee which have been violated.

56. The agreement dated 4-11-1993 has not been executed as required under Section 133 of the Act. The resolution of the High Power Committee, which was placed before the Mahapalika and the Executive Committee for information, required that "the prescribed project may be got executed by M.I. Builders Pvt. Ltd. and the Mukhya Nagar Adhikari should be authorised for conducting all the forthcoming actions and formalities". Now, the Mahapalika has power to enter into contracts (Section 131). Under sub-section (1) of Section 132 a contract shall be expressed to be made, for and on behalf of the Mahapalika, and shall be so executed for and on behalf of the Mahapalika. Under sub-section (4), no contract involving an expenditure exceeding five lakh rupees shall be made by the Mukhya Nagar Adhikari (Chief Executive Officer) unless it has been sanctioned by the Mahapalika. Proviso (*a*) to Section 133(1) requires the common seal of the Mahapalika to be affixed on every contract. The common seal shall be affixed only in the presence of a Corporator (Sabhasad) who shall attach his signatures to the contract in token that the same was sealed in his presence. The signature of the Corporator shall be distinct from the signature of any witness to the execution of such contract [sub-sections (2) and (3) of Section 133]. Under sub-section (4) of Section 133 no contract executed otherwise than as

26 (1998) 6 SCC 39

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provided in the section shall be binding on the Mahapalika. The impugned agreement is thus not executed in accordance with the requirements of law. Further, under sub-section (2) of Section 136 where the Mahapalika approves the project and the entire estimated cost exceeds rupees ten lakhs, the project report shall be submitted to the State Government and it is for the State Government to reject or sanction the project with or without modifications. Till that is done no work shall be commenced. No such sanction of the State Government was obtained in the present case. It was submitted that this provision would apply only if the project cost was to be incurred by the Mahapalika. We do not think it is so. It is the cost of the project that matters and not who incurs the cost in the first instance. The agreement dated 4-11-1993 is, therefore, not a valid contract and not binding on the Mahapalika. As held in *H.S. Rikhy case*[8] where a statute makes a specific provision that a body corporate has to act in a particular manner and in no other, that provision of law being mandatory and not directory has to be strictly followed. This principle will apply both as regards holding of meeting of the Mahapalika and execution of contract on its behalf. This judgment is also an authority for the proposition that there is no estoppel against a statute.

57. We may now examine some of the terms of the agreement dated 4-11-1993. There are six recitals to the agreements which cannot be correlated to any discussion in any of the meetings of the Mahapalika, the Executive Committee or the High Power Committee. Under clause (2) of the agreement it is for the builder to make a construction at its own cost and then to realise the cost with profit not exceeding more than 10% of the investment in respect of each shop. Nobody knows how much cost the builder is likely to incur and how long it will continue to be in possession of the shopping complex. Full freedom has been given to the builder to lease out the shops as per its own terms and conditions to persons of its choice on behalf of the Mahapalika and the Mahapalika shall be bound by these terms and conditions. The builder has also been given the right to sign the agreement on behalf of the Mahapalika on the terms and conditions which the builder may deem fit and proper. The builder is only required to give a copy of the agreement to the Mahapalika after its execution and both the Mahapalika and the builder shall remain bound by the terms of that agreement. Since there is no project report nobody knows how many shops the builder would construct and of what sizes. The Mahapalika is allowed to charge Rs 5000 per shop for every second and subsequent transfer of shops by the builder but what amount is to be charged for the first transfer or subsequent transfers is left to the sole discretion of the builder. A bare glance at the terms of the agreement shows that not only the clauses of the agreement are unreasonable for the Mahapalika but they are atrocious. No person of ordinary prudence shall ever enter into such an agreement. A trustee, which the Mahapalika is, has to be more cautious in dealing with its properties. Valuable land in the heart of a commercial area has been handed on a platter to the builder for it to exploit

8 *H.S. Rikhy (Dr)* v. *New Delhi Municipal Committee*, AIR 1962 SC 554

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and to make runaway profits. As a matter of fact on examining the terms of the agreement we find that the Mahapalika has been completely ousted from the underground shopping complex for an indefinite period. It has completely abdicated its functions.

58. To repeat, the agreement is completely one-sided favouring the builder. A land of immense value has been handed over to it to construct an underground shopping complex in violation of the public trust doctrine and the Master Plan for the city of Lucknow. The Mahapalika has no right to step in even if there is any violation by the builder of the terms of the agreement or otherwise. The Mahapalika, though considered to be the owner of the land, is completely ousted and divested of the land for a period which is not definite and which depends wholly on the discretion of the builder. On the question of reasonableness reference may be made to *Wade on Administrative Law*, 7th Edn., p. 399. The learned author observed that:

> "The court must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate."

Quoting Lord Hailsham, L.C. in *W. (an infant), Re*[27] where he said:

> "Two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable."

The following passage from the treatise would be relevant:

> "This is not therefore the standard of 'the man on the Clapham omnibus'. It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do. It distinguishes between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come. This is the essence of what is now commonly called 'Wednesbury unreasonableness', after the now famous case in which Lord Greene, M.R. expounded it as follows:
>
> > 'It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'.

27 1971 AC 682 : (1971) 2 All ER 49

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Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington, L.J. in *Short* v. *Poole Corpn.*[28] gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.'

This has become the most frequently cited passage (though most commonly cited only by its nickname) in administrative law. It explains how 'unreasonableness', in its classic formulation, covers a multitude of sins. These various errors commonly result from paying too much attention to the mere words of the Act and too little to its general scheme and purpose, and from the fallacy that unrestricted language naturally confers unfettered discretion.

Unreasonableness has thus become a generalised rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category or errors commonly described as 'irrelevant considerations', and mistakes and misunderstandings which can be classed as self-misdirection, or addressing oneself to the wrong question. But the language used in the cases shows that, while the abuse of discretion has this variety of differing legal facets, in practice the courts often treat them as distinct. When several of them will fit the case, the court is often inclined to invoke them all. The one principle that unites them is that powers must be confined within the true scope and policy of the Act.

Taken by itself, the standard of unreasonableness is nominally pitched very high: 'so absurd that no sensible person could ever dream that it lay within the powers of the authority' (Lord Greene, M.R.); 'so wrong that no reasonable person could sensibly take that view' (Lord Denning, M.R.), 'so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it' (Lord Diplock). It might seem from such language that the deliberate decisions of ministers and other responsible public authorities could almost never be found wanting. But, as may be seen in the following pages, there are abundant instances of legally unreasonable decisions and actions at all levels. This is not because ministers and public authorities take leave of their senses, but because the courts in deciding cases tend to lower the threshold of unreasonableness to fit their more exacting ideas of administrative good behaviour."

59. When we keep in view the principles laid by this Court in its various judgments and which we have noticed above. it has to be held that the agreement dated 4-11-1993 is not a valid one. The agreement defies logic. It

28 1926 Ch 66 : 1925 All ER Rep 74

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is outrageous. It crosses all limits of rationality. The Mahapalika has certainly acted in a fatuous manner in entering into such an agreement. It is a case where the High Court rightly interfered in exercise of its powers of judicial review keeping in view the principles laid down by this Court in *Tata Cellular* v. *Union of India*[1]. Every decision of the authority except the judicial decision is amenable to judicial review and reviewability of such a decision cannot now be questioned. However, a judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. On the principle of good governance reference was made to a decision of the Division Bench of the Bombay High Court in *State of Bombay* v. *Laxmidas Ranchhoddas*[29] (AIR Bom at p. 475) (para 12). It was submitted that bad governance sets a bad example. That is what exactly happened in the present case.

60. In *State of Bombay* v. *Laxmidas Ranchhoddas*[29] a Division Bench of the High Court was considering the argument that the writ of mandamus being discretionary, the Court should consider whether it should not put a limitation upon its own powers and jurisdiction. It was submitted that it was impossible for any State to function if there was a constant interference by the High Court in the executive acts performed by the officers of the State. Chagla, C.J., speaking for the Court, said:

> "It may be that interference by the High Court may result in inconvenience or difficulty in administration. But what we have to guard against is a much greater evil. When we find in the modern State wide powers entrusted to Government, powers which affect the property and person of the citizen, it is the duty of the courts to see that those wide powers are exercised in conformity with what the legislature has prescribed. We are not oblivious of the fact that in order that the modern State should function the Government must be armed with very large powers. But the High Court does not interfere with the exercise of those powers. The High Court only interferes when it finds that those powers are not exercised in accordance with the mandate of the legislature. Therefore, far from interfering with the good governance of the State, the Court helps the good governance by constantly reminding the Government and its officers that they should act within the four corners of the statute and not contravene any of the conditions laid down as a limitation upon their undoubtedly wide powers. Therefore, even from a practical point of view, even from the point of view of the good governance of the State, we think that the High Court should not be reluctant to issue its prerogative writ whenever it finds that the sovereign legislature has not been obeyed and powers have been assumed which the legislature never conferred upon the executive."

1 (1994) 6 SCC 651

29 AIR 1952 Bom 468, 475 (para 12) : 54 Bom LR 681

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61. It cannot be said that the construction of the underground shopping complex is by the builder as an agent of the Mahapalika. The concept of agency is totally missing in the present case. Rather the deal is from principal to principal. Reference may be made to the decision of this Court in *Akadasi Padhan case*[9] quoted above. When the "development" is by the builder the provisions of Section 14 of the Development Act would apply. There is no sanction of the building plan of the underground shopping complex by LDA. Construction is, therefore, per se illegal. Even after the interim order of this Court allowing construction, plans were not got sanctioned from LDA, which would be the authority under the Development Act. Sanction of the building plan by the Mahapalika would, therefore, be meaningless. Even then, there were no sanctioned drawings. It has been pointed out that the process of sanction appeared to be ad hoc and skeletal. When construction started LDA issued a show-cause notice to the Mahapalika but then in view of the interim order made by this Court the show-cause notice was subsequently withdrawn. It was stated that against the order withdrawing the show-cause a revision was filed by Mr Amrit Puri, a writ petitioner to the State Government, which was stated to be still pending.

62. It is not disputed that there is a Master Plan applicable to the city of Lucknow. This Master Plan is prepared under the Development Act. It was submitted by the builder that the park could be exploited for commercial purposes as Aminabad has been shown to be a commercial area. No doubt Aminabad is a commercial area but that does not mean that the park can be utilised for commercial purposes. Rather using the park for commercial purposes would be against the Master Plan. However, in the letter dated 16-10-1993 the Vice-Chairman, LDA to the Mahapalika did say:

> "I am to inform you in this regard that the land use of Jhandewala Park situated in Aminabad is a commercial one as per the Master Plan. This Department has no objection on the layout plan submitted accordingly."

63. How this letter came to be written one may notice the sequence. The High Power Committee meets on 13-10-1993 and is adjourned to 19-10-1993. Mr G.C. Goyal is Architect of the Mahapalika and he forwarded the layout plan to LDA. Mr Goyal is also officiating as Architect of LDA. Approval of the layout plan by LDA is dated 16-10-1993, which is 3 days before the next meeting of the High Power Committee. This approval of the layout at LDA was recommended by the same person who forwarded it from the Mahapalika and in a great hurry. In the Master Plan for the city of Lucknow, it is Aminabad area which is commercial and that would not mean that the park can be put to commercial use. By letter dated 23-11-1993, LDA objected to the construction being undertaken in the park without obtaining permission/no-objection from it and required the construction to stop. The Mahapalika in turn by its letter sent on the following day to the builder informed it of the objection raised by LDA and that before starting any

9 *Akadasi Padhan* v. *State of Orissa*, AIR 1963 SC 1047 : 1963 Supp (2) SCR 691, 722

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construction the permission/no-objection of LDA as required under Sections 14 and 15 of the Development Act was necessary. It does appear to us that the Master Plan of the city of Lucknow could not have envisaged Jhandewala Park as a site available for commercial exploitation considering the density and congestion in the area.

64. The reason for the construction of underground shopping complex given was that it would remove the congestion in the area. We have the report of the Local Commissioner, which says that it would rather lead to more congestion. We think Mr Dave is right in his submission that a decision to construct underground shopping complex by M.I. Builders had already been taken and that the whole process was gone into to confer undue benefit on M.I. Builders and the bogie of congestion was introduced to justify the action of the Mahapalika. It is wholly illegal and smacks of arbitrariness, unreasonableness and irrationality.

65. We may also note the argument of Mr Adarsh Goel who said that Jhandewala Park was acquired by the State in the year 1913 and was given to the Mahapalika for its management. He said that under Section 41 of the Development Act read with Section 5 of the U.P. Regulation of Building Operations Act a government order was issued on 18-8-1986 by the State Government whereby the use of a park for any other use was prohibited. This direction of the State Government was incorporated in the Master Plan for the city of Lucknow and of course violated by allowing construction of an underground shopping complex.

66. Action of the Mahapalika in agreeing to the construction of an underground shopping complex in contravention of the provisions of the Act and then entering into an agreement with the builder against settled norms was wholly illegal and has been held to be so by the High Court. No doubt the Mahapalika is a continuing body and it will be estopped from changing its stand in the given case. But when the Mahapalika finds that its action was contrary to the provisions of law by which it was constituted there could certainly be no impediment in its way to change its stand. There cannot be any estoppel operating against the Mahapalika. The principles laid down in *Union of India* v. *Anglo Afghan Agencies Ltd.*[4] and of the Calcutta High Court in *Ganges Mfg. Co.* v. *Sourujmull*[5] cannot apply to the facts of the present case.

67. Section 128 of the Act confers powers on the Mahapalika to sell, let out, hire, lease, exchange, mortgage, grant otherwise dispose of any property or any interest therein acquired by or vested in the Mahapalika. The appellant and the intervenors said that there was no disposal of any property and no interest in the land had been transferred by the Mahapalika to the builder. The respondent, as noted above, contended to the contrary. Under Section 54 of the Transfer of Property Act, 1882 agreement to sell does not create any

4 AIR 1968 SC 718 : (1968) 2 SCR 366
5 ILR (1880) 5 Cal 669, 678 : 5 CLR 533

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interest in land. We are not concerned with this provision. Reference may, however, be made to Sections 60(*b*) and 62(*f*) of the Easements Act, 1882. Though the licence under Section 60(*b*) is irrevocable but it can be revoked after the happening of a certain event which is when the builder has recovered the whole of his investment plus 10% of the profit. Reference may be made to a decision of this Court in *Chevalier I.I. Iyyappan* v. *Dharmodayam Co.*[30] In this case an argument was raised by the appellant that he had been granted a licence and acting upon the licence he had executed a work of permanent character and incurred expenses in the execution thereof and, thereafter, under Section 60(*b*) of the Easements Act, 1882 the licence was irrevocable. This Court said:

> "In our opinion no case of licence really arises but if it does what is the licence which the appellant obtained and what is the licence which he is seeking to plead as a bar. The licence, if it was a licence, was to construct the building and hand it over to the respondent Company as trust property. There was no licence to create another kind of trust which the appellant has sought to create. It cannot be said therefore that there was an irrevocable licence which falls under Section 60(*b*) of the Act. Even such a licence is deemed to be revoked under Section 62(*f*) of that Act where the licence is granted for a specific purpose and the purpose is attained or abandoned or becomes impracticable. In the present case the purpose for which the licence was granted has either been abandoned or has become impracticable because of the action of the appellant."

[*The Indian Easements Act, 1882*: Sections 52, 53, 60(*b*) and 62(*f*):

> "52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.
>
> 53. A licence may be granted by anyone in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the licence.
>
> * * *
>
> 60. A licence may be revoked by the grantor, unless—
>
> (*a*) * * *
>
> (*b*) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution.
>
> * * *
>
> 62. A licence is deemed to be revoked—
>
> (*a*) to (*e*) * * *
>
> (*f*) where the licence is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable;]"

68. We find force in the submissions of the respondents that by granting licence to the builder to construct underground shopping complex of a

30 AIR 1966 SC 1017 : (1963) 1 SCR 85

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permanent nature and to hold on to the same for a period which is not definite and then under the impugned agreement the builder having been authorised to lease out the shops on behalf of the Mahapalika, it is a dubious method adopted to subvert the provisions of Section 128 which apply as well in the case of lease and thus the transaction will also be covered by the expression "otherwise dispose of any interest in the property". It is, therefore, difficult to accept the argument of the builder that the transaction is outside Section 128 of the Act. Now, first licence has been granted to the builder to enter upon the park and to execute a work of permanent character and incur expenses in the execution of the work, thus making the licence irrevocable. However, the licence is deemed to be revoked after the licensee has recovered his full cost on the construction plus 10% of the profit on the investment made by him. When this purpose is achieved by the licensee is anybody's guess. Not only that the licensee, i.e., the builder is then authorised to lease out the shops so constructed on behalf of the Mahapalika. The result would be that to the builder the provisions of Section 129 of the Act cannot be thus made applicable. In such a situation for the builder to contend that the transaction is not covered by Section 128 and, therefore, Section 129 will not apply is certainly incredulous. The provisions of Section 129 of the Act have, therefore, been flouted. The impugned agreement dated 4-11-1993 is bad having been executed also in contravention of the requirement of Section 129 of the Act.

69. The facts and circumstances when examined point to only one conclusion that the purpose of constructing the underground shopping complex was a mere pretext and the dominant purpose was to favour M.I. Builders to earn huge profits. In depriving the citizens of Lucknow of their amenity of an old historical park in the congested area on the specious plea of decongesting the area the Mahapalika and its officers forgot their duty towards the citizens and acted in a most brazen manner.

70. The proposition of construction of underground shopping complex was so lucrative and the land so valuable that the Mahapalika itself could have done it by collecting earnest money from the prospective allottees. But then nobody cared to examine this aspect and a plea was also advanced that the Mahapalika had no finance to undertake the project. If one refers to the agreement, the builder itself devised a self-financing scheme and it had not to spend anything from its own pocket. On mere booking of the shops the builder could collect rupees one crore twenty-five lakhs and would have collected more money with the progress of the construction at various stages. A public body would not sequester away its property by devising new methods.

71. Thus there are two distinct areas of challenge in the present case — (*1*) the agreement is a fraud on power, prime land has been given for a song by the Mahapalika. The fact that the scheme is so lucrative could be seen from the fact that all the shops less 5% were booked within six days of the advertisement appearing in December 1993. Public interest and the public

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exchequer have been sacrificed. The Mahapalika is divested of its control over the project though notionally not for ever but the builder, on the other hand, has control over the project for all times to come, and (2) construction is in contravention of the provisions of law as contained in the Development Act. The project has been entrusted to the builder in violation of the provisions of the Act. The decision taken by the Mahapalika was not on proper consideration and was not an informed objective decision. Judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. As said earlier the High Court rightly exercised its power of judicial review in the present case. It has examined the manner in which the decision was made by the Mahapalika. The second principle laid down in *Tata Cellular case*[1] applies in all respects. The High Court held that the maintenance of the park because of its historical importance and environmental necessity was in itself a public purpose and, therefore, the construction of an underground market in the garb of decongesting the area was wholly contrary and prejudicial to the public purpose. By allowing the construction the Mahapalika had deprived its residents as also others of the quality of life which they were entitled to under the Constitution and the Act. The agreement smacks of arbitrariness, unfairness and favouritism. The agreement was opposed to public policy. It was not in public interest. The whole process of law was subverted to benefit the builder. We agree with the findings and conclusions of the High Court.

72. The High Court in its impugned judgment has not doubted the capacity of M.I. Builders to undertake the project but then that is not the issue. The question is why was it not necessary to invite tenders for the project of such a high cost? Why was it thought that it was only M.I. Builders in the country who could undertake the job? Why was the project report not obtained to know the cost of the project? Why could it not be thought that there could be any other person who could undertake the job at a lesser cost and in an equally competent manner? Public interest has certainly been given a go-by. There was some undercurrent flowing to award the contract to M.I. Builders. The High Court said "lest we are taken amiss we wish to make it clear that we do not doubt either the bona fides of the authorities or the competence of the respondents M/s M.I. Builders to enter into the impugned agreement but we are of the view...." The competence of M/s M.I. Builders to undertake the project is not doubted when now it is seen that proper construction has been made but before taking the decision to award the contract to it nobody knew its credentials. No attempt was made whatsoever to consider if there was any other person more competent for the job or if of equal competence could offer better terms. In these circumstances, the dictum contained in the case of *Kasturi Lal Lakshmi Reddy* v. *State of J&K*[2] becomes inapplicable. No advantage can be drawn by

1 *Tata Cellular* v. *Union of India*, (1994) 6 SCC 651

2 (1980) 4 SCC 1

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the builder from the decision of this Court in *G.B. Mahajan case*[7] as here the whole process of awarding contract to M.I. Builders has been gone through in an unabashed manner and in flagrant violation of law with the sole purpose of conferring benefit on it. All said and done, we fail to understand the certificate given by the High Court about the bona fides of the authorities in awarding the contract to M/s M.I. Builders. The officers of the Mahapalika, who were impleaded as the respondents by name, did not file any replies to contradict the allegations made against them. Rather it appears that it was a fit case where the High Court should have directed an enquiry to be made as to how the project came to be awarded to M.I. Builders including the conduct of the lawyers.

73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.

74. In the present case we find that the builder got an interim order from this Court and on the strength of that order got sanction of the plan from the Mahapalika and no objection from LDA. It has no doubt invested considerable amount on the construction which is 80% complete and by any standard is a first class construction. Why should the builder take such a risk when the interim order was specific that the builder will make construction at its own risk and will not claim any equity if the decision in the appeal goes against it? When the interim order was made by this Court the Mahapalika and the State Government were favouring the builder. As a matter of fact the Mahapalika itself filed appeals against the impugned judgment of the High Court. Perhaps that gave hope to the builder to go ahead with the construction and to take the risk of getting the construction demolished and restoring the park to its original condition at its own cost. The builder did not foresee the change in stand not only of the Mahapalika but also of the State Government. It also, as it would appear, overrated its capacity to manage

7 *G.B. Mahajan* v. *Jalgaon Municipal Council*, (1991) 3 SCC 91

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with the State Government to change the land use of the park. The builder is not an innocent player in this murky deal when it was able to get the resolutions of the Mahapalika in its favour and the impugned agreement executed. Now, construction of shops will bring in more congestion and with that the area will get more polluted. Any commercial activity now in this unauthorised construction will put additional burden on the locality. The primary concern of the Court is to eliminate the negative impact the underground shopping complex will have on the environmental conditions in the area and the congestion that will aggravate on account of increased traffic and people visiting the complex. There is no alternative to this except to dismantle the whole structure and restore the park to its original condition leaving a portion constructed for parking. We are aware that it may not be possible to restore the park fully to its original condition as many trees have been chopped off and it will take years for the trees now to be planted to grow. But a beginning has to be made.

75. There are four blocks under construction. Services like air-conditioning, firefighting, water supply, sanitary installation, necessary pumps for drainage and sewerage, etc. are yet to be installed and completed.

76. In Block 1 there are shops at the level minus 9'6". These shops are divided by partition walls. There is a big hall with pillars below these shops at a level of minus 19'6".

77. In Block 2 there are shops on the upper basement level 9'6". There is no lower basement level.

78. The third block is currently designed to have shops at the upper basement level and parking at the lower basement level. The upper basement level can be converted to have parking at that level too since the structural configuration will permit the same. Flooring on the lower basement is yet to be laid. There can thus be parking both on the upper basement and the lower basement. This parking place for vehicles would lead to decongestion of the roads surrounding the park which are otherwise choked with the parked vehicles in its entire periphery.

79. The fourth block is only partially developed with just a separate ramp going down to the first basement level and a few columns with their foundations standing from the lower basement level. This fourth block is currently dug up. However, to facilitate the movement of the vehicles to the two levels of parking in the third block a new ramp shall be constructed adjacent to and contiguous to the third block.

80. We have noted above that under clause (*ix-a*) of Section 114 of the Act, it is incumbent on the Mahapalika to make reasonable and adequate provisions by any means or measures which it is lawfully competent to use or to take for the construction and maintenance of parking lots, bus-stops and public convenience.

81. A number of cases come to this Court pointing to unauthorised constructions taking place at many places in the country by builders in

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connivance with the corporation/municipal officials. In a series of cases, this Court has directed demolition of unauthorised constructions. This does not appear to have any salutary effect in cases of unauthorised construction coming to this Court. While directing demolition of unauthorised construction, the court should also direct an enquiry as to how the unauthorised construction came about and to bring the offenders to book. It is not enough to direct demolition of unauthorised construction, where there is clear defiance of law. In the present case, but for the observation of the High Court, we would certainly have directed an enquiry to be made as to how the project was conceived and how the agreement dated 4-11-1993 came to be executed.

82. We direct as under:

1. Blocks 1, 2 and 4 of the underground shopping complex shall be dismantled and demolished and on these places the park shall be restored to its original shape.

2. In Block 3 partition walls and if necessary columns in the upper basement shall be removed and this upper basement shall be converted into a parking lot. Flooring should be laid at the lower basement level built to be used as a parking lot. Ramp shall be constructed adjacent to Block 3 to go to upper and lower basement levels for the purpose of parking of vehicles. Further to make Block 3 functional as a separate unit walls shall be constructed between Block 2 and Block 3 and also Block 3 and Block 4.

3. Dismantling and demolishing of these structures in Blocks 1, 2 and 4 and putting Block 3 into operation for parking shall be done by the Mahapalika at its own cost. Necessary services like sanitation, electricity etc. in Block 3 shall be provided by the Mahapalika.

4. The Mahapalika shall be responsible for maintaining the park and Block 3 for parking purposes in a proper and efficient manner.

5. M.I. Builders Pvt. Ltd., the appellant, is divested of any right, title or interest in the structure built by it under or over the park. It shall have no claim whatsoever against the Mahapalika or against any other person or authority.

6. Block 3 shall vest in the Mahapalika free from all encumbrances. Licence of M.I. Builders to enter into the park and the structure built therein is cancelled of which possession is restored to the Mahapalika with immediate effect. No obstruction or hindrance shall be caused to the Mahapalika by anyone in discharge of its functions as directed by this order.

7. Restoration of the park and operation of Block 3 for parking purposes shall be completed by the Mahapalika within a period of 12 months from today and the report filed in the Registry of this Court.

83. With the directions aforesaid, the appeals are dismissed with costs.

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requirements of the 1993 Regulations, we are of the opinion that it would be just and appropriate to permit the College to start after making due arrangements, imparting instruction to the existing students who have passed 1st year of MBBS course within two weeks from today. The College shall be inspected by the Medical Council of India with reference to the deficiencies pointed out as per the standards fixed in the 1993 Regulations in the first week of August 2001 after due notice to the applicant-respondent College. The report whereof shall be submitted in this Court in the 2nd week of August 2001 by MCI. Further orders on the IAs will be passed on the basis of inspection report of MCI. However, we make it clear that if the college does not come up to the standards fixed under the 1993 Regulations, we will be constrained to consider the question of ordering closure of the College and at that stage appropriate order for the absorption of the students in other colleges of Uttar Pradesh will be passed, if considered necessary. We also make it clear that this arrangement is without prejudice to the contentions raised by the Medical Council of India in the appeal."

6. Even thereafter, it is submitted that inspection was not allowed by the respondent Society on one specious reason or the other. In the circumstances, when the respondent Society has not fulfilled the requirements nor has allowed the appellants to conduct the appropriate inspection, we have no option but to set aside the order made by the High Court and dismiss the writ petitions filed by the respondent Society.

7. Both appeals shall stand allowed accordingly. No costs.

(2002) 3 Supreme Court Cases 653

(BEFORE M.B. SHAH AND DORAISWAMY RAJU, JJ.)

M.C. MEHTA . . Petitioner;

Versus

KAMAL NATH AND OTHERS . . Respondents.

Writ Petition (C) No. 182 of 1996†, decided on March 15, 2002

A. **Constitution of India — Art. 32 — Damages/Compensation — Exemplary damages — Exemplary damages for causing pollution — Quantum of — Pollution of river by Motel — Show-cause notice issued under Supreme Court's order reported in (2000) 6 SCC 213, to show cause against proposed imposition of exemplary damages in addition to the damages payable under the judgment reported in (1997) 1 SCC 388 for committing various acts as enumerated in the latter judgment — Keeping in view the punishment prescribed for violation of various laws meant to prevent and control pollution and to protect the environment and ecology and also the undertaking given by the Motel to bear a fair share of the project cost of ecological restoration, the exemplary damages payable by the Motel quantified at Rs ten lakhs — Amount of the exemplary damages**

† Under Article 32 of the Constitution of India

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directed to be utilised only for flood protection works in the area of the river concerned affected by the action of the polluter Motel — Question of quantification of damages payable on the principle of "polluter pays" under the main judgment left to be decided later — Ecology — Pollution — Polluter-pays principle — Exemplary damages for causing — Quantum of

B. **Constitution of India — Art. 32 — Res judicata — Findings given in a petition at one stage and later held to be final — Challenging such findings at a later stage of the same petition — Impermissibility — Supreme Court in its judgment reported in (1997) 1 SCC 388 holding that the Motel by constructing walls and bunds on the river bank and in the river bed, as detailed therein, had interfered with the flow of the river — Subsequently on 19-12-1996 Supreme Court holding that the said findings of fact had become final and would not be permitted to be reopened — Proceeding further in the same case, Supreme Court in its judgment reported in (2000) 6 SCC 213 issuing notice to the Motel to show cause against proposed imposition of exemplary damages in addition to the damages payable by it under the main judgment — Motel in question pleading that it had committed no illegalities and that, therefore, levying any exemplary damages against it would be unjustified — In view of the finality of the findings rendered by Supreme Court earlier, such a plea rejected — Civil Procedure Code, 1908, S. 11**

Pursuant to Supreme Court's decision in (2000) 6 SCC 213 notice for considering the question of levying exemplary damages was issued. The Motel concerned pleaded that it had committed no illegal acts.

Rejecting this plea, the Supreme Court

Held :

The Supreme Court, on the earlier occasions, after adverting to the pleadings, relevant documents and the technical report of the Central Pollution Control Board, enumerated the various activities of Span Motels considered to be illegal and constituting "callous interference with the natural flow of River Beas" resulting in the degradation of the environment and for that purpose indicted them with having "interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river". Equally, the Himachal Pradesh Government also was held to have committed patent breach of public trust by leasing the ecologically fragile land to the Motel. It is only on such findings, the "polluter-pays" principle with liability for harm to compensate not only the victims but also the cost of restoring the environmental degradation and reversing the damaged ecology was held applicable to the present case. Those findings rendered earlier were held to be "final and no argument can be permitted to be addressed in that respect". Therefore, not only it is impermissible for the Motel or anyone else to claim for a reversal of those findings or any reconsideration of the nature, character and legality or propriety of those activities of the Motel but the Supreme Court is bound by them. (Para 7)

M.C. Mehta v. *Kamal Nath*, (2000) 6 SCC 213; *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388, *followed*

The various laws in force to prevent and control pollution and protect the environment and ecology provide for different categories of punishment in the nature of imposition of fine as well as of imprisonment or either of them, depending upon the nature and extent of violation. The fine that may be imposed

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alone may extend even to one lakh of rupees. Keeping in view all these and the very object underlying the imposition of imprisonment and fine under the relevant laws to be not only to punish the individual concerned but also to serve as a deterrent to others to desist from indulging in such wrongs which is almost similar to the purpose and aim of awarding exemplary damages, it would be both in public interest as well as in the interests of justice to fix the quantum of exemplary damages payable by Span Motels Pvt. Ltd. at rupees ten lakhs only. This amount is being fixed keeping in view the undertaking given by them to bear a fair share of the project cost of ecological restoration which would be quite separate and apart from their liability for the exemplary damages. The question relating to the said quantum of liability for damages on the principle of "polluter pays", as held by the Supreme Court against Span Motels Pvt. Ltd. and undertaken by them, will be determined separately and is left open for the time being. The amount of special damages of ten lakhs of rupees, shall be remitted to the State Government in the Department of Irrigation and Public Health to the Commissioner/Secretary for being utilized only for the flood protection works in the area of Beas river affected by the action of Span Motels Pvt. Ltd. (Para 9)

H-M/Z/25465/C

Advocates who appeared in this case :

N.C. Kochhar, V.C. Mahajan, G.L. Sanghi and Rajiv Dutta, Senior Advocates (M.C. Mehta, Vijay Panjwani, Naresh K. Sharma, C.V. Subba Rao, B.V. Balaram Das, N.S. Vashist, Ms Geetanjali Mohan, Devinder Singh, Chandra Prakash Pandey, Advocates, with them) for the appearing parties.

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

1. (2000) 6 SCC 213, *M.C. Mehta* v. *Kamal Nath* 655*e-f*, 657*g*, 660*a*
2. (1997) 1 SCC 388, *M.C. Mehta* v. *Kamal Nath* 655*f-g*, 657*a*

The Judgment of the Court was delivered by

RAJU, J.— The above matter has been set down for hearing before us pursuant to the orders passed by this Court (Justice S. Saghir Ahmad and Justice Doraiswamy Raju) on 12-5-2000[1] and the consequent notice issued to the Executive Director, M/s Span Motels Pvt. Ltd. at Manali, and the Executive Director, Span Motels Pvt. Ltd., Operations Headquarters at New Delhi, calling upon them to show cause as to why in addition to damages, exemplary damages be not awarded for having committed the various acts set out and enumerated in detail in the main judgment reported in *M.C. Mehta* v. *Kamal Nath*[2] wherein it was held as hereunder: (SCC pp. 414-15, para 39)

> "*39.* We, therefore, order and direct as under:
>
> *1.* The public trust doctrine, as discussed by us in this judgment is a part of the law of the land.
>
> *2.* The prior approval granted by the Government of India, Ministry of Environment and Forests by the letter dated 24-11-1993 and the lease deed dated 11-4-1994 in favour of the Motel are quashed. The lease granted to the Motel by the said lease deed in respect of 27 bighas and 12 biswas of area, is cancelled and set aside.

1 *M.C. Mehta* v. *Kamal Nath*, (2000) 6 SCC 213

2 (1997) 1 SCC 388

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The Himachal Pradesh Government shall take over the area and restore it to its original natural conditions.

3. The Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the river bed and the banks of River Beas has to be removed and reversed. We direct NEERI through its Director to inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology of the area. NEERI may take into consideration the report by the Board in this respect.

4. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel.

5. The Motel shall construct a boundary wall at a distance of not more than 4 metres from the cluster of rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the area of the Motel which is covered by the lease dated 29-9-1981. The Motel shall not encroach/cover/utilize any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for public use.

6. The Motel shall not discharge untreated effluents into the river. We direct the Himachal Pradesh Pollution Control Board to inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel.

7. The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into River Beas. The Board shall inspect all the hotels/institutions/factories in Kullu-Manali area and in case any of them are discharging untreated effluent/waste into the river, the Board shall take action in accordance with law.

8. The Motel shall show cause on 18-12-1996 why pollution fine and damages be not imposed as directed by us. NEERI shall send its report by 17-12-1996. To be listed on 18-12-1996."

2. On being served with a notice dated 14-12-1996, the matter was heard on 19-12-1996, when this Court (Justice Kuldip Singh and Justice S. Saghir Ahmed) passed the following order:

"Pursuant to the above-quoted direction NEERI has filed its report. A copy of the report was given to the learned counsel for the Motel yesterday. Show-cause notice to the Motel has been given on 2 counts: (*i*) why the Motel be not asked to pay compensation to reverse the degraded environment, and (*ii*) why pollution fine, in addition, be not imposed. Mr H.N. Salve, learned counsel appearing for the Motel states that he intends to file counter to the report filed by NEERI. He has asked for short adjournment. We are of the view that prayer for adjournment is justified.

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We, however, make it clear that this Court in the judgment dated 13-12-1996[2] *has found as a fact that the Motel by constructing walls and bunds on the river banks and in the river bed, as detailed in the judgment, has interfered with the flow of the river. The said finding is final and no argument can be permitted to be addressed in that respect.* The only question before this Court is the determination of quantum of compensation and further, whether the fine in addition be imposed, if so, the quantum of fine." (emphasis supplied)

3. When the matter came up for hearing on 4-8-1998†, the State of Himachal Pradesh was directed to examine the report submitted by NEERI and also submit its own plan of action, too. Since, it was felt that the various owners of properties along the river banks would be benefited by the plan that is prepared, they should also be heard before any action is taken on the basis of such plan. The suggested plan and list of owners of properties were directed to be filed and thereupon notices were also issued to them, in due course. On 16-3-1999, notice was issued to the Ministry of Environment, Government of India, to indicate their response to the action plan submitted by the Government of Himachal Pradesh on 21-12-1998, wherein it was also stated that they are not possessed of sufficient financial means to implement their own action plan unless the Government of India provides them necessary finances. On 3-8-1999, it was ordered that the larger issue regarding the action plan will be considered later and the matter will be taken to decide the question relating to pollution fine, if any, to be imposed on the 1st respondent. On 28-9-1999, the statement of Mr Salve, learned counsel on behalf of the respondent, that M/s Span Motels (P) Ltd. was prepared to bear their fair share of the project cost of ecological restoration was recorded, and directed the same to be submitted in writing. On 19-1-2000, it was also ordered that the question of apportionment of cost of restoration of ecology as also the question of pollution fine will be considered by the Court on the next date of hearing. At the hearing on 29-2-2000, Shri G.L. Sanghi, Senior Advocate appearing for M/s Span Motels (P) Ltd., challenged the legality of the proposed levy of fine, otherwise than through the manner envisaged under the relevant pollution laws by resorting to prosecution before the criminal court and after a fair trial therefor. Mr M.C. Mehta, apart from making submissions, was permitted to submit a note in response to the submissions of Shri G.L. Sanghi.

4. On a consideration of the respective stand on behalf of the parties on either side, by a judgment dated 12-5-2000[1], reported in *Kamal Nath*[1] after adverting to the various laws relating to the prevention and control of pollution and for protection of environment, it was held as follows: (SCC p. 224, paras 22-24)

"22. Thus, in addition to the damages which have to be paid by M/s Span Motels, as directed in the main judgment, it cannot be punished with fine unless the entire procedure prescribed under the Act is followed

† *M.C. Mehta* v. *Kamal Nath*, (1999) 1 SCC 702

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and M/s Span Motels is tried for any of the offences contemplated by the Act and is found guilty.

23. The notice issued to M/s Span Motels why pollution fine be not imposed upon it is, therefore, withdrawn. But the matter does not end here.

24. Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender. The powers of this Court under Article 32 are not restricted and it can award damages in a PIL or a writ petition as has been held in a series of decisions. In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner. Unfortunately, notice for exemplary damages was not issued to M/s Span Motels although it ought to have been issued. The considerations for which 'fine' can be imposed upon a person guilty of committing an offence are different from those on the basis of which exemplary damages can be awarded. While withdrawing the notice for payment of pollution fine, we direct a fresh notice be issued to M/s Span Motels to show cause why in addition to damages, exemplary damages be not awarded for having committed the acts set out and detailed in the main judgment. This notice shall be returnable within six weeks. This question shall be heard at the time of quantification of damages under the main judgment."

5. Shri G.L. Sanghi, learned Senior Counsel and Shri Rajiv Dutta, Senior Counsel, were heard for M/s Span Motels Pvt. Ltd. Mr M.C. Mehta, Shri Vijay Panjwani for the Central Pollution Control Board, Shri N.C. Kochhar for the State of Himachal Pradesh, and others were heard. Both Shri G.L. Sanghi and Shri N.C. Kochhar, took us in great detail to the relevant portions of the pleadings, the various orders passed on different occasions and the reports submitted by the Central Pollution Control Board as well as by NEERI and the action plan submitted by the State of Himachal Pradesh. The counsel for the Central Pollution Control Board also explained the tenor of the report submitted by it apart from inviting attention to Section 24 of the Water (Prevention and Control of Pollution) Act, 1974.

6. We have carefully considered the submissions made by them in the light of the materials on record. The sum and substance of the stand taken for M/s Span Motels (P) Ltd., is that the action taken and construction works executed by them at heavy cost was meant to protect not only their own property but the property of the State and the same was also in the interests of those on the basin and banks of both sides of River Beas and a perusal of the remedial measures suggested in the technical reports noticed above would go to show that they have only executed such nature and type of works which

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now are suggested for execution in those reports as protective measures and, therefore, they cannot be held guilty of having committed any illegalities and interfered with or endangering the environment or ecology in the place to warrant the levy of exemplary damages against them. In pursuing such a stand the repeated endeavour was to reiterate that M/s Span Motels (P) Ltd. could not be said to have committed any illegal acts, when they really approached all the authorities concerned for effective action and even obtained necessary permissions for executing those necessary protective measures and works, at a stage when the authorities who are obliged themselves to undertake such works were feeling helpless for want of funds to undertake them. Finally, it was contended that they have already spent considerable sum of their own money for the protective and relief measures undertaken by them and it will be unjust and harsh to impose upon them any further liability in the shape of exemplary damages, when they have already undertaken responsibility to bear a fair share of the project cost of ecological restoration. Shri G.L. Sanghi also reiterated and reinforced the said undertaking by stating that his clients still stand by the same and there is no justification whatsoever to levy any exemplary damages against them.

7. This Court, on the earlier occasions, after adverting to the pleadings, relevant documents and the technical report of the Central Pollution Control Board, enumerated the various activities of Span Motels considered to be illegal and constituting "callous interference with the natural flow of River Beas" resulting in the degradation of the environment and for that purpose indicted them with having "interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river". We do not want to burden this judgment once again by repeating them *in extenso*. Equally, the Himachal Pradesh Government also was held to have committed patent breach of public trust by leasing the ecologically fragile land to the Motel. It is only on such findings, the "polluter-pays" principle as interpreted by this Court with liability for harm to compensate not only the victims but also the cost of restoring the environmental degradation and reversing the damaged ecology was held applicable to this case. Those findings rendered earlier were held to be "final and no argument can be permitted to be addressed in that respect" and the only question that remained left is the "determination of quantum of compensation and further whether the fine in addition be imposed, if so, the quantum of fine". Therefore, not only it is impermissible for the counsel for the Motel or anyone else to claim for a reversal of those findings or any reconsideration of the nature, character and legality or propriety of those activities of SMPL but we feel bound by them and not persuaded to proceed on a clean slate, bypassing the exercise earlier undertaken and the conclusions firmly recorded in this regard. After the submission of the technical report by NEERI also, it was held that the "question of apportionment of cost of restoration of ecology as also the question of pollution fine will be considered by the Court" on the next and further hearings. The NEERI report also does not appear to either give a clean chit or completely exonerate Span Motels (P) Ltd. for their activities,

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which were earlier considered to constitute an onslaught on the fragile environment and ecology of the area.

8. Even in the judgment of this Court, since reported in *Kamal Nath*[1] while accepting the claim of the Motels that the *sine qua non* for punishment of imprisonment and fine is a fair trial in a competent court and that such punishment of imprisonment or fine can be imposed only after the person is found guilty by the competent court, a general and passing reference has also been made to the earlier findings and as a consequence of which only it has been again held that though no fine as such can be imposed and the notice issued by this Court earlier be withdrawn, a fresh notice was directed to be issued to Span Motels Pvt. Ltd. as to why in addition to damages, as directed in the main judgment, exemplary damages cannot be awarded against them "for having committed the acts set out and detailed in the main judgment". Equally, the object and purpose of such levy of exemplary damages was also indicated to serve as "a deterrent for others not to cause pollution in any manner". Having regard to what has been stated supra, the question as to the imposition of exemplary damages and the liability of Span Motels Pvt. Ltd. in this regard has to necessarily depend upon the earlier findings of this Court that the Motel by constructing walls and bunds on the river banks and in the river bed as detailed in the judgment has interfered with the flow of the river and their liability to pay the damages on the principle of "polluter pays" and also as an inevitable consequence thereof. The specification in the NEERI report regarding details of the activities of Span Motels Pvt. Ltd. and the nature of constructions made in 1993 in Figure 2 that (*a*) "in 1993, to protect the newly acquired land as also the main resort land, SMPL constructed concrete studs, stepped wall and concrete bars as depicted in Figure 2"; (*b*) "blocked the mouth of the natural relief/spill channel by dumping of boulders" resulting in the levelling of the leased area; and (*c*) "at the downstream of M/s SMPL, a private property-owner has blocked the relief/spill channel by constructing a stonewall across the channel (E and F)" also confirms and only reinforces the need and justification for the indictment already made. The basis for their liability to be saddled with the exemplary costs has been firmly and irreversibly already laid down in the main judgment itself and there is no escape for Span Motels Pvt. Ltd. in this regard. We have to necessarily proceed further only on those bases of facts and position of law, found and declared.

9. The question remaining for further consideration relating to the award of exemplary damages is only as to the quantum. The various laws in force to prevent and control pollution and protect the environment and ecology provide for different categories of punishment in the nature of imposition of fine as well as of imprisonment or either of them, depending upon the nature and extent of violation. The fine that may be imposed alone may extend even to one lakh of rupees. Keeping in view all these and the very object underlying the imposition of imprisonment and fine under the relevant laws to be not only to punish the individual concerned but also to serve as a deterrent to others to desist from indulging in such wrongs which we

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consider to be almost similar to the purpose and aim of awarding exemplary damages, it would be both in public interest as well as in the interests of justice to fix the quantum of exemplary damages payable by Span Motels Pvt. Ltd. at rupees ten lakhs only. This amount we are fixing keeping in view the undertaking given by them to bear a fair share of the project cost of ecological restoration which would be quite separate and apart from their liability for the exemplary damages. The question relating to the said quantum of liability for damages on the principle of "polluter pays", as held by this Court against Span Motels Pvt. Ltd. and undertaken by them, will be determined separately and is left open for the time being. The amount of special damages of ten lakhs of rupees, shall be remitted to the State Government in the Department of Irrigation and Public Health to the Commissioner/Secretary for being utilized only for the flood protection works in the area of Beas river affected by the action of Span Motels Pvt. Ltd.

(2002) 3 Supreme Court Cases 661

(BEFORE G.B. PATTANAIK, S.N. PHUKAN AND S.N. VARIAVA, JJ.)

UNION OF INDIA . . Appellant;

Versus

BHAGWATI PRASAD (DEAD) AND OTHERS . . Respondents.

Civil Appeals Nos. 431-46 of 1988†, decided on March 7, 2002

Motor Vehicles — Motor Vehicles Act, 1939 — Ss. 110 and 110-A — Jurisdiction of Motor Accidents Claims Tribunals — Held, not ousted so long as a motor vehicle is involved — Claim can be filed, even if death or injury has been caused by negligence of joint tortfeasor, not by owner/driver of motor vehicle — Any other interpretation would result in undue hardship to claimants — In every case of an accident "arising out of the use of a motor vehicle", the victims or their dependants would have right to file claims before the Tribunal, even if the accident involves collision with something other than a motor vehicle, for instance a railway train — Such claim would be against the owner and/or insurer of the motor vehicle as well as those of the other vehicle — Once such claim is found to be maintainable and is entertained, the Tribunal would not lose its jurisdiction just because the accident is ultimately found to have been caused because of something other than a motor vehicle — Held, Division Bench of High Court rightly found that Tribunal would have jurisdiction to entertain claims of respondents against appellant Railway Administration — Motor Vehicles Act, 1988, Ss. 165 and 166

Dismissing the appeal, the Supreme Court

Held :

A combined reading of Sections 110 and 110-A of the Motor Vehicles Act, 1939, which deal with the constitution of one or more Motor Accidents Claims

† From the Judgment and Order dated 23-4-1982 of the Allahabad High Court in CRs Nos. 309-11 of 1980, 314-21 and 333-37 of 1980

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2011 SCC OnLine NGT 16

National Green Tribunal New Delhi
(Principal Bench)
(BEFORE C.V. RAMULU, J.M. AND DEVENDRA KUMAR AGRAWAL, E.M.)

Between:

1. Vimal Bhai D 334/10 Ganesh Nagar Pandav Nagar Complex, DELHI-110092
2. Dr. Bharat Jhunjhunwala Lakshmoli, P.O. Maletha, VIA Kirti Nagar DT. Tehri, UK - 249161
3. Briharshraj Singh Tariyal Village: Naurakh, P.O. Pipalkoti, DT. Chamoli, Uttarakhand ... Appellants;

and

1. Ministry of Environment & Forests Through the Secretary Government of India Paryavaran Bhawan Lodi Road, New Delhi - 03
2. Tehri Hydro Development Corporation, Pragati Puram, Rishikesh, DT. Dehradun, UK
3. Department of Forest Through Principal Chief Conservator of Forests Uttarakhand Forest Department, Indira Nagar, Forest Colony Dehra Dun ... Respondents.

Appeal No. 5 of 2011
Decided on December 14, 2011

(Advocates Appeared: Shri Ritwick Dutta & Ms. Parul Gupta, Advocates for Appellants and Mrs. Neelam Rathore, Advocate for Respondent No. 1. Shri Shail Kumar Dwivedi and Shri Abhinav Shrivastava, Advocates for Respondent No. 2 and Shri Ashutosh Kumar Sharma for Respondent No. 3.)

JUDGMENT

(Judgment delivered by the Bench)

This appeal is filed being aggrieved by the grant of Forest Clearance (for short FC) accorded by the First respondent through its Order No. 8- 65/2009 — FC dated 3rd of June 2011 under which deforestation of 80.507 hectares of government forest land diverted for construction of 65m high diversion dam across river Alakhnanda near village Helong in Chamoli District of Uttarakhand State for the purpose of generating hydroelectricity power.

Before going to the facts of this case it may be necessary to notice that the Environmental Clearance (for short EC) was already granted as early as on 22nd August 2007 by the first respondent. Though, it is more than three years, the EC was not challenged and the same is valid. However, after issuance of the FC by the First respondent, questioning the same the present appeal is filed. Thus, the only challenge made is for the grant of FC and not EC.

Submissions:

According to the appellants, the appellant No. 1 is a Gandhian Social Activist working for the Environment Protection and Peoples' right over the natural resources in middle Himalaya area since 1988. The appellant No. 2 is an economist and a former Professor of Indian Institute of Management, Bangalore and lives on the bank of the river Alaknanda. The appellant No. 3 is a Social Activist and elected as Van Sarpanch

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of Village Naurakh. And all of them are affected by the FC of the Vishnugad-Pipalkoti hydro power project in which construction of a 65m high diversion dam across river Alaknanda at Helong Village, Chamoli district of Uttarakhand State is proposed.

The total land requirement of the project is about 120 hectares. Out of which, about 40ha is agriculture land and about 80 hectares is government forest land. The project is being developed by the Respondent No. 2. Respondent No. 3 had sent proposal for diversion of forest land vide their letter no. 65/IG-2521 (Chamoli) dated 2nd September 2009. The said proposal was considered by the Forest Advisory Committee (for short FAC) of Respondent No. 1 on 30th/31st May 2011. While that being so, the matter of diversion of forest land for Kotlibhel 1A and Kotlibhel 1B hydroelectric Projects appears to have come up before the Hon'ble Supreme Court and the Respondent No. 1 herein was directed to conduct a detailed study with defined scope of work. The grant of FC in the present case was substantially based on the study made by Indian Institute of Technology, Roorkee (for short IITR) and Wildlife Institute of India, Dehradun (for short WII). As per the scope of work, "effectiveness of mitigative measures and compliance of stipulated conditions on which various projects earlier have been examined", was to be completed, however, no such study was conducted. Thus, the recommendation of the FAC was based on non-existent study and as such is arbitrary and whimsical. Further, even the environmental flows study recommendations by IITR were also not done scientifically. The environmental flow requirement suggested by the IITR has not taken the ecological functions of flood flows into account. The cost benefit analysis was not evaluated properly and the negative aspects were not taken into account.

The Respondents No. 1 to 3 have filed their detailed relies. According to them, all the allegations made and the grounds raised in the appeal are all baseless and liable to be rejected. Further, the very appeal is not maintainable, since the appellants are neither interested parties nor they are aggrieved and/or injured persons as defined in the Act. They are neither directly nor indirectly affected by the project. The Respondent No. 2, in this regard, relied upon several sections of the National Green Tribunal's Act 2010 and also referred to various Judgments of Apex Court as well as High Courts. In fact, diversion of forest land for Kotlibhel 1A and 1B projects had come up before the Hon'ble Supreme Court much before the Respondent No. 1 received proposal seeking prior approval of the Central Government for diversion of the forest land for the Vishnugad-Pipalkoti hydroelectric Project. In compliance to orders of Hon'ble Supreme Court, Respondent No. 1 placed the proposals of Kotlibhel 1A and 1B before them. On examination of the FAC recommendations, the Hon'ble Supreme Court constituted Central Empowered Committee (for short CEC) and entrusted the matter for examination. The suggestions made by CEC were placed before the Hon'ble Supreme Court where Respondent No. 1 was directed for a study and place the matter for reconsideration before the newly constituted FAC. The FAC entrusted the matter to a sub-committee. The sub-committee examined the whole issue in proper perspective and recommended for grant of FC only after taking into consideration the study made on comprehensive study of carrying capacity of river Ganga in the hilly terrain upto Haridwar. In so far as Cumulative Impact Assessment (for short CIA) or carrying capacity study is concerned, this was undertaken by IITR and WII. Final reports were submitted by them. In view of the same, the appeal is devoid of merits and is liable to be dismissed.

The Counsel on either side advanced elaborate arguments and also submitted their written arguments.

Discussion:

We have given our earnest consideration to the respective submissions made by the learned counsel on either side and perused the material made available on record.

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We are of the considered opinion that the following questions arise for considerations in this appeal.

a) Whether the appellants can be called as aggrieved and/or injured "person(s)" as defined under the National Green Tribunal (for short NGT) Act and the appeal is maintainable by them;

b) Whether the appellants are justified in raising grounds that may be available for challenging the EC or its conditions in the guise of challenging the grant of present FC;

c) Whether the FC granted in favour of project proponent is in consonance with the principles of sustainable development and precautionary measures;

i) Whether the environmental flows fixed by the authority is in accordance with the fixed standards or not;

ii) Whether the cost benefit analysis have been properly conducted while applying for grant of FC;

iii) Whether the impacts of deforestation on wildlife ecology and environment have been considered or not.

The above points have been examined in detail as under:

Point (a):

Whether the appellants can be called as aggrieved and/or injured "person"(s) as defined under the NGT Act and the appeal is maintainable by them;

Before going into the arguments advanced by the Counsel on either side it may be necessary to notice few sections of the NGT Act 2010 in this regard, which reads as under:

Section 2(j):

"person" includes—

i) an individual;

ii) a Hindu undivided family;

iii) a company;

iv) a firm;

v) an association of persons or a body of individuals, whether incorporated or not;

vi) trustee of a trust;

vii) a local authority; and

viii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Section 16(e):

Tribunal to have appellate jurisdiction -- Any person aggrieved by—

(a to d).....

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980).

Section 18 - Application or appeal to Tribunal:

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

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

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i) the person who has sustained the injury; or

ii) the owner of the property to which the damage has been caused; or

iii) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

iv) any agent duly authorized by such person or owner of such property or all or any of the legal representative of the deceased, as the case may be; or

v) any person aggrieved, including any representative body or organization; or

vi) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a: Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environmental (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:

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

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

(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

We may also have to take note of the Preamble and Section 20 of the NGT Act, 2010 which reads as under:

Preamble of NGT Act 2010 - "An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto."

Section 20:"Tribunal to apply certain principles-The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pay principle."

A combined reading of the Preamble and Section 20 of the NGT Act, 2010 would reveal that this Tribunal has got vast jurisdiction to decide the environmental disputes such as enforcement of legal rights relating to environment, compensation, damages to persons and property, and matters connected therewith and incidental thereto including conservation of natural resources. Keeping this in view, we have to examine the case on hand.

The project in question is a hydroelectric power project on Alakhnanda river. According to the Respondent No. 2, the appellants are neither aggrieved person (s) nor injured person (s) for maintaining an appeal of this nature. According to him, the person as defined under Section 2(j) or as appear in Section 16 or 18 of the Act

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have no application to the facts of this case. The appellants are neither directly nor indirectly affected and as such cannot be called as aggrieved/injured person (s).

Further, the learned counsel for the Respondent No. 2 strenuously contended that may be the Section 2(j) and person as noticed in Section 16 and 18 all inclusive definition. But Section 18(2)(a) entitles only a person who had sustained injury per-se to approach this Tribunal. Further, the aggrieved person as contemplated in the Act refers to substantial grievance as to denial of some personal, pecuniary or property right or imposition upon a party of a burden or obligation. In any case the grievance must be substantial and cannot be fanciful. Mere sentimental grievance does not make a person aggrieved (*Nekumar K. Porwal* v. *Mohanlal Harigovindas*, AIR 1963 Bom. 246). A person aggrieved must be a person who has suffered a legal grievance i.e. a man who has been wrongfully deprived of something or to whom something has been refused wrongfully (2003) 3 SCC 393. Further, the technical considerations, if any involved, Courts generally will not interfere into such matter, since the technicalities are the matters on which experts might disagree which involve nice issues of judgment and choice which required the exercise of informed discretion (1988) 4 SCC 59. It is also the case of Respondent No. 2 that the EC in this case was granted 4 years ago and the same was widely published in the local newspapers and the Appellant No. 1 was individually informed of the same. If the appellants are concerned with the environmental impact of the project, they should have raised the issue in accordance with the law at the stage of EC itself. The appellants have no concern with the environmental effect of the project but there is ideological bias against the development of projects. The Appellant No. 1 had put forth certain demands at the time of "Public Hearing" regarding the EC. The same was considered and redressed. The appellant did not raise any objection. Thus, the Respondent No. 2 moved forward with the project and also for the sanction of investment of the project. According to the Respondent No. 2, the mala-fide intention of the appellants is evident from the recent communications which they have sent to the World Bank demanding review of the loan sanctioned by it. The Appellants also threatened that there has been a challenge of FC accorded and they hope to succeed in the same. Therefore, it cannot be said that they have approached this Tribunal with clean hands and can be called that they are the aggrieved persons. The learned counsel for the Respondent No. 1 and 3 also submitted arguments on the same lines.

The appellants however, vehemently submitted that they are the lovers of nature, environment and ecology. Their grievance is genuine and they cannot be thrown out saying that they are not the persons directly aggrieved or injured.

A reading of Section 2(j)(i) to (viii) would reveal that any individual, Hindu undivided family, Company, Firm, an association of persons or a body of individuals whether incorporated or not, trustees of a trust, a local authority and every artificial juridical person not falling within any of the preceding sub-clauses, would indicate "person" who can maintain an application/appeal under the NGT Act. But, it is the argument of the learned counsel of the Respondent that even the above defined person shall be a person either aggrieved or injured directly or indirectly and not otherwise.

Then the question arises whether in the environmental matters, a person who is really aggrieved/injured shall alone be permitted to approach this Tribunal. A combined reading of the above sections, would indicate, that any person whether he is a resident of that particular area or not whether he is aggrieved and/or injured or not, can approach this Tribunal. In such situations, it is of course necessary to scan and find out the credentials of the applicant/appellants as to their true intentions and motives. No doubt that in the present case though the appellants have participated in the EC proceedings and they have not challenged the same. However, that does not mean that they cannot challenge the FC proceedings on any available legal grounds

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(However, it is to be noted that in the guise of challenging the FC, the appellants cannot be permitted to raise the grounds which might be raised, had the EC was challenged). Appellants apprehend a great danger and disaster to the environment and ecology, if the project is not properly envisaged and does not satisfy the principles of sustainable development and precautionary principles as is mandated under Section 20 of the NGT Act. In the matters of environmental cases, any individual or persons and body of individuals can agitate as to the correctness of the study of environment and ecology made by the granting authority. Further, nothing substantial has been demonstrated to doubt the credentials of the appellants except saying that they (appellants) are not aggrieved and/or injured person (s) under the Act and they are a busy body and their motives are ulterior. The person injured per-se as occurred in Section 18(2) of the NGT Act is only for the purpose of claiming relief, compensation or settlement of disputes, is altogether different from the person aggrieved as available in Section 16. Person aggrieved and person injured are two different words which connote different meaning. Under Section 16, any person aggrieved can approach this Tribunal by way of filing an appeal, whereas, under Section 18(2), the person injured per-se, whether it is an individual or a body of individual or a social organization or a Hindu joint family, etc. Further, under Section 14 and 16 any person can approach this Tribunal for appropriate relief including the relief under Section 18.

The only exception to be made for treating an appeal/application as not maintainable could be a matter which falls beyond the seven (7) Acts as notified in Schedule I of the NGT Act 2010 and in a case of mala-fide and vexatious litigation brought before this Tribunal and not otherwise.

In a given case, the person living in the area or vicinity of the proposed project may not know about many intrinsic scientific details and effects of the ultimate project and any disaster, it may cause. The safety of the dam and the likely devastation and loss of properties and lives of the people in the downstream, if the dam, being situated in a highly earthquake prone area, bursts or leaks - the structural flaws of the dam and rehabilitation policies, etc. Therefore, it may not be proper for this Tribunal to reject an Application on the ground that the applicant/appellant as the case may be, is not the resident of the area or not directly injured or aggrieved. The nature has been created over lakhs of thousands of years and such nature cannot be allowed to do away with one stroke of pen, in the guise of development, without properly examining the environmental and ecological impact of the project proposed. No scientific study assumes finality as with the progress of time our knowledge and understanding of the subject matter undergoes metamorphous with new evidence.

It is further very apt to note the relevant provisions of the Constitution of India which reads as under:

> "Article 48A - Protection and improvement of environment and safeguarding of forests and wild life: *The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country*."
>
> "Article 51A - Fundamental Duties: It shall be the duty of every citizen of India: .....
>
> *(g) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures*.

From the above it is clear that the State shall endeavor and safeguard the environment and wild life and it is the fundamental duty of the citizen to improve the natural environment including forests, lakes, rivers, and wildlife and also to have compassion for living creatures. Once, the protection and improving the natural environment is the fundamental duty of a citizen, any person can approach this Tribunal and agitate his grievance as to protection and improvement of the natural environment. The statutory provisions are subservient to the constitutional mandates.

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The person as defined or person aggrieved as occurs in Section 2(j)16 and 18(2) of the NGT Act cannot be placed above "every citizen" as appears in Article 51A of the Constitution of India. Once the mandate is of every citizen, any person can approach this Tribunal complaining environmental threat in the activities of the State or any organization or individual.

Therefore, we are of the view that the appellants are interested persons in the environment and ecology of the area, though they are not directly affected/injured at this point of time. But, they can be definitely called aggrieved persons since they apprehend some danger, if the project is launched without taking proper precautions. The person aggrieved in environmental matters must be given a liberal construction and needs to be flexible. Therefore, we are of the considered opinion that persons like the appellants are also entitled to approach this Tribunal and the appeal is maintainable.

Point (b)

Whether the appellants are justified in raising grounds that may be available for challenging the EC or its conditions in the guise of challenging the grant of present FC?

The learned counsel for the appellant vehemently submitted that the grounds which are available for challenging EC or its conditions can be raised in this appeal while challenging the grant of FC. According to him, it is a matter of environment and ecology and grant of EC & FC cannot be viewed independently. We are of the considered opinion, in view of the legal provisions as to the period of limitation, etc., it may not be proper on our part to examine such areas which fall into the area of grant of EC while considering the FC under challenge. The EC, which was issued, was liable to be challenged within 30 days from the date of decision (Section 16 of the Act). Admittedly, the EC was granted to the project on 22.8.2007 and no challenge was made to EC. The FC alone is under challenge in this Appeal, which was granted on 3.6.2011. Now, it is more than four years and the Appellant No. 1 in fact participated in the EC proceedings and having raised several objections, did not challenge the EC. Therefore, the submission made by learned counsel for the appellant that all the issues that arise from the EC can also be raised in this appeal cannot be countenanced and accepted. But an exception can be made when the issues overlap i.e. the issues that were considered at the time of grant of EC and again while granting FC, since they are considered one after the other, independently. In fact, in the present case, few of the stipulations made under the EC have since been revised, based on the studies that were undertaken for various reasons, as discussed herein after for grant of FC, have been considered in this appeal.

Point (c)

Whether the FC granted in favour of project proponent is in consonance with the principle of sustainable development and precautionary measures.

At the outset, it may be noticed that Vishnugad-Pipalkoti HEP is a national project being carried out by the Tehri Hydro Development Corporation (for short THDC). The appeal before this Tribunal is directed against FC dated 3rd June, 2011 under Section 2 of the Forest (Conservation) Act, 1980 granted by Respondent No. 1 whereby Stage-I approval of the Central Government under the Forest (Conservation) Act, 1980 for diversion of 80.507 Ha of forest land in favour of THDC for 30 years for construction of 444 MW Hydroelectric Project in District Chamoli, Uttarakhand has been granted subject to terms and conditions stipulated in the aforesaid order. No challenge has been made so far as the procedural aspects are concerned and no irregularities have been brought to our notice. Therefore, we are of the opinion that the procedure for grant of FC followed does not suffer from any illegality or irregularity.

The appellants have raised grounds pertaining to negative impact of tunneling on

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water springs and its subsequent impact on forests and agriculture; Methane emissions from reservoirs; deterioration in water quality due to less absorption of beneficent chemicals; loss of aesthetic and 'non-use values'; value of free-flowing rivers; breeding of mosquitoes in reservoirs and the negative impact on health; deprivation of sand and fish to local people; negative cultural impacts; and negative impact of blasting/tunneling, etc. Whereas the respondents have filed detailed replies countering the allegations and relied on various documents/reports starting from Environment Impact Assessment/Environment Management Plan report, Geological reports, Appraisal documents for World Bank loan, etc. At the face of facts placed, it appears that a majority of the issues have been addressed in one or the other document and accordingly, general and specific conditions have been imposed in the EC & FC granted to the project. The main question that arise from the arguments pertains to the fundamental question as to 'whether the project follows the sustainable development and precautionary principles or not?' After detailed arguments and subsequent evaluation of the records made available, following additional documents were sought from Respondent No. 1:

a. The full report of the sub-committee of FAC under the chairmanship of Dr. Mahesh Rangrajan constituted to prepare a detailed report on cumulative environmental impact of various Hydroelectric Projects which was placed before the FAC on 11/12-12-2009.
b. The Terms Of Reference (for short TOR) for the Cumulative Impact Assessment (for short CIA) study of various Hydropower Projects awarded to IITR and WII separately including any additional TOR, if any.
c. Final copy of the report and recommendations of the CIA Study awarded to IITR and WII.
d. Whether any study made in respect of physical and social environment including project configuration (layout) as a part of the CIA or separately while considering FC in respect of the project in question.

A perusal of the documents reveals that:

1. The diversion of forest land for Kotlibhel 1A and 1B hydroelectric projects had come up before the Hon'ble Supreme Court much before the Respondent No. 1 received proposal seeking prior approval of the Central Government for diversion of forest land for the Vishungad-Pipalkoti Hydroelectric Project.
2. State Government of Uttarakhand in August, 2007 and January, 2008 submitted two separate proposals to obtain prior approval of Central Government under the Forest (Conservation) Act, 1980 for diversion of forest land for construction Kotlibhel 1A and Kotlibhel 1B hydropower projects respectively.
3. The FAC constituted by the Central Government in accordance with Section 3 of the Forest (Conservation) Act, 1980 after examination of these proposals in its meeting convened on 29th April 2008 recommended diversion of the forest land required for construction of the aforementioned two projects.
4. In compliance of the order passed by the Hon'ble Supreme Court on 27th April 2007 in IA No. 1413, 1414 etc. in WP © No. 202/1995 in the matter of *T.N. Godavarman Thirumulpad* v. *Union of India*, wherein Hon'ble Supreme Court inter -alia directed that "...fresh cases may be cleared Project-wise by the FAC and thereafter such clearances shall be placed before this Court for approval...," as such the proposal seeking prior approval of the Central Government under the Forest (Conservation) Act, 1980, for diversion of forest land required for construction of Kotlibhel-A and Kotlibhel-1B projects along with the recommendations of the FAC on these proposals were placed before the Hon'ble Supreme Court which in turn referred the matter to CEC for their views.
5. On examination of the said proposals and FAC recommendations, the CEC

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recommended as below:

"*The CEC is of the view that it would be prudent that the reconstituted FAC reviews these projects after considering the findings of the studies regarding as follows*:—

(a) Cumulative environmental impact of various hydroelectric projects particularly on the riverine ecosystem and land and aquatic biodiversity; and

(b) Effectiveness of the mitigative measures and compliance of the stipulated conditions on which various projects have earlier been cleared".

6. After examination of the above proposals, the Hon'ble Supreme Court vide order dated 20th February 2009 inter-alia directed as below:

"*CEC had made certain recommendations regarding diversion of 258.737 ha of forest land for Kotlibhel Hydro Electric Projects in favour of the National Hydro Power Corporation Ltd. and diversion of 496.793 ha of forest land for Kotlibhel Hydro Electric Projects in favour of National Hydro Electric Power Corporation Ltd. The FAC will review its earlier order and take a fresh decision and decision may be taken at the earliest at least within a period of five months*".

7. In pursuance to the said order dated 20th February 2009 passed by the Hon'ble Supreme Court, the afore-mentioned proposals were placed before the newly constituted FAC in its meeting convened on 2nd April 2009. After careful consideration, FAC recommended that a subcommittee under the chairmanship of Dr. Mahesh Rangarajan may be constituted to prepare a detailed report on cumulative environmental impact of various hydroelectric projects, particularly on the riverine ecosystem and land and aquatic biodiversity, effectiveness of the mitigative measures and compliance of the stipulated conditions on which various projects have earlier been cleared.

8. The FAC Sub-committee met on 06th June for the first time. On 30th June, 2009, all the project proponents of major hydroelectric projects on river Ganga made their presentations on cumulative environmental impact of projects on river Ganga and study done so far, mitigative measures suggested therein and their compliance.

9. The FAC Sub-committee conducted a field visit of Kotlibhel Stage 1A, Kotlibhel Stage 1B, Kotlibhel Stage II and Srinagar HEP on 29th October to 1st November, 2009. The FAC Sub-committee also interacted with NGOs, local people and user agencies and considered their views and representations.

10. After thorough study and site visits, the FAC Sub-committee submitted its report containing following major recommendations:

(a) Minimum natural water flow (i.e. ecological water flow) should be maintained for continuity of aquatic eco-system of river Ganga. This may be decided by the National Ganga River Basin Authority (NGRBA for short), constituted in February 2009. However, till time it should be 16 cumecs or 20% of the lean season flow, whichever is higher.

(b) Mahseer Conservation Reserve as proposed by State Wildlife Department should be established.

(c) Aquatic Otter Conservation area should be properly demarcated as suggested in the Environmental Management Plan and should have restricted access.

(d) A corpus of 5% of the project costs of these three projects should be established for sustaining above mentioned activities.

(e) The corpus should be managed by a society registered under Society Act, with representative of the MOEF, representative of State Forest Department and Sate Wildlife Department, two independent experts and representative of NHPC. This will be constituted by the State Government.

11. The FAC after examination of the report of the FAC Sub-Committee in its

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meeting convened on 11th and 12th December, 2009, in general agreed with the report submitted by the FAC Sub-Committee and observed that in view of preliminary assessment done and the fact that several dozen more small, medium and large similar projects are on various stages of formulation, there is potential for irreparable and irreversible damage to the entire riverine eco-system in the future. The FAC therefore, recommended that no further projects of this nature can be considered by the FAC, without a comprehensive study of carrying capacity of River Ganga in the hilly terrain up to Haridwar.

12. Apart from the Kotlibhel 1A and Kotlibhel 1B, following three proposals seeking prior approval of Central Government under the Forest (Conservation) Act, 1980 for diversion of forest land for construction of Hydropower projects in Ganga River Basin were received by the MOEF:

(a) Diversion of 658.282 ha of forest land for construction of 530 MW capacity Kotlibhel Hydro-electric Power Project (Stage-II) on lease for 30 years in favour of NHPC, in the district of Pauri-Gharwal Uttarkhand.

(b) Diversion of 80.507 ha of forest land for construction of 444 MW Vishnugad-Pipalkoti Hydro Electric Project in favour of Tehri Hydro Development Corporation for 30 years in district Chamoli, Uttarkhand.

(c) Diversion of 60.513 ha of forest land in favour of GMR Energy Ltd. For construction of Alaknanda Hydro-electric Project in Chamoli district of Uttarakhand.

13. Accordingly, the NGRBA was requested to study and fix the minimum ecological water flow with TOR having issues like minimum ecological water flow in river Ganga vis-a-vis sustainable aquatic eco-system and bio-diversity therein, as per their mandate. The NGRBA was also requested that the study should include suitable provision to assess the level of minimum water flow to have a sustainable aquatic eco-system and bio-diversity, impact of these projects on terrestrial flora and fauna, etc. However, it was realized that the NGRBA has not been envisaged as a separate project clearance body. Therefore Forest Conservation Division in the MOEF commissioned the study involving the WII and other appropriate institutions having special knowledge and practical experience in the field of terrestrial, aquatic flora & fauna and bio-diversity. The Forest Conservation Division in the MOEF, therefore, assigned the said study to the WII. Meanwhile, the National River Conservation Directorate of the MOEF also assigned a study on Assessment of Cumulative Impact of Hydropower Projects in Alaknanda and Bhagirathi basins up to Devprayag to the Alternate Hydro Energy Centre of the IITR.

14. The Respondent No. 1 keeping in view the non-availability of any credible study on the issues raised by CEC and as a measure of abundant caution and also to carry out the directions of the Hon'ble Supreme Court, considered the findings of these studies in taking decision on diversion of forest land even for the Vishnugad-Pipalkoti Hydropower Project.

15. In the meanwhile, it is also noticed here that the Vishnugad-Pipalkoti project is a project being carried out by the Tehri Hydro Development Corporation. The Techno-commercial viability to Vishnugad-Pipalkoti project was accorded by the Central Electricity Authority in September 2006. The Environment Impact Assessment/Environment Management Plan studies of the project were carried out by Water and Power Consultancy Services, a Government of India enterprise, in 2006. The Public Hearing for the project was held in the month of January 2007 at project site. The EC was accorded in August 2007. Further, investment approval for the project was accorded by the Cabinet Committee on Economic Affairs in August 2008. In the meantime, in 2006 it was decided that the project

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may be considered by the World Bank for funding. As per the World Bank requirements, an additional study entailing detailed field investigations, community consultations and consolidation of previous studies on environmental issues was conducted by an independent environmental engineering firm, Consulting Engineering Services over the period April 2008-May 2009. The additional studies included:

i. Study of managed river flows in the project stretch of the Alaknanda River;

ii. Assessment of the terrestrial biodiversity impacts of the Project, including supplemental study of project impact on the Kedarnath Wildlife Sanctuary;

iii. Assessment of archeological, physical and cultural resources;

iv. Safety Assurances Plan for the project;

v. Catchment area treatment plan for the project prepared by the Uttarakhand State Forest Department; and

vi. Social Impact Assessment and Resettlement Action Plan

In addition to these studies, in the course of time, the project pioneered numerous other good practices in order to minimize the disruption to people living in the project area and to the natural environment. These included:

i. Engagement of a reputed NGO, Shri Bhubaneshwari Mahila Ashram, to act as THDC's interface with Project-affected communities, including in Garhwali, the local language;

ii. Mandatory use of a Tunnel Boring Machine instead of the traditional drill-and-blast method of driving tunnels to minimize the disruption on people in the project area (blasting will be reduced to the absolute minimum), which also brings environmental benefits;

iii. Translation of the entire Environmental Impact Assessment into Hindi;

iv. Insurance for all houses within a defined corridor of impact along the Tunnel to ensure that in the unlikely event of any damage accruing to these structures as a result of project excavation, the local people would not have to bear the damage;

v. Compensation for loss of fuel and fodder at the rate of 100 days of minimum agriculture wages to each entitled house hold for a period of 5 years;

vi. Extending benefits to the project affected people beyond the requirement of NPRR 2007. Besides, project has also taken action for upliftment of the area which includes:

a) Imparting training to the local youth for gainful employment;

b) Promoting education by providing scholarships;

c) Providing employment contracts to local people by way of providing small contracts, engaging their vehicles, etc.;

d) Making available free medical services to PAFS from THDC hospital;

e) Adoption of ITI at Gopeshawar for imparting skills to local youth; and

f) Development of infrastructures in the project affected villages.

In addition to above, other important studies such as Sediment optimization, adequacy of water ways for spillways, Geological Baseline Report were also executed. Based on the detailed studies, the project scheme was prepared in an optimized manner giving due attention to all the aspects, be it social, environmental or technical. The stringent norms of the World Bank were followed while developing the project scheme and also while finalizing the project parameters.

Following the completion of the additional studies and their incorporation into a single consolidated Environmental Impact Assessment/Environmental Management

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Plan, in September 2009, THDC organized a Public Hearing at which the findings of all the relevant studies and the associated mitigation measures were shared with project-affected people. At the Public Hearing in September 2009, pradhans, sarpanches and local leaders addressed the public to give their strong endorsement of the project.

Having considered the sound project scheme and robust project preparation the Board of Directors of the World Bank after considering the World Bank's Project Appraisal Document dated 10.06.2011 sanctioned a loan amounting to US$ 648 million for the Vishnugad-Pipalkoti project on 30.06.2011 and the loan agreement was signed on 10.08.2011.

It would be worth mentioning that a conventional project and site-specific approach to EIA has its limitations when it comes to assessing potential cumulative effects on environmental resources because the impact of a particular project on an environmental resource may be considered insignificant when assessed in isolation, but may be significant when evaluated in the context of the combined effect of all past, present, and reasonably foreseeable future activities that may have or have had an impact on the resources in question. Cumulative effects generally refer to impacts that are additive or interactive (synergistic) in nature and result from multiple activities over time, including the project being assessed. Cumulative effects

(i) are caused by the aggregate of past, present, and future actions;

(ii) are the total effect, including both direct and indirect effects, on a given resource, ecosystem, and human community of all actions taken, no matter who has taken the actions;

(iii) need to be analysed in terms of the specific resource, ecosystem, and human community being affected;

(iv) cannot be practically analysed beyond a reasonable boundary; the list of environmental effects must focus on those that are meaningful;

(v) rarely correspond to political or administrative boundaries;

(vi) may result from the accumulation of similar effects or the synergistic interaction of different effects;

(vii) may last for many years beyond the life of the project that caused the effects; and

(viii) should be assessed in terms of the capacity of the affected resource, ecosystem, and/or human community to accommodate additional effects.

The process of analysing cumulative effects is an enhancement of the traditional EIA components: (i) scoping, (ii) describing the affected environment, and (iii) determining the environmental consequences. The CIA studies in the instant case were awarded to IITR & WII separately with elaborate TOR and time bound deliverables as evidenced from the material placed on record. The TOR not only covered the physical, biological and social aspects but also highlighted the grey areas where specific inputs were sought such as determination of environmental flow, etc. The TOR clearly envisaged capitalizing on the available expertise of the expert institutions in their respective subject area. The scope of work also included integration of specific inputs/outputs by the two institutions leading to a comprehensive document to be able to provide direction to Respondent No. 1 in taking a final decision.

It is noted from the records made available that IITR submitted its report titled ‘Study on Assessment of Cumulative Impact of Hydropower projects in Alaknanda and Bhagirathi Basin up to Devprayag’ in March 2011 whereas WII submitted its interim report titled ‘Assessment of Cumulative Impacts of Hydroelectric Projects on Aquatic and Terrestrial Biodiversity in Alaknanda and Bhagirathi Basins, Uttarakhand’ in May

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2011. The voluminous reports of IITR focused on all existing and proposed hydropower projects of the river basins for the Remote Sensing & GIS Studies, Geological Studies, Seismological Aspects, Water Quality, Biodiversity and River Ecology, Hydrological Studies, Hydropower Development, Impact on Places of Cultural & Religious Importance, Hydropower and Stakeholders to undertake CIA through assessment of hydroelectric projects components of ecosystem to give Conclusions and Recommendations. The interim report of WII whereas took account of only five projects i.e. Kotlibhel IA, Kotlibhel IB, Kotlibhel II, Vishnugad-Pipalkoti and Alaknanda -Badrinath and after defining the zone of influence, established the baseline data for floral and faunal attributes. Impact prediction and Evaluation on biodiversity has been done after developing the criterion for scoping and weightage of impacts to give interim findings. It is evidenced from the material papers on record that IITR report looks mostly on physical and social aspects in greater details whereas the interim report of WII gives consideration to aquatic and terrestrial ecology only.

It is further noted from the records that the appellants have raised certain objections (similar to the grounds of appeal of the present case) to the IITR report and the same have been forwarded by the Respondent No. 1 to IITR for incorporation in the final report. On the other hand, it is seen that the WII interim report which considers CIA of aquatic and terrestrial ecology only (the final report was expected in September 2011; however, has not been made available to this Tribunal as of date).

In the meantime, after examining the above records, the FAC of Respondent No. 1 took the decision to recommend the project under reference for grant of FC giving due emphasis to the fact that cumulative impact of project (on biodiversity) under reference is least. Undoubtedly, in Indian context, the concept of CIA is an emerging subject area and due to lack of available data base, a lot of constraints are posed in conducting CIA; and in the instant case, we sincerely appreciate the efforts put forward by the two leading institutions of the country namely, IITR and WII in producing the voluminous reports with lot of primary database. However, it is surprising that integration of the physical, biological and social aspects of the environment for arriving at the crucial decision making stage, has been somehow not been attempted at all and Respondent No. 1 has overlooked/ignored its own set of awarded TOR for the CIA. To illustrate this point while attempting CIA, impacts such as quantum loss of agricultural land, barren land, river bed land, number of project affected families, villages, infrastructure, geological setting etc. have not been considered. In view of the stated figures and facts, it is difficult to surmise that what would be the outcome of the CIA study, if integration of physical, biological and social aspects in the present case is undertaken - may be the recommendation remains the same. Given the situation, where a large volume of database is available through project specific EIAs apart from these two CIA reports from IITR & WII, it would be appropriate if a single integrated CIA report is finalized and a final decision is taken. By and large, though it appears that every study was made but it does not appear to have made an integrated and comprehensive study for the purpose of a flawless approach in making the CIA report which is required to satisfy the principles of sustainable development and precautionary principles, subject to suggestions indicated infra.

Point (c) - (i):

Whether the environmental flows fixed by the authority is in accordance with the standards or not.

With regards to question pertaining to environmental flow, though originally part of EC, it is argued that the Respondent No. 1 has stipulated at para (xi) of the FC that minimum environmental flow as recommended in IITR study report shall be released whereas, the environmental flow determined by IITR is erroneous owing to limited

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data, non-use of Building Block Method and mechanical application of other methodologies as examined by Mr. Himanshu Thakkar and Parineeta Dandekar of South Asian Networks on Dams, Rivers and People. In this context, a study of International Water Management Institute (for short IWMI) has been quoted that gives environmental flow recommendations for the Ganges basin. The environmental flow requirement critically depends upon the development stage of the region and what the society expects from the river. The indicative values could not have been taken as final values. The report of IWMI gives value of 67.6 per cent of Mean Annual Run off (for short MAR) for Ganges, if it is treated as class 'A' river, against 12.1 per cent if it is treated as Class 'F' river. The IITR made a fundamental error in calculating environmental flow requirement at 7.62 per cent to 10.72 per cent and FAC made a similar error in accepting the IITR recommendations. The IITR treated Ganges as Class 'F' river which stands for highly degraded river without application of mind. The IITR has not taken the ecological functions of flood flows into account and not ensured that adequate flood flows shall be released.

The respondents argued that considering the constraints, a multi-disciplinary team of experts used various methods and arrived at range of environmental flow to be released from the project under reference. Finally, Respondent No. 1 accordingly revised the originally envisaged environmental flow of 3 cumecs as approved in EC to 15.65 cumecs subject to the condition that this would be further reviewed once the final report of IITR is accepted. It was also argued that the IWMI report gives the recommendation for the entire Ganges basin not the area under reference that is only a small fraction of it apart from the fact that interpretation of term MAR has been done erroneously by the Appellants. Replies also clarified that normal flood flows are proposed to be released and hence the ecological functions of them are not likely to be altered significantly.

Undoubtedly, hydropower projects provide substantial benefits, but, if poorly planned, designed or operated, they can also have serious consequences in terms of health of rivers and the economic and social well-being of communities dependent upon the goods and services provided by rivers. Traditionally, assessments of the environmental and social effects of hydropower projects focused primarily on areas in the immediate vicinity of the project, however, these projects can impact downstream areas by changing the water flow (volume and timing), water chemistry, physical structure of river channels and floodplains, and hydrologic connections between upstream and downstream and between a river and its floodplain. In recent times, planners are realizing the need to maintain adequate water flows and other habitat conditions to sustain river in the further downstream reaches.

It is well recognized that even with the best-available expert knowledge and analysis, impacts of infrastructure development projects involving especially natural resources such as hydropower projects, the environmental consequences of infrastructure development and operations cannot be predicted with complete certainty. To have ecologically and socially sustainable, water and energy development and management, strong need is for monitoring, evaluation, and adjustment in the development process. It is further expected that the operating objectives of development projects will change over time in response to changing social priorities, scientific and technological advancements, and climate change. These require options for having flexibility to modify the operation policy, if required.

A number of case studies suggest that it is possible to improve the environmental performance of existing hydropower projects in a cost-effective manner, and sometimes with little or no social or economic disruption. This can be accomplished by implementing various water or energy management techniques that increase the flexibility of reservoir storage and releases such that environmental flows can be released into the downstream channel and floodplain. However, it is always easier and

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more cost-effective to integrate environmental flow considerations into the planning and design of hydropower projects than to modify or retrofit the design and operation of existing schemes.

It is also accepted that scientific opinion of various experts/institutions can have differing views. However, it is important to view the argument from the view point of application of principles of sustainable development and adoption of precautionary principles.

After examining the figures and facts and the arguments made and considering the provisions made in the stipulations in the FC based on a scientific study by IITR within the available timeframe and resources coupled with flexibility option for revising the same, we are of the considered opinion that the stipulations regarding environmental flow certainly follows the sustainable development and precautionary principles.

Point (c) - (ii):

Whether the cost benefit analysis has been properly conducted while applying for grant of FC.

The appellants argued that the FC can be granted only if the benefits are huge and costs are less while diverting the required forest land for the purpose of the project. The true cost-benefit analysis has not been done in the instant case before allowing diversion of the forest land. The appellants in this context relied on the few cost-benefit statements filed by other hydropower proponents and stated that following errors are made routinely:

(1) Future benefits are not discounted to present values;

(2) Gross revenues are shown as benefits;

(3) Environment costs are not calculated in money terms and not taken into account;

(4) Decline in generation due to recession of glaciers is not taken into account; and

(5) Long term viability of the project due to low-cost solar and other alternative sources of electricity is not examined.

Drawing parallel between other hydropower projects cost-benefit statements and their own suggested framework for cost-benefit stream parameters, appellants tried to demonstrate that the cost-benefit for the project is 0.13 only as against the projected cost-benefit ratio of 7.81 given by the project developer.

In this context, the respondents invariably stated that the cost-benefit analysis has been carried out adopting detailed guidelines issued for the purpose by Respondent No. 1 (which has been submitted on records). It is further argued by all the respondents that the cost-benefit analysis prepared in accordance with these guidelines is to be furnished along with the proposals seeking prior approval of central government under the Forest (Conservation) Act, 1980 for diversion of forest land required for such projects. The respondents have further advanced the argument that the case studies of cost-benefit analysis submitted by the Appellants is not in accordance with the guidelines of Respondent No. 1 and details of unit rates, their basis and method, etc. have not been provided and more importantly parallels cannot be drawn to the case study of other project with the project under reference.

Given the finite public and private resources, one need a standard for evaluating trade-offs, setting priorities, and making choices about how to allocate scarce resources among competing uses. The cost benefit analysis provides a way of doing this and this offers a technique for assessing the monetary social costs and benefits of a capital investment project over a given time period. This has traditionally been applied to big public sector projects such as new highway, dams, bridges, flood protection schemes and new industries. At the center of any appraisal decision, the key question remains as to ‘does the planned project lead to a net increase in social

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welfare?' For undertaking cost-benefit analysis, social costs & social benefits are worked out which include calculation of tangible benefits and costs (i.e. direct costs and benefits) and intangible benefits and costs (i.e. indirect costs and benefits - externalities). This aspect is very important as it involves trying to identify all of the significant costs and benefits. Subsequently, the future value of benefits is discounted to the present value since the costs and benefits accrue over time. Individuals normally prefer to enjoy the benefits now rather than later - so the value of future benefits has to be discounted. There are several objections to the use of cost benefit analysis especially when natural resources are involved as they involve problems in attaching valuations to costs and benefits. Some costs are easy to value such as the running costs (e.g. staff costs), capital costs (new equipment), etc. Other costs are more difficult - not least when a project has a significant impact on the environment. The value attached to the destruction of a habitat is to some "priceless" and to others "worthless". Costs are also subject to change over time. Similarly, the cost benefit analysis may not cover everyone affected - inevitably with major construction projects; there are a huge number of potential "stakeholders" who stand to be affected (positively or negatively) by the decision. It is in above context that the appellants wish to place a substantial value on public goods such as the environmental attributes.

We must keep in mind that the cost benefit analysis is basically an appraisal technique that tries to place monetary values on all benefits arising from a project and then compares the total value with the project's total cost. It has numerous potential applications although there are inherent difficulties with the issue of valuation. Essentially the process of cost benefit analysis is a comparative one, so that we can perhaps make judgment about which projects from a limited choice should be given the go ahead.

Upon hearing the arguments and perusal of the records furnished, we are of the considered view that the appellants as such intend to have more cost and benefit parameters such as greenhouse gas emissions, climate change, etc. to be included while carrying out the cost benefit analysis. From the records made available, it is noted that guidelines by Respondent No. 1 are available and it is expected that the same should be used while submitting the proposal for diversion of forest land by the project proponent and this cost benefit analysis should be examined with utmost care by the agencies responsible for grant of FC.

In the instant case, however, it is observed that despite elaborate guidelines (Form 'A', Item 1 (v) of form for seeking prior approval under Section 2 of the proposal by the State Government and other authorities in the Forest (Conservation) Rules, 2003 and prescribed parameters for cost and benefit stream, Annexure VI (a), (b) and (c) in Forest (Conservation) Rules, 2003, against parameters such as item No. 5 of Annexure VI (b), items No. 3, 4, 6 and 8 of Annexure VI (c) of Forest (Conservation) Rules, 2003, only general qualitative statements have been made rather than quantitative statements while making the cost benefit analysis and the same has been accepted by the Respondent No. 1.

In view of the facts stated, we are of the considered opinion that though the cost benefit analysis furnished by the project proponent is not in total accordance with the guidelines of Respondent no. 1 and the same has also been ignored by the Respondent no. 1 during appraisal, who is the custodian of the forest resources of the country. Considering the nature of project, and its likely benefits and comparatively very less loss of forest cover; probably the cost benefit analysis would not alter significantly even if the guidelines are followed in totality with the parameters suggested for inclusion in the cost and benefit stream. However, some suggestions have been made (infra) for better appreciation of the cost benefit analysis while considering such proposals may be taken care of.

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Point (c) - (iii):

Whether the impacts of deforestation on wildlife, ecology and environment have been considered or not.

The allegation that FAC has assumed that fish migration can be managed by suitable measures, negative impacts on terrestrial and aquatic bio-diversity are also amenable to mitigation and there will be no impact of the project in question on the Kedarnath Wildlife Sanctuary, etc. was also argued in greater details by the Respondents. No substantial evidence has been placed before the Tribunal to come to a different conclusion than what it was recorded by the FAC that though the population status of Cheer pheasant, which is very poor has been taken note of and no damage is caused to the wildlife available in the area. The project is a national project undertaken by the Government of India and all the precautionary principles were incorporated in the EC and FC to meet the mitigative measures in handling the project; may be in the form of stipulations to implement all the measures as suggested by the respective institutions/authorities. It is also noted that considering the proximity to the Kedarnath Wildlife Sanctuary, it has been mandated in the FC that the proposal requires clearance from National Board of Wildlife. In view of the said facts, we are of the considered opinion that all precautionary measures and principles of sustainable development have been followed in these matters.

Conclusions:

For the all the above discussion and reasons, we are of the opinion that there are no substantial merits calling for our interference into the FC, in question, granted by the Respondent No. 1. The appeal stands disposed of subject to the following directions:

1. *Integrated CIA Report preparation*: The first respondent shall setup an appropriate committee of experts drawn from IITR and WII in the preparation of CIA report of the five projects considered in WII report to integrate the physical, biological and social impacts in making comprehensive cumulative impact assessment report and frame appropriate conclusions and recommendations within a reasonable timeframe for consideration and final review by the Ministry of Environment and Forest to avoid any unforeseen environmental and ecological threat in the study area in the light of the discussion made against Point (c).

If this direction is not carried out, the appellant is at liberty to take appropriate steps as required under the law.

2. *Preparation of Cost Benefit Analysis Norms*: Considering the need for better procedures in making sound evaluation of the forest land diversion proposals as discussed in Point c(ii), following options for cost benefit analysis shall be explored for future proposals:
   a. the guidelines for cost benefit analysis may be updated/modified to provide clear instructions regarding the various cost and benefit elements to be incorporated for the purpose of arriving at cost benefit ratio; and M'
   b. the cost benefit analysis for each proposal received for diversion of forest land shall be done adopting the prescribed procedure.

The appeal accordingly stands disposed of. No costs.

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(2013) 5 Supreme Court Cases 336

(BEFORE G.S. SINGHVI AND S.J. MUKHOPADHAYA, JJ.)

DIPAK KUMAR MUKHERJEE . . Appellant;

Versus

KOLKATA MUNICIPAL CORPORATION AND OTHERS . . Respondents.

Civil Appeal No. 7356 of 2012†, decided on October 8, 2012

A. **Local Government — Town Planning — Illegal/Unauthorised constructions/Development/Encroachment — Demolition of illegal construction, directed — Refund of amounts taken from bona fide purchasers with interest — Penal costs — Illegal/Unauthorised constructions, reiterated, affect planned development of the area meant for public benefit, cause public hazard and violate fundamental rights of other citizens**

— Construction of multi-storeyed building in violation of sanctioned plan and Municipal Corporation Act and Municipal Corporation Building Rules — Construction continued by builder despite stop-work notice issued by competent authority of Municipal Corporation, demolition order issued by Mayor-in-Council after giving notice and opportunity of hearing and demolition of part of unauthorised structure — After completion of unauthorised construction, application moved by builder before Corporation for its regularisation under S. 400(1) of Municipal Corporation Act and seeking benefit under R. 25(2)(b) of Municipal Corporation Building Rules — Held, Corporation must demolish unauthorised construction within a month — Builder not entitled to benefit under R. 25(2) because disputed construction was in violation of sanctioned plan and notices issued by Corporation and also because application for regularisation was made after completion of unauthorised construction — Direction given by High Court to competent authority of Corporation to pass appropriate order after giving opportunity of hearing to builder cannot be sustained — Builder apart from being guilty of violating sanctioned plan, Act and Rules, also guilty of cheating bona fide purchasers of unauthorised portion of construction — Therefore, builder must refund cost of flats, etc. with interest @ 18% to bona fide purchasers and must also pay costs of Rs 25 lakhs for violation of sanctioned plan and continuation of illegal construction — Detailed directions issued to ensure compliance — Calcutta Municipal Corporation Act, 1980 (59 of 1980) — Ss. 400(1) and 401-A — Calcutta Municipal Corporation Building Rules, 1990 — R. 25(2) — Transfer of Property Act, 1882 — Ss. 55(1)(a) and 55(2) — Consumer Protection — Services — Housing — Fraud by builder in selling unauthorised flats — Relief — Consumer Protection Act, 1986, Ss. 14 and 2(1)(o) & (g)

† Arising out of SLP (C) No. 23780 of 2011. From the Judgment and Order dated 2-5-2011 of the Division Bench of the Calcutta High Court in FMA No. 2320 of 2011

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B. **Constitution of India — Art. 21 — Urban environment and ecology — Maintenance of balance with requirements of development — Illegal constructions directed to be demolished — Regularisation thereof, refused**

C. **Constitution of India — Art. 136 — Penal costs, when warranted**

Allowing the appeal, the Supreme Court

Held :

Illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors. Therefore, there should be no judicial tolerance of illegal and unauthorised constructions by those who treat the law to be their subservient. (Paras 8 and 9)

While preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer. (Para 29)

K. Ramadas Shenoy v. *Town Municipal Council, Udipi*, (1974) 2 SCC 506; *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577; *Pleasant Stay Hotel* v. *Palani Hills Conservation Council*, (1995) 6 SCC 127; *Cantonment Board, Jabalpur* v. *S.N. Awasthi*, 1995 Supp (4) SCC 595; *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*, (1991) 3 SCC 341; *G.N. Khajuria* v. *DDA*, (1995) 5 SCC 762; *Manju Bhatia* v. *NDMC*, (1997) 6 SCC 370; *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*, (1999) 6 SCC 464; *Friends Colony Development Committee* v. *State of Orissa*, (2004) 8 SCC 733; *Shanti Sports Club* v. *Union of India*, (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707; *Priyanka Estates International (P) Ltd.* v. *State of Assam*, (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283, *applied*

Since Respondent 7 has not disputed that the building was constructed in violation of the sanctioned plan and the Mayor-in-Council passed order for demolition of the disputed construction, the direction given by the Division Bench of the High Court to the competent authority of the Corporation to pass appropriate order after giving opportunity of hearing to Respondent 7 cannot be sustained. Respondent 7 cannot take benefit of Rule 25 because the disputed construction was in clear violation of the sanctioned plan and the notices issued by the competent authority of the Corporation and also because the application was made after completion of the construction. (Paras 21 and 27)

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Respondent 7 is guilty not only of violating the sanctioned plan and the relevant provisions of the 1980 Act and the Rules framed thereunder but also of cheating those who purchased portions of unauthorised construction under a bona fide belief that Respondent 7 had constructed the building as per the sanctioned plan. With the demolition of unauthorised construction some of such persons will become shelterless. It is, therefore, necessary that Respondent 7 is directed to compensate them by refunding the cost of the flat, etc., with interest. Respondent 7 must also pay for raising construction in violation of the sanctioned plan. (Para 28)

With a view to ensure that the illegal construction raised by Respondent 7 is pulled down without delay, it is directed that Respondent 7 shall pay the price of the flats, etc. to the purchasers with interest @ 18% per annum from the date of payment. The occupiers of illegal/unauthorised construction shall vacate such portions of the building within the next one month. Within the next one month, the Corporation shall demolish unauthorised construction after taking adequate precautionary measures. Respondent 7 shall pay cost of Rs 25,00,000 for brazen violation of the sanctioned plan and continuance of illegal construction despite "stop-work notice". The amount of cost shall be deposited with the Kolkata State Legal Service Authority within three months and the same be utilised for providing legal aid in deserving cases. (Para 30)

Reports showing compliance with the aforesaid directions be filed by the Corporation and Respondent 7 in the Registry of the High Court within six months. Thereafter, the matter be placed before the Single Judge who had passed the order dated 28-7-2010. If the Single Judge finds that any of the aforesaid directions has not been implemented then he shall initiate proceedings against the defaulting officers and/or Respondent 7 under the Contempt of Courts Act, 1971 and pass appropriate order. (Para 31)

Dipak Kumar Mukherjee v. *Kolkata Municipal Corpn.*, WP No. 13815 of 2010, order dated 28-7-2010 (Cal), *referred to*

Purusottam Lalji v. *Ratan Lal Agarwalla*, AIR 1972 Cal 459, *cited*

R-D/50953/CV

Advocates who appeared in this case :

Bhaskar P. Gupta and Kalyan Bandopadhyay, Senior Advocates (Partha Sil, L.C. Agrawala, Abhijeet Chatterjee and Abhijit Sengupta, Advocates) for the appearing parties.

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

1. (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283, *Priyanka Estates International (P) Ltd.* v. *State of Assam* 339*d-e*, 343*f*, 350*f*
2. WP No. 13815 of 2010, order dated 28-7-2010 (Cal), *Dipak Kumar Mukherjee* v. *Kolkata Municipal Corpn.* 345*e-f*, 356*f-g*
3. (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707, *Shanti Sports Club* v. *Union of India* 339*d*, 342*c*
4. (2004) 8 SCC 733, *Friends Colony Development Committee* v. *State of Orissa* 339*d*, 340*e-f*, 350*f*
5. (1999) 6 SCC 464, *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu* 339*d*
6. (1997) 6 SCC 370, *Manju Bhatia* v. *NDMC* 339*d*
7. (1995) 6 SCC 127, *Pleasant Stay Hotel* v. *Palani Hills Conservation Council* 339*c-d*
8. (1995) 5 SCC 762, *G.N. Khajuria* v. *DDA* 339*d*

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9. (1995) 2 SCC 577, *Virender Gaur* v. *State of Haryana* 339*c-d*
10. 1995 Supp (4) SCC 595, *Cantonment Board, Jabalpur* v. *S.N. Awasthi* 339*c-d*
11. (1991) 3 SCC 341, *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra* 339*c-d*, 340*c-d*
12. (1974) 2 SCC 506, *K. Ramadas Shenoy* v. *Town Municipal Council, Udipi* 339*c*, 339*d-e*
13. AIR 1972 Cal 459, *Purusottam Lalji* v. *Ratan Lal Agarwalla* 347*e-f*

The Judgment of the Court was delivered by

G.S. SINGHVI, J.— Leave granted.

2. In the last four decades, the menace of illegal and unauthorised constructions of buildings and other structures in different parts of the country has acquired monstrous proportion. This Court has repeatedly emphasised the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions as in *K. Ramadas Shenoy* v. *Town Municipal Council, Udipi*[1], *Virender Gaur* v. *State of Haryana*[2], *Pleasant Stay Hotel* v. *Palani Hills Conservation Council*[3], *Cantonment Board, Jabalpur* v. *S.N. Awasthi*[4], *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*[5], *G.N. Khajuria* v. *DDA*[6], *Manju Bhatia* v. *NDMC*[7], *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*[8], *Friends Colony Development Committee* v. *State of Orissa*[9], *Shanti Sports Club* v. *Union of India*[10] and *Priyanka Estates International (P) Ltd.* v. *State of Assam*[11].

3. In *K. Ramadas Shenoy* v. *Town Municipal Council, Udipi*[1] the resolution passed by the Municipal Committee authorising construction of a cinema theatre was challenged on the ground that the site was earmarked for the construction of Kalyan Mantap-cum-Lecture Hall and the same could not have been used for any other purpose. The High Court held that the cinema theatre could not be constructed at the disputed site but declined to quash the resolution of the Municipal Committee on the ground that the theatre owner had spent huge amount. While setting aside the High Court's order, this Court observed: (SCC pp. 513-14, paras 28-29)

> "*28.* An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation

1 (1974) 2 SCC 506
2 (1995) 2 SCC 577
3 (1995) 6 SCC 127
4 1995 Supp (4) SCC 595
5 (1991) 3 SCC 341
6 (1995) 5 SCC 762
7 (1997) 6 SCC 370
8 (1999) 6 SCC 464
9 (2004) 8 SCC 733
10 (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707
11 (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283

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under the statute to see that the residential area is not spoilt by unauthorised construction. The Scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the Scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the courts will quash orders passed by Municipalities in such cases.

29. The Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The Scheme here is for the benefit of the public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction."

4. In *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*[5] this Court approved the order passed by Bombay Municipal Corporation for demolition of the illegally constructed floors of the building and observed: (SCC pp. 345-46, para 7)

"*7.* ... Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and bye-laws are made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits."

5. In *Friends Colony Development Committee* v. *State of Orissa*[9] this Court noted that a large number of illegal and unauthorised constructions were being raised in the city of Cuttack and made the following significant observations: (SCC pp. 742-44, paras 20 & 22-24)

"*20. ... Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffers unbearable burden and is often thrown out of gear.* Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the

5 (1991) 3 SCC 341
9 (2004) 8 SCC 733

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unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. …

* * *

22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimised from the point of view of the control of community development, the prevention of overcrowding of land, the furnishing of recreational facilities like parks

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and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building." (emphasis supplied)

6. In *Shanti Sports Club* v. *Union of India*[10] this Court approved the order of the Delhi High Court which had declared the construction of sports complex by the appellant on the land acquired for planned development of Delhi to be illegal and observed: (SCC pp. 743-44, paras 74-75)

"*74.* In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different

10 (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707

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types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc....

75. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

7. In *Priyanka Estates International (P) Ltd.* v. *State of Assam*[11] this Court refused to order regularisation of the illegal construction raised by the appellant and observed: (SCC p. 42, para 55)

"*55.* It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally

11 (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283

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responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."

8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to the poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storeyed structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorised constructions by those who treat the law to be their subservient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short "the Corporation") have been extremely vigilant and taken steps for enforcing the provisions of the Calcutta Municipal Corporation Act, 1980 (for short "the 1980 Act") and the Rules framed thereunder for demolition of illegal construction raised by Respondent 7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against illegal and unauthorised constructions and those indulging in such activities will not be spared.

10. The appellant is an enlightened resident of Kolkata. He succeeded in convincing the learned Single Judge of the Calcutta High Court to order demolition of unauthorised construction of multi-storeyed building by Respondent 7, M/s Unique Construction on the plot owned by Respondent 8, Sarjun Prasad Shaw but could not persuade the Division Bench to affirm the order of the learned Single Judge and this is the reason why he has approached this Court.

11. Mohammad Shahid (the sole proprietor-cum-attorney of Respondent 7) entered into an agreement with Respondent 8 for development of plot bearing No. 8/1F, Gopal Doctor Road, Kolkata. The building plan submitted by Respondent 7 for construction of two-storeyed building was sanctioned by the Corporation on 11-4-1990 and five years' time was given for completing the construction. When the site was inspected by the officers of the Corporation in October 2009, they found that Respondent 8 had raised unauthorised construction by erecting RCC column up to 3rd floor along with staircase in deviation of the sanctioned plan. Thereupon, stop-work

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notice was issued by the Executive Engineer (Civil), Building under Section 401 of the 1980 Act. However, instead of stopping the construction, Respondent 7 added one more floor. This brazen defiance of law by Respondent 7 led to the issuance of notices dated 15-10-2009 and 10-11-2009 under Sections 400(1) and 401-A respectively. Simultaneously, a report was submitted by the Deputy Chief Engineer (Building) to the Director General (Building-II), for demolition of the unauthorised construction on the ground that structural stability of the illegal construction was doubtful and existence of the same was dangerous to the lives of the people. The issue was then considered by the Mayor-in-Council on 14-1-2010 and it was decided to demolish the unauthorised construction. Accordingly, about 600 sq ft out of the total constructed area measuring 1500 sq ft was demolished on 4-2-2010.

12. In the meanwhile, the appellant filed WP No. 23741 of 2009 in the High Court for issue of a direction to the Corporation to demolish the illegal construction by Respondent 7. The same was disposed of by the learned Single Judge on 3-3-2010 with the direction that the objection raised by the appellant against the unauthorised construction be decided by the competent authority after hearing the affected parties. Simultaneously, it was ordained that no illegal construction be carried out in the premises in question.

13. Notwithstanding the decision of the Mayor-in-Council and the order of the High Court, Respondent 7 continued with the construction of the building, albeit in violation of the sanctioned plan. Therefore, the appellant filed a fresh writ petition which came to be registered as WP No. 13815 of 2010 for demolition of the unauthorised construction and for issue of a direction to the Corporation not to issue completion certificate in favour of Respondents 7 and 8. The second writ petition was disposed of by the learned Single Judge vide order dated 28-7-2010[12], the relevant portions of which are extracted below:

> "It appears from the submissions that the construction has been raised up to ground plus fourth floor which is beyond the sanctioned plan. It is evident from the photocopies of the records that it was resolved on 14-1-2010 in the MIC meeting of the Corporation that as the person responsible continued with the unauthorised construction which might lead to an accident, appropriate action towards demolition of the unauthorised construction should be taken forthwith under Section 400(8) of the Calcutta Municipal Corporation Act, 1980 with the help of the local administration.
>
> Since admittedly, unauthorised construction has been raised, that is, construction has been carried out beyond the sanctioned plan, I direct the Director General (Building-II), Kolkata Municipal Corporation and the Executive Engineer (Civil), Building Department, Borough-IX, Respondents 3 and 4 respectively, to demolish the unauthorised structure,

12 *Dipak Kumar Mukherjee* v. *Kolkata Municipal Corpn.*, WP No. 13815 of 2010, order dated 28-7-2010 (Cal)

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as resolved, within eight weeks from the date of communication of this order. During such demolition, if need be Respondents 3 and 4 are at liberty to seek assistance of the Officer-in-charge, Watgunge Police Station, Kolkata, Respondent 6 shall render all assistance in implementing the order of this Court."

14. Immediately thereafter, Mohammad Shahid submitted an application dated 13-8-2010 for regularisation of the unauthorised portion of the building under Section 400(1) of the 1980 Act. That application reads as under:

Dated: 13-8-2010

"To
The Executive Engineer (Civil),
Building Department Br.-IX,
Kolkata Municipal Corporation,
11, Belvedere Road, Kolkata 700 027.

Sub.: Regularisation of additional floor over sanctioned building.

Re: Pre: No. 8/1F, Gopal Doctor Road,
Ward No. 76, Br.-IX.

Dear Sir,

I, Md. Shahid, attorney of the abovementioned premises, am submitting herewith one copy of ammonia print of five-storeyed building plan. The said building was sanctioned for two storeys, and additional three more storeys have been constructed for accommodation of existing tenants and our family members.

Now I do request and pray to your good self to regularise the unauthorised portion of the said building under Section 400(1). For that I am ready to pay the penalty and charges for the same.

Hope your honour would extend your cooperation in this respect and oblige me.

Thanking you.

Yours faithfully,
sd/-
Md. Shahid"

15. Simultaneously, Respondent 7 challenged the order of the learned Single Judge by filing an appeal. During the pendency of the appeal, Mohammad Shahid filed an additional affidavit dated 16-9-2010, Paras 5 to 10 whereof are reproduced below:

"*5.* I state that a plan dated 11-4-2009 vide building Permit No. 2009090004 was sanctioned for Premises No. 8/1F, Gopal Doctor Road, Kidderpore, Kolkata 700 023, by Kolkata Municipal Corporation, for erection of a two-storeyed building, covering a sanctioned area measuring about 145.82 sq m. The proposed FAR for the said plan was 0.99 over land measuring about 145.927 sq m. But the building has been

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constructed up to five storeys. Presently, the total constructed cover area for the five-storeyed building is measuring about 559.57 sq m and the present FAR is 3.83.

6. I say that according to clause (*b*) sub-rule (2) of Rule 25 of the Calcutta Municipal Corporation Building Rules, 1990, 'if during the erection or execution of work any external deviation beyond the sanctioned covered space is intended to be made and which does not violate the provisions of the Act or the said Rules, the person erecting such construction, prior to carrying out such erection or execution of works, submit, in accordance with the provisions of the said Rules, a revised plan incorporating the deviation intended to be carried out, for obtaining necessary sanction thereof'.

7. I further say that clause (*b*) sub-rule (2) of Rule 25 of the Calcutta Municipal Corporation Building Rules, 1990, empowers the municipal authorities to allow a person to construct beyond the sanctioned covered area, which means construction exceeding the floor area ratio can be allowed to be carried on.

8. I say that there is no express provision in the Calcutta Municipal Corporation Act, 1980 and also in the Calcutta Municipal Corporation Building Rules, 1990, stopping a person from constructing beyond the floor area ratio. I further say that though none of the provisions of the Calcutta Municipal Corporation Act, 1980 and the Calcutta Municipal Corporation Building Rules, 1990, empowers Calcutta Municipal Corporation to regularise the construction made in excess of the sanctioned plan, but Kolkata Municipal Corporation gets the said power of regularisation by virtue of the Full Bench judgment of this Hon'ble Court delivered in *Purusottam Lalji* v. *Ratan Lal Agarwalla*[13]. In the said case this Hon'ble Court was pleased to decide that 'even in respect of matters which involve violation of unrelaxable building rules the Commissioner has discretion not to order demolition if the violation is not of serious nature'.

9. I say that I, on 13-8-2010, have already applied before Kolkata Municipal Corporation for regularisation of the construction erected beyond the sanctioned plan and have submitted a revised plan for sanction before the authority concerned. Copy of the letter dated 13-8-2010 and the revised plan is collectively annexed hereto and marked with the letter 'R-1'.

10. I say that the construction erected by me in the present case is not of a serious nature and there is no immediate threat that the building may fall down and the said fact shall be proved from the structural stability certificate issued by Shri Prabir Kumar Mitra, Civil Engineer, after due inspection of the premises in question.

13 AIR 1972 Cal 459

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A copy of the structural stability certificate is annexed hereto and marked with the letter 'R-2'."

16. The appellant filed detailed counter-affidavit dated 17-1-2011 reiterating his plea that the construction made by Respondent 7 was illegal. Thereafter, Respondent 8 filed affidavit dated 22-2-2010 and questioned the locus standi of the appellant to file the writ petition. Shri Tapas Chandra and Smt Asha Devi Shaw, to whom the unauthorised portions of the building are said to have been sold, got themselves impleaded as parties to the appeal filed by Respondent 7. On 1-3-2011, the Division Bench of the High Court suo motu directed issue of notice under Order 1 Rule 8 of the Code of Civil Procedure and publication thereof in two daily newspapers, one in Bengali and another in English so as to enable other purchasers of the unauthorised portions of the building to present their cause before the Court. The relevant portion of that order reads as under:

"1-3-2011

Mr Bhaskar Ghosh, learned advocate, has filed a report of the Officer-in-charge of Watgunge Police Station.

Let the first and second pages of the said report be endorsed by the learned Advocate Mr Ghosh.

Let the said report be kept on record.

From the said report it appears that in an unauthorised construction without sanction plan above 2nd floor, in terms of the complaint filed by Kolkata Municipal Corporation, Case No. 320 dated 14-10-2010 under Section 401-A of the CMC Act was started and developer/appellant and the respondent/owner are accused in the said proceeding.

It is submitted by the learned Advocate Mr Chatterjee, appearing for the developer and Mr Bhattacharya, learned advocate appearing for the owner that their clients already have been granted bail in that criminal proceeding and trial is continuing.

It is further submitted by the learned advocate appearing for the developer/appellant and the learned advocate appearing for the respondent/owner that the premises concerned, as have been constructed, though on breach of the sanction plan of Kolkata Municipal Corporation but many persons have been provided with occupation in different flats by selling the flats concerned of the said property or providing their occupation on considering their earlier tenancy right.

Let affidavits be filed by them disclosing the total number of flats of the premises concerned, the names of the occupants therein, if any, detailing the particulars, namely, their right and the instruments executed by the appellant and/or the respondent/owner concerned, so that the Court may pass appropriate order was to whether those persons should be heard to not before passing any decision in this appeal.

Let such affidavits be filed within 10 days from date.

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The matter is posted for hearing on 15-3-2011 at 10.30 a.m. as fixed matter.

Since it is the submission of the appellant that there are many occupants above the 2nd floor of the premises concerned up to the 5th floor which have been constructed without any sanction plan, for effective adjudication, let notice under Order 1 Rule 8 of the Code of Civil Procedure be published by the appellant within a week in two daily newspapers having State-wide publication; one in Bengali and another in English and will submit a supplementary affidavit disclosing his action to that effect."

17. On 15-3-2011, the High Court, after taking note of the fact that none of the occupants had come forward to espouse their cause, directed that a fresh notice be published under Order 1 Rule 8 CPC. The second opportunity given by the High Court was also not availed by the occupants of the illegally constructed portion of the building. The appeal filed by Respondent 7 was finally disposed of by the Division Bench of the High Court on 2-5-2011 and the competent authority of the Corporation was directed to take appropriate decision in accordance with law after complying with the principles of natural justice. This is evinced from the following extracts of the impugned order:

"Having heard the learned counsel appearing for the parties and considering the facts and circumstances of the case, we are of the view that the competent authority of Kolkata Municipal Corporation should take appropriate decision under the provisions of the Calcutta Municipal Corporation Act and the Building Rules framed thereunder while dealing with the allegations of unauthorised construction in respect of any building. In the present case, specific allegation has been made to the effect, that two floors of the building in question were constructed even in the absence of sanctioned building plan.

In the aforesaid circumstances, the competent authority of Kolkata Municipal Corporation must take appropriate decision in respect of the building in question upon complying with the provisions of the Calcutta Municipal Corporation Act and the Building Rules framed thereunder.

The Court cannot usurp the authority of Kolkata Municipal Corporation in this regard. The validity and/or legality of the decision of the Kolkata Municipal Corporation Authorities regarding demolition and/or retention of any unauthorised structure can be challenged before this Court but this Court under normal circumstances should not dictate the Kolkata Municipal Corporation Authorities to take any specific decision regarding demolition or retention of any structure without allowing the competent authority to take appropriate decision in this regard.

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The Kolkata Municipal Corporation Authorities should take appropriate decision in respect of the fate of an illegal structure at the first instance and the Court will thereafter adjudicate the correctness of such decision. The Court under normal circumstances should not either direct retention of any illegal structure or demolition of the same before allowing the competent authority of the Kolkata Municipal Corporation concerned to take appropriate decision in accordance with law.

For the aforementioned reasons, we direct the competent authority of Kolkata Municipal Corporation to consider the nature and magnitude of the unauthorised construction at the premises in question and take specific decision regarding retention or demolition of the same or any part thereof.

Needless to mention that the competent authority of Kolkata Municipal Corporation will take appropriate decision strictly in accordance with law and upon observing the principles of natural justice without any further delay but positively within a period of two months from date."

18. Shri Bhaskar P. Gupta, learned Senior Counsel appearing for the appellant argued that the direction given by the Division Bench is legally unsustainable because while deciding the appeal preferred by Respondent 7, the Division Bench of the High Court overlooked the fact that the Mayor-in-Council had, after giving notice and opportunity of hearing to the representative of Respondent 7, already passed order on 14-1-2010 for demolition of the unauthorised construction. The learned Senior Counsel emphasised that Respondent 7 had defied the "stop-work notice", decision taken by Mayor-in-Council and continued with the construction of the building even after demolition of the unauthorised portion thereof and argued that the Division Bench of the High Court committed serious error by ordaining compliance with the rule of audi alteram partem ignoring that Respondent 7 had never contested the factum of unauthorised construction. Shri Bhaskar P. Gupta relied upon the judgments of this Court in *Friends Colony Development Committee* v. *State of Orissa*[9] and *Priyanka Estates International (P) Ltd.* v. *State of Assam*[11] and argued that the Division Bench of the High Court committed serious error by interfering with the direction given by the learned Single Judge for demolition of the construction which was raised by Respondent 7 in violation of the sanctioned plan and by showing total contempt for the notices issued by the Corporation under Sections 400 and 401 of the 1980 Act.

19. Shri Kalyan Bandopadhyay, learned counsel for the Corporation extensively referred to the pleadings of the parties to show that the representative of Respondent 7 had admitted construction of building in

9 (2004) 8 SCC 733

11 (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283

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violation of the sanctioned plan and argued that such construction cannot be regularised under Rule 25(2) of the Calcutta Municipal Corporation Building Rules, 1990 (for short "the Rules").

20. The learned counsel for Respondent 7 fairly conceded that the construction raised by his client is contrary to the sanctioned plan but argued that the Corporation is duty-bound to pass appropriate order on the application filed for regularisation of such construction. The learned counsel submitted that even though Rule 25(2) of the Rules may not be strictly applicable to the case of his client, the Corporation possesses inherent power to regularise the illegal construction and there is no justification to demolish the unauthorised portion of the building without deciding the application submitted on 13-8-2010.

21. We have considered the respective arguments and carefully perused the record. Since, Respondent 7 has not disputed that the building was constructed in violation of the sanctioned plan and the Mayor-in-Council passed order dated 14-1-2010 for demolition of the disputed construction, the direction given by the Division Bench of the High Court to the competent authority of the Corporation to pass appropriate order after giving opportunity of hearing to Respondent 7 cannot be sustained. It appears that attention of the Division Bench was not drawn to the notices issued by the competent authority of the Corporation under Sections 400, 401 and 401-A of the 1980 Act and the order dated 14-1-2010 passed by the Mayor-in-Council, else it would not have decided the appeal by assuming that the competent authority had not passed an order for demolition of the illegal construction. The factum of illegal construction having been raised by Respondent 7 is also evinced from the counter-affidavits filed on behalf of Respondents 1 to 5 and Respondent 7 respectively.

22. In Paras 4(*a*) to (*c*), (*e*) to (*h*), (*j*) and (*k*), Shri Amitava Roy Chaudhary, Executive Engineer (Civil), Building Department, Kolkata Municipal Corporation has explained the Corporation's stand in the following words:

> "*4*. I crave leave of this Hon'ble Court to set out the following facts in connection with the present SLP:
>
> (*a*) A building plan being Building Sanction Plan No. 2009090004 was sanctioned on 11-4-2009 by the authority of the Corporation concerned in favour of one Md. Shahid for construction of two-storeyed residential building in respect of Premises No. 8/1F, Gopal Doctor Road, Kolkata 700 023 (hereinafter referred to as 'the said premises') and the same to be completed within five years from the date of sanction i.e. 10-4-2014 as per the said sanction.
>
> (*b*) On or about October 2009 the officers of the Corporation concerned inspected the said premises after receiving a complaint over telephone about the unauthorised construction being made in the said premises. Upon the said complaint the officials concerned

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inspected the said premises and found that RCC columns were erected up to 3rd floor level with projections of some columns above 3rd floor level and casting of RCC slab were made up to 3rd floor level along with staircase in deviation from the said sanction plan for which a notice under Section 401 of the CMC Act, 1980 was served on 8-10-2009 to Md. Shahid, the person responsible, to stop forthwith further progress of the construction work and the same was received by the person responsible. Moreover, an intimation was sent to the Officer-in-charge, Watgunge Police Station, Kolkata, requesting him for follow-up action in the prevention of unauthorised construction at the said premises which was in deviation and beyond the sanction plan.

A true copy of notice under Section 401 of the CMC Act and a copy of the intimation given to the Officer-in-charge, Watgunge Police Station, Kolkata, are annexed as Annexures P-1 & P-2 at pp. 23-27 of the SLP paper book.

(*c*) It appeared from the records of the KMC that in spite of service of notice under Section 401 of the CMC Act, 1980 to stop construction forthwith, the person responsible continued with the construction works defying the said stop-work notice for which first time municipal guard watch was posted from 12-10-2009 in respect of the said premises and an intimation of the said posting of guard watch was given to the person responsible for prevention of the continuance of unauthorised construction thereon.

* * *

(*e*) On or about November 2009 the officers of the Building Department of the Corporation concerned further inspected the said premises and found that the construction works were going on up to 4th floor level in spite of posting of guard watch. Accordingly, considering the gravity of the situation and safety of the adjoining structure as well as the safety of the public in general the authority concerned suggested that action under Section 401-A of the CMC Act, 1980 may be taken against the said person responsible and a proposal was made by the officials of the Corporation concerned, besides to it the same was sent to Watgunge Police Station for taking action against the person responsible or any other person who has conspired to make the said unauthorised construction. A true copy of the said proposal dated 10-11-2009 is annexed as Annexure P-4 at p. 30 of the SLP paper book.

(*f*) After considering the said statement and the demolition sketch the Deputy Chief Engineer (Building) submitted a report to the Director General (Building-II), KMC. In the said report the Deputy Chief Engineer (Building) mentioned that since the nature of the unauthorised construction works are massive and there was defiant

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attitude of the person responsible and since the premises are situated in congested area, the construction had been done in a haphazard manner without following the norms and practice of Civil Engineering. It was felt that the structural stability of the impugned construction is doubtful which would create several hazards like traffic congestion, fire hazards, environmental hazards, etc. Accordingly, it was recommended that action under Section 400(8) of the CMC Act, 1980 may be taken against the said unauthorised construction in the said premises to cause such building or work to be demolished forthwith, and the same was placed before the Member, Mayor-in-Council for approval.

(*g*) The Member, Mayor-in-Council approved the said recommendation. On 14-1-2010, upon such approval the Mayor-in-Council resolved that unauthorised construction/structures at the said premises be demolished forthwith under Section 400(8) of the CMC Act, 1980 with the help of the local administration. A true copy of the said proposal of the said premises and the resolution of the Mayor-in-Council dated 14-10-2010 is annexed as Annexure P-5 (Colly) at pp. 31-32 of the SLP paper book.

(*h*) In accordance with the said resolution of the Mayor-in-Council the demolition squad of the Corporation went to the said premises on 4-2-2010 and was able to demolish a portion of the unauthorised construction about 600 sq ft approx. out of approx. 1500 sq ft of the said unauthorised construction in the said premises. The demolition squad also submitted a report of the said structure in the said premises. In the said report the reason for not being able to demolish the entire unauthorised structure was also stated. A true copy of the demolition report and the demolition sketch is annexed as Annexure P-6 at p. 33 of the SLP paper book.

* * *

(*j*) Pursuant to the directions of the Calcutta High Court, the Executive Engineer concerned gave a hearing on 8-4-2010 to the petitioner and the respondent, M/s Unique Constructions represented by its proprietor Md. Shahid, the person responsible for making unauthorised constructions and on 16-4-2010 the Executive Engineer concerned passed an order and communicated the same to the respective parties. A true copy of the said order dated 16-4-2010 is annexed as Annexure P-8 (at pp. 36-37) of the SLP paper book.

(*k*) Thereafter, on the basis of the said order of the Executive Engineer, on 20-7-2010 the Assistant Engineer concerned along with the Sub-Assistant Engineer inspected the said premises and found that the demolished portion of the said building has been repaired by the said person responsible and also found that the said building is full of occupancy."

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23. In Paras 4, 5 and 6 of his affidavit, Mohammad Shahid has averred as under:

"*4*. That since Premises No. 8/1F, Gopal Doctor Road, Police Station Watgunge, Kolkata having an area of about 2 cottahs 11 chittacks 33 sq ft was covered with temporary structures and some of which were tiles and asbestos, etc. The said structures were occupied by various tenants and partly by the landlord. Therefore, the owner/landlord decided to enter into an agreement with the answering respondent for undertaking necessary construction works since the property became uninhabitable. Thus necessary agreements were executed by and between the answering respondent and owner/landlord for the construction work in the premises in question.

Accordingly, thereafter a plan dated 11-4-2009 vide Building Permit No. 2009090004 was sanctioned for Premises No. 8/1F, Gopal Doctor Road, Kidderpore, Kolkata 700 023, by Kolkata Municipal Corporation for erection of a two-storeyed building, covering a sanctioned area measuring about 145.82 sq m. The proposed FAR for the said plan was 0.99 over land measuring about 145.927 sq m. But the building has been constructed up to five storeys. Presently the total constructed cover area for the five-storeyed building is measuring about 55.57 sq m and the present FAR is 3.83.

5. That subsequent thereto as per the requirement of the owner and the tenants in the said premises construction up to the floor more than sanctioned was constructed. Upon construction the answering respondent filed an application with Kolkata Municipal Corporation under Rule 25(2)(*b*) of the Building Rules on 13-8-2010 for regularisation of the construction erected beyond sanctioned plan and a revised plan was submitted for sanction before the competent authority.

6. That according to clause (*b*) sub-rule (2) of Rule 25 of the Calcutta Municipal Corporation Building Rules, 1990 it is provided that if during the erection or execution of work any external deviation beyond the sanctioned covered space is intended to be made and which does not violate the provisions of the Act or the said Rules, the person erecting such construction, prior to carrying out such erection or execution of works, submit, in accordance with the provisions of the said Rules, a revised plan incorporating the deviation intended to be carried out, for obtaining necessary sanction thereof. Further clause (*b*) sub-rule (2) of Rule 25 of the Calcutta Municipal Corporation Building Rules, 1990, empowers the municipal authorities to allow a person to construct the sanctioned covered area, which means construction exceeding the floor area ratio can be allowed to be carried on."

24. In view of the pleadings filed before the High Court and the affidavits filed before this Court, there is no escape from the conclusion that Respondent 7 had raised construction in violation of the plan sanctioned under Section 396 of the 1980 Act and continued with that activity despite

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the order of the Mayor-in-Council. In the prevailing scenario, the representative of Respondent 7 might have thought that he will be able to pull strings in the power corridors and get an order for regularisation of the illegal construction but he did not know that there are many mortals in the system who are prepared to take the bull by horn and crush it with iron hand.

25. Rule 25 of the Rules, on which reliance was placed by Respondent 7 for seeking regularisation of the illegal construction, reads as under:

> "**25.** ***Deviation during execution of works***.—(1) No deviation from the sanctioned plan shall be made during erection or execution of any work.
>
> (2) Notwithstanding anything contained in sub-rule (1), if during erection or execution of work any internal alterations or external additions which do not violate the provisions of the Act or these Rules is made, the Municipal Commissioner may without prejudice to any action that may be taken against the person at whose instance such alteration or additions have been made, allow the person referred to in sub-rule (1) of Rule 4 to submit, in accordance with the provisions of these Rules, a revised plan showing the deviation and may sanction such plan.
>
> (3) Any departure made during the execution of any work or at any time thereafter without sanction shall be deemed to be in contravention of the provisions of the Act and these Rules and shall be dealt with accordingly."

26. A reading of the plain language of Rule 25(1) makes it clear that a person, who erects any structure or executes any work is not entitled to deviate from the sanctioned plan. Rule 25(2) which contains a non obstante clause and provides for sanction of revised plan to be submitted by the person engaged in erection of building or execution of work lays down that if during erection or execution of work, any internal alterations or external additions which do not violate the provisions of the Act or the Rules is made, the Municipal Commissioner can, at an application made in that behalf sanction the revised plan showing the deviation. Rule 25(3) is declaratory in nature. It lays down that any departure made during the execution of any work or at any time thereafter without sanction shall be deemed to be in contravention of the Act and the Rules shall be dealt with accordingly.

27. In our view, Respondent 7 cannot take benefit of Rule 25 because the disputed construction was in clear violation of the sanctioned plan and the notices issued by the competent authority of the Corporation and also because the application was made after completion of the construction.

28. Before parting with the case, we consider it necessary to observe that Respondent 7 is guilty not only of violating the sanctioned plan and the relevant provisions of the 1980 Act and the Rules framed thereunder but also of cheating those who purchased portions of unauthorised construction under a bona fide belief that Respondent 7 had constructed the building as per the sanctioned plan. With the demolition of unauthorised construction some of such persons will become shelterless. It is, therefore, necessary that Respondent 7 is directed to compensate them by refunding the cost of the flat, etc., with interest. Respondent 7 must also pay for raising construction in violation of the sanctioned plan.

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29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer.

30. In the result, the appeal is allowed and the impugned judgment is set aside. With a view to ensure that the illegal construction raised by Respondent 7 is pulled down without delay, we issue the following directions:

30.1. Within three months from today, Respondent 7 shall pay the price of the flats, etc. to the purchasers with interest @ 18% per annum from the date of payment.

30.2. The occupiers of illegal/unauthorised construction shall vacate such portions of the building within the next one month.

30.3. Within the next one month, the Corporation shall demolish unauthorised construction after taking adequate precautionary measures.

30.4. Respondent 7 shall pay costs of Rs 25,00,000 for brazen violation of the sanctioned plan and continuance of illegal construction despite "stop-work notice". The amount of cost shall be deposited with the Kolkata State Legal Service Authority within three months and the same be utilised for providing legal aid in deserving cases.

31. Reports showing compliance with the aforesaid directions be filed by the Corporation and Respondent 7 in the Registry of the Calcutta High Court within six months. Thereafter, the matter be placed before the learned Single Judge who had passed the order dated 28-7-2010[12]. If the learned Single Judge finds that any of the aforesaid directions has not been implemented then he shall initiate proceedings against the defaulting officers and/or Respondent 7 under the Contempt of Courts Act, 1971 and pass appropriate order.

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12 *Dipak Kumar Mukherjee* v. *Kolkata Municipal Corpn.*, WP No. 13815 of 2010, order dated 28-7-2010 (Cal)

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(2013) 4 Supreme Court Cases 575

(BEFORE A.K. PATNAIK AND H.L. GOKHALE, JJ.)

STERLITE INDUSTRIES (INDIA) LIMITED
AND OTHERS .. Appellants;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeals Nos. 2776-83 of 2013†, decided on April 2, 2013

A. **Environment Protection and Pollution Control — Polluter pays principle — Closure of polluting plant or direction to pay compensation for loss suffered by citizenry due to harm caused to environment — Factors to be considered and balanced — Sustainable development — Considerations of — Remedial action to restore environmental damage caused by polluting plant concerned/improve environment — Possibility of, without closure of plant**

— Environmental impact assessment (EIA) for setting up copper smelter plant by appellant Company and environmental clearance by authorities being valid, rational and as per procedure — But plant while operating failing to maintain emission and effluent standards and operating without renewal permission and thereby causing air and water pollution which could have been averted — High Court therefore quashing environmental clearance and directing closure of plant — But when matter coming to Supreme Court, appellant removing 29 out of 30 pollution-causing deficiencies at plant pointed out by NEERI (National Environmental Engineering and Research Institute)

— Considering: (a) economic importance of plant and need of sustainable development in public interest, (b) that authorities could exercise their discretion under R. 5(1)(v), 1986 Rules at any later stage to shift the plant if they felt the need therefor without closing down plant, (c) well-settled principles and grounds for judicial review and intervention, (d) that pollution could be checked/remedied without the plant being closed down, and (e) paying capacity of plant to pay compensation — Held, the plant should not be closed down but instead appellant Company should pay compensation of Rs 100 crores to remedy environmental damage caused/ improve environment as directed — Therefore, High Court order directing closure of plant, set aside — Clarified that State Pollution Control Board (i.e. TNPCB) can issue directions to appellant Company including a direction for closure of the plant, for the protection of environment in accordance with law, if found necessary at any stage — Also clarified that award of Rs 100 crores as compensation would not bar any other claim by any person that may be available under law — Constitution of India — Arts. 21, 32, 47, 48-A, 226 and 136 — Air (Prevention and Control of Pollution) Act, 1981 — S. 21 — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 25, 3,

† Arising out of SLPs (C) Nos. 28116-23 of 2010. From the Judgment and Order dated 28-9-2010 of the High Court of Judicature of Madras in WPs Nos. 15501-502 of 1996, 5769 of 1997, 16861 of 1998, WMPs Nos. 8044-46 of 1999 and WP No. 15503 of 2006

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16 and 18 — Environment (Protection) Act, 1986 — Ss. 3(1) & (2) — Environment (Protection) Rules, 1986 — Rr. 5(1)(v) & (3) — Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, R. 19

B. **Environment Protection and Pollution Control — Pollutants/ Polluting industry — Compensation on basis of polluter pays principle — Manner of determination of amount — Paying capacity of polluter — Reckoning of — Closure of plant, when not desirable**

C. **Environment Protection and Pollution Control — Polluter pays principle — Compensation awarded under, for causing harm to environment for a particular period, held, not to affect any claim for damages for the aforesaid period or any other period that may lie in a civil court or any other forum in accordance with law**

D. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Judicial review/Quashment of — Grounds and scope for judicial intervention — Principles summarised**

— Held, Environmental Impact Assessment (EIA) done and environmental clearance granted by expert authorities can only be quashed on well-recognised principles of judicial review i.e. only if there is any illegality, irrationality or procedural impropriety in granting such permission (which is not the case here) — However, if after setting up of plant, the plant begins/continues to pollute environment, fundamental right under Art. 21 of Constitution can always be invoked — But as remedies were available to remedy damage caused/improve environment without closing the plant, High Court should not have directed closure of plant (and as per latest record, plant had already removed 29 out of 30 pollution-causing deficiencies pointed out by NEERI) — Environment (Protection) Act, 1986 — Ss. 3(1) & (2) — Environmental clearance granted under — Grounds and scope of judicial intervention — Evidence Act, 1872 — S. 45 — Expert opinion — EIA (Environment Impact Assessment) — Grounds for judicial review

E. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Ground of procedural impropriety — When can be resorted to, to quash environmental clearance — Held, ground of procedural impropriety can be resorted to, to quash environmental clearance only when a mandatory requirement is violated — As requirements of comprehensive EIA and public hearing prior to grant of environmental clearance were not mandatory (as per prevalent notification), High Court could not have quashed environmental clearance on said grounds — Environment (Protection) Act, 1986, Ss. 3(1) & (2)**

F. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Grant of environmental clearance/NOC for setting up of plant/industry — If valid and proper in present case**

— (a) There being no public hearing on issue of environmental effects of setting up of plant at location where it was set up (which was opposed at

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three other places in India), (b) EIA being conducted speedily by taking only data of one season, (c) authorities reducing requirement of green belt around plant from 250 m to 25 m, and (d) plant being located within 25 km of ecologically sensitive area (i.e. islands of Gulf of Munnar) as notified under S. 35(1), 1972 Act — Against this Supreme Court found that requirement of public hearing and comprehensive EIA were not mandatory as per prevalent notification (EIA Noti. dt. 27-1-1994), though later notification (i.e. EIA Noti. dt. 10-4-1997) requiring mandatory public hearing and comprehensive EIA — Rapid EIA being permissible under prevalent notification, whereunder EIA could be done by taking data of only one season — All procedures regarding rapid EIA were complied with as per prevalent notification — It could not be shown as to how by reducing green belt from 250 m to 25 m around the plant area any procedure was violated or there was any irrationality — Rather plant had installed air control utilities such that it satisfied ambient air quality standards prescribed by State Pollution Control Board (i.e. TNPCB) — Therefore, held, there was no illegality, irrationality, or procedural impropriety in granting environmental clearance to the project of appellant — Regarding location, no notification prohibiting setting up of industry in said area had been issued under R. 5(1)(v), 1986 Rules — Thus as and when Central Government issues a notification under R. 5(1)(v), 1986 Rules, prohibiting or restricting location of plant, steps may be taken by all concerned for shifting of the industry subject to content of notification and subject to legal challenge by industry concerned — Air (Prevention and Control of Pollution) Act, 1981 — S. 21 — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 25, 3, 16 and 18 — Wild Life (Protection) Act, 1972 — Ss. 35(1) & (4) — Notification under S. 35(4) not having been issued — Effect — Environment (Protection) Rules, 1986, Rr. 5(1)(v) & (3)

G. **Environment Protection and Pollution Control — Sustainable development — Polluting plant — Relief of setting aside order of closure — Said relief, when can be given even if there was suppression and misrepresentation of material facts by polluting plant (appellant) — EIA Noti. dt. 27-1-1994 — Para 2(c) and Expln. Note, Para 5 — EIA Noti. dt. 10-4-1997 — Constitution of India, Arts. 226, 32 and 136**

H. **Environment Protection and Pollution Control — Non-Governmental Organisations (NGOs) and Third Sector — Appreciation expressed by Supreme Court for work done by writ petitioners and intervenor for prosecuting these proceedings in genuine public interest**

Allowing the appeal in the terms below, the Supreme Court

Held :

The environmental clearance for setting up the plant of the appellant Company was granted to the appellants under Section 3(1) of the Environment (Protection) Act, 1986 (1986 Act). The prevalent Environmental Impact Assessment (EIA) notification issued under Section 3(2)(*v*), 1986 Act, and Rule 5(3) of the Environment (Protection) Rules, 1986, by the Central Government was EIA Notification dated 27-1-1994. The language of Para 2(*c*), EIA Notification dated 27-1-1994 did not lay down that a public hearing was a must for giving environmental clearance when the appellants' case was under

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consideration. In the present case the environmental clearance was thus granted by MoEF on 16-1-1995 in accordance with the procedure laid down by the EIA Notification dated 27-1-1994 well before the issuance of the EIA Notification dated 10-4-1997 providing for mandatory public hearing in accordance with the procedure laid down in Schedule IV. Therefore, the High Court could not have allowed the writ petitions challenging the environmental clearances on the ground that no public hearing was conducted before the grant of the environmental clearances. (Paras 28 to 29, 2, 7 and 22)

Para 5 of the Explanatory Note, EIA Notification dated 27-1-1994 clarified that project proponents could furnish a rapid EIA report to the Impact Assessment Agency based on one season data, for examination of the project and a comprehensive EIA report could be submitted later, if so asked for by the Impact Assessment Agency. Therefore, the High Court could not have allowed the writ petitions on the ground that environmental clearance was issued to the appellant Company on the basis of inadequate rapid EIA, particularly when the Union of India in its affidavit had clearly averred that the environmental clearance was granted after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis in accordance with the procedure laid down in EIA Notification dated 27-1-1994 (as amended on 4-5-1994). The High Court has noticed some decisions of the Supreme Court on sustainable development, precautionary and polluter pays principles and public trust doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well-recognised principles of judicial review: for e.g. the High Court could interfere on the ground of illegality, irrationality, *Wednesbury* unreasonableness, or on the ground of procedural impropriety. However, on the ground of procedural impropriety, the High Court can quash the environmental clearance only if it is satisfied that the breach was of a mandatory requirement in the procedure. In the absence of a mandatory requirement of public hearing and a mandatory comprehensive EIA report, the High Court could not have interfered with the decision of the Central Government granting environmental clearance on the ground of procedural impropriety. No materials have been produced to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision or that the decision of MoEF to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA. (Paras 30 to 33, 8 and 18 to 21)

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

Vellore Citizens' Welfare Forum v. *Union of India*, (1996) 5 SCC 647; *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.*, (2009) 9 SCC 737; *M.C. Mehta* v. *Union of India*, (2009) 6 SCC 142; *East Coast Railway* v. *Mahadev Appa Rao*, (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483; *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment*, (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC); *Northern Jamaica Conservation Assn.* v. *Natural Resources Conservation Authority*, Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC); *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), *referred to*

National Trust for Clean Environment v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *cited*

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It is for the authorities under the 1986 Act and Rules and the notifications issued thereunder to determine the scope of the project, the extent of the screening and the assessment of the cumulative effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review. (Para 34)

Belize Alliance of Conservation Non-Governmental Organisations v. *Deptt. of the Environment*, (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC), *relied on*

Bow Valley Naturalists Society v. *Canada (Minister of Canadian Heritage)*, (2001) 2 FC 461 (Can), *approved*

The TNPCB (State Pollution Control Board) while granting the consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 added the requirement that the location of the unit should be 25 km away from ecologically sensitive area without noting that the area for plant concerned was within 25 km from ecologically sensitive area. Since, however, the consent order was granted to the appellant Company to establish its plant in the said area, and the plant has in fact been established there, the High Court could not have come to the conclusion that the appellant Company had violated the consent order and based thereon directed closure of the plant. The Gulf of Munnar is an ecologically sensitive area [having been so notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986] and the Central Government may in exercise of its powers under Rule 5(1)(*v*), 1986 Rules, prohibit or restrict the location of industries and carrying on processes and operations to preserve the biological diversity of the Gulf of Munnar. As and when the Central Government issues an order under Rule 5, 1986 Rules, then appropriate steps may have to be taken by all concerned for shifting the industry depending upon the content of the order or notification and subject to the legal challenge by the industries. (Paras 37, 38, 6 to 6.3, 12 and 14 to 26)

NEERI (National Environmental Engineering and Research Institute) Report of 1998, *referred to*

Various conditions have been imposed on the plant/industry of the appellants to ensure that air pollution control measures are installed for the control of emissions generated from the plant and that the emissions from the plant satisfies the ambient air quality standards prescribed by the TNPCB and development of green belt contemplated under the environmental management plan around the battery limit of the industry of the appellants was an additional condition that was imposed by the TNPCB in the no-objection certificate dated 1-8-1994. If the TNPCB after considering the representation of the appellants has reduced the requirement of width of the green belt from a minimum of 250 metres to a minimum of 25 metres around the battery limit of the industry of the appellants and it is not shown that this power which has been exercised was vitiated by procedural breach or irrationality, the High Court in exercise of its powers of judicial review could not have interfered with the exercise of such power by the TNPCB. (Paras 39.1, 9 and 13)

Sterlite Industries (I) Ltd. v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *referred to*

It is for the administrative and statutory authorities empowered under the law to consider and grant environmental clearance and the consents to the appellants for setting up the plant and where no ground for interference with the decisions of the authorities on well-recognised principles of judicial review is made out, the High Court could not interfere with the decisions of the authorities to grant

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the environmental clearance or the consents on the ground that had the authorities made a proper environmental assessment of the plant, the adverse environmental effects of the industry could have been prevented. If, however, after the grant of environmental clearance under the 1986 Act and Rules and the notifications issued thereunder and after the consents granted under the Air Act and the Water Act, the industry begins to/continues to pollute the environment so as to affect the fundamental right to life under Article 21 of the Constitution, the High Court could still direct the closure of the industry by virtue of its powers under Article 21 of the Constitution if it came to the conclusion that there were no other remedial measures to ensure that the industry maintains the standards of emission and effluent. (Paras 40 and 18)

M.C. Mehta v. *Union of India*, (1987) 4 SCC 463, *relied on*

The High Court relied on the report of NEERI (National Environmental Engineering and Research Institute) of 2005 to hold that the plant site itself is severely polluted and the ground samples level of arsenic justified classifying the whole site of the plant of the appellant as hazardous waste. The NEERI Report of 2005 did show that the emission and effluent discharged from the appellants' plant affected the environment but the report read as whole does not warrant a conclusion that the plant of the appellants could not possibly take remedial steps to remedy/improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants. As per the joint inspection carried out by TNPCB and CPCB as per Supreme Court, directions, out of the 30 directions issued by the TNPCB, the appellant Company has complied with 29 directions and only one more direction under the Air Act remains to be complied with. As the deficiencies in the plant of the appellants which affected the environment as pointed out by NEERI have now been removed, the impugned order of the High Court directing closure of the plant of the appellants is liable to be set aside. (Paras 41 to 44, 10, 14 and 23)

Sterlite Industries (I) Ltd. v. *Union of India*, (2011) 13 SCC 769; *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 773, *relied on*

Sterlite Industries (I) Ltd. v. *Union of India*, (2011) 13 SCC 772; *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 10 SCC 254; *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *referred to*

National Trust for Clean Environment v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *reversed*

NEERI (National Environmental Engineering and Research Institute) Reports of 2005, 1998, 1999, 2003 and 2011; Joint Inspection Report of TNPCB and CPCB, September 2012, *referred to*

There is no doubt that there has been misrepresentation and suppression of material facts made in the SLP by the appellants, but to decline relief to the appellants in this case would mean closure of the plant of the appellants. The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile and construction industries and infrastructure, etc. The plant of the appellants has about 1300 employees and it also provides employment to a large number of people through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates huge revenue to the Central and State Governments in terms of excise, custom duties, income tax and VAT. It also contributes to 10% of the total cargo volume of Tuticorin Port. For these considerations of public interest, it will not be a proper exercise of the discretion under Article 136 of the Constitution to refuse relief on the grounds of

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misrepresentation and suppression of material facts in the SLP. (Paras 48, 11 and 15 to 17)

Sterlite Industries (I) Ltd. v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC); *Hari Narain* v. *Badri Das*, AIR 1963 SC 1558; *G. Narayanaswamy Reddy* v. *Govt. of Karnataka*, (1991) 3 SCC 261; *Dalip Singh* v. *State of U.P.*, (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324; *Abhyudya Sanstha* v. *Union of India*, (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241, *referred to*

The NEERI Reports of 1998, 1999, 2003 and 2005 show that the plant of the appellant did pollute the environment through emissions which did not conform to the standards laid down by the TNPCB under the Air Act and through discharge of effluent which did not conform to the standards laid down by the TNPCB under the Water Act. On account of some of these deficiencies, TNPCB also did not renew the consent to operate for some periods and yet the appellants continued to operate its plant without such renewal. For such damages caused to the environment from 1997 to 2012 and for operating the plant without a valid renewal for a fairly long period, the appellant Company obviously is liable to compensate by paying damages. (Para 45)

Considering the magnitude, capacity and prosperity of the appellant Company, the appellant Company is directed to pay compensation of Rs 100 crores. The aforesaid amount will be deposited with the Collector of Thoothukudi District who will invest it in a fixed deposit. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu. (Paras 47 and 50)

M.C. Mehta v. *Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37, *followed*

NEERI (National Environmental Engineering and Research Institute) reports of 1998, 1999, 2003 and 2005; Annual Report 2011 of the Sterlite Industries, at pp. 20 and 21, *referred to*

The efforts of writ petitioners before the High Court and the intervenor before the Supreme Court are appreciated for having taken up the cause of the environment both before the High Court and the Supreme Court and for having assisted the Supreme Court on all dates of hearing with utmost sincerity and hard work. Voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of the environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervenor before the Supreme Court not only ventured but also put in their best for the cause of the general public. (Para 49)

Indian Council for Enviro-Legal Action v. *Union of India*, (1996) 3 SCC 212, *relied on*

The impugned common judgment of the High Court is, therefore, set aside and it is made clear that the present judgment will not stand in the way of the TNPCB issuing directions to the appellant Company, including a direction for closure of the plant, for the protection of environment in accordance with law. It is also made clear that the direction for payment of compensation of Rs 100 crores by the present judgment against the appellant Company for the period from 1997 to 2012 will not stand in the way of any claim for damages for the aforesaid period or any other period in a civil court or any other forum in accordance with law. (Paras 50 and 51)

National Trust for Clean Environment v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *reversed*

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

1. SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *Sterlite Industries (I) Ltd.* v. *Union of India* 588*b-c*, 603*c-d*
2. (2011) 13 SCC 773, *Sterlite Industries (I) Ltd.* v. *Union of India* 603*a-b*
3. (2011) 13 SCC 772, *Sterlite Industries (I) Ltd.* v. *Union of India* 603*a*
4. (2011) 13 SCC 769, *Sterlite Industries (I) Ltd.* v. *Union of India* 602*g-h*
5. (2011) 10 SCC 254, *Sterlite Industries (I) Ltd.* v. *Union of India* 603*b-c*, 603*c*
6. (2011) 7 SCC 338, *Lafarge Umiam Mining (P) Ltd.* v. *Union of India* 595*b*
7. (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241, *Abhyudya Sanstha* v. *Union of India* 590*a*
8. (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483, *East Coast Railway* v. *Mahadev Appa Rao* 591*c*
9. (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324, *Dalip Singh* v. *State of U.P.* 590*a*
10. SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC), *Sterlite Industries (I) Ltd.* v. *Union of India* 584*a-b*, 589*f-g*, 605*g*
11. WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *National Trust for Clean Environment* v. *Union of India* **(reversed)** 583*f-g*, 584*a-b*, 584*b-c*, 585*f-g*, 587*a-b*, 587*b*, 587*d*, 589*f*, 593*a*, 599*c*, 600*c*, 603*f*, 606*d*, 606*f-g*
12. (2009) 9 SCC 737, *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.* 590*c-d*
13. (2009) 6 SCC 142, *M.C. Mehta* v. *Union of India* 590*c-d*
14. Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC), *Northern Jamaica Conservation Assn.* v. *Natural Resources Conservation Authority* 591*e*
15. (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC), *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment* 591*d*, 596*e*
16. (2001) 2 FC 461 (Can), *Bow Valley Naturalists Society* v. *Canada (Minister of Canadian Heritage)* 596*e-f*
17. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum* v. *Union of India* 590*c*
18. (1996) 3 SCC 212, *Indian Council for Enviro-Legal Action* v. *Union of India* 606*c*
19. (1991) 3 SCC 261, *G. Narayanaswamy Reddy* v. *Govt. of Karnataka* 589*g-h*
20. (1987) 4 SCC 463, *M.C. Mehta* v. *Union of India* 600*b*
21. (1987) 1 SCC 395 : 1987 SCC (L&S) 37, *M.C. Mehta* v. *Union of India* 604*g-h*
22. AIR 1963 SC 1558, *Hari Narain* v. *Badri Das* 589*g*
23. (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.* 595*d-e*

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The Judgment of the Court was delivered by

A.K. PATNAIK, J.— Leave granted.

Facts

2. The relevant facts very briefly are that the appellant Company applied and obtained "no-objection certificate" on 1-8-1994 from the Tamil Nadu Pollution Control Board (for short "the TNPCB") for setting up a copper smelter plant (for short "the plant") in Melavittan Village, Tuticorin. On 16-1-1995, the Ministry of Environment and Forests, Government of India, granted environmental clearance to the setting up of the plant of the appellants at Tuticorin subject to certain conditions including those laid down by the TNPCB and the Government of Tamil Nadu. On 17-5-1995, the Government of Tamil Nadu granted clearance subject to certain conditions and requested the TNPCB to issue consent to the proposed plant of the appellants. Accordingly, on 22-5-1995, the TNPCB granted its consent under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (for short "the Air Act") and under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (for short "the Water Act") to the appellants to establish the plant in the SIPCOT Industrial Complex, Melavittan Village, Tuticorin Taluk.

3. The environmental clearance granted by the Ministry of Environment and Forests, Government of India, and the consent orders under the Air Act and the Water Act granted by the TNPCB were challenged before the Madras High Court in WPs Nos. 15501-503 of 1996 by the National Trust for Clean Environment. While these writ petitions were pending, the appellants set up the plant and commenced production on 1-1-1997. Writ Petition No. 5769 of 1997 was then filed by V. Gopalsamy, General Secretary, MDMK Political Party, Thayagam, praying for, inter alia, a direction to the appellants to stop forthwith the operation of the plant. Writ Petition No. 16861 of 1998 was also filed by Shri K. Kanagaraj, Secretary, CITU District Committee, District Thoothukudi, for directions to the State of Tamil Nadu, the TNPCB and the Union of India to take suitable action against the appellant Company for its failure to take safety measures due to which there were pollution and industrial accidents in the plant.

4. A Division Bench of the High Court heard Writ Petitions Nos. 15501-503 of 1996, Writ Petition No. 5769 of 1997 and Writ Petition No. 16861 of 1998 and by the common judgment dated 28-9-2010[1], allowed and disposed of the writ petitions with the direction to the appellant Company to close down its plant at Tuticorin. By the common judgment, the High Court also declared that the employees of the appellant Company would be entitled to compensation under Section 25-FFF of the Industrial Disputes Act, 1947 and directed the District Collector, Tuticorin, to take all necessary and immediate steps for the re-employment of the workforce of the appellant Company in some other companies/factories/organisations so as to protect their livelihood

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

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and to the extent possible take into consideration their educational and technical qualifications and also the experience in the field.

5. Aggrieved, the appellant has filed these appeals against the common judgment dated 28-9-2010[1] of the Division Bench of Madras High Court and on 1-10-2010, this Court passed an interim order[2] staying the impugned judgment of the High Court.

Contentions on behalf of the appellants

6. Mr C.A. Sundaram, learned Senior Counsel appearing for the appellants, submitted that one of the grounds stated in the impugned judgment[1] of the High Court for directing closure of the plant of the appellants was that the TNPCB had stipulated in the consent order dated 22-5-1995 that the appellant Company has to ensure that the location of the unit should be 25 km away from the ecologically sensitive area and as per the report of NEERI (National Environmental Engineering and Research Institute) of 1998 submitted to the High Court, the plant is situated within 25 km from four of the twenty-one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, which are at distances of 6 km, 7 km and 15 km respectively from Tuticorin where the plant is located:

6.1. He submitted that there is no notification issued by the Central Government under Rule 5(1) of the Environment (Protection) Rules, 1986 prohibiting or restricting the location of an industry in Tuticorin area. He submitted that the Government of Tamil Nadu, however, had issued a Notification dated 10-9-1986 notifying its intention under Section 35(1) of the Wild Life (Protection) Act, 1972 to declare the twenty-one islands of the Gulf of Munnar as a marine national park, but no notification has yet been issued by the Government of Tamil Nadu under Section 35(4) of the aforesaid Act declaring the twenty-one islands of the Gulf of Munnar as a national park.

6.2. He explained that prior to the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986, some environmental guidelines had been issued by the Ministry of Environment and Forests, Department of Environment, Government of India, in August 1985 and one of the guidelines therein was that industries must be located at least 25 km away from the ecologically sensitive areas and it is on account of these guidelines that the TNPCB in its consent order dated 22-5-1995 under the Water Act had stipulated that the plant of the appellants should be situated 25 km away from ecologically sensitive areas. He submitted that this stipulation was made in the consent order under the Water Act because the plant was likely to discharge effluent which could directly or indirectly affect the ecologically sensitive areas within 25 km of the industry, but in the consent

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

2 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC), wherein it was directed:

"List on 18-10-2010. Interim stay of the impugned judgment of the High Court till then."

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order issued on 14-10-1996 to operate the industry, this stipulation was removed and instead it was stipulated in Clause 20 that the unit shall re-use the entire quantity of treated effluent in the process and ensure that no treated effluent is discharged into inland surface water or on land or sewer or sea as proposed by the unit.

6.3. He submitted that in any case the consent for establishment issued under the Water Act by the TNPCB would show that the appellant Company was given the consent to establish its copper smelter project in SIPCOT Industrial Complex irrespective of the distance at which the SIPCOT Industrial Complex was located from any ecologically sensitive area and in the SIPCOT Industrial Complex, many other chemical industries are located and the High Court appears to have lost sight of this aspect of the consent given by the TNPCB to establish the plant.

7. Mr Sundaram submitted that the second ground given by the High Court for directing closure of the plant of the appellants was that this being a project exceeding Rs 50 crores, environmental clearance was required to be obtained from the Ministry of Environment and Forests, Government of India, after a public hearing which was a mandatory requirement but no materials were produced before the High Court to show that there was any such public hearing conducted before the commencement of the plant of the appellant Company. He submitted that when the environmental clearance was granted to the appellant Company the Environmental Impact Assessment (for short "EIA") Notification dated 27-1-1994 was in force and this notification did not make public hearing mandatory and only stated that comments of the public may be solicited if so recommended by the Impact Assessment Agency within 30 days of the receipt of the proposal. He submitted that the High Court, therefore, was not correct in taking a view that a public hearing was mandatory during EIA before environmental clearance was given by the Ministry of Environment and Forests, Government of India. He clarified that by a subsequent Notification dated 10-4-1997, a public hearing was made compulsory but by the time this notification came into force environmental clearance had already been granted to the plant of the appellants on 16-1-1995.

8. Mr Sundaram submitted that the High Court also took the view in the impugned judgment[1] on the basis of the report of the NEERI of 1998 that there was undue haste on the part of the governmental authorities in granting permissions and consents to the appellant Company. He submitted that in an explanatory note to the EIA Notification dated 27-1-1994 the Central Government has clarified that rapid EIA could also be conducted for obtaining environment clearance for any new project/activity and therefore the State Government while granting no-objection certificate by its Letter dated 1-8-1994 asked the appellants to conduct rapid EIA based on one season data and the appellants carried out rapid EIA study based on the data collected by the M/s Tata Consultancy Service (TCS). He relied on the

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

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affidavit dated 1-12-1998 filed on behalf of the Ministry of Environment and Forests, Government of India to submit that rapid EIA before granting clearance to the plant of the appellant was conducted in accordance with the guidelines.

9. Mr Sundaram submitted that the third ground on which the High Court directed closure of the plant of the appellants was that the TNPCB stipulated a condition in Clause 20 of the no-objection certificate that the appellants will develop a green belt of 250 metres width around the battery limit of the industry as contemplated under the environmental management plan but subsequently the appellant Company submitted a representation to TNPCB requesting TNPCB to reduce the requirement of green belt from 250 metres to the width of 10-15 metres as development of the green belt of 250 metres width requires a land of around 150 acres and TNPCB in its meeting held on 18-8-1994 relaxed this condition and stipulated that the appellant Company will develop a green belt of minimum width of 25 metres. He submitted that the land allocated by SIPCOT to the appellants was not sufficient to provide a green belt of 250 metres width around the plant and hence this was an impossible condition laid down in the no-objection certificate and for this reason the appellants approached the TNPCB to modify this condition and the TNPCB reduced the width of the green belt to 25 metres. He further submitted that generally, the TNPCB and the Ministry of Environment and Forests, Government of India, have been insisting on a green belt of 25% of the plant area and the appellants could not be asked to provide a green belt of more than 25% of the plant area.

10. Mr Sundaram submitted that the last ground, on which the High Court directed closure of the plant of the appellants is that the plant of the appellants has caused severe pollution in the area as has been recorded by NEERI in its report of 2005 submitted to the High Court and the groundwater samples taken from the area indicate that the copper, chrome, lead cadmium and arsenic and the chloride and fluoride content is too high when compared to the Indian drinking water standards. He referred to the reports of NEERI of 1998, 1999, 2003 and 2005 submitted to the High Court and the report of NEERI of 2011 and also the joint inspection report of TNPCB and CPCB of September 2012 submitted to this Court, to show that the finding of the High Court that the plant of the appellants had caused severe pollution in the area was not correct. He vehemently submitted that though there were no deficiencies in the plant of the appellants, the TNPCB in its affidavit has referred to its recommendations as if there were deficiencies. He submitted that the recommendations made by the TNPCB were only to provide the best of checks in the plant against environmental pollution with a view to ensure that the plant of the appellants becomes a model plant from the point of view of the environment, but that does not mean that the plant of the appellants had deficiencies which need to be corrected. He submitted that the reports of NEERI of 2005 and 2011 referred to accumulation of gypsum and phosphogypsum, which come out from the plant of the appellants as part of the slag but the opinion of CPCB in its letter dated 17-11-2003 to the TNPCB

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is that such slag is non-hazardous and can be used in cement industries, for filling up lower level area and as building/road construction material, etc. and has no adverse environmental effects.

11. Mr Sundaram finally submitted that since none of the grounds given by the High Court in the impugned judgment[1] for directing closure of the plant of the appellants are well-founded, it is a fit case in which this Court should set aside the impugned judgment[1] of the High Court and allow the appeals. He submitted that the plant of the appellants produces 2,02,000 metric tonnes of copper which constitute 39% of the total of 5,14,000 metric tonnes of copper produced in India and that 50% of the copper produced by the plant of the appellants is consumed in the domestic market and the balance 50% is exported abroad. He also submitted that the plant provides direct and indirect employment to about 3000 people and yields a huge revenue to both the Central and State Governments. He submitted that closure of the plant of the appellants, therefore, would also not be in the public interest.

Contentions on behalf of the respondent-writ petitioner

12. Mr V. Gopalsamy, who was the writ petitioner in Writ Petition No. 5769 of 1997 before the High Court, appeared in person and supported the impugned judgment[1] of the High Court. He submitted that the TNPCB in its no-objection certificate dated 1-8-1994 as well as in its consent order dated 22-5-1995 under the Water Act clearly stipulated that the appellant Company shall ensure that the location of its unit should be 25 km away from the ecologically sensitive area and the Government of Tamil Nadu in their affidavit dated 27-10-2012 have stated that all the 21 islands including the four near Tuticorin in the Gulf of Munnar marine national park are ecologically sensitive areas. He submitted that NEERI in its report of 1998 has observed that four out of twenty-one islands, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, are at distances of 6 km, 7 km and 15 km respectively from Tuticorin. He further submitted that merely because a condition has been subsequently imposed on the appellant Company by TNPCB not to discharge any effluent to the sea, the restriction of minimum 25 km distance from the ecologically sensitive area from location of the unit of the appellants cannot be lifted particularly when the Government of Tamil Nadu as well as the Central Government are treating the Gulf of Munnar as a marine national park and extending financial assistance for the development of its ecology. He submitted that the proposal for issuance of a declaration under Section 35(4) of the Wild Life (Protection) Act, 1972 is pending for concurrence of the Central Government and, therefore, the ecological balance in the area of Gulf of Munnar would be disturbed if the plant of the appellants continues at Tuticorin and the High Court was right in directing closure of the plant of the appellants located at Tuticorin.

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

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13. Mr V. Gopalsamy submitted that the High Court was similarly right in directing closure of the plant of the appellants on the ground that the appellants did not develop a green belt of 250 metres width around their plant as stipulated in the no-objection certificate dated 1-8-1994 of the TNPCB and instead represented to the TNPCB and got the green belt reduced to only 25 metres width. He submitted that considering the grave adverse impact on the environment by the plant of the appellants, a 250 metres width of green belt was absolutely a must but the TNPCB very casually reduced the green belt from 250 metres width to 25 metres. He submitted that it will be seen from the joint report of the TNPCB and CPCB filed pursuant to the order dated 27-8-2012[3] of this Court that as a condition of the renewal of the consent order, the appellant Company has been asked to develop a green belt to an extent of 25% of the total area of 172.17 ha which works out to 43.04 ha and yet the TNPCB has found development of green belt of 26 ha as sufficient compliance. He submitted that the appellants would, therefore, be required to develop a green belt of 17.04 ha more for compliance with the condition for renewal of consent stipulated by the TNPCB.

14. Mr V. Gopalsamy submitted that for their plant, the appellants have been importing copper concentrate from Australian mines which are highly radioactive and contaminated and contains high levels of arsenic, uranium, bismuth, fluorine and experts of environment like Mark Chernaik have given a report on the adverse impacts of the plant of the appellants at Tuticorin on the environment. In this context, he also submitted that an American company, namely, the Asarco producing copper had to be closed down on account of such adverse environmental effects. He submitted that the claim of the appellants that their plant has no deficiencies and that it does not have any impact on the environment is not correct and different reports of the NEERI would show that the plant of the appellants is continuing to pollute the

3 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), wherein it was directed:

"1. Mr C.A. Sundaram, learned Senior Counsel states that pursuant to the order passed by this Court on 9-5-2012, the petitioner is taking effective steps to ensure strict compliance with the various conditions attached to the consent given by the Tamil Nadu Pollution Control Board. He further submits that the entire procedure for compliance with the conditions for consent will be completed by 31-8-2012.

2. The learned counsel appearing for the Tamil Nadu Pollution Control Board submits that, in fact, the Board was ready with an affidavit to be filed in Court today. However, in case the petitioner is able to achieve satisfactorily the required standards in the conditions imposed by the Tamil Nadu Pollution Control Board by 31-8-2012, the Board shall submit a detailed status report thereafter. The learned counsel appearing for the Central Pollution Control Board, in our opinion, has rightly made a submission that the Central Pollution Control Board shall also participate in the inspection to be carried out jointly by the Tamil Nadu Pollution Control Board and Central Pollution Control Board.

3. Let the inspection be completed by 14-9-2012. The joint report be submitted to the Court in a sealed cover. The Tamil Nadu Pollution Control Board is permitted to file any additional affidavit if deemed necessary by the said Board. However, advance copy of the same shall be given to the petitioner, the learned counsel for the Central Pollution Control Board as well as to the other respondents.

4. List the matter on 1-10-2012."

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air and has also affected the groundwater of the area by discharging effluent and the High Court, therefore, rightly directed the closure of the plant.

15. Mr Gopalsamy submitted that the appellants had initially proposed to establish the plant in Gujarat but this was opposed vehemently and the appellants decided to shift the establishment of the plant to Goa but because of opposition the plant could not be established in Goa. He submitted that the appellants thereafter intended to set up the plant at Ratnagiri in Maharashtra and invested Rs 200 crores in construction activities after obtaining environmental clearance but because of the opposition of the farmers of Ratnagiri, the Maharashtra Government had to revoke the licence granted to the appellants. He submitted that the appellants have been able to set up the plant at Tuticorin in Tamil Nadu by somehow obtaining environmental clearance from the Ministry of Environment and Forests, Government of India, without a public hearing and the consents under the Water Act and the Air Act from the TNPCB and the High Court rightly allowed the writ petitions and directed closure of the plant of the appellants.

16. Mr V. Prakash, learned Senior Counsel appearing for the writ petitioner, National Trust for Clean Environment, in Writ Petitions Nos. 15501-503 of 1996 before the High Court, submitted that the appellants had made a false statement in the synopsis at p. (B) of the special leave petition that it has been consistently operating for more than a decade with all necessary consents and approvals from all the statutory authorities without any complaint. He submitted that similarly in Ground IV at p. 45 of the special leave petitions the appellants have falsely stated that the High Court has erred in not appreciating that the appellants had got all the statutory approvals/consent orders from the authorities concerned as also the Central Government and the State Government. He submitted that the report of NEERI of 2011 would show that the appellants did not have valid consent during various periods including the period when it filed the special leave petitions. He submitted that the appellants did not also inform this Court that when they moved this Court on 1-10-2010 to stay the operation of the impugned order[1] of the High Court, the plant of the appellants had already stopped operation. He vehemently argued that due to misrepresentation of the material facts by the appellants in the special leave petitions as well as suppression of the material facts, this Court was persuaded to pass the stay order dated 1-10-2010[2]. He argued that on this ground alone this Court should refuse to grant relief to the appellants in exercise of its discretion under Article 136 of the Constitution.

17. Mr V. Prakash relied on the decisions of this Court in *Hari Narain* v. *Badri Das*[4], *G. Narayanaswamy Reddy* v. *Govt. of Karnataka*[5] and

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

2 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC)

4 AIR 1963 SC 1558

5 (1991) 3 SCC 261

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Dalip Singh v. *State of U.P.*[6] and *Abhyudya Sanstha* v. *Union of India*[7] for the proposition that this Court can refuse relief under Article 136 of the Constitution where the appellants have not approached this Court with clean hands and have made patently false statements in the special leave petition.

18. Mr Prakash next submitted that the main ground that was taken in the writ petitions before the High Court by the National Trust for Clean Environment was that the Ministry of Environment and Forests, Government of India, and the TNPCB had not applied their mind to the nature of the industry as well as the pollution fallout of the industry of the appellants and the capacity of the unit of the appellants to handle the waste without causing adverse impact on the environment as well as on the people living in the vicinity of the plant. He submitted that this Court has already held that a right to clean environment is part of the right to life guaranteed under Article 21 of the Constitution and has explained the precautionary principle and the principle of sustainable development in *Vellore Citizens' Welfare Forum* v. *Union of India*[8], *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.*[9] and *M.C. Mehta* v. *Union of India*[10]. He submitted that these principles, therefore, have to be borne in mind by the authorities while granting environmental clearance and consent under the Water Act or the Air Act, but unfortunately both the Ministry of Environment and Forests, Government of India, and the TNPCB have ignored these principles and have gone ahead and hastily granted environmental clearance and the consent under the two Acts. He submitted that, in the present case, the appellants have relied on the rapid EIA done by Tata Consultancy Service, but this rapid EIA was based on the data which is less than the month's particulars and is inadequate for making a proper EIA which must address the issue of the nature of the manufacturing process, the capacity of the manufacturing facility and the quantum of production the quantum and nature of pollutants, air, liquid and solid and handling of the waste.

19. Mr Prakash referred to the report of NEERI of 1998 submitted to the High Court to show that the inspection team of NEERI collected waste water samples from the plant of the appellants and an analysis of the waste water samples indicate that the treatment plant of the appellants was operating inefficiently as the levels of arsenic, selenium and lead in the treated effluent as also the effluent stored in the surge ponds were higher than the standards stipulated by the TNPCB. He also referred to the report of NEERI of February 1999 in which NEERI has stated that the treated effluent quality did not conform to the standards stipulated by the TNPCB.

20. Mr Prakash further submitted that the counter-affidavit of the Union of India filed on 1-12-1998 before the High Court also does not disclose whether, apart from the rapid EIA of Tata Consultancy Services, there was

6 (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324
7 (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241
8 (1996) 5 SCC 647
9 (2009) 9 SCC 737
10 (2009) 6 SCC 142

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any independent evaluation of the rapid EIA by the environmental impact assessment authority, namely, the Ministry of Environment and Forests. He submitted that the TNPCB in its no-objection certificate dated 1-8-1994 has stipulated in Clause 18 that the appellants have to carry out rapid EIA (for one season other than monsoon) as per the EIA Notification dated 27-1-1994 issued by the Ministry of Environment and Forests, Government of India, and furnish a copy to the TNPCB and this clause itself would show that TNPCB had not applied its mind as to whether there was a sufficient rational analysis of the nature of the industry, nature of pollutants, quantum of fallout and the plan or method for handling the waste. He submitted that since there was no application of mind by either the Ministry of Environment and Forests, Government of India, before granting the environmental clearance or by the TNPCB before granting the consents under the Water Act and the Air Act, the environmental clearance and the consent orders are liable to be quashed.

21. In support of his submissions, Mr Prakash cited *East Coast Railway* v. *Mahadev Appa Rao*[11], for the proposition that for a valid order there has to be application of mind by the authority, and in the absence of such application of mind by the authority, the order is arbitrary and is liable to be quashed. He cited the decision of the Lords of the Judicial Committee of the Privy Council in *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment*[12], WIR at para 69 in which it has been observed that EIA is expected to be comprehensive in treatment of the subject, objective in its approach and must meet the requirement that it alerts the decision-maker to the effect of the activity on the environment and the consequences to the community.

22. Mr Prakash also relied on the judgment of the Supreme Court of Judicature of Jamaica in *Northern Jamaica Conservation Assn.* v. *Natural Resources Conservation Authority*[13] to argue that a public hearing was a must for grant of environmental clearance and submitted that as there was no public hearing in this case and there was inadequate EIA before the grant of the environmental clearance for the plant of the appellants, the High Court has rightly directed closure of the plant of the appellants.

23. Finally, Mr Prakash submitted that the finding of the High Court that the plant of the appellants continues to pollute the environment has been substantiated by the inspection report which has been filed in this Court by NEERI as well as the TNPCB from time to time. In particular, he referred to the joint inspection report of the TNPCB and CPCB to show that the directions issued by the TNPCB to improve solid waste disposal has not been complied with. He submitted that one of the conditions of the consent order of the TNPCB was that no slag was to be stored in the premises of the plant but huge quantity of slag has been stored in the premises of the plant and the direction to dispose at least 50% more than the monthly generation quantities of both slag and gypsum has not been complied with. He vehemently argued

11 (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483
12 (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC)
13 Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC)

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that unless the plant is shut down, the appellants will not be able to clear the huge quantity of slag and gypsum lying in the plant premises. He submitted that it is not correct as has been submitted on behalf of the appellants that the slag is not a hazardous waste containing arsenic and will certainly jeopardise the environment. He argued that there was therefore no other option for the High Court but to direct closure of the plant of the appellants to ensure clean environment in the area.

Contentions on behalf of the authorities

24. Mr S. Guru Krishna Kumar, learned counsel appearing for the TNPCB as well as the State of Tamil Nadu, relying on the affidavit filed on behalf of the State of Tamil Nadu on 29-10-2012 submitted that the Gulf of Munnar consisting of 21 islands in 4 groups was notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986 as this group of islands consisted of territorial waters between them and the proposal to declare Gulf of Munnar as a marine national park under Section 35(4) of the said Act was sent by the Chief Wild Life Warden to the State Government for approval on 30-4-2003 but the declaration under Section 35(4) of the said Act has not been finally made. He further submitted that all the 21 islands including the 4 islands in the Gulf of Munnar are therefore ecologically sensitive areas. He submitted that notwithstanding the fact that four of the islands were near Tuticorin, the TNPCB gave the consent under the Water Act to the appellants to set up the plant at Tuticorin because the plant has a zero effluent discharge. He also referred to the compliance affidavit of the TNPCB filed on 8-10-2012 to show that the TNPCB is monitoring the emissions from the plant of the appellants to ensure that the National Ambient Air Quality Standards are maintained.

25. Mr Vijay Panjwani, learned counsel appearing for CPCB, made a reference to Sections 3, 16 and 18 of the Water Act which relate to the CPCB and submitted that it was not for the CPCB but for the TNPCB to issue no-objection certificate and consent in respect of the plant set up in the State of Tamil Nadu. He submitted that under Rule 19 of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, however, improvement notices can be issued by the CPCB to any person to remedy the contravention of the Rules.

Contentions on behalf of the intervenor

26. Mr Raj Panjwani, learned counsel for the intervenor, submitted that a marine biosphere is an ecologically sensitive area and if in the consent order a condition was stipulated that the plant of the appellants has to be situated beyond 25 km from ecologically sensitive area, this condition has to be complied with. He further submitted that in any case the appellants are liable to compensate for having damaged the environment.

Findings of the Court

27. Writ Petition No. 15501 of 1996, Writ Petition No. 15503 of 1996 and Writ Petition No. 5769 of 1997 had been filed for quashing the environmental clearances dated 16-1-1995 and 17-5-1995 granted by the

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Ministry of Environment and Forests, Government of India, to the appellants for setting up the plant at Tuticorin and by the impugned judgment[1], the High Court has not quashed the environmental clearance but has allowed the three writ petitions. Hence, the first question which we will have to decide is whether the High Court could have interfered with the environmental clearances granted by the Ministry of Environment and Forests, Government of India, and the Government of Tamil Nadu, Department of Environment?

28. The environmental clearance for setting up the plant was granted to the appellants under the Environment (Protection) Act, 1986:

28.1. Sub-section (1) of Section 3 of the Environment (Protection) Act, 1986 provides that:

> "**3.** ***Power of Central Government to take measures to protect and improve environment***.—(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution."

28.2. Sub-section (2) of Section 3 further provides that in particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the matters specified therein. One such matter specified in clause (*v*) of sub-section (2) is:

> "**3. (2)(*v*)** restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards."

28.3. Rule 5(3) of the Environment (Protection) Rules, 1986 accordingly empowers the Central Government to impose prohibitions or restrictions on the location of an industry or the carrying on processes and operations in an area, by notification in the Official Gazette. In exercise of these powers under Section 3(2)(*v*) of the Environment (Protection) Act, 1986 and Rule 5(3) of the Environment (Protection) Rules, 1986, the Central Government has issued a Notification dated 27-1-1994 imposing restrictions and prohibitions on the expansion and modernisation of any activity or new projects being undertaken in any part of India unless environmental clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified in the said notification.

29. Para 2 of the Notification dated 27-1-1994 lays down the requirements and procedure for seeking environmental clearance of projects, and clause (*c*) of Para 2 provides that the Impact Assessment Agency could solicit comments of the public within thirty days of receipt of proposal, in public hearings, arranged for the purpose, after giving thirty days' notice of such hearings in at least two newspapers, and after completion of public hearing, where required, convey its decision. The language of this notification did not lay down that the public hearing was a must. The impact

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

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assessment was done by Tata Consultancy Services as per the requirements then existing and the Government of India has granted the environmental clearance on 16-1-1995. The Notification dated 27-1-1994, however, was amended by Notification dated 10-4-1997 and it was provided in clause (*c*) of Para 2 of the notification that the Impact Assessment Agency shall conduct a public hearing and the procedure for public hearing was detailed in Schedule IV to the notification by the amendment Notification dated 10-4-1997. Admittedly, in this case, the environmental clearance was granted by the Ministry of Environment, Government of India, on 16-1-1995 in accordance with the procedure laid down by the Notification dated 27-1-1994 well before the Notification dated 10-4-1997 providing for mandatory public hearing in accordance with the procedure laid down in Schedule IV. As there was no mandatory requirement in the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the Notification dated 27-1-1994 as amended by the Notification dated 4-5-1994 that a public hearing has to be conducted before grant of environmental clearance, the High Court could not have allowed the writ petitions challenging the environmental clearances on the ground that no public hearing was conducted before grant of the environmental clearances.

30. An explanatory note regarding the EIA Notification dated 27-1-1994 was also issued by the Central Government and Para 5 of the explanatory note clarified that project proponents could furnish rapid EIA report to the Impact Assessment Agency based on one season data, for examination of the project and comprehensive EIA report may be submitted later, if so asked for by the Impact Assessment Agency and this was permitted where comprehensive EIA report would take at least one year for its preparation. In Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petitions Nos. 15501-503 of 1996, the allegation of the writ petitioner that the Ministry of Environment and Forests have accorded environmental clearance without applying its mind and without making any analysis of the adverse impacts on the marine ecological system has been denied and it has been further stated that after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis, the project was examined as per the procedure laid down in the EIA Notification dated 27-1-1994 (as amended on 4-5-1994) and the project was accorded approval on 16-1-1995 subject to specific conditions. As the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the Notification dated 27-1-1994 as amended by the Notification dated 4-5-1994 and as explained by the explanatory note issued by the Government of India permitted rapid EIA in certain circumstances, the High Court could not have allowed the writ petitions on the ground that environmental clearance was issued to the appellant Company on the basis of inadequate rapid EIA, particularly when the Union of India in its affidavit had clearly averred that the environmental clearance was granted after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State

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Pollution Control Board and risk analysis in accordance with the procedure laid down in EIA Notification dated 27-1-1994 (as amended on 4-5-1994).

31. The High Court has noticed some decisions of this Court on sustainable development, precautionary and polluter pays principles and public trust doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well-recognised principles of judicial review as has been held by a three-Judge Bench of this Court in *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*[14], SCC at p. 380. To quote *Environmental Law* edited by David Woolley, Q.C., John Pugh-Smith, Richard Langham and William Upton, Oxford University Press:

> "The specific grounds upon which a public authority can be challenged by way of judicial review are the same for environmental law as for any other branch of judicial review, namely, on the grounds of illegality, irrationality, and procedural impropriety."

Thus, if the environmental clearance granted by the competent authority is clearly outside the powers given to it by the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 or the notifications issued thereunder, the High Court could quash the environmental clearance on the ground of illegality. If the environmental clearance is based on a conclusion so unreasonable that no reasonable authority could ever have come to the decision, the environmental clearance would suffer from *Wednesbury*† unreasonableness and the High Court could interfere on the ground of irrationality. And, if the environmental clearance is granted in breach of proper procedure, the High Court could review the decision of the authority on the ground of procedural impropriety.

32. Where, however, the challenge to the environmental clearance is on the ground of procedural impropriety, the High Court could quash the environmental clearance only if it is satisfied that the breach was of a mandatory requirement in the procedure. As stated in *Environmental Law* edited by David Woolley, Q.C., John Pugh-Smith, Richard Langham and William Upton, Oxford University Press:

> "It will often not be enough to show that there has been a procedural breach. Most of the procedural requirements are found in the regulations made under primary legislation. There has been much debate in the courts about whether a breach of regulations is mandatory or directory, but in the end the crucial point which has to be considered in any given case is what the particular provision was designed to achieve."

As we have noticed, when the plant of the appellant Company was granted environmental clearance, the Notification dated 27-1-1994 did not provide for mandatory public hearing. The explanatory note issued by the Central Government on the Notification dated 27-1-1994 also made it clear that the

14 (2011) 7 SCC 338

† *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)

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project proponents may furnish rapid EIA report to the IAA based on one season data (other than monsoon), for examination of the project comprehensive EIA report was not a must. In the absence of a mandatory requirement in the procedure laid down under the scheme under the Environment (Protection) Act, 1986 at the relevant time requiring a mandatory public hearing and a mandatory comprehensive EIA report, the High Court could not have interfered with the decision of the Central Government granting environmental clearance on the ground of procedural impropriety.

33. Coming now to the ground of irrationality argued so vehemently by Mr V. Prakash, we find that no materials have been produced before us to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision. As we have already noticed, in Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petitions Nos. 15501-503 of 1996, it has been stated that the Ministry of Environment and Forests have accorded environmental clearance after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis, and that the project was examined as per the procedure laid down in the EIA Notification dated 27-1-1994 (as amended on 4-5-1994) and only thereafter the project was accorded approval on 16-1-1995. No material has been placed before us to show that the decision of the Ministry of Environment and Forests to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA.

34. In *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment*[12] cited by Mr Prakash, the Lords of the Judicial Committee of the Privy Council have quoted with approval the following words of Linden, JA with reference to the Canadian legislation in *Bow Valley Naturalists Society* v. *Canada (Minister of Canadian Heritage)*[15], FC at p. 494:

> "The Court must ensure that the steps in the Act are followed, but it must defer to the responsible authorities in their substantive determinations as to the scope of the project, the extent of the screening and the assessment of the cumulative effects in the light of the mitigating factors proposed. It is not for the Judges to decide what projects are to be authorised but, as long as they follow the statutory process, it is for the responsible authorities."

The aforesaid passage will make it clear that it is for the authorities under the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 and the notifications issued thereunder to determine the scope of the project, the extent of the screening and the assessment of the cumulative

12 (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC)
15 (2001) 2 FC 461 (Can)

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effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review.

35. The next question that we have to decide is whether the High Court was right in directing closure of the plant of the appellants on the ground that the plant of the appellants is located at Tuticorin within 25 km of four of the twenty-one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli. The reason given by the High Court in coming to this conclusion is that the TNPCB had stipulated in the consent order dated 22-5-1995 that the appellant Company has to ensure that the location of the unit should be 25 km away from ecologically sensitive area and as per the report of NEERI, the plant of the appellants was situated at a distance of 6 km of Vanthivu, 7 km of Kasuwar and 15 km of Karaichalli and Villanguchalli and these four villages are part of the twenty-one islands in the Gulf of Munnar. Hence, the High Court directed closure of the plant because the appellant Company has violated the condition of the consent order dated 22-5-1995 issued by the TNPCB under the Water Act.

36. The consent order dated 22-5-1995 issued by the TNPCB under Section 25 of the Water Act states as follows:

> "Consent to establish or take steps to establish is hereby granted under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988) (hereinafter referred to as 'the Act') and the rules and orders made thereunder to
>
> The Chief Project Manager,
> M/s Sterlite Industries (India) Limited
> (Copper Smelter Project)
> SIPCOT Industrial Complex,
> Meelavittam Village, Tuticorin Taluk,
> V.O. Chidambaraner District
>
> (hereinafter referred to as 'the applicant') authorising him/her/them to establish or take steps to establish the industry in the site mentioned below:
>
> SIPCOT Industrial Complex,
> Meelavittam Village, Tuticorin Taluk,
> V.O. Chidambaraner District."

The aforesaid extract from the consent order dated 22-5-1995 of the TNPCB issued under the Water Act makes it clear that the appellant Company was given consent to establish its plant in the SIPCOT Industrial Complex, Meelavittam Village, Tuticorin Taluk. Along with the consent order under the Water Act, special conditions were annexed and Clause 20 of the special conditions reads as follows:

> "20. (*i*) 1 km away from the water resources specified in GOMs No. 213 E&P Deptt., dt. 30-3-1989.
>
> (*ii*) 25 km away from ecological/sensitive areas.
>
> (*iii*) 500 metres away from high tide line."

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37. On the one hand, therefore, the appellants were given consent to establish their plant in the SIPCOT Industrial Complex, which as per the NEERI report is within 25 km of four of the twenty-one islands in the Gulf of Munnar. On the other hand, a condition was stipulated in the consent order that the appellants have to ensure that the location of the unit is 25 km away from ecologically sensitive area. It thus appears that the TNPCB while granting the consent under the Water Act for establishment of the plant of the appellants in the SIPCOT Industrial Complex added the above requirement without noting that the SIPCOT Industrial Complex was within 25 km from ecologically sensitive area. Since, however, the consent order was granted to the appellant Company to establish its plant in the SIPCOT Industrial Complex and the plant has in fact been established in the SIPCOT Industrial Complex, the High Court could not have come to the conclusion that the appellant Company had violated the consent order and directed closure of the plant on this ground.

38. This is not to say that in case it becomes necessary for preservation of ecology of the aforesaid four islands which form part of the Gulf of Munnar, the plant of the appellants cannot be directed to be shifted in future. We find from the affidavit filed on behalf of the State of Tamil Nadu on 29-10-2012 that the Gulf of Munnar consisting of 21 islands including the aforesaid four islands have been notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986 and a declaration may also be made under Section 35(4) of the said Act declaring the Gulf of Munnar as a marine national park. We have, therefore, no doubt that the Gulf of Munnar is an ecologically sensitive area and the Central Government may in exercise of its powers under clause (*v*) of sub-rule (1) of Rule 5 of the Environment (Protection) Rules, 1986 prohibit or restrict the location of industries and carrying on processes and operations to preserve the biological diversity of the Gulf of Munnar. As and when the Central Government issues an order under Rule 5 of the Environment (Protection) Rules, 1986 prohibiting or restricting the location of industries within and around the Gulf of Munnar marine national park, then appropriate steps may have to be taken by all concerned for shifting the industry of the appellants from the SIPCOT Industrial Complex depending upon the content of the order or notification issued by the Central Government under the aforesaid Rule 5 of the Environment (Protection) Rules, 1986, subject to the legal challenge by the industries.

39. The next question with which we have to deal is whether the High Court could have directed the closure of the plant of the appellants on the ground that though originally the TNPCB stipulated a condition in the "no-objection certificate" that the appellant Company has to develop a green belt of 250 metres width around the battery limit of the plant, the appellants made representation to the TNPCB for reducing the width of the green belt and the TNPCB in its meeting held on 18-8-1994 relaxed this condition and required the appellants to develop the green belt with a minimum width of 25 metres:

39.1. We find on a reading of the no-objection certificate issued by the TNPCB that various conditions have been imposed on the industry of the

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appellants to ensure that air pollution control measures are installed for the control of emissions generated from the plant and that the emissions from the plant satisfy the ambient air quality standards prescribed by the TNPCB and development of green belt contemplated under the environmental management plan around the battery limit of the industry of the appellants was an additional condition that was imposed by the TNPCB in the no-objection certificate. If the TNPCB after considering the representation of the appellants has reduced the width of the green belt from a minimum of 250 metres to a minimum of 25 metres around the battery limit of the industry of the appellants and it is not shown that this power which has been exercised was vitiated by procedural breach or irrationality, the High Court in exercise of its powers of judicial review could not have interfered with the exercise of such power by the State Pollution Control Board.

39.2. The High Court in the impugned judgment[1] has not recorded any finding that there has been any breach of the mandatory provisions of the Air Act or the Rules thereunder by the TNPCB by reducing the green belt to 25 metres. Nor has the High Court recorded any finding that by reducing the width of the green belt around the battery limit of the industry of the appellants from 250 metres to 25 metres, it will not be possible to mitigate the effects of fugitive emissions from the plant. The High Court has merely held that the TNPCB should not have taken such a generous attitude and should not have in a casual way dealt with the issue permitting the appellant Company to reduce the green belt particularly when there have been ugly repercussions in the area on account of the incidents which took place on 5-7-1997 onwards. It was for the TNPCB to take the decision in that behalf and considering that the appellant's plant was within a pre-existing industrial estate, the appellant could not have been singled out to require such a huge green belt.

40. This takes us to the argument of Mr Prakash that had the Ministry of Environment and Forests, Government of India, applied its mind fully before granting the environment clearance and had the TNPCB applied its mind fully to the consents under the Air Act and the Water Act and considered all possible environmental repercussions that the plant proposed to be set up by the appellants would have, the environmental problems now created by the plant of the appellants would have been prevented. As we have already held, it is for the administrative and statutory authorities empowered under the law to consider and grant environmental clearance and the consents to the appellants for setting up the plant and where no ground for interference with the decisions of the authorities on well-recognised principles of judicial review is made out, the High Court could not interfere with the decisions of the authorities to grant the environmental clearance or the consents on the ground that had the authorities made a proper environmental assessment of the plant, the adverse environmental effects of the industry could have been prevented. If, however, after the environmental clearance is granted under the Environment (Protection) Act, 1986, and the Rules and the notifications

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

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issued thereunder and after the consents granted under the Air Act and the Water Act, the industry continues to pollute the environment so as to affect the fundamental right to life under Article 21 of the Constitution, the High Court could still direct the closure of the industry by virtue of its powers under Article 21 of the Constitution if it came to the conclusion that there were no other remedial measures to ensure that the industry maintains the standards of emission and effluent as laid down by law for safe environment (see *M.C. Mehta* v. *Union of India*[16] in which this Court directed closure of tanneries polluting the waters of River Ganga).

41. We have, therefore, to examine whether there were materials before the High Court to show that the plant of the appellants did not maintain the standards of emission and effluent as laid down by the TNPCB and whether there were no remedial measures other than the closure of the industry of the appellants to protect the environment. We find on a reading of the impugned judgment[1] of the High Court that it has relied on the report of NEERI of 2005 to hold that the plant site itself is severely polluted and the ground samples level of arsenic justified classifying the whole site of the plant of the appellant as hazardous waste.

42. We extract hereinbelow the relevant observations of NEERI in its report of 2005 relating to air, water and soil environment in the executive summary:

"*Air environment*

The emission factors of SO_2 from sulphuric acid plant — I (SAP-I) and sulphuric acid plant — II (SAP-II) were 0.55 kg/MT of H_2SO_4 manufactured which is well within the TNPCB stipulated limit of 2kg/MT of H_2SO_4 manufactured.

The acid mist concentration of SAP-I was 85 mg/Nm_3, which exceeds the TNPCB limit of 50 mg/Nm_3. The acid mist concentration from SAP-II was 42 mg/Nm_3, which is well within the TNPCB limit. In view of the exceeding of TNPCB limit for acid mist, it is recommended that the performance of acid mist eliminators may be intermittently checked. It is further recommended to install a tail gas treatment plant to take care of occasional upsets.

Out of the seven DG sets, one (6.3 MW) was monitored for particulate matter (PM) emissions. The level of PM was 115 mg/Nm_3 (0.84 gm/kWh) which is within the TNPCB stipulated limit of 150 mg/Nm_3 for thermal power plants of 200 MW and higher capacity (165 mg/Nm_3) but higher than that stipulated for diesel engines/gen sets up to 800 kW capacity (0.3 gm/kWh). Therefore TNPCB may decide whether the present PM emissions from the DG sets of 6.3 MW capacity is within the limit or otherwise.

The fugitive emissions were monitored at four sites to assess the status of air quality with respect of SO_2, NO_2 and SPM. The results of

16 (1987) 4 SCC 463

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

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analysis at all fugitive emission monitoring sites indicate that the levels of gaseous pollutants SO_2 and NO_2, were below the respective
a NIOSH/OSHA standards for work place environment. The levels of SPM were also within the stipulated TNPCB standards for industrial areas.

Impact of stack and fugitive emissions on surrounding air quality was also assessed by monitoring SO_2, NO_2 and SPM levels at five monitoring locations. The levels of SPM, SO_2 and NO_2 at all the five sites were far below the TNPCB standards of 120 µg/Nm_3 for SO_2 as well
b as NO_2 and 500 µg/Nm_3 for SPM for industrial zone.

Water environment

Surface water samples were collected and analysed for physico-chemical, nutrient demand parameters. The physico-chemical characteristics and nutrient demand parameters i.e. with special reference to pH (7.9-8.0), TDS (120-160 mg/L), COD (11-18 mg/L) and levels of
c heavy metals viz. Cd, Cr, Cu, Pb, Fe, Mn, Zn and As in surface water, were found within the prescribed limits of drinking water standards (IS: 10500-1995).

Total eight groundwater samples were collected (seven from hand-pumps and one from dug well) to assess the groundwater quality in the study area. The analysis on physico-chemical characteristics of
d groundwater samples collected from various locations showed high mineral contents in terms of dissolved solids (395-3020mg/L), alkalinity (63-210 mg/L), total hardness (225-2434 mg/L), chloride (109-950 mg/L), sulphate (29-1124 mg/L) and sodium (57-677 mg/L) as compared to the drinking water standards (IS:10500-1995). Thus, it could be concluded that water in some of the wells investigated is unfit for
e drinking. The concentrations of nutrient demand parameters revealed that phosphate was in the range 0.1-0.3 mg/L while nitrate was in the range 1-7.5 mg/L at all sampling locations which is within the limits stipulated under drinking water standards (IS:10500-1995). The levels of chromium, copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards (IS:10500-1995),
f other heavy metal concentrations viz. iron, manganese, zinc and arsenic were found in the range 0.01-0.05 mg/L, ND-0.01 mg/L and ND-0.08 mg/L respectively which are within the drinking water standards (IS:10500-1995).

To assess the impact on groundwater quality due to secured and fill sites and other waste disposal facilities, five samples were collected from monitoring wells (shallow bore wells located around the waste disposal
g sites). The physico-chemical characteristics of well water around secured landfill site and gypsum pond showed mineral contents higher than the levels stipulated in IS: 10500-1995 in terms of dissolved solids (400-3245 mg/L), alkalinity (57-137 mg/L), hardness (290-1280 mg/L), chloride (46-1390 mg/L), sulphate (177-649 mg/L) and sodium (9-271 mg/L). The results of nutrient demand parameters showed phosphate in
h the range 0.1-0.5 mg/L while nitrate was in the range 0.8-11.7 mg/L at all sampling locations, which are within the levels stipulated in IS:10500-

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1995, whereas level of arsenic was found in the range of ND-0.08 mg/L as against the stipulated limit of 0.05 mg/L under drinking water standards (IS:10500-1995). The levels of cadmium, chromium, copper and lead were also found to exceed the drinking water standards in some of the wells.

The hourly composite wastewater samples were collected at six locations. During the sample collection, flow monitoring was also carried out at the inlet and final outlet of the effluent treatment plant (ETP). The concentrations of total dissolved solid (TDS) and sulphate exceed the limit stipulated by the TNPCB for treated effluent. All the other parameters are within the consent conditions prescribed by TNPCB. The treated effluent is being recycled back in the process to achieve zero discharge.

Soil environment

Soil samples were also analysed for level of heavy metals. The soil samples at the plant site showed presence of As (132.5 to 163.0 mg/kg), Cu (8.6 to 163.5 mg/kg), Mn (283 to 521.0 mg/kg) and Fe (929.6 to 1764.6 mg/kg). Though there is no prescribed limit for heavy metal contents in soil, the occurrence of these heavy metals in the soil may be attributed to fugitive emission, solid waste dumps, etc."

It will be clear from the extracts from the Executive Summary of NEERI in its report of 2005, that while some of the emissions from the plant of the appellants were within the limits stipulated by the TNPCB, some of the emissions did not conform to the standards stipulated by TNPCB. It will also be clear from the extracts from the executive summary relating to water environment that the surface water samples were found to be within the prescribed limits of drinking water (IS:10500-1995) whereas groundwater samples showed high mineral contents in terms of dissolved solids as compared to the drinking water standards, but concentrations of nutrient demand parameters revealed that the phosphate and nitrate contents were within the limits stipulated under drinking water standards and levels of chromium, copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards, whereas the heavy metal concentrations, namely, iron, manganese, zinc and arsenic were within the drinking water standards. Soil samples also revealed heavy metals. Regarding the solid waste out of slag in the plant site, the CPCB has taken a view in its communication dated 17-11-2003 to TNPCB that the slag is non-hazardous. Thus, the NEERI report of 2005 did show that the emission and effluent discharged affected the environment but the report read as whole does not warrant a conclusion that the plant of the appellants could not possibly take remedial steps to improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants.

43. In fact, this Court passed orders on 25-2-2011[17] directing a joint inspection by NEERI (National Environmental Engineering Research Institute) with the officials of the Central Pollution Control Board (for short

17 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 769

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"the CPCB") as well as the TNPCB. Accordingly, an inspection was carried out during 6-4-2011 to 8-4-2011 and 19-4-2011 to 22-4-2011 and a report was submitted by NEERI to this Court. On 18-7-2011, this Court directed[18] the Tamil Nadu Government and the TNPCB to submit their comments with reference to the NEERI report. On 25-8-2011, this Court directed[19] TNPCB to file a synopsis specifying the deficiencies with reference to the NEERI report and suggest control measures that should be taken by the appellants so that this Court can consider the direction to be issued for remedial measures which can be monitored by the TNPCB. Accordingly, the TNPCB filed an affidavit dated 30-8-2011 along with the chart of deficiencies and measures to be implemented by the appellants and on 11-10-2011, this Court directed[20] the TNPCB to issue directions, in exercise of its powers under the Air Act and the Water Act to the appellants to carry out the measures and remove the deficiencies indicated in the chart. Pursuant to the order dated 11-10-2011[20], the TNPCB issued directions to the appellants and on 17-1-2012, the appellants claimed before the Court that they have removed the deficiencies pointed out by the TNPCB and on 27-8-2012, this Court directed[3] that a joint inspection be carried out by TNPCB and CPCB and completed by 14-9-2012 and a joint report be submitted to this Court.

44. The conclusion in the joint inspection report of CPCB and TNPCB is extracted hereinbelow:

> "Out of the 30 directions issued by the Tamil Nadu Pollution Control Board, the industry has complied with 29 directions. The remaining Direction 1(3) under the Air Act on installation of bag filter to converter is at the final stage of erection, which will require further 15 working days to fully comply as per the industry's revised schedule."

From the aforesaid conclusion of the joint inspection report, it is clear that out of the 30 directions issued by the TNPCB, the appellant Company has complied with 29 directions and only one more direction under the Air Act was to be complied with. As the deficiencies in the plant of the appellants which affected the environment as pointed out by NEERI have now been removed, the impugned order[1] of the High Court directing closure of the plant of the appellants is liable to be set aside.

45. We may now consider the contention on behalf of the intervenors that the appellants were liable to pay compensation for the damage caused by the plant to the environment. The NEERI reports of 1998, 1999, 2003 and 2005 show that the plant of the appellant did pollute the environment through emissions which did not conform to the standards laid down by the TNPCB under the Air Act and through discharge of effluent which did not conform to the standards laid down by the TNPCB under the Water Act. As pointed out by

18 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 772

19 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 773

20 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 10 SCC 254

3 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC)

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

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Mr V. Gopalsamy and Mr Prakash, on account of some of these deficiencies, TNPCB also did not renew the consent to operate for some periods and yet the appellants continued to operate its plant without such renewal. This is evident from the following extracts from the NEERI Report of 2011:

"Further, renewal of the consent to operate was issued vide the following proceedings numbers and validity period:

TNPCB proceeding	*Validity up to*
No. T7/TNPCB/F.22276/RL/TTN/W/2007 dated 7-5-2007 No. T7/TNPCB/F.22276/RL/TTN/A/2006 dated 7-5-2007	30-9-2007
No. T7/TNPCB/F.22276/URL/TTN/W/2008 dated 19-1-2009 No. T7/TNPCB/F.22276/URL/TTN/A/2008 dated 19-1-2009	31-3-2009
No. T7/TNPCB/F.22276/URL/TTN/W/2009 dated 14-8-2009 No. T7/TNPCB/F.22276/URL/TTN/A/2009 dated 14-8-2009	31-12-2009

Thereafter, the TNPCB did not renew the consents due to non-compliance with the following conditions:

Under the Water Act, 1974

(*i*) The unit shall take expedite action to achieve the time-bound target for disposal of slag, submitted to the Board, including BIS clearance before arriving at disposal to cement industries, marine impact study before arriving at disposal for landfill in abandoned quarries.

(*ii*) The unit shall take expedite action to dispose the entire stock of the solid waste of gypsum.

Under the Air Act, 1981

(*i*) The unit shall improve the fugitive control measure to ensure that no secondary fugitive emission is discharged at any stage, including at the points of material handling and vehicle movement area."

For such damages caused to the environment from 1997 to 2012 and for operating the plant without a valid renewal for a fairly long period, the appellant Company obviously is liable to compensate by paying damages.

46. In *M.C. Mehta* v. *Union of India*[21], a Constitution Bench of this Court held: (SCC pp. 420-21, para 31)

"*31.* … The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is

21 (1987) 1 SCC 395 : 1987 SCC (L&S) 37

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engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part."

The Constitution Bench in the aforesaid case further observed that the quantum of compensation must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it.

47. In the Annual Report 2011 of the appellant Company, at pp. 20 and 21, the performance of its copper project is given. We extract hereinbelow the paragraph titled "Financial Performance":

> "PBDIT for the financial year 2010-2011 was Rs 1043 crores, 40% higher than PBDIT of Rs 744 crores for the financial year 2009-2010. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realisation."

Considering the magnitude, capacity and prosperity of the appellant Company, we are of the view that the appellant Company should be held liable for a compensation of Rs 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and according to us, any less amount, would not have the desired deterrent effect on the appellant Company. The aforesaid amount will be deposited with the Collector of Thoothukudi District, who will invest it in a fixed deposit with a nationalised bank for a period of five years. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu.

48. We now come to the submission of Mr Prakash that we should not grant relief to the appellants because of the misrepresentation and suppression of material facts made in the special leave petition that the appellants have always been running their plant with statutory consents and approvals and misrepresentation and suppression of material facts made in the special leave petition that the plant was closed at the time the special leave petition was moved and a stay order was obtained from this Court on 1-10-2010[2]. There is no doubt that there has been misrepresentation and suppression of material facts made in the special leave petition but to decline relief to the appellants in this case would mean closure of the plant of the appellants. The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile, construction and infrastructure, etc. The plant of the appellants has about 1300 employees and it also provides employment to a large number of people

2 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC)

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through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates a huge revenue to the Central and State Governments in terms of excise, custom duties, income tax and VAT. It also contributes to 10% of the total cargo volume of Tuticorin Port. For these considerations of public interest, we do not think it will be a proper exercise of our discretion under Article 136 of the Constitution to refuse relief on the grounds of misrepresentation and suppression of material facts in the special leave petition.

49. Before we part with this case, we would like to put on record our appreciation for the writ petitioners before the High Court and the intervenor before this Court for having taken up the cause of the environment both before the High Court and this Court and for having assisted this Court on all dates of hearing with utmost sincerity and hard work. In *Indian Council for Enviro-Legal Action* v. *Union of India*[22], this Court observed that voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervenor before this Court not only ventured but also put in their best for the cause of the general public.

50. In the result, the appeals are allowed and the impugned common judgment[1] of the High Court is set aside. The appellants, however, are directed to deposit within three months from today a compensation of Rs 100 crores with the Collector of Thoothukudi District, which will be kept in a fixed deposit in a nationalised bank for a minimum of five years, renewable as and when it expires, and the interest therefrom will be spent on suitable measures for improvement of the environment, including water and soil, of the vicinity of the plant of the appellants after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu. In case the Collector of Thoothukudi District, after consultation with TNPCB, finds the interest amount inadequate, he may also utilise the principal amount or part thereof for the aforesaid purpose after approval from the Secretary, Environment, Government of Tamil Nadu. By this judgment, we have only set aside the directions of the High Court in the impugned common judgment[1] and we make it clear that this judgment will not stand in the way of the TNPCB issuing directions to the appellant Company, including a direction for closure of the plant, for the protection of environment in accordance with law.

51. We also make it clear that the award of damages of Rs 100 crores by this judgment against the appellant Company for the period from 1997 to 2012 will not stand in the way of any claim for damages for the aforesaid period or any other period in a civil court or any other forum in accordance with law.

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22 (1996) 3 SCC 212

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

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(2014) 6 Supreme Court Cases 590

(BEFORE A.K. PATNAIK, S.S. NIJJAR AND F.M. IBRAHIM KALIFULLA, JJ.)

GOA FOUNDATION .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 435 of 2012† with Nos. 99, 184 of 2013, Transferred Cases Nos. 131-36 and 138-43 of 2013,
decided on April 21, 2014

A. **Environment Protection and Pollution Control — Mining — Illegal and uncontrolled and unmonitored mining affecting environment and revenue — Expired mining leases in State of Goa — Continuance of, in violation of Ss. 8(2) & (3), MMDR Act — Impermissibility and consequential remedial measures**

— S. 8(2) of MMDR Act permitting only one time renewal option for a period not exceeding 20 yrs (availing said option, present leases renewed from 22-11-1987 to 22-11-2007) — S. 8(3) permitting a second renewal for specified minerals (that is those not mentioned in Sch. I Pts. A & B, MMDR Act) but conditions in S. 8(3) for second renewal not having been fulfilled (that is State Government not having formed any opinion nor recording the same that the second renewal is in the interest of mineral development) — Held, said illegal mining leases cannot continue beyond 22-11-2007 neither under S. 8(2) nor under S. 8(3), MMDR Act — Therefore, impugned orders suspending said leases and keeping in abeyance their environmental clearances (that is impugned orders dt. 10-9-2012 and 14-9-2012 of State Government and MoEF respectively), held, were proper — Said orders directed to continue till issue of grant of fresh leases by State Government and environmental clearances by MoEF had been duly decided as per law — Mines and Minerals (Development and Regulation) Act, 1957, Ss. 8(2), 8(3) and Sch. I Pts. A, B & C (Paras 24 to 28, 82, 87.1 and 89)

B. **Environment Protection and Pollution Control — Mining — Illegal and uncontrolled/unmonitored mining affecting environment and revenue — Expired mining leases in State of Goa — Minerals excavated after expiration of lease — Sale proceeds after e-auction of said minerals as per directions of Supreme Court — Manner of utilisation and appropriation of said sale proceeds — Directions issued**

— State Government (under supervision of Monitoring Committee) directed to make the following payments (after duly calculating the same): (a) Average/approximate costs (not actual costs) of excavation of minerals to lessees, (b) 50% of wages and DA to eligible workers as per S. 25-C, ID Act who suffered due to suspension of mining leases by State Government, (c) 50% of claim towards storage charges of Marmagao Port Trust for storage of minerals after 5-10-2012 (that is, date from which Supreme Court suspended mining leases) — After said payments 10% of balance amount directed to be paid to Goa Iron Ore Permanent Fund for the purpose of sustainable

† Under Article 32 of the Constitution of India

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development and intergenerational equity — And the rest of balance amount directed to be appropriated by State Government as owners of said ore — Labour Law — Industrial Disputes Act, 1947 — S. 25-C — Compensation under, for affected eligible workers, for suspension of mining leases under directions of Government/Court — Entitlement to (Paras 85, 86 and 88.8)

C. **Mines and Minerals — Mineral Concession Rules, 1960 — Rr. 24-A(8), (6), (9), (4), (5) and R. 42-A(9) — Deemed renewal of mining leases if applications for renewal are not disposed of within stipulated time under R. 24-A(8) — Such applications having been made and such time having expired, mining leases, held, had been duly renewed up to 21-11-2007 — Thus, finding of Shah Commission that continuance of leases up to 21-11-2007 was without valid renewal, is not correct (Paras 20 to 23)**

D. **Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 8(3) & (2) — Renewal of mining lease under R. 8(3) — General principle of R. 24-A(6) of 1960 Rules (that there cannot be any hiatus in mining), held, is inapplicable to said renewal without express orders of State Government recording reasons for said renewal — Mineral Concession Rules, 1960, R. 24-A(6) (Para 28)**

Goa Foundation v. *Union of India*, (2014) 6 SCC 738, *relied on*

Tisco Ltd. v. *Union of India*, (1996) 9 SCC 709, *affirmed*

Goa Foundation v. *Union of India*, WP (C) No. 435 of 2012, order dated 5-10-2012 (SC), *vacated*

Vassudeva Madeva Salgaocar v. *Union of India*, (1985) 1 Bom CR 36; *Shantilal Khushaldas and Bros. (P) Ltd.* v. *Union of India*, WP No. 177 of 1990, decided on 20-6-1997 (Bom); *Shantilal Khushaldas and Bros. (P) Ltd.* v. *Union of India*, SLP (C) No. 23827 of 1997, order dated 2-3-1998 (SC); *State of U.P.* v. *Lalji Tandon*, (2004) 1 SCC 1, *referred to*

E. **Public Accountability, Vigilance and Prevention of Corruption — Commissions of Inquiry Act, 1952 — Ss. 8-B and 8-C — Principles of natural justice under — Non-compliance with — Effect on Inquiry Commission report — Extent to which findings in report may be relied on**

— Shah Commission inquiring into illegal mining in State of Goa giving its report without giving any opportunity of hearing to lessees of alleged illegal mining — Central Government and State Government pleading that they would not take any action against said lessees on basis of said findings prior to giving an opportunity of hearing to lessees — Therefore, Shah Commission Report not quashed (as prayed for by the lessees) — At the same time, the prosecution of mining leases cannot be directed on the basis of the findings in the Report of the Justice Shah Commission, if they have not been given the opportunity of being heard and to produce evidence in their defence and not allowed the right to cross-examine and the right to be represented by a legal practitioner before the Commission as provided in Ss. 8-B and 8-C — However, the legal and environmental issues raised in the Report of the Justice Shah Commission can be examined and on the basis of the said findings on these issues the reliefs prayed for from both sides can be considered — Administrative Law — Natural Justice — Audi Alteram Partem — Right to Hearing — Reasonable Opportunity/Right of Representation (Para 14)

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Kiran Bedi v. *Committee of Inquiry*, (1989) 1 SCC 494; *State of Bihar* v. *Lal Krishna Advani*, (2003) 8 SCC 361; *Union of India* v. *Tulsiram Patel*, (1985) 3 SCC 398 : 1985 SCC (L&S) 672, *referred to*

F. **Environment Protection and Pollution Control — Mining — Mining waste — Dumping of, outside leased area, held, is not permissible under MMDR Act and Rules made thereunder — Clarified that even if land outside the mining area is privately owned mineral wastes cannot be dumped there without prior environmental clearance under R. 5(3) of 1986 Rules**

— Expert Committee directed to submit its report within six months on how the mining dumps in the State of Goa should be dealt with — Environment (Protection) Rules, 1986 — R. 5(3) — Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 9, 4 and 3(d) — Mineral Concession Rules, 1960 — R. 64-C and R. 31 r/w Form K — Terms of lease deed under Form K and principles of dumping of mineral waste under R. 64-C — Clarified — None of said provisions, held, permits dumping of mineral waste outside leased area — Mineral Conservation and Development Rules, 1988 — R. 16 — Forest (Conservation) Act, 1980, S. 2 (Paras 30 to 37, 87.2 and 88.11)

Central Bank of India v. *Workmen*, AIR 1960 SC 12, *relied on*

Samaj Parivartana Samudaya v. *State of Karnataka*, (2013) 8 SCC 154, *referred to*

G. **Environment Protection and Pollution Control — Mining — Safety/ prohibition zones around natural parks, wildlife sanctuaries and protected areas — Extent of prohibition zones for State of Goa, considering its local needs for development, occupational structure and geographical availability of land**

— Reiterating direction of Supreme Court in *T.N. Godavarman Thirumulpad*, (2010) 13 SCC 740, all mining within a distance of 1 km from national parks and sanctuaries, held, are prohibited — Regarding extension of safety zones to 10 kms at six proposed sites, MoEF directed to proceed as per statutory procedure and consider the objections of State Government in this regard (that is regarding needs of local people, development needs, availability of land and geographical constraints peculiar to State of Goa) — Environment (Protection) Rules, 1986 — Rr. 5(1)(viii) & (x) and Rr. 5(2) & (3) — Environment (Protection) Act, 1986 — S. 3(2)(v) — Wildlife (Protection) Act, 1972 — S. 5-C(2)(b) — Constitution of India, Arts. 21 and 32 (Paras 38 to 53, 87.3, 87.4 and 88.1)

Noida Memorial Complex near Okhla Bird Sanctuary, In re, (2011) 1 SCC 744, *relied on*

T.N. Godavarman Thirumulpad v. *Union of India*, (2010) 13 SCC 740, *explained* and *relied on*

Goa Foundation v. *Union of India*, (2011) 15 SCC 791, *explained*

T.N. Godavarman Thirumulpad v. *Union of India*, (2002) 10 SCC 634, *referred to*

H. **Mines and Minerals — Mineral Concession Rules, 1960 — Rr. 37(1)(a) and 38 — Violation of, by mining lessees by resorting to illegal transfers and amalgamations — Clarified that iron ore mines (not being specified in Sch. I Pt. A or B but being specified in Pt. C, MMDR Act) could**

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not be transferred without the previous written consent of State Government — Further clarified that amalgamation of mines is not permitted, if the State Government has not recorded its reasons for said amalgamation — And that the period of such amalgamation cannot exceed the period of lease whose term expires first — State Government, therefore, directed to initiate action against all mining lessees who had violated Rr. 37 and 38, MC Rules so that there is no loss of revenue and mining is effectively controlled — Mines and Minerals (Development and Regulation) Act, 1957 — Sch. I Pts. A, B and C — Transfer of Property Act, 1882 — Ss. 10 and 11 — Statutory bars on transfer of property

I. **Mines and Minerals — Mineral Concession Rules, 1960 — R. 37 — Intent of rule-making authorities under, explained — The intent is to ensure that there is no loss of revenue and mining is effectively controlled**

Held :

The Justice Shah Commission has found in its Report that in the State of Goa, 16 companies/firms/individuals are carrying out mining operations under different leases granted to them as a single unit as if the leases are amalgamated. CEC has reported that there are several complaints received by the State Government that the leases have been operated by persons other than the lessees. As per Rule 37(1)(*a*) of the MC Rules, 1960 the lessee cannot assign, sub-let, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, without the previous consent in writing of the State Government in the case of those minerals which are not specified in Part A and Part B of the First Schedule to the MMDR Act. Since iron ore is specified in Part C of the First Schedule to the MMDR Act, the previous consent in writing of the State Government is necessary before any such transfer is made by a mining lessee. (Paras 54 to 57)

The intent of the rule-making authority in making these provisions in Rule 37 of the MC Rules, 1960 is that the liabilities and conditions in a mining lease are also enforceable against the transferee and that the transferee pays his dues towards income tax regularly. Rule 37, therefore, cannot be allowed to be violated by the lessees with impunity and the State Government cannot overlook transfers by saying that the transfers of the mining leases are part of the mining practice in the State of Goa. If these violations of Rule 37 of the MC Rules, 1960 are allowed, there shall be substantial leakage of revenue and mining operations cannot be effectively regulated and controlled by the State Government. The State Government, therefore, must initiate action against those mining leases who violate Rule 37 of the MC Rules, 1960. (Para 60)

Rule 38 of the MC Rules, 1960 provides that the State Government may, in the interest of mineral development and with reasons to be recorded in writing, permit amalgamation of two or more adjoining leases held by a lessee, provided that the period of amalgamated leases shall be co-terminus with the lease whose period will expire first. If the State Government has not permitted amalgamation of adjoining leases in the interest of mineral development and has not recorded the reasons for such permission, the State Government cannot allow the amalgamation of the leases. The State Government will initiate action against those mining lessees who violate Rules 37 and 38 of the MC Rules, 1960. (Para 61)

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J. **Environment Protection and Pollution Control — Mining — Illegal and uncontrolled/unmonitored mining affecting environment and revenue — Monitoring and regulatory mechanism — Need of strict implementation of statutory provisions and powers by regulatory bodies — Directions issued to regulatory bodies**

— Judicial notice taken of fact that Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013 has adequate provisions to deal with illegal mining and that the regulatory bodies have failed in their endeavour to restore the environment from the damage caused by mining — State of Goa directed to enforce provision of MMDR Act and Rules made there under and to strictly enforce 2013 Rules — Goa State Pollution Control Board also directed to exercise the immense powers conferred under S. 33-A, 1974 Act and 31-A, 1981 Act — Further directed that as and when Regulator as directed in *T.N. Godavarman Thirumulpad*, (2014) 4 SCC 61, is appointed, it would carry out its functions as per order passed under S. 3(3), Environment (Protection) Act, 1986 — Mines and Minerals (Development and Regulation) Act, 1957 — S. 23-C — Air (Prevention and Control of Pollution) Act, 1981 — S. 31-A — Water (Prevention and Control of Pollution) Act, 1974, S. 33-A (Paras 62, 63, 69 to 71, 75 to 78 and 88.6)

K. **Environment Protection and Pollution Control — Mining — Sustainable development — Illegal and uncontrolled/unmonitored mining affecting environment and revenue — Rationale why mining cannot be totally prohibited in State of Goa, explained — Goa is heavily dependent upon iron ore mining for its revenue and employment — People have taken bank loans, purchased trucks and many people depend upon mining for their livelihood — Therefore, mining cannot be totally prohibited in Goa (Paras 77, 78, 88.9 and 88.10)**

L. **Constitution of India — Arts. 21 and 32 — Sustainable development — Goa Iron Ore Permanent Fund — In future, lessees directed to deposit 10% of their sale proceeds from iron ore towards said fund in the interest of sustainable development and inter-generational equity as the damage caused cannot be rectified by regulation/monitoring alone — CEC directed to submit a comprehensive scheme within six months in this regard — Environment Protection and Pollution Control — Polluter pays principle (Paras 77, 78, 88.9 and 88.10)**

M. **Constitution of India — Arts. 21 and 32 — Sustainable development — Cap on annual excavation of iron ore in State of Goa — Based on reports of experts, and until a final report by Expert Committee, a cap of 20 Million MT on said excavation fixed — Expert Committee directed to submit said report within 12 months — Environment Protection and Pollution Control — Sustainable development (Paras 88.4 and 88.5)**

T.N. Godavarman Thirumulpad v. *Union of India*, (2014) 4 SCC 61; *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*, (2011) 7 SCC 338, *considered*

Goa Foundation v. *Union of India*, (2014) 6 SCC 738; *Goa Foundation* v. *Union of India*, WP (C) No. 435 of 2012, order dated 18-11-2013 (SC); *Samaj Parivartana Samudaya* v. *State of Karnataka*, (2013) 8 SCC 154, *referred to*

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Report of Expert Committee, Reports of ISM, Dhanbad and Neeri, *referred to*

N. **Environment Protection and Pollution Control — Mining — Mining leases — Mode by which should be granted — Whether State Government should be directed to grant said leases only by way of auction — Held, it is for the State Government to decide as a matter of policy, in what manner the leases are to be granted — MMDR Act does not prohibit the State from holding auction — The State Government may also adopt any other method — But said methods must conform to Constitution and law and are subject to judicial review — Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 4 to 11 — Constitution of India — Arts. 21, 32 and 39(b) — Government Grants, Largesse, Public Property and Premises — Allotment/Grant/Lease/Licence of land — Mode of grant of**

(Paras 79 to 81 and 87.5)

Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1, *relied on*

Centre for Public Interest Litigation v. *Union of India*, (2012) 3 SCC 1, *referred to*

SS-D/53204/C

Advocates who appeared in this case :

A.N.S. Nadkarni, Advocate General, Suryanarayana Singh, Additional Advocate General, Datta Prasad Lawande, Government Advocate, Nikhil D. Pai and Ms Neha Umesh Kholkar, Additional Government Advocates, Mukul Rohatgi, Senior Advocate [Prashant Bhushan, Amit Sharma, Yashraj Singh Deora, M/s K.J. John & Co., Harish Pandey, P.S. Sudheer, M/s Mitter & Mitter Co., A. Venayagam Balan, Abhijat P. Medh, P.V. Yogeswaran, Ms Jyoti Mendiratta, Ms Madhu Sikri, Dr (Ms) Vipin Gupta, Ninad Laud, Ms Aparna Singhal, Mahesh Agarwal, E.C. Agarwala, Ms Sudha Gupta, M/s Parekh & Co., Shadman Ali, D.S. Mahra, Yashraj Singh Deora, Mohan Pandey, Shreekant N. Terdal, M/s J.S. Wad & Co., Abhijit Gosavi, Jayant Mohan, Harish Pandey, M/s K.J. John & Co., Chander Shekhar Ashri, Mohit Abraham, Shiv Kr. Suri, P.S. Sudheer, T. Mahipal, Parijat Sinha, S.M. Walawaikar, Rameshwar Prasad Goyal, M.P. Jha, Siddharth Bhatnagar, Ms A. Subhashini, Bhavanishankar V. Gadnis, A. Venayagam Balan, Prafulla Hede, Advocates] for the appearing parties.

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

1. (2014) 6 SCC 738, *Goa Foundation* v. *Union of India* 599*d-e*, 600*a-b*, 626*d-e*, 628*f*, 635*d-e*, 635*f*, 636*h*
2. (2014) 4 SCC 61, *T.N. Godavarman Thirumulpad* v. *Union of India* 632*b-c*
3. (2013) 8 SCC 154, *Samaj Parivartana Samudaya* v. *State of Karnataka* 609*d*, 632*g*
4. WP (C) No. 435 of 2012, order dated 18-11-2013 (SC), *Goa Foundation* v. *Union of India* 626*d-e*
5. (2012) 10 SCC 1, *Natural Resources Allocation, In re, Special Reference No. 1 of 2012* 634*b-c*, 634*e*
6. (2012) 3 SCC 1, *Centre for Public Interest Litigation* v. *Union of India* 633*e-f*
7. WP (C) No. 435 of 2012, order dated 5-10-2012 (SC), *Goa Foundation* v. *Union of India* 599*a*, 635*d*, 638*f-g*
8. (2011) 15 SCC 791, *Goa Foundation* v. *Union of India* 613*c*, 613*f*, 614*a*, 614*b*, 614*f*, 617*b*, 617*g-h*, 618*a*, 618*d*, 618*d-e*, 637*c*
9. (2011) 7 SCC 338, *Lafarge Umiam Mining (P) Ltd.* v. *Union of India* 632*c-d*
10. (2011) 1 SCC 744, *Noida Memorial Complex near Okhla Bird Sanctuary, In re* 616*g-h*

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11. (2010) 13 SCC 740, *T.N. Godavarman Thirumulpad* v. *Union of India* 613*f-g*, 614*g*, 617*b*, 617*b-c*, 617*c-d*, 617*f*, 637*b-c*
12. (2004) 1 SCC 1, *State of U.P.* v. *Lalji Tandon* 606*g-h*
13. (2003) 8 SCC 361, *State of Bihar* v. *Lal Krishna Advani* 600*e-f*
14. (2002) 10 SCC 634, *T.N. Godavarman Thirumulpad* v. *Union of India* 614*a*
15. SLP (C) No. 23827 of 1997, order dated 2-3-1998 (SC), *Shantilal Khushaldas and Bros. (P) Ltd.* v. *Union of India* 597*c*, 597*d*
16. WP No. 177 of 1990, decided on 20-6-1997 (Bom), *Shantilal Khushaldas and Bros. (P) Ltd.* v. *Union of India* 597*b-c*, 597*c*
17. (1996) 9 SCC 709, *TISCO Ltd.* v. *Union of India* 607*a*, 608*b*
18. (1989) 1 SCC 494, *Kiran Bedi* v. *Committee of Inquiry* 600*e-f*
19. (1985) 3 SCC 398 : 1985 SCC (L&S) 672, *Union of India* v. *Tulsiram Patel* 600*e-f*
20. (1985) 1 Bom CR 36, *Vassudeva Madeva Salgaocar* v. *Union of India* 596*f*
21. AIR 1960 SC 12, *Central Bank of India* v. *Workmen* 611*f-g*

The Judgment of the Court was delivered by

A.K. PATNAIK, J.— This batch of writ petitions and transferred cases relate to mining in the State of Goa and as issues raised are common to the writ petitions and the transferred cases, the cases have been analogously heard and are being disposed of by this common judgment.

Facts relating to mining in Goa

2. Prior to 19-12-1961 when Goa was a Portuguese territory, its Portuguese Government had granted mining concessions in perpetuity to concessionaires. On 19-12-1961, Goa was liberated and became part of the Indian Union and on 1-10-1963, the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the MMDR Act") was made applicable to the State of Goa. On 10-3-1975, the Controller of Mining Leases issued a Notification calling upon every lessee and sub-lessee to file returns under Rule 5 of the Mining Leases (Modification of Terms) Rules, 1956 and sent copies of the notification to the concessionaires in Goa. Aggrieved, the concessionaires moved the Bombay High Court, Goa Bench, and by judgment dated 29-9-1983, in *Vassudeva Madeva Salgaocar* v. *Union of India*[1], the Bombay High Court restrained the Union of India from treating the concessions as mining leases and from enforcing the notification against the concessionaires.

3. Parliament thereafter passed the Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 (for short "the Abolition Act") which received the assent of the President on 23-5-1987. Section 4 of the Abolition Act abolished the mining concessions and declared that with effect from the 20th day of December, 1961, every mining concession will be deemed to be a mining lease granted under the MMDR Act and that the provisions of the MMDR Act will apply to such mining lease. Section 5 of the Abolition Act further provided that the concession holder shall be deemed to have become a holder of the mining lease under

1 (1985) 1 Bom CR 36

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the MMDR Act in relation to the mines in which the concession relates and the period of such lease was to extend up to six months from the date when the Abolition Act received President's assent i.e. up to 22-11-1987. On 14-10-1987, sub-rules (8) and (9) were inserted in Rule 24-A of the Mineral Concession Rules, 1960 (for short "the MC Rules") which deal with renewal of mining leases in Goa, Daman and Diu.

4. The Abolition Act was challenged by the lessees before the Bombay High Court in a writ petition. The High Court passed an interim order permitting the lessees to carry on mining operations and the mining business in the concessions for which renewal applications had been filed under Rule 24-A of the MC Rules. Subsequently, the High Court held in its judgment dated 20-6-1997[2] that the Abolition Act was valid but Section 22(*i*)(*a*) of the Abolition Act would operate prospectively and not retrospectively. The concessionaires filed special leave petition against the judgment dated 20-6-1997[2] before this Court. On 2-3-1998[3], this Court passed an interim order permitting the concessionaires to carry on mining operations and mining business in the mining areas for which renewal applications have been made on the condition that the lessee pays to the Government dead rent from the date of commencement of the Abolition Act. Subsequently, this Court granted leave in the special leave petition and continued the aforesaid interim order[3].

The Justice Shah Commission and its Report

5. As reports were received from various State Governments of widespread mining of iron ore and manganese ore in contravention of the provisions of the MMDR Act, the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986 and other rules and guidelines issued thereunder, the Central Government appointed the Justice Shah Commission under Section 3 of the Commissions of Inquiry Act, 1952 by Notification dated 22-11-2010. Paras 2 and 3 of the Notification, which are relevant, are extracted hereinbelow:

> "**2.** The terms of reference of the Commission shall be—
>
> (*i*) to inquire into and determine the nature and extent of mining and trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and to identify, as far as possible, the persons, firms, companies and others that are engaged in such mining, trade and transportation of iron ore and manganese ore, done illegally or without lawful authority;
>
> (*ii*) to inquire into and determine the extent to which the management, regulatory and monitoring systems have failed to deter, prevent, detect and punish offences relating to mining, storage, transportation, trade and export of such ore, done illegally or without lawful authority, and the persons responsible for the same;

2 *Shantilal Khushaldas and Bros. (P) Ltd.* v. *Union of India*, WP No. 177 of 1990, decided on 20-6-1997 (Bom)

3 *Shantilal Khushaldas and Bros. (P) Ltd.* v. *Union of India*, SLP (C) No. 23827 of 1997, order dated 2-3-1998 (SC)

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(*iii*) to inquire into the tampering of official records, including records relating to land and boundaries, to facilitate illegal mining and identify, as far as possible, the persons responsible for such tampering; and

(*iv*) to inquire into the overall impact of such mining, trade transportation and export done illegally or without lawful authority, in terms of destruction of forest wealth, damage to the environment, prejudice to the livelihood and other rights of tribal people, forest dwellers and other persons in the mined areas, and the financial losses caused to the Central and State Governments.

3. The Commission shall also recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority."

6. The Justice Shah Commission visited Goa and issued notices under Section 4 of the Commissions of Inquiry Act, 1952 calling for information from the authorities concerned and the lessees and submitted its interim report on 15-3-2012 to the Ministry of Mines, Union of India. On 7-9-2012, the Justice Shah Commission Report on Goa was tabled in Parliament along with an Action Taken Report of the Ministry of Mines and on 10-9-2012 the State Government of Goa passed an Order suspending all mining operations in the State of Goa with effect from 11-9-2012. Pursuant to this Order of the State Government, on 11-9-2012 and 12-9-2012 the District Magistrates of the State of Goa banned transportation of iron ore in their respective districts and the Director of Mines and Geology ordered for verification of mineral ore which was already extracted. On 13-9-2012, the Director of Mines and Geology, Government of Goa issued show-cause notices to 40 mining leases. On 14-9-2012, the Ministry of Environment and Forests of the Union of India also directed that all environmental clearances granted to mines in the State of Goa be kept in abeyance.

7. On the basis of findings in the Report of the Justice Shah Commission on illegal mining in the State of Goa, Goa Foundation has filed Writ Petition (C) No. 435 of 2012 as public interest litigation praying for directions to the Union of India and the State of Goa to take steps for termination of the mining leases of lessees involved in mining in violation of the Forest (Conservation) Act, 1980, the Mines and Minerals (Development and Regulation) Act, 1957, the Mineral Concessions Rules, 1960, the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as the Wild Life (Protection) Act, 1972. Goa Foundation has prayed that a direction be issued to the respondents to prosecute all those who have committed offences under the different laws and are involved in the pilferage of State revenue through illegal mining activities in the State of Goa including the public servants who have aided and abetted the offences. Goa Foundation has also sought for appointment of an independent authority with full powers to take control, supervise and regulate mining operations in the State of Goa and to ensure the implementation of the laws. Besides, the

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aforesaid main reliefs, Goa Foundation has also prayed for some incidental and consequential reliefs.

8. On 5-10-2012, this Court issued notice in *Goa Foundation* v. *Union of India*[4] to the respondents and directed the Central Empowered Committee (for short "CEC") to submit its report on the writ petition and also directed that till further orders, all mining operations in the leases identified in the report of the Justice Shah Commission and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended, as recommended in the report of the Justice Shah Commission.

9. Different mining lessees of the State of Goa and the Goa Mining Association also filed writ petitions in the Bombay High Court, Goa Bench for a declaration that the report of the Shah Commission is illegal and for quashing the findings in the Report of the Justice Shah Commission and also for quashing the Order dated 10-9-2012 of the Government of Goa suspending mining operations in the State of Goa and the Order dated 14-9-2012 of the Ministry of Environment and Forests, Government of India, directing that the environmental clearances granted to the mines in the State of Goa be kept in abeyance. These writ petitions have been transferred to this Court for hearing along with the hearing of Writ Petition (Civil) No. 435 of 2012 filed by Goa Foundation.

10. The writ petitions and the transferred cases were heard during September, October and November 2013. On 11-11-2013[5], an order was passed by this Court directing that the inventory of the excavated mineral ores lying in different mines/stockyards/jetties/ports in the State of Goa made by the Department of Mines and Geology of the Government of Goa be verified and thereafter the whole of the inventoried mineral ores be sold by e-auction and the sale proceeds (less taxes and royalty) be retained in separate

4 WP (C) No. 435 of 2012, order dated 5-10-2012 (SC), wherein it was directed:

"1. Issue notice. Dasti service in addition.

2. The Central Empowered Committee (CEC) is directed to submit its report on this writ petition, which is essentially based on the report of Justice M.B. Shah (a former Judge of this Court), Chairman of the Commission of Enquiry for illegal mining of iron ore and manganese. The Secretaries of the Ministries of Mines and Forest and Environment, Union of India, and the Chief Secretary of the State of Goa are directed to furnish all information that CEC may require for making its report for the Court in light of the Shah Commission's Report.

3. A preliminary report from CEC should reach this Court within four weeks from today. Put up on receipt of the report from CEC. Till further orders, all mining operations in the leases identified in the Shah Commission's Report and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended, as recommended in the Commission's Report.

4. IAs Nos. 2580 and 2669 of 2009 in Writ Petition (Civil) No. 202 of 1995 may also be listed along with this writ petition."

5 *Goa Foundation* v. *Union of India*, (2014) 6 SCC 738

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fixed deposits (leasewise) by the State of Goa till the Court delivers the judgment in these matters on the legality of the leases from which the mineral ores were extracted. The Court has also directed that this entire process of verification of the inventory, e-auction and deposit of sale proceeds be monitored by a Monitoring Committee appointed by the Court. By the said order dated 11-11-2013[5], this Court also constituted an Expert Committee to conduct a macro-EIA study on what should be the ceiling of annual excavation of iron ore from the State of Goa considering its iron ore resources and its carrying capacity, keeping in mind the principles of sustainable development and intergenerational equity and all other relevant factors. On 11-11-2013 the case was also reserved for judgment.

Challenge to the Report of the Justice Shah Commission

11. As we have already noticed, in the cases transferred from the Bombay High Court to this Court, the mining lessees have prayed for quashing the Report of the Justice Shah Commission. Mr K.K. Venugopal, learned Senior Counsel appearing for the mining lessees, submitted that the Justice Shah Commission did not issue any notice under Section 8-B of the Commissions of Inquiry Act, 1952 to the mining lessees giving a reasonable opportunity of being heard in the inquiry and to produce evidence in their defence. He further submitted that the Justice Shah Commission also did not permit the mining lessees to cross-examine the witnesses, to address the Commission and to be represented by legal practitioners before the Commission contrary to the provisions of Section 8-C of the Commissions of Inquiry Act, 1952. He submitted that even otherwise there is gross breach of the principles of natural justice and fair play by the Justice Shah Commission and, therefore, the Report of the Commission was violative of Article 14 of the Constitution. He submitted that the Report of the Justice Shah Commission should, therefore, be quashed. In support of this submission, he relied on the decisions of this Court in *Kiran Bedi* v. *Committee of Inquiry*[6], *State of Bihar* v. *Lal Krishna Advani*[7] and *Union of India* v. *Tulsiram Patel*[8].

12. Mr Mohan Parasaran, learned Solicitor General for the Union of India, on the other hand, submitted that as the Notification dated 22-11-2010 of the Central Government appointing the Justice Shah Commission under Section 3 of the Commissions of Inquiry Act, 1952 would show, reports were received from various State Governments of widespread mining of iron ore and manganese ore in contravention of the MMDR Act, the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 or other rules and licences issued thereunder and for this reason, the Central Government appointed the Justice Shah Commission for the purpose of making inquiry into these matters of public importance. He submitted that

5 *Goa Foundation* v. *Union of India*, (2014) 6 SCC 738
6 (1989) 1 SCC 494
7 (2003) 8 SCC 361
8 (1985) 3 SCC 398 : 1985 SCC (L&S) 672

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after the Justice Shah Commission submitted the Report pointing out various illegalities, the Union Government has kept the environment clearances in abeyance and it will take legal action on the basis of its own assessment of the facts and not on the basis of the facts as found in the Justice Shah Commission's Report.

13. Similarly, Mr Atmaram N.S. Nadkarni, the Advocate General appearing for the State of Goa, submitted that after going through the Report of the Justice Shah Commission, the State Government has suspended all mining and transportation of ores and no legal action will be taken against the mining lessees on the basis of the findings in the Justice Shah Commission's Report unless due opportunity is given to the mining lessees to place their defence against the findings of the Justice Shah Commission.

14. We find that Section 8-B of the Commissions of Inquiry Act, 1952 provides that if a person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a reasonable opportunity of being heard and to produce evidence in his defence and Section 8-C of the Commissions of Inquiry Act, 1952 provides that every such person will have a right to cross-examine and the right to be represented by a legal practitioner before the Commission. As the State Government of Goa has taken a stand before us that no action will be taken against the mining lessees only on the basis of the findings in the Report of the Justice Shah Commission without making its own assessment of facts and without first giving the mining lessees the opportunity of hearing and the opportunity to produce evidence in their defence, we are not inclined to quash the Report of the Justice Shah Commission on the ground that the provisions of Sections 8-B and 8-C of the Commissions of Inquiry Act, 1952 and the principles of natural justice have not been complied with. At the same time, we cannot also direct prosecution of the mining lessees on the basis of the findings in the Report of the Justice Shah Commission, if they have not been given the opportunity of being heard and to produce evidence in their defence and not allowed the right to cross-examine and the right to be represented by a legal practitioner before the Commission as provided in Sections 8-B and 8-C respectively of the Commissions of Inquiry Act, 1952. We will, however, examine the legal and environmental issues raised in the Report of the Justice Shah Commission and on the basis of our findings on these issues consider granting the reliefs prayed for in the writ petition filed by Goa Foundation and the reliefs prayed for in the writ petitions filed by the mining lessees, which have been transferred to this Court.

Whether the leases held by the mining lessees have expired

15. According to the Justice Shah Commission Report, prior to 7-1-1993, sub-rule (4) of Rule 24-A of the MC Rules provided that the renewal application of the lessee is required to be disposed of within six months from the date of its receipt and sub-rule (5) of Rule 24-A provided that if the

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application is not disposed of within stipulated time, the same shall be deemed to have been refused. The Justice Shah Commission has found that the applications of several mining leases for renewal were not disposed of within the stipulated time and there was no provision in the MC Rules to condone the delay and, therefore, these leases are in contravention of the MC Rules and are void and have no effect as provided in Section 19 of the MMDR Act.

16. CEC in its report has stated that under Section 4 of the Abolition Act, the concessions were abolished from 23-5-1987 and treated as deemed leases under the MMDR Act and the period of deemed leases under Section 5 of the Abolition Act was extended up to six months with effect from the date of assent to the Abolition Act (23-5-1987) i.e. up to 22-11-1987. CEC has further stated that by Notifications dated 20-11-1987 and 20-5-1988, however, the Government of Goa allowed extension of six months each (totalling one year) for making applications for the first renewal of deemed mining leases and this one year period expired on 22-11-1988. CEC has further stated that as per the information provided to CEC, out of 595 mining concessions abolished and converted into deemed mining leases under Section 4 of the Abolition Act, as many as 379 deemed mining lease-holders have filed applications for the first renewal of the mining leases before 22-11-1988 and 59 such lessees have filed applications for the first renewal of the deemed mining leases after 22-11-1988 i.e. beyond the time-limit permitted under Rule 24-A(8) of the MC Rules.

17. In reply, the learned counsel for the lessees and Mr Arvind Datar, learned Senior Counsel appearing for the State of Goa, submitted that sub-rules (4) and (5) of Rule 24-A of the MC Rules did not apply to the State of Goa. They submitted that sub-rules (8) and (9) of Rule 24-A of the MC Rules apply specifically to the State of Goa and sub-rule (8) of Rule 24-A of the MC Rules provides that an application for the first renewal of the deemed mining lease referred to in Section 4 of the Abolition Act shall be made to the State Government in Form J before the period of six months of the mining lease as provided in Section 5(1) of the Abolition Act. They submitted that the proviso to sub-rule (8) of Rule 24-A of the MC Rules conferred power on the State Government to extend time for making such application up to a total period not extending one year. They submitted that, by two Notifications, the State Government extended time for a period of one year up to 22-11-1988 and within this period most of the lessees have applied for the first renewal of the deemed mining lease. The learned counsel for the lessees and the learned counsel for the State of Goa submitted that sub-rule (9) of Rule 24-A of the MC Rules makes it clear that if an application for first renewal is made within the time referred to in sub-rule (8) of Rule 24-A of the MC Rules or within the time allowed by the State Government under the proviso to sub-rule (8) of Rule 24-A of the MC Rules, the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon.

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18. For easy reference, Chapter II containing Sections 4 and 5 of the Abolition Act is extracted hereinbelow:

"CHAPTER II

ABOLITION OF MINING CONCESSIONS AND DECLARATION AS MINING LEASES UNDER THE MINES AND MINERALS ACT

4. ***Abolition, etc., of mining concessions***.—(1) Every mining concession specified in the First Schedule shall, on and from the appointed day, be deemed to have been abolished, and shall, without effect from that day, be deemed to be a mining lease granted under the Mines and Minerals Act, and the provisions of that Act shall, save as otherwise provided in this Act, apply to such mining lease.

(2) Every mining concession specified in the Second Schedule shall, on and from the day next after the date of grant of the said concession and specified in the corresponding entry in the eighth column of the said Schedule, be deemed to have been abolished, and shall, with effect from that day, be deemed to be a mining lease granted under the Mines and Minerals Act, and the provisions of that Act shall, save as otherwise provided in this Act, apply to such mining lease.

(3) If, after the date of assent, the Central Government is satisfied, whether from any information received by it or otherwise, that there has been any error, omission or misdescription in relation to the particulars of any mining concession or the name and residence of any concession holder specified in the First or the Second Schedule, it may, by notification, correct such error, omission or misdescription, and on the issue of such notification, the First or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.

5. ***General effect of declaring the mining concessions to be mining leases***.—(1) Where a mining concession has been deemed to be a mining lease under Section 4, the concession holder shall, on and from the day mentioned in that section, be deemed to have become the holder of such mining lease under the Mines and Minerals Act in relation to the mine to which the mining concession relates, subject to the condition that the period of such lease shall, notwithstanding anything contained in that Act, extend up to a period of six months from the date of assent.

(2) On the expiry of the period of any mining lease under sub-section (1), it may, if so desired by the holder of such lease and on an application being made by him in accordance with the provisions of the Mines and Minerals Act and the rules made thereunder, be renewed on such terms and conditions, and up to the maximum period, for which such lease can be renewed under the provisions of that Act and the rules made thereunder."

19. For easy reference, Rule 24-A of the MC Rules is also extracted hereinbelow:

"**24-A.** ***Renewal of mining lease***.—(1) An application for the renewal of a mining lease shall be made to the State Government in Form J, at least twelve months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf.

(2) The renewal or renewals of a mining lease granted in respect of a mineral specified in Part A and Part B of the First Schedule to the Act may

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be granted by the State Government with the previous approval of the Central Government.

(3) The renewal or renewals of a mining lease granted in respect of a mineral not specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government:

Provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of the mining lease.

Provided further that in case a report is not received from Controller General, Indian Bureau of Mines in a period of three months of receipt of the communication from the State Government, it would be deemed that the Indian Bureau of Mines has no adverse comments to offer regarding the grant of the renewal of mining lease.

(4) An application for the renewal of a mining lease shall be disposed of within a period of six months from the date of its receipt. (*Omitted*)

(5) If an application is not disposed of within the period specified in sub-rule (4) it shall be deemed to have been refused. (*Omitted*)

(6) If an application for the renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of the lease shall be deemed to have been extended by a further period till the State Government passes order thereon.

(7) *Omitted.*

(8) Notwithstanding anything contained in sub-rule (1) and sub-rule (6) an application for the first renewal of a mining lease, so declared under the provisions of Section 4 of the Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987, shall be made to the State Government in Form J before the expiry of the period of mining lease in terms of sub-section (1) of Section 5 of the said Act, through such office or authority as the State Government may specify in this behalf:

Provided that the State Government may, for reasons to be recorded in writing and subject to such conditions as it may think fit, allow extension of time for making of such application up to a total period not exceeding one year.

(9) If an application for first renewal made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon.

(10) The State Government may condone delay in an application for renewal of mining lease made after the time-limit prescribed in sub-rule (1) provided the application has been made before the expiry of the lease."

20. Sub-rule (8) of Rule 24-A of the MC Rules has been inserted by G.S.R. 855(E), dated 14-10-1987 and this sub-rule (8) of Rule 24-A of the MC Rules provides that notwithstanding anything contained in sub-rule (1) and sub-rule (6), an application for the first renewal of a deemed mining lease, referred to in Section 4 of the Abolition Act, shall be made to the State Government in Form J before the expiry of the six months' period of deemed

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mining lease as provided in Section 5(1) of the Abolition Act. The proviso to sub-rule (8) of Rule 24-A of the MC Rules, however, empowers the State Government to extend the time for making such application up to a total period not extending one year. In exercise of these powers in the proviso to sub-rule (8) of Rule 24-A of the MC Rules, the State Government of Goa has, in fact, extended time for making applications for first renewal up to 22-11-1988, by two Notifications dated 20-11-1987 and 20-5-1988.

21. Sub-rule (9) of Rule 24-A of the MC Rules, which was also inserted by G.S.R. 855(E), dated 14-10-1987, reads as follows:

> "In an application for first renewal made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a period of one year from the date of expiry of lease or date of receipt of application, whichever is later, provided that the period of deemed extension of lease shall end with the date of receipt of the orders of the State Government thereon, if such orders are made earlier."

Sub-rule (9) was substituted by G.S.R. 724(E) dated 27-9-1994 by the existing sub-rule (9) (extracted above at para 19) to provide that if an application for first renewal is made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon. In our considered opinion, the intention of the rule-making authorities is very clear from sub-rule (9) as was originally inserted by G.S.R. 855(E), dated 14-10-1987 and sub-rule (9) as was substituted by G.S.R. 724(E), dated 27-9-1994, that until orders were passed by the State Government on an application for first renewal of a lease filed by a lessee within the time allowed, the lease was deemed to have been extended.

22. The lessees have contended that they had filed their applications by 22-11-1988 i.e. the date up to which the State Government had allowed time under the proviso to sub-rule (8) of Rule 24-A of the MC Rules. The State Government has also taken the stand that most of the applications for first renewal were filed within the time allowed by the State Government and this stand is also supported by the facts found by CEC. The result is that most of the mining leases in which the State Government has not passed orders are deemed to have been extended under sub-rule (9) of Rule 24-A of the MC Rules. Hence, the finding in the Justice Shah Commission Report that the applications for renewal were not disposed of within the stipulated time and the leases are in contravention of the MC Rules is, thus, not correct. This opinion of the Justice Shah Commission, as we have noticed, was based on sub-rules (4) and (5) of Rule 24-A of the MC Rules, which were applicable generally to an application for renewal of mining leases, stood excluded to the extent that specific provisions have been subsequently made by the rule-making authorities in sub-rules (8) and (9) of Rule 24-A of the MC Rules in respect of the deemed leases in Goa.

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23. Mr Prashant Bhushan, learned counsel for Goa Foundation, however, submitted that sub-section (2) of Section 8 of the MMDR Act prior to its amendment provided that a mining lease may be renewed for only ten years and, therefore, if the deemed mining leases of the lessees expired on 22-11-1987, even if the lease was renewed on the application of first renewal made by the lessees in Goa, the period of lease under the first renewal would expire on 21-11-1997 and after 21-11-1997, there can be no deemed extension. Alternatively, he submitted that sub-section (2) of Section 8 of the MMDR Act as amended by Act 25 of 1994 provided that the mining lease may be renewed for a maximum period not exceeding twenty years. He submitted that as the deemed mining leases expired on 22-11-1987, the lessees would be entitled to a renewal for a maximum period of twenty years up to 21-11-2007 and after 21-11-2007, the lessees would not be entitled to any renewal and hence the lessees were not entitled to operate the lease beyond 21-11-2007.

24. The learned counsel for the lessees, on the other hand, submitted that sub-section (3) of Section 8 of the MMDR Act makes it clear that notwithstanding anything contained in sub-section (2) of Section 8 of the MMDR Act, the State Government can authorise renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case. They submitted that iron ore is specified in Part C in the First Schedule and hence the State Government can authorise renewal of the mining lease in respect of iron ore for a period or periods not exceeding twenty years in each case. They also referred to sub-rule (3) of Rule 24-A which provided that renewal or renewals of a mining lease granted in respect of a mineral not specified in Part A and Part B of the First Schedule to the MMDR Act may be granted by the State Government provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of the mining lease. The learned counsel for the lessees submitted that as the application of the lessees for renewal of mining leases have not been disposed of by the State Government before the date of expiry of lease, the period of lease shall be deemed to have been extended by a further period till the State Government passes orders thereon as provided in sub-rule (6) of Rule 24-A of the MC Rules. They submitted that it will be clear from sub-rule (6) of Rule 24-A of the MC Rules that the intention of rule-making authorities is that there may not be any hiatus in mining, and mineral development in the country may continue without break, without any loss to the economy and loss of revenue to the Government. They cited the judgment of this Court in *State of U.P.* v. *Lalji Tandon*[9], in which this Court has held that there is a difference between an extension of lease and renewal of lease and whereas in the case of extension of lease it is not necessary to have a

9 (2004) 1 SCC 1

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fresh deed of lease executed, in case of renewal of lease, a fresh deed of lease shall have to be executed between the parties. They also cited *TISCO Ltd.* v. *Union of India*[10] in support of their argument that under sub-section (3) of Section 8 of the MMDR Act, the Government can renew the mining lease for a further period if it was in the interest of mineral development.

25. Mr Nadkarni, learned Advocate General for the State of Goa, submitted that the then State Government of Goa allowed the working of the mines from 2007 till 2012 based on deemed extension status but it has been decided by the State Government now in the Goa Mining Policy of 2013 that no mine can be allowed on deemed extension basis. The clear stand of the State Government of Goa in the résumé of arguments filed by the learned Advocate General Mr Nadkarni is that the deemed extension status would not mean that a mine can be allowed to run indefinitely without a decision on the renewal application.

26. Section 8 of the MMDR Act is extracted hereinbelow:

> "**8.** ***Periods for which mining leases may be granted or renewed.***—(1) The maximum period for which a mining lease may be granted shall not exceed thirty years:
>
> Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years;
>
> (2) A mining lease may be renewed for a period not exceeding twenty years.
>
> (3) Notwithstanding anything contained in sub-section (2), if the State Government is of opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, authorise the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case.
>
> (4) Notwithstanding anything contained in sub-section (2) and sub-section (3), no mining lease granted in respect of mineral specified in Part A or Part B of the First Schedule shall be renewed except with the previous approval of the Central Government."

27. Sub-section (1) of Section 8 of the MMDR Act, which provides the maximum and minimum periods for which a mining lease may be granted will not apply to deemed mining leases in Goa because sub-section (1) of Section 5 of the Abolition Act provides that the period of such deemed mining leases will extend up to six months from the date of assent notwithstanding anything contained in the MMDR Act. In other words, notwithstanding anything contained in sub-section (1) of Section 8 of the MMDR Act, the period of a deemed mining lease in Goa was to expire on 22-11-1987 (six months from the date of assent). Under sub-section (2) of Section 8 of the MMDR Act, a mining lease may be renewed for a period not exceeding twenty years. Sub-section (3) of Section 8, however, provides that notwithstanding anything contained in sub-section (2), if the State Government is of the opinion that in the interest of mineral development, it is

10 (1996) 9 SCC 709

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necessary so to do, it may for reasons to be recorded, authorise the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case. Thus, renewal beyond the first renewal for a period of twenty years is conditional upon the State Government forming an opinion that in the interest of mineral development, it is necessary to do so and also conditional upon the State Government recording reasons for such renewal of a mining lease in respect of iron ore which is not specified in Part A and Part B of the First Schedule. In *TISCO Ltd.* v. *Union of India*[10], this Court has held (at SCC p. 720, para 34) that the language of sub-section (3) of Section 8 is quite clear that ordinarily a lease is not to be granted beyond the time specified in sub-section (2) and only if the Government is of the view that it would be in the interest of mineral development, it is empowered to renew lease of a lessee for a further period after recording sound reasons for doing so. This Court has further held in the aforesaid case that this measure has been incorporated in the legislative scheme as a safeguard against arbitrariness and the letter and spirit of the law must be adhered to in a strict manner.

28. The MC Rules have been made under Section 13 of the MMDR Act by the Central Government and obviously could not have been made in a manner inconsistent with the provisions of the Act. Sub-rule (6) of Rule 24-A of the MC Rules provides that:

> "**24-A. (6)** If an application for renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon."

This sub-rule cannot apply to a renewal under sub-section (3) of Section 8 of the MMDR Act because the renewal under this provision cannot be made without express orders of the State Government recording reasons for renewal in the interest of mineral development. In other words, so long as there is a right of renewal in the lessee which in the case of a mining lease is for a maximum period of twenty years, the provision regarding deemed extension of a lease can operate, but if the right of renewal of a mining lease is dependent upon the State Government forming an opinion that in the interest of mineral development it is necessary to do so and the State Government recording reasons therefor, a provision regarding deemed extension till orders are passed by the State Government on the application of renewal cannot apply. We are, therefore, of the opinion that sub-rule (6) of Rule 24-A of the MC Rules will apply to a case of first renewal under sub-section (2) of Section 8 of the MMDR Act other than a case covered under sub-rule (9) of Rule 24-A of the MC Rules, but will not apply to renewal under sub-section (3) of Section 8 of the MMDR Act. In our view, the deemed mining leases of the lessees in Goa expired on 22-11-1987 under

10 (1996) 9 SCC 709

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sub-section (1) of Section 5 of the Abolition Act and the maximum of 20 years renewal period of the deemed mining leases in Goa as provided in sub-section (2) of Section 8 of the MMDR Act read with sub-rules (8) and (9) of Rule 24-A of the MC Rules expired on 22-11-2007.

Whether dump can be kept beyond the lease area?

29. The Report of the Justice Shah Commission states that about 2796.24 ha of area have been found to be under encroachment by the mining lessees out of which about 578.42 ha have been found to have been illegally used for extraction/removal of iron ore. CEC in its report has stated that CEC visited some of the areas stated to be under encroachments and a number of lease-holders have filed representations against the findings of the Shah Commission stating that they are not involved in any encroachment. According to Goa Foundation, this was a gross illegality committed by the mining lessees.

30. Mr A.D.N. Rao, Amicus Curiae, referred to Section 9 of the MMDR Act to submit that any removal of minerals from the leased area can be made by holder of a mining lease only on payment of royalty. He submitted that the waste material and overburden, therefore, cannot be dumped outside the leased area without payment of royalty. He referred to para 48 of the judgment of this Court in *Samaj Parivartana Samudaya* v. *State of Karnataka*[11] in which this Court has observed that dumping of mining waste (overburden dumps) also constitutes mining operations within the meaning of Section 3(*d*) of the MMDR Act and, therefore, the use of forest land for such activity would require clearances under the Forest (Conservation) Act, 1980. He submitted that in the event dumping of mining waste outside the leased area is to be done, it can only be done after clearance is obtained under the Forest (Conservation) Act, 1980.

31. The learned counsel appearing for the mining lessees submitted that the lessees have actually used areas outside the mining lease which are also owned mostly by the lessees for clearing the dump and this was permissible under the Mineral Conservation and Development Rules, 1988 (for short "the MCD Rules") and the MC Rules. In particular, they referred to Rule 16 of the MCD Rules, which provides for separate stacking of non-saleable minerals, such as overburden and waste material obtained during mining operation, on the ground earmarked for the purpose, which should be away from the working pit. They also referred to Rule 64-C of the MC Rules which provides that on removal of tailings or rejects from the leased area for dumping outside leased area, such tailings or rejects are not liable for payment of royalty. The State Government has supported this stand of the mining lessees that dumping of the overburden and mining waste outside the lease area was permissible under the MC Rules and the MCD Rules.

32. Sections 4(1) and 9(2) of the MMDR Act, Rule 64-C of the MC Rules and Rule 16 of the MCD Rules are extracted below:

11 (2013) 8 SCC 154

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"**4.** ***Prospecting or mining operations to be under licence or lease***.—(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of Section 617 of the Companies Act, 1956:

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.

* * *

9. ***Royalties in respect of mining leases***.—(1) * * *

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any (mineral removed or consumed by his agent, manager, employee, contractor of sub-lessee) from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral."

"**64-C.** ***Royalty on tailings or rejects***.—On removal of tailings or rejects from the leased area for dumping and not for sale or consumption, outside leased area such tailings or rejects shall not be liable for payment of royalty:

Provided that in case so dumped tailings or rejects are used for sale or consumption on any later date after the date of such dumping, then, such tailings or rejects shall be liable for payment of royalty."

"**16.** ***Separate stacking of non-saleable minerals***.—(1) The overburden and waste material obtained during mining operations shall not be allowed to be mixed with non-saleable or sub-grade minerals/ores. They shall be dumped and stacked separately on the ground earmarked for the purpose.

(2) The ground selected for dumping of overburden, waste material, the sub-grade or non-saleable ores/minerals shall be away from working pit. It shall be proved for absence or presence of underlying mineral deposits before it is brought into use for dumping.

(3) Before starting mining operations, the ultimate size of the pit shall be determined and the dumping ground shall be so selected that the dumping is not carried out within the limits of the ultimate size of the pit except in cases where concurrent backfilling is proposed."

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33. Under Section 4 of the MMDR Act, a person who holds a mining lease granted under the MMDR Act and the Rules made thereunder is entitled to carry on mining operations in accordance with the terms of the lease in the leased area and may carry on all other activities connected with mining within the leased area. Rule 31 of the MC Rules prescribes that the lease deed will be in Form K or in a form near thereto. Part I of Form K delineates the area of the lease and Part II of Form K authorises the activities that can be done by the lessee in the leased area. Thus, a holder of a mining lease does not have any right to dump any reject, tailings or waste in any area outside the leased area of the mining lease on the strength of a mining lease granted under the MMDR Act and the Rules made thereunder. Such area outside the leased area of the mining lease may belong to the State or may belong to any private person, but if the mining lease does not confer any right whatsoever on the holder of a mining lease to dump any mining waste outside the leased area, he will have no legal right whatsoever to remove his dump, overburden, tailings or rejects and keep the same in such area outside the leased area. In other words, dumping of any waste materials, tailings and rejects outside the leased area would be without a valid authorisation under the lease deed.

34. Moreover, Section 9(2) of the MMDR Act makes the holder of a mining lease granted on or after the commencement of the Act liable to pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area. Thus, the moment the mineral is removed or consumed from the leased area, the holder of a mining lease has to pay royalty. By virtue of Section 9 of the MMDR Act, tailings and rejects excavated during mining operations being minerals will also be exigible to royalty the moment they are removed from the leased area.

35. Rule 64-C of the MC Rules states that on removal of tailings or rejects from the leased area for dumping and not for sale or consumption, outside leased area such tailings or rejects shall not be liable for payment of royalty. Rule 64-C of the MC Rules, therefore, exempts the removal of tailings or rejects from the leased area for the purpose of dumping and not for the purpose of sale or consumption from the levy of royalty. Rule 64-C of the MC Rules does not authorise dumping of tailings or rejects in any area outside the leased area. This Court has held in *Central Bank of India* v. *Workmen*[12] that "if a rule goes beyond what the section contemplates, the rule must yield to the statute". In our view, if Rule 64-C of the MC Rules suggests that tailings or rejects can be dumped outside the leased area, it must give way to Section 4 of the MMDR Act, which does not authorise dumping of minerals outside the leased area and must give way to Section 9 of the MMDR Act which does not authorise removal of minerals outside the leased area without payment of royalty. We, therefore, hold that dump cannot be kept by the lessees beyond the leased area.

12 AIR 1960 SC 12

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36. Rule 16 of the MCD Rules provides that the overburden and waste material obtained during mining operations shall be dumped and stacked separately on the ground earmarked for the purpose and the ground selected for dumping of overburden, waste material shall be away from working pit. There is nothing in sub-rules (1), (2) and (3) of Rule 16 of the MCD Rules, which provides that such overburden or waste material obtained from mining operations shall be kept "outside the leased area". On the other hand, clause (7) of Part II of Form K provides as follows:

> "**7.** ***To use land for stacking, heaping, depositing purposes***.—Liberty and power to enter upon and use a sufficient part of the surface of the said lands for the purpose of stacking, heaping, storing or depositing therein any produce of the mines or works carried on and any tools, equipment, earth and materials and substances dug or raised under the liberties and powers mentioned in this part."

The expression "said lands" in clause (7) of Part II of Form K quoted above refers to the area of the lease in Part I of Form K and, therefore, is confined to the leased area. Rule 16 of the MCD Rules, therefore, cannot be read to permit dumping of overburden and waste materials obtained from mining operations outside the leased area.

37. The learned counsel for the lessees, however, submitted that many of these areas in which they have dumped the overburdens, tailings and rejects are lands owned by them and by virtue of their ownership right they could dump the mining waste on their own lands. This contention of the learned counsel appearing for the lessees loses sight of the fact that most of these lands are located in forest areas where non-forest activity, such as mining, is prohibited under Section 2 of the Forest (Conservation) Act, 1980 without the prior permission of the Central Government. Moreover, the notification issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 requiring prior environmental clearance covers the activity of mining. Sub-rule (3) of Rule 5 empowers the Central Government to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area for the purpose of protecting the environment. Inasmuch as the activity of dumping mineral wastes will pollute the environment, it will come within the meaning of activity of mining included in the Schedule to the notification issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986. Thus, for dumping of mining waste on a private land, a prior clearance of the Central Government under the notification issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 would be necessary. We, therefore, do not find any merit in the contention of the learned counsel for the lessees that they can dump mining waste outside the leased area.

Within what distance from the boundaries of National Parks and Wildlife Sanctuaries, is mining not permissible in the State of Goa?

38. The Justice Shah Commission has stated in its Report that the National Board for Wildlife (NBWL) adopted "the Wild Life Conservation

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Strategy, 2002" and took a decision in its meeting held on 21-1-2002 under the chairmanship of the Prime Minister to notify the areas within 10 km from the boundaries of national parks and sanctuaries as eco-fragile zones under Section 3(*v*) of the Environment (Protection) Act and Rule 5 sub-rules (1)(*viii*) and (*x*) of the Environment (Protection) Rules and this decision has been communicated on 5-2-2002 to the Chief Wildlife Warden, Government of Goa and the State Government has been requested to list out such areas and furnish a detailed proposal for their notification as eco-sensitive areas under the Environment (Protection) Act, 1986. The Justice Shah Commission has found that this has not been done till date but the Government of Goa has allowed mines to operate.

39. In this context, the Justice Shah Commission Report has referred to the order dated 4-12-2006 of this Court in *Goa Foundation* v. *Union of India*[13] by which this Court had directed MoEF to refer to the Standing Committee of the National Board for Wildlife, under Sections 5-B and 5-C(2) of the Wild Life (Protection) Act, the cases in which environmental clearance has already been granted where activities are within 10 km zone. According to the Report of the Justice Shah Commission, in spite of the clear provisions of Section 3(2)(*v*) of the Environment (Protection) Act, 1986 and the EIA notifications, conferring the jurisdiction, power and authority on the Central Government (MoEF) to grant or refuse prior environment clearance for any iron ore mining activity within 10 km of national parks, sanctuaries and protected areas and despite provisions in Section 5-C(2)(*b*) of the Wild Life (Protection) Act, 1972 putting a restriction on mining activities inside national parks, sanctuaries and other protected and eco-sensitive areas, mining activities have been permitted within 10 km and inside the national parks, sanctuaries and protected areas.

40. The Report of the Justice Shah Commission further states that out of the environmental clearances, the clearances with regard to 74 mining leases should have been placed before the Standing Committee of the National Board for Wildlife in accordance with the order dated 4-12-2006[13] of this Court. The Report of the Justice Shah Commission further states that there has been a total failure on the part of MoEF in not considering this issue while granting the environmental clearances.

41. The Justice Shah Commission in its Report has further stated that in the order dated 4-8-2006 of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India*[14], this Court has taken a view that 1 km from the boundaries of national parks and sanctuaries would be a safety zone, subject to the orders that may be made in IA No. 1000 regarding Jamua Ramgarh Sanctuary and the State will not grant any temporary working permit (TWP) in these safety zones comprising 1 km from the boundaries of national parks and sanctuaries and yet some of the mines within 1 km from the boundaries of national parks and sanctuaries have been allowed in the State of Goa.

13 (2011) 15 SCC 791
14 (2010) 13 SCC 740

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42. CEC in its report is of the view that had MoEF implemented this Court's orders dated 14-2-2000[15] and 4-12-2006[13], the unregulated and environmentally unsustainable manner in which mining has taken place in Goa would have been avoided. CEC has suggested that all environmental clearances granted for mining leases located up to a distance of 10 km from the boundaries of national parks and wildlife sanctuaries should be directed to be kept in abeyance and the environmental clearances should be directed to be considered by the Standing Committee of the National Board for Wildlife in accordance with this Court's order dated 4-12-2006[13] and the Additional Principal Chief Conservator of Forests, Regional Office, MoEF, Bangalore, should be directed to verify, after examining the EIA/EMP reports and other relevant details, whether the mining operations will have adverse impact on the flora, fauna and wildlife habitat and whether the distance of the national parks/wildlife sanctuaries and that the status of the "forest" have been correctly stated in the EC/application for taking a decision regarding ECs and only after considering the recommendations of the Standing Committee of the National Board of Wildlife and the report of the Additional Principal Chief Conservator of Forests (Central) and other relevant information/details, this Court may take a decision.

43. Mr Prashant Bhushan, learned counsel appearing for Goa Foundation, submitted that there should be no mining activity within any national parks/wildlife sanctuaries or within 10 km from the boundaries of national parks and wildlife sanctuaries so that the flora, fauna and wildlife habitat of national parks and wildlife sanctuaries are protected.

44. The learned counsel for the lessees, on the other hand, stated that so far as the State of Goa is concerned, on the one side, there is a coastal regulation zone in which mining is not permitted and, on the other side, are the national parks and wildlife sanctuaries in which again mining is not permitted and as a consequence a very small strip of land is available for mining. They submitted that there is no basis for presuming that an area outside the limits of a national park or a wildlife sanctuary is required to be maintained as a buffer zone. They submitted that by the order dated 4-12-2006 of this Court passed in *Goa Foundation* v. *Union of India*[13], this Court did not finally fix the buffer zone of 10 km from the boundaries of national parks and wildlife sanctuaries, but granted a last opportunity to the States to submit their recommendations for eco-sensitive zone and that the issue is still pending in IA No. 1000 in Writ Petition No. 202 of 1995 in *T.N. Godavarman Thirumulpad* v. *Union of India*. They further argued that by the order dated 4-8-2006[14], this Court had only directed that no mining would be permitted by temporary working permits within 1 km from the national parks and wildlife sanctuaries and by the said order, absolute ban has not been imposed against mining even within 1 km from the boundaries of national

15 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2002) 10 SCC 634
13 *Goa Foundation* v. *Union of India*, (2011) 15 SCC 791
14 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 740

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parks and wildlife sanctuaries. They argued that for declaration of eco-sensitive zone, a notification under Section 3 of the Environment (Protection) Act, 1986 is mandatory and till date no such notification has been issued for the State of Goa delineating any eco-sensitive zone and in the absence of such a notification mining activities cannot be prohibited beyond the boundaries of a national park/wildlife sanctuary.

45. Mr Nadkarni, learned Advocate General appearing for the State of Goa, submitted that presently the State of Goa is not permitting mining inside any national park or wildlife sanctuary. He submitted that each of the seven wildlife sanctuaries in the State of Goa have got revenue villages and local habitation of people inside the sanctuaries and before notifying the buffer zone around a wildlife sanctuary the consequences of the restrictions of the buffer zone on the local population and on the local development have to be weighed. He submitted that the State Government is of the considered opinion that while evolving a conservation strategy, the following peculiar local constraints in the State of Goa have to be considered:

(*i*) The State of Goa is the third smallest State in the Union; with a total geographical area of only 3702 sq m; and out of that, an area of 1440 sq m is under "forest" (protected/reserved/private) which is almost about 38% of the total geographical area;

(*ii*) Out of the said area under "forest" nearly 62% i.e. 75.35 sq m has been declared as "national park", and/or "wildlife sanctuary";

(*iii*) An area of approximately or more than 70 sq km falls under the "coastal regulation zone" (CRZ). Indeed, CRZ runs into 106 km, of the coastal belt of the State of Goa;

(*iv*) In fact, the total land mass available to the State of Goa, free from various restrictions, would further be reduced by 196.80 sq km i.e. up to 5.32%, on account of rivers, lakes and other water bodies;

(*v*) Indeed, approximately 40% of the land is under agriculture which the Government has decided not to be diverted under any circumstances;

(*vi*) Further, the State Government has also directed that no "forest land" is to be diverted for any mining purpose.

He submitted that considering all these constraints, the State Government has recommended that an area up to 1 km from the boundaries of national parks/wildlife sanctuaries should be treated as safety zones but even in these safety zones mining activity should be prohibited in a phased manner in 5 to 10 years.

46. Mr Mohan Parasaran, learned Solicitor General, submitted that the Principal Chief Conservator of Forests and Chief Wildlife Warden, Government of Goa, vide his letter dated 2-5-2013 has submitted six proposals for declaration of eco-sensitive zones around six protected areas in the State of Goa (national parks/wildlife sanctuaries) and the proposals were referred to a committee constituted under the chairmanship of Dr Rajesh Gopal, Additional Director General of Forests and Member Secretary of National Tiger Conservation Authority, with the following terms of reference:

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(*i*) The Committee will undertake a site-specific site survey of all six protected areas in Goa, with reference to studying the topography and report on the existing natural boundaries around that is outside each protected area. Such boundaries could include inter alia rivers, hills, etc.

(*ii*) The Committee will draw up a definition of what could constitute a credible natural boundary, always keeping in mind that the object is to protect the flora, fauna and biodiversity in the PA from biotic pressure.

(*iii*) The Committee will submit its views on whether any of the natural boundaries of the PAs in Goa could be an effective boundary of a robust eco-sensitive zone around the PA.

Mr Parasaran submitted that the Committee has submitted its report on 18-10-2013 and the report has been considered by the Ministry of Environment and Forests and by Office Memorandum dated 24-10-2013, the Ministry of Environment and Forests has not accepted the recommendation of the Government of Goa regarding buffer zone and instead accepted the recommendation of the Committee to define the eco-sensitive zones in site-specific manner subject to the relevant Court orders on the subject and that a draft notification defining eco-sensitive zones around each of the six protected areas would be issued for stakeholder consultations.

47. We have considered the submissions of the learned counsel for the parties and we find that presently no mining operations are being carried on inside any national park or wildlife sanctuary, and the State of Goa has taken a stand before us that it will not permit any mining operations inside any national park or wildlife sanctuary. Hence, the only question that we have to decide is whether mining could have been permitted or could be permitted within a certain distance from the boundaries of the national park or wildlife sanctuary in the State of Goa.

48. This Court in exercise of its power under Article 32 of the Constitution can direct the State to prohibit mining activities in an area adjacent to a national park or a wildlife sanctuary for the purpose of protecting the flora, fauna and wildlife habitat of the national park/wildlife sanctuary because these constitute part of the natural environment necessary for healthy life of persons living in the State of Goa. The right to life under Article 21 of the Constitution is a guarantee against the State and for enforcing this fundamental right of persons the State, which alone has a right to grant mining leases of the mines located inside the State, can be directed by the Court by an appropriate writ or direction not to grant mining leases or not to allow mining that will be violative under Article 21 of the Constitution. *Noida Memorial Complex near Okhla Bird Sanctuary, In re*[16] a three-Judge Bench (Forest Bench) of this Court has observed: (SCC pp. 776-77, para 74)

> "*74.* ... Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution. Environment is, therefore, a matter directly under the Constitution and if the Court

16 (2011) 1 SCC 744

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perceives any project or activity as harmful or injurious to the environment it would feel obliged to step in."

Thus, the submissions of the learned counsel for the lessees that until a notification is issued under the Environment (Protection) Act, 1986 and the Rules made thereunder prohibiting mining activities in an area outside the boundaries of a national park/wildlife sanctuary, no mining can be prohibited by this Court is misconceived.

49. We may now examine whether this Court has by the orders passed on 4-8-2006[14] and 4-12-2006[13], prohibited mining activities around national parks or wildlife sanctuaries. When we read the order of this Court passed on 4-8-2006 in *T.N. Godavarman Thirumulpad* v. *Union of India*[14], we find that the Court while considering the question of grant of temporary working permits for mining activities in national parks, sanctuaries and forest areas, directed that temporary working permits shall be granted only where the conditions stipulated in the said order are satisfied. Conditions (*ii*) and (*iii*) stipulated in the order dated 4-8-2006[14] are extracted hereinbelow: (SCC p. 743, para 19)

> "*19.* ... (*ii*) The mine is not located inside any national park/ sanctuary notified under Sections 18, 26-A or 35 of the Wild Life (Protection) Act, 1972;
>
> (*iii*) The grant of TWP would not result in any mining activity within the safety zone around such areas referred to in (*ii*) above (as an interim measure, one kilometre safety zone shall be maintained subject to the orders that may be made in IA No. 1000 regarding Jamua Ramgarh Sanctuary);"

It would, thus, be clear that this Court was of the opinion that grant of temporary working permits should not result in any mining activities within the safety zones around a national park or wildlife sanctuary and as an interim measure, one kilometre safety zone was to be maintained subject to the orders that may be made in IA No. 1000 in Jamua Ramgarh Sanctuary. This order dated 4-8-2006[14] has not been varied subsequently nor any orders made in IA No. 1000 regarding Jamua Ramgarh Sanctuary saying that temporary working permits can be granted within one kilometre safety zone beyond the boundaries of a national park or wildlife sanctuary. The result is that the order passed by this Court saying that there will be no mining activity within one kilometre safety zone around national park or wildlife sanctuary has to be enforced and there can be no mining activities within this area of one kilometre from the boundaries of national parks and wildlife sanctuaries in the State of Goa.

50. When, however, we read the order dated 4-12-2006 of this Court in *Goa Foundation* v. *Union of India*[13], we find that the Court has not prohibited any mining activity within 10 kilometre distance from the boundaries of the

14 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 740

13 *Goa Foundation* v. *Union of India*, (2011) 15 SCC 791

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national parks or wildlife sanctuaries. The relevant portion of the order dated 4-12-2006[13] is quoted hereinbelow: (SCC pp. 792-93, paras 4-5)

> "*4*. The Ministry is directed to give a final opportunity to all States/ Union Territories to respond to its Letter dated 27-5-2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21-1-2002, namely, notification of the areas within 10 km of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment and having regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.
>
> *5*. MoEF would also refer to the Standing Committee of the National Board for Wildlife, under Sections 5-B and 5-C(2) of the Wild Life (Protection) Act, the cases where environment clearance has already been granted where activities are within 10 km zone."

It will be clear from the order dated 4-12-2006[13] of this Court that this Court has not passed any orders for implementation of the decision taken on 21-1-2002 to notify areas within 10 km of the boundaries of national parks or wildlife sanctuaries as eco-sensitive areas with a view to conserve the forest, wildlife and environment. By the order dated 4-12-2006[13] of this Court, however, the Ministry of Environment and Forests, Government of India, was directed to give a final opportunity to all States/Union Territories to respond to the proposal and also to refer to the Standing Committee of the National Board for Wildlife the cases in which environment clearance has already been granted in respect of activities within the 10 km zone from the boundaries of the wildlife sanctuaries and national parks. There is, therefore, no direction, interim or final, of this Court prohibiting mining activities within 10 km of the boundaries of national parks or wildlife sanctuaries.

51. Apart from the powers of the Court to give a direction prohibiting mining activities up to a certain distance from the boundaries of national parks or wildlife sanctuaries, the Central Government has powers under Rule 5 of the Environment (Protection) Rules, 1986 to prohibit carrying on of mining operations in areas which are proximate to a wildlife sanctuary or a national park. Rule 5 of the Environment (Protection) Rules, 1986 is extracted hereinunder:

> "**5.** ***Prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas***.—(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas—

13 *Goa Foundation* v. *Union of India*, (2011) 15 SCC 791

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(*i*) Standards for quality of environment in its various aspects laid down for an area.

(*ii*) The maximum allowable limits of concentration of various environment pollutants (including noise) for an area.

(*iii*) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(*iv*) The topographic and climatic features of an area.

(*v*) The biological diversity of the area which, in the opinion of the Central Government, needs to be preserved.

(*vi*) Environmentally compatible land use.

(*vii*) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(*viii*) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, national park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972, or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(*ix*) Proximity to human settlements.

(*x*) Any other factors as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3)(*a*) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(*b*) Every notification under clause (*a*) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries and carrying on of processes or operations in that area.

(*c*) Any person interested in filing an objection against the imposition of prohibition or restriction on carrying on of processes or operations as notified under clause (*a*) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(*d*) The Central Government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may within one hundred and eighty days from such day of publication impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

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(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (*a*) of sub-rule (3)."

52. Sub-rule (1) of Rule 5 lists the number of factors, which the Central Government has to take into consideration while prohibiting or restricting the carrying on of processes and operations in different areas. Sub-rule (2) of Rule 5 provides that before prohibiting the processes and operations in the area the Central Government has to follow the procedure laid down in sub-rule (3). The procedure in sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 includes giving notice of the intention of the Central Government to prohibit the carrying on of processes and operations in the reserved area, giving brief description of the area, the operations and processes in that area relating to which the notification pertains and also specifying the reasons for the imposition of the prohibition on carrying on of the processes or operations in that area, and an opportunity to the persons interested in filing an objection against the imposition of such prohibition on carrying on of processes or operations by the Central Government. These procedural checks have been made in Rule 5 because a notification issued by the Central Government prohibiting an operation or a process will have serious consequences on the rights of different persons. For example, persons who are carrying on the process or operation and those who are directly or indirectly employed in the process or the operation may be affected by the proposed prohibition of the process or the operation in the entire area. Therefore until the Central Government takes into account various factors mentioned in sub-rule (1), follows the procedure laid down in sub-rule (3) and issues a notification under Rule 5 prohibiting mining operations in a certain area, there can be no prohibition under law to carry on mining activity beyond 1 km of the boundaries of national parks or wildlife sanctuaries.

53. In fact, we find that the process of issuing a notification under Rule 5 of the Environment (Protection) Rules, 1986 prohibiting mining activities in eco-sensitive zones around the national parks or wildlife sanctuaries in the State of Goa has now been initiated. The Government of Goa vide Letter dated 2-5-2013 submitted the following six proposals for declaration of eco-sensitive zones around protected areas in the State of Goa to the Ministry: (*i*) Cotigao Wildlife Sanctuary; (*ii*) Netravali Wildlife Sanctuary; (*iii*) Bhagwan Mahaveer Wildlife Sanctuary and Bhagwan Mahaveer National Park; (*iv*) Madei Wildlife Sanctuary; (*v*) Bondla Wildlife Sanctuary; and (*vi*) Dr Salim Ali Bird Sanctuary. These six proposals were referred to a committee constituted under the chairmanship of Dr Rajesh Gopal, Additional Director General of Forests and Member-Secretary of National Tiger Conservation Authority, with specified terms of reference and the Committee gave its findings and the Ministry of Environment and Forests, Government of India by the Office Memorandum dated 24-10-2013 have accepted the findings of the Committee and rejected the proposals of the Government of Goa. It is also stated in the Office Memorandum dated 24-10-2013 of the Ministry of

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Environment and Forests, Government of India that a draft notification defining eco-sensitive zones around each protected area is being issued for stakeholder consultations. This notification will have to be issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, and after objections are received, the Central Government will have to consider the same and thereafter take the decision regarding imposition of prohibition of mining activities in the eco-sensitive areas within the period stipulated in sub-rule 3(*b*) of Rule 5 of the Environment (Protection) Rules, 1986. At this stage, we can only direct the Ministry of Environment and Forests to follow the procedure and issue the notification of eco-sensitive zones under Rule 5 of the Environment (Protection) Rules, 1986 within six months.

Whether there has been a violation of Rules 37 and 38 of the MC Rules by the mining lessees in the State of Goa?

54. The Justice Shah Commission has found in its Report that in the State of Goa, 16 companies/firms/individuals are carrying out mining operations under different leases granted to them as a single unit as if the leases are amalgamated. The Shah Commission has referred to Rule 38 of the MC Rules which provides that the State Government may, in the interest of mineral development and with reasons to be recorded in writing, permit amalgamation of two or more adjoining leases held by a lessee provided that the period of amalgamated leases shall be co-terminus with the lease whose period will expire first. The Justice Shah Commission is of the opinion that as amalgamation of two leases can only be permitted by the State Government for reasons to be recorded in writing, and no such permission has been taken from the State Government for the amalgamation of different leases as a single unit, the lessees who are operating different leases as a single unit have violated Rule 38 of the MC Rules.

55. CEC in its report, however, has not stated about any violation of Rule 38 of the MC Rules and has instead stated that Rule 37 of the MC Rules which provides that the lessee shall not, without the previous consent in writing of the State Government assign, sub-let, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, has been violated by several lessees. CEC has reported that there are several complaints received by the State Government that the leases have been operated by the persons other than the lessees. CEC has observed in its report that Rule 37 itself provides that in such cases of violation of Rule 37, the State Government may determine the mining lease, but the State Government has taken no action and has taken a stand that working of the mining leases by a person other than lease-holder is a prevailing mining practice in Goa and these facts are in the knowledge of the Government. Mr Prashant Bhushan, learned counsel for Goa Foundation, submitted that in all these cases the violation should be identified by a committee headed by the Chief Secretary, Goa, and those lessees who have been found to have violated Rule 37 of the MC Rules, should be penalised by determination of the leases.

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56. Rules 37 and 38 of the MC Rules are extracted hereinbelow:

"**37.** ***Transfer of lease***.—(1) The lessee shall not, without the previous consent in writing of the State Government and in the case of mining lease in respect of any mineral specified in Part A and Part B of the First Schedule to the Act, without the previous approval of the Central Government:

(*a*) assign, sub-let, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, or

(*b*) enter into or make any bona fide arrangement, contract, or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by, any person or body of persons other than the lessee:

Provided further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for the lessee to obtain any such consent of the State Government.

(1-A) The State Government shall not give its consent to transfer of mining lease unless the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease.

(2) Without prejudice to the provisions of sub-rule (1) the lessee may, subject to the conditions specified in the proviso to Rule 35, transfer his lease or any right, title or interest therein to a person who has filed an affidavit stating that he has filed an up-to-date income tax return, paid the income tax assessed on him and paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961 (43 of 1961), on payment of a fee of five hundred rupees to the State Government:

Provided that the lessee shall make available to the transferee the original or certified copies of all plans of abandoned workings in the area and in a belt 65 metres wide surrounding it:

Provided further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for any such institution or Bank or Corporation to meet with the requirement relating to income tax:

Provided further that the lessee shall not charge or accept from the transferee any premium in addition to the sum spent by him, in obtaining the lease, and for conducting all or any of the operations referred to in Rule 30 in or over the land leased to him;

(3) The State Government may, by order in writing determine any lease at any time if the lessee has, in the opinion of the State Government, committed a breach of any of the provisions of sub-rule (1) or sub-rule (1-A) or has transferred any lease or any right, title, or interest therein otherwise than in accordance with sub-rule (2):

Provided that no such order shall be made without giving the lessee a reasonable opportunity of stating his case.

38. ***Amalgamation of leases***.—The State Government may, in the interest of mineral development and with reasons to be recorded in writing, permit amalgamation of two or more adjoining leases held by a lessee:

Provided that the period of amalgamated leases shall be co-terminus with the lease whose period will expire first:

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Provided further that prior approval of the Central Government shall be required for such amalgamation in respect of leases for minerals specified in Part A and Part B of the First Schedule to the Act."

57. It will be clear from sub-rule (1)(*a*) of Rule 37 that the lessee cannot assign, sub-let, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, without the previous consent in writing of the State Government in the case of those minerals which are not specified in Part A and Part B of the First Schedule to the Act. Since iron ore is specified in Part C of the First Schedule to the Act, the previous consent in writing of the State Government is necessary before any such transfer is made by a mining lessee. Sub-rule (1-A) of Rule 37 further states that the State Government shall not give its consent to transfer of a mining lease unless the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease. Sub-rule (3) of Rule 37 further provides that the State Government may, by order in writing determine any lease at any time if the lessee has, in the opinion of the State Government committed a breach of any of the provisions of sub-rule (1) or sub-rule (1-A) of Rule 37 of the MC Rules. These provisions have been made in Rule 37 to ensure that all the conditions and liabilities to which a lessee is subjected to under a mining lease are also accepted by the transferee.

58. Sub-rule (2) of Rule 37 further provides that without prejudice to the provisions of sub-rule (1), the lessee may transfer his lease or any right, title or interest therein to a person who has filed an affidavit stating that he has filed up-to-date income tax returns, paid the income tax assessed on him and paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961. This provision is meant to ensure that the transferee of a mining lease is an income tax assessee and is paying his income tax assessed on him and due from him on the basis of self-assessment.

59. Sub-rule (3) of Rule 37 empowers the State Government to determine any lease at any time if the lessee has, in the opinion of the State Government, committed a breach of any of the provisions of sub-rule (1) or sub-rule (1-A) or has transferred any lease or any right, title, or interest therein otherwise than in accordance with sub-rule (2) after giving the lessee a reasonable opportunity of stating his case.

60. The intent of the rule-making authority in making these provisions in Rule 37 is that the liabilities and conditions in a mining lease are also enforceable against the transferee and that the transferee pays his dues towards income tax regularly. Rule 37, therefore, cannot be allowed to be violated by the lessees with impunity and the State Government cannot overlook transfers by saying that the transfers of the mining leases are part of the mining practice in the State of Goa. In our view, if these violations of Rule 37 are allowed, there shall be substantial leakage of revenue and mining operations cannot be effectively regulated and controlled by the State Government. The State Government, therefore, must initiate action against those mining leases who violate Rule 37 of the Rules.

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61. Rule 38 of the MC Rules provides that the State Government may, in the interest of mineral development and with reasons to be recorded in writing, permit amalgamation of two or more adjoining leases held by a lessee, provided that the period of amalgamated leases shall be co-terminus with the lease whose period will expire first. If the State Government has not permitted amalgamation of adjoining leases in the interest of mineral development and has not recorded the reasons for such permission, the State Government cannot allow the amalgamation of the leases.

Was there a complete lack of control on production and transportation of mineral from the mining leases in the State of Goa?

62. CEC in its report has stated that in the State of Goa, there is no system of periodic verification of the quantity of iron ore produced in the mining leases, the payments of royalty, the permits issued for transportation of mineral by the Mining Department, the transit permits issued by the Forest Department nor any reconciliation of the quantity of the mineral stated to have been produced in the mining lease with the quantity of the mineral for which royalty has been paid and transit permits have been issued, and there is no verification of the transit permits at the check posts and no verification of the quantity of the mineral exported/domestically used vis-à-vis the quantity legally produced. According to CEC, in the absence of such checks/verifications/controls, illegal mining can easily be undertaken and the actual quantity of iron ore produced and transported from the mining leases may not be accounted for by the State of Goa or by the lessees, resulting in leakage of revenue. CEC in its report has given a chart to show the difference of figures in the iron ore exported as provided by the Goan Mineral Ore Exporters' Association and the total iron ore produced in the State of Goa as per reports compiled by the Indian Bureau of Mines, which is extracted hereinbelow:

Year	*Goan Iron Ore Exports*	*Total production*	*(in lakh MT) Excess of exports over production*
2006-2007	308.940	277.931	31.009
2007-2008	334.334	300.091	34.253
2008-2009	380.752	315.994	64.758
2009-2010	456.869	331.649	125.22
2010-2011	468.464	328.059	140.405
Total	*1949.359*	*1553.724*	*395.645*

According to CEC, there is every reason to believe that the excess quantity of 395.645 lakh MT, as shown in the aforesaid chart, is illegally mined ore.

63. We entirely agree with the CEC report that in the absence of proper checks, verifications and controls, there is bound to be illegal mining, storage and transportation of minerals, but we find that after the CEC report, the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules,

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2013 have been framed by the State Government under Section 23-C of the MMDR Act. A reading of these Rules shows that several provisions have been made in these Rules to prevent illegal mining and to regulate the sale, export and transit of ore, storage of mineral and transportation and winning of mineral. The Rules also provide for establishment of check posts, barriers and weighbridges and inspection of minerals in transit. Moreover, these Rules empower any person authorised by the Government to enter, inspect, search and seize articles. These Rules will have to be strictly enforced by the State Government and we hope that by such strict enforcement of these Rules, the mining, storage and transportation of minerals in the State of Goa will get controlled and regulated and the leakages and evasion of revenue will, to a large extent, be prevented.

To what extent mining has damaged the environment in Goa and what measures are to be taken to ensure intergenerational equity and sustainable development?

64. Mr Prashant Bhushan, learned Senior Counsel appearing for Goa Foundation, relying on the Report of the Justice Shah Commission, submitted that substantial damage has been caused to the eco-sensitive zone in Goa by excavating large quantities of iron ore through mining and as suggested by the Justice Shah Commission action should be taken in this regard. He submitted that the conditions stipulated in the EIA clearances imposed by the Chief Wildlife Warden, Goa, have not been implemented. He submitted that the environmental clearance system has actually collapsed resulting in amassing of wealth by certain individuals and companies at the cost of the environment and the ecosystem. He submitted that principles of sustainable development and intergenerational equity which were part of the fundamental right under Article 21 of the Constitution, require that a cap should be put on the annual excavation of iron ore from different mines in the State of Goa, after taking into account the need to conserve iron ore resources for future generations and the carrying capacity of the State of Goa for mining and transportation of mineral ores.

65. The learned counsel appearing for the lessees, on the other hand, submitted that there are adequate provisions in the MCD Rules for preventing damage to the environment and for restoration of the environment. They referred to Rules 23-A, 23-B, 23-D and 23-E of the MCD Rules which relate to the mine closure plan which must provide for protective measures including reclamation and rehabilitation work. They submitted that the holder of the mining lease, therefore, has to take all the protective measures including reclamation and rehabilitation work before abandoning the mine. They submitted that Chapter V of the MCD Rules also contains various provisions which a holder of mining lease has to comply and these provisions include precautions for protection of environment and controlling of pollution while conducting mining operations in the area.

66. In reply to the submissions of Mr Bhushan that there should be a cap on the annual excavation of mineral ore in the State of Goa to ensure that

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future generations are not denied the mineral resources, Mr Mukul Rohatgi, learned Senior Counsel appearing for Sesa Goa Ltd., relied on a publication of the British Geological Survey and submitted that there would never be any scarcity of mineral resources and there would be enough for the future generations. He submitted that Sesa Goa Ltd. has also taken steps to reclaim the land which was damaged through mining operation and produced photographs to show how reclamation and rehabilitation work has been done after mining was over in any area.

67. Mr N.S. Nadakarni, learned Advocate General for the State of Goa, submitted that in the Goa Mineral Policy of 2013, the State Government has proposed a capping of the mineral ores to be excavated annually in the State of Goa based on the carrying capacity of public roads and the need to protect intergenerational equity. He submitted that as per the Goa Mineral Policy of 2013, until the road capacity in Goa improves, there should be a gross capping at 45 MT per annum.

68. After considering the aforesaid submissions of the learned counsel for the parties, we took the view that a Committee of Experts must conduct a macro-EIA study and propose ceiling of the annual excavation of iron ore from the State of Goa, considering its iron ore resources and its carrying capacity and keeping in mind the principles of sustainable development and intergenerational equity and all other relevant factors. Accordingly, by orders dated 11-11-2013[5] and 18-11-2013[17], we constituted an Expert Committee comprising Prof. C.R. Babu (Ecologist), Dr S.C. Dhiman (Geologist/

5 *Goa Foundation* v. *Union of India*, (2014) 6 SCC 738

17 *Goa Foundation* v. *Union of India*, WP (C) No. 435 of 2012, order dated 18-11-2013 (SC), wherein it was directed:

> "These matters have been listed for the limited purpose of finalising the names of the Expert Committee which is to conduct the Macro Environmental Impact Assessment study as per the directions in our order dated 11-11-2013. The Expert Committee will consist of:
>
> (*i*) Dr C.R. Babu, Head of the Centre for Environmental Management of Degraded Ecosystems, Delhi University—(Ecologist).
>
> (*ii*) Dr S.C. Dhiman, Geologist/Hydrogeologist, Former Chairman of the Central Ground Water Board/Authority—(Geologist).
>
> (*iii*) Prof. B.K. Mishra, Director of the Institute of Minerals and Materials Technology, a CSIR Institution formerly called the Regional Research Laboratory, Bhubaneshwar—(Mineralogist).
>
> (*iv*) Prof. S. Parameswarappa, Former PCCF (Karnataka), Director ICFRE—(An expert on Forestry).
>
> (*v*) A representative of Department of Mines, Government of Goa not less than the rank of Joint Secretary to be nominated by the Chief Secretary, Goa.
>
> (*vi*) A representative of Ministry of Environment and Forests, Government of India not less than the rank of Joint Secretary to be nominated by the Secretary, Ministry of Environment and Forests, Government of India."

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Hydrogeologist), Prof. B.K. Mishra (Mineralogist), Prof. S. Parameswarappa (Forestry), Shri Parimal Rai (nominee of the Ministry of Environment and Forests, Government of India). This Expert Committee has submitted an interim report dated 14-3-2014. In this report, the Expert Committee has indicated that the economy of Goa depends on tourism and iron ore mining, besides agriculture, horticulture and minor industries, but in recent years, while there has been increase in the growth rate in tourism and mining, there has been a decline in the growth rate of agriculture and fishing.

69. The Expert Committee has in particular highlighted the damage that has been done by increase in the production of iron ore through mining to the environment in Goa in the following words:

> "The production of iron ore has jumped from 14.6 million tons in 1941 to 41.17 million tons in 2010-2011. In 1980s the production was about 10 MT per annum. The quantum jump in iron ore production in Goa was essentially due to steep rise in exports of fines and other low grade ore of 42% Fe content to China. This has led to massive negative impacts on all ecosystems leading to enhanced air, water, and soil pollution affecting quality of life across Goa. This is evident by three important reports i.e. (*i*) Areawise Environmental Quality Management (AEQM) Plan for the Mining belt of Goa by Tata Energy Research Institute, New Delhi and Goa (1997) and it was submitted to the Directorate of Planning, Statistics, and Evaluation, Government of Goa, (*ii*) Environmental and Social Performance Indicators and Sustainability Markers in Minerals Development Reporting Progress towards Improved Ecosystem Health and Human Well-being, Phase III by TERI and International Development Research Centre, Ottawa, Canada (2006) and (*iii*) the Regional Environmental Impact Study of Iron Ore Mining in Goa region sponsored by MoEF, New Delhi (2014) by Indian School of Mines. Besides the above three main reports, a number of scientific research papers on the impact of iron ore mining on the environment and ecology of diverse ecosystems were published by scientists working at Goa University and NIO.
>
> These reports and publications substantiate that the mining, particularly the enhanced level of annual production contributed to adverse impacts on the ecological systems, socio-economics of Goa and health of people of Goa leading to loss of ecological integrity. This is due to enhanced levels of pollutants, particularly RSPM and SPM, sedimentation of materials from dumps and iron ore in rivers, estuaries and shallow depth (20 m) of sea water, agricultural fields, high concentration of Fe and Mn in surface waters and their bioaccumulation."

The Expert Committee has also studied the sustainability of iron ore mining in Goa and after analysing the existing data from TERI Report, 1997, ISM, Dhanbad Report, 2013, Pollution Control Board, Goa (Annual Report) and relevant literature relating to sustainability and after adopting the Folchi method has given the opinion that mining at the rate of 20 to 27.5 million

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tons per annum appears sustainable in the State of Goa. However, in its summary of recommendations, the Expert Committee has made these recommendations:

> "*10.* To eliminate the element of subjectivity, due to the time constraints and limitation of available authentic time series data relating to mineral resources and environmental impact of mining in the State of Goa, this Committee suggests that mining be permitted to be carried out at the level of 20 million tons per annum with adequate monitoring of impacts on different ecological and environmental parameters, which will also help this Committee in its future appraisal.
>
> *11.* Till the scientific study by this Committee is completed, which may take about 12 months more, the mining activity at levels as directed by the Hon'ble Supreme Court, be strictly monitored and regulated by the Department of Mines and Geology and the State Pollution Control Board of the State of Goa, in consultation with other statutory bodies such as Indian Bureau of Mines, Ministry of Environment and Forests (Government of India) and others."

It, thus, appears that the Expert Committee has suggested that for the time being annual excavation of 20 million tons of iron ore may be permitted in Goa with adequate monitoring impacts on different ecological and environmental parameters, which will also help the Expert Committee in its future appraisal. Regarding the authorities or agencies which should strictly monitor and regulate the mining activities in Goa, the Expert Committee has recommended that the Department of Mines and Geology of Government of Goa and the Goa State Pollution Control Board in consultation with other statutory bodies such as Indian Bureau of Mines, Ministry of Environment and Forests (Government of India) should carry on such monitoring and regulation strictly. The Expert Committee, however, has said nothing about how the mining dumps inside or outside the leased areas noticed by the Justice Shah Commission are to be dealt with presumably because in our order dated 11-11-2013[5] we had not issued any direction in this regard. We think that we should seek the opinion of the Expert Committee in this regard.

70. We find that the State Government has also engaged the services of NEERI for macro-level EIA study for clusters of iron ore mines in the State of Goa, but NEERI in its preliminary report has not recommended as to what should be the total quantum of annual production of iron ore in Goa in future. We also find that the Ministry of Environment and Forests, Government of India had entrusted the Indian School of Mines (ISM), Dhanbad to carry out a regional environment impact assessment study of mining in Goa region and ISM, Dhanbad has submitted its report proposing a cap of 24.995 MT per annum on the basis of the carrying capacity of the existing infrastructure of

5 *Goa Foundation* v. *Union of India*, (2014) 6 SCC 738

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Goa. The relevant portion of the report of ISM, Dhanbad, is extracted hereinbelow:

a "***20.7.4.7: Cluster-wise capping on transport***

The cap of 24.995 MTPA proposed in the aforementioned section is dependent primarily on the existing infrastructure and must be followed based on the spatial variations. To present an overall capacity of mining in North Goa and South Goa, the road capacity has been taken as a parameter. The capacity was arrived at 13.685 MTPA for North Goa and

b 11.31 MTPA for South Goa. The cap proposed will not include the mines lying within the buffer zones as these have imposed restriction of phasing out in time-bound period. Further, this cap can be represented into a cluster-wise scenario to decipher how much each cluster will be able to transport under the existing transport facilities. The values are presented in table below.

c ***20.7.19: Cluster-wise capping on transport based on existing transport facilities***

Cluster	*Routes*	*Capacity of the routes (MTPA)*	*Capacity of the cluster (MTPA)*
d Adwalpal-Bicholim	Adwalpale to Sirsai Jetty	0.81	5.875
	Shrigao to Sirsai Jetty	1.26	
	Shrigao to Kalvin Jetty	1.16	
	Dahbdhaba to Sarmanas Jetty	2.645	
e Velguem-Pissurlem	Sonshi to Amona Jetty	2.11	7.9
	Sanquelim to Amona Jetty	0.52	
	Honda to Navelim (Maina)	1.32	
	Sonshi to Khazan Jetty	1.32	
	Ambesi to Cotambi Jetty	1.29	
	Digneum to Surla Jetty	1.34	
f Codli-Costi	Codli to Amona Jetty	1.94	4.69
	Codli to Capxem Jetty	1.24	
	Costi to Sanvordem	1.51	
Collem	Collem to Amona Jetty	1.94	2.76
	Shigao to Sanvordem	0.82	
g Tollem	Tollem to Shelvona Jetty	1.71	1.71
Maina-Sulcorna	Sulcorna to Shelvona Jetty	1.02	2.06
	Maina to Shelvona	1.04	
Total capacity of the region			24.995

h Thus, the cumulative ore transportation capacity of the existing road networks is 24.995 MTPA."

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71. We, therefore, find that the Expert Committee as well as ISM, Dhanbad, after considering the available data and after considering the adverse impact on environment and the limited carrying capacity of the transport system in Goa, are of the opinion that a cap between 20 to 27.5 million tons per annum should be fixed for excavation of iron ore in the State of Goa. In its recommendations, however, the Expert Committee has suggested that till the scientific study by the Expert Committee is completed in about 12 months or so, and more of data including impacts on different ecological environmental parameters is available through monitoring of the impacts by different agencies including the Goa State Pollution Control Board, 20 million tons per annum should be fixed as the annual excavation of iron ore in Goa. Even this mining of 20 million tons per annum in the State of Goa, according to the Expert Committee, has to be strictly monitored and regulated by the Department of Mines and Geology, Government of Goa and the Goa State Pollution Control Board in consultation with other statutory bodies such as the Indian Bureau of Mines, the Ministry of Environment and Forests (Government of India) and others. It was the responsibility of the Government of Goa, Department of Mines, to enforce the provisions of the MMDR Act, the MC Rules and the MCD Rules, but as we have already noticed, this responsibility was not properly discharged. We hope that in future, it will enforce the provisions of the MMDR Act, the MC Rules, the MCD Rules and the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013.

72. The Goa State Pollution Control Board has immense powers under the Water (Prevention and Control of Pollution) Act, 1974 (for short "the 1974 Act") to prevent pollution of water. Section 33-A of the 1974 Act which confers on the State Pollution Control Board the power to give directions is quoted hereinbelow:

> "**33-A.** ***Power to give directions***.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.
>
> *Explanation*.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—
>
> (*a*) the closure, prohibition or regulation of any industry, operation or process; or
>
> (*b*) the stoppage or regulation of supply of electricity, water or any other service."

73. Similarly, the Air (Prevention and Control of Pollution) Act, 1981 (for short "the 1981 Act") confers immense powers on the State Pollution Control Board to prevent air pollution. Section 31-A of the 1981 Act which

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confers powers on the State Pollution Control Board to give directions is quoted hereinbelow:

> "**31-A.** ***Power to give directions***.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.
>
> *Explanation*.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—
>
> (*a*) the closure, prohibition or regulation of any industry, operation or process; or
>
> (*b*) the stoppage or regulation of supply of electricity, water or any other service."

74. It will be clear from the aforesaid provisions of Section 33-A of the 1974 Act and Section 31-A of the 1981 Act that the Goa State Pollution Control Board had powers to issue any direction including the power to close, prohibit or regulate mining operations or even to stop or regulate supply of electricity, water or any other service with a view to prevent water pollution or air pollution. Yet, from the report of the Expert Committee as well as the reports of ISM, Dhanbad and NEERI, it is clear that iron ore production in Goa has led to massive negative impacts on all ecosystems leading to enhanced air, water and soil pollution affecting quality of life across Goa. The Goa State Pollution Control Board in its note filed in Writ Petition (C) No. 435 of 2012, however, states:

> "*Details of monitoring of water quality (with regards to mining leases) from 2007 to 2012* — The Board conducts inspections during the monsoon and other seasons also to verify the discharge of surface runoff/discharge from the pit outside the mining lease and also collects samples for analysing in the Board Laboratory. Wherever the parameters exceed the prescribed limits necessary directions are issued to the mining units to take remedial measures for controlling the waste water being discharged into the water bodies/fields without treatment. Directions are also issued to provide settling ponds, arrestor walls, filter beds so as to ensure that no untreated waste water is discharged into the water bodies/fields.
>
> *Details of monitoring of air quality (with regards to mining leases) from 2007 to 2012* — The Board is presently carrying out the periodic monitoring of Air Quality in pre-selected areas throughout the State to comply with one of the mandates of the Central Pollution Control Board (CPCB) under National Ambient Monitoring Programme (NAMP) at 16 stations."

75. We do not agree with Mr Arvind Datar, learned Senior Counsel for the Goa State Pollution Control Board, that sincere efforts were made by the

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Pollution Control Board to monitor the water quality and air quality in the mining areas. Rather, it appears that the Goa State Pollution Control Board, though conferred with immense statutory powers, has failed to discharge its statutory functions and duties. We hope that in future the Goa State Pollution Control Board exercises strict vigil and monitors the water quality and air quality in accordance with the provisions of the two Acts and if necessary, exercises the powers conferred on it to close down mining operation of a lessee, if the lessee does not conform to the air emission and water discharge standards while carrying on mining operations and does not take other preventive measures as directed by the State Pollution Control Board.

76. Regarding the regulation by the Ministry of Environment and Forests, in our order dated 6-1-2014 passed in *T.N. Godavarman Thirumulpad* v. *Union of India*[18], we have already directed the Union of India to appoint a Regulator with offices in as many States as possible under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 as directed in the order in *Lafarge Umiam Mining (P) Ltd.*[19] As and when the Union of India appoints a Regulator under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with an office for Goa in compliance with the aforesaid direction of this Court, the Regulator so appointed will carry out its functions in accordance with the order passed under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986.

77. The regulatory and monitoring measures enforced by the Departments of Mines and Geology, the Goa State Pollution Control Board and the Regulator appointed by the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 cannot, however, restore entirely the environment that is damaged in course of mining operations. The Expert Committee has, therefore, recommended that a permanent fund for intergenerational equity and sustainability of mining for all times to come named as "Goan Iron Ore Permanent Fund" be created and an expert group may be constituted by the State for working out the details of this fund. Mr Harish Salve, learned Amicus Curiae, submitted that as the lessees of mining leases earn out of the sale proceeds of the iron ore excavated by them, they should be directed to contribute 10% of the sale proceeds of all iron ore excavated in the State of Goa and sold by them towards the Goan Iron Ore Permanent Fund. He cited the judgment of this Court in *Samaj Parivartana Samudaya* v. *State of Karnataka*[11] in which this Court has similarly directed for creation of a Special Purpose Vehicle out of 10% of the sale proceeds of the ore sold by e-auction. There is a lot of force in the aforesaid submission of Mr Salve.

78. We find from the report of the Expert Committee that the State of Goa heavily depends on iron ore mining for revenue as well as employment.

18 (2014) 4 SCC 61

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

11 (2013) 8 SCC 154

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The legislative policy behind the MMDR Act made by Parliament is mineral development through mining. The State Government of Goa has also adopted the executive policy to encourage mining of minerals in Goa. Moreover, as Mr Ravi Shankar Prasad, learned Senior Counsel appearing for 33 Panchayats, has submitted about 1.5 lakh people are directly employed in mining in Goa and large number of persons have taken bank loans and purchased trucks for transportation of iron ore. Hence, people who earn their livelihood through work in connection with mining will be seriously affected if mining is totally banned to protect the environment. We cannot, therefore, prohibit mining altogether, but if mining has to continue, the lessees who benefit the most from mining, must contribute from their sale proceeds to the Goan Iron Ore Permanent Fund for sustainable mining. Accordingly, in exercise of our powers under Article 32 read with Article 21 of the Constitution, we direct that henceforth 10% of the sale proceeds of iron ore excavated in the State of Goa and sold by the lessees must be appropriated towards the Goan Iron Ore Permanent Fund for the purpose of sustainable development and intergenerational equity and the State of Goa in consultation with CEC will frame a comprehensive scheme in this regard and submit the same to this Court within six months.

Whether in future the mining leases are to be auctioned or have to be granted in accordance with the policy of the State and the provisions of the MMDR Act and the MC Rules?

79. Mr Prashant Bhushan, learned counsel for Goa Foundation, submitted that in Article 39(*b*) of the Constitution, it is provided that the ownership and control of the material resources of the community should be so distributed so as to best subserve the common good and, therefore, the State cannot distribute the material resource of the community in any way it likes. He submitted that in *Centre for Public Interest Litigation* v. *Union of India*[20], a two-Judge Bench of this Court has held relying on Article 39(*b*) of the Constitution that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good. He submitted that in the aforesaid case, the two-Judge Bench has further held that a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and methods like "first-come-first-served" when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. He relied on the conclusion of the two-Judge Bench of this Court in the aforesaid case that while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction

20 (2012) 3 SCC 1

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by giving wide publicity so that all eligible persons can participate in the process. He submitted that as the MMDR Act does not prohibit the State from holding auction of the mining leases, this Court should direct that in future the mining leases must be auctioned by the State Government.

80. The learned counsel for the lessees and the learned Advocate General, on the other hand, submitted that the MMDR Act and the MC Rules have made specific provisions regarding the manner in which the State is to grant mining leases and it is for the State to take decisions on grant of mining leases in accordance with the policy and the provisions of the MMDR Act and the MC Rules. They cited the opinion of the Constitution Bench of this Court in *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*[21] that auction despite being a more preferable method of alienation/ allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and, therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate.

81. We are of the considered opinion that it is for the State Government to decide as a matter of policy in what manner the leases of these mineral resources would be granted, but this decision has to be taken in accordance with the provisions of the MMDR Act and the Rules made thereunder and in consonance with the constitutional provisions and the decision taken by the State of Goa to grant a mining lease in a particular manner or to a particular party can be examined by way of judicial review by the Court. To quote the opinion of four Judges out of five Judges expressed by D.K. Jain, J. in *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*[21]: (SCC pp. 98-99, para 149)

> "*149.* … Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."

21 (2012) 10 SCC 1

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Whether suspension of mining operations in the State of Goa by Order dated 10-9-2012 of the Government of Goa and the suspension of the environmental clearances granted to the mines in the State of Goa by Order dated 14-9-2012 were legal and valid?

82. As we have held that the deemed mining leases of the lessees in Goa expired on 22-11-1987 and the maximum period (20 years) of renewal of the deemed mining leases in Goa has also expired on 22-11-2007, mining by the lessees in Goa after 22-11-2007 was illegal. Hence, the Order dated 10-9-2012 of the Government of Goa suspending mining operations in the State of Goa and the Order dated 14-9-2012 of MoEF, Government of India, suspending the environmental clearances granted to the mines in the State of Goa, which have been impugned in the writ petitions in the Bombay High Court, Goa Bench (transferred to this Court and registered as transferred cases) cannot be quashed by this Court. The Order dated 10-9-2012 of the Government of Goa and the Order dated 14-9-2012 of MoEF will have to continue till decisions are taken by the State Government to grant fresh leases and decisions are taken by MoEF to grant fresh environmental clearances for mining projects.

83. On 5-10-2012, this Court while issuing notice in *Goa Foundation* v. *Union of India*[4] also passed orders that all mining operations in the leases identified in the report of the Justice Shah Commission and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended. Thereafter on 11-11-2013[5], this Court passed an order that the inventory of the excavated mineral ores lying in different mines/stockyards/jetties/ports in the State of Goa made by the Department of Mines and Geology of the Government of Goa be verified and thereafter the whole of the inventoried mineral ores be sold by e-auction and the sale proceeds (less taxes and royalty) be retained in separate fixed deposits (leasewise) by the State of Goa till this Court delivers judgment in these matters on the legality of the leases from which the mineral ores were extracted. In our order passed on 11-11-2013[5], we had also directed that this entire process of verification of the inventory, e-auction and deposit of sale proceeds be monitored by a Monitoring Committee appointed by the Court. The Monitoring Committee comprising Dr U.V. Singh (Additional Principal Chief Conservator of Forests, Karnataka), Shri Shaikh Naimuddin (former Member of Central Board of Direct Taxes) and Parimal Rai (nominee of Government of Goa) have in the meanwhile monitored the e-auction.

84. We extract hereinbelow the relevant portion of the interim report dated 12-3-2014 of the Monitoring Committee:

> "After the two e-auctions, the total ore auctioned is about 1.62 million MT and the total value realised is Rs 260.68 crores approximately. As directed by this Hon'ble Court, the State Government

4 WP (C) No. 435 of 2012, order dated 5-10-2012 (SC)

5 *Goa Foundation* v. *Union of India*, (2014) 6 SCC 738

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has been requested to maintain separate accounts, leasewise, and keep the sale proceeds as fixed deposits in nationalised banks.

The process of transportation of ore for export has not yet been initiated because of the storage charges being demanded from the successful bidder by the Marmagao Port Trust (MPT). As a result, the process of e-auction is likely to slow down. The extent of storage charges demanded is as per Annexure MC III."

85. As we have held that renewal of all the deemed mining leases in the State of Goa had expired on 22-11-2007, the mining lessees will not be entitled to the sale value of the ores sold in e-auction but they will be entitled to the approximate cost (not actual cost) of the extraction of the ores. On account of suspension of mining operations in the State of Goa, the workers who were employed by the lessees claim that they have not been paid their wages. Under Section 25-C of the Industrial Disputes Act, 1947, when a workman whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid off, he is entitled to be paid by the employer for all the days which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to 50% of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off. Following this principle of lay-off compensation, we hold that workers who could not be paid wages by the lessees will have to be paid compensation at the rate of 50% of their basic wages and dearness allowance during the period of non-employment on account of suspension of mining operations. Moreover, Marmagao Port Trust will have to be paid 50% of their charges for storage of the mineral ores after 5-10-2012.

86. The entire sale value of the stock of mineral ores sold by e-auction, less the average cost of excavation, 50% of the wages and allowances and 50% of the storage charges to be paid to Marmagao Port Trust is thus due to the State Government which is the owner of the mineral ores which have been sold by e-auction. The State Government will set aside 10% of this balance amount for the Goan Iron Ore Permanent Fund for the purpose of sustainable development and intergenerational equity. This entire exercise of calculating the average cost of extraction of ores to be paid to the mining lessees, 50% of the basic wages and dearness allowance to be paid to the workers, 10% of the balance amount towards the Goan Iron Ore Permanent Fund and the balance amount to be appropriated by the State Government will be done by the Director of Mines and Geology, Government of Goa, under the supervision of the Monitoring Committee. Till this exercise is over and the report of the Monitoring Committee is filed, the Monitoring Committee will continue and their members will be paid their remuneration allowances as directed in the order dated 11-11-2013[5].

5 *Goa Foundation* v. *Union of India*, (2014) 6 SCC 738

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87. In the result, we declare that:

87.1. The deemed mining leases of the lessees in Goa expired on 22-11-1987 and the maximum of 20 years renewal period of the deemed mining leases in Goa expired on 22-11-2007 and consequently mining by the lessees after 22-11-2007 was illegal and hence the impugned Order dated 10-9-2012 of Government of Goa and the impugned Order dated 14-9-2012 of MoEF, Government of India are not liable to be quashed.

87.2. Dumping of minerals outside the leased area of the mining lessees is not permissible under the MMDR Act and the Rules made thereunder.

87.3. Until the order dated 4-8-2006[14] of this Court is modified by this Court in IA No. 1000 in *T.N. Godavarman Thirumulpad* v. *Union of India*, there can be no mining activities within one kilometre from the boundaries of national parks and sanctuaries in Goa.

87.4. By the order dated 4-12-2006 in *Goa Foundation* v. *Union of India*[13], this Court has not prohibited mining activities within 10 kilometres' distance from the boundaries of the national parks or wildlife sanctuaries.

87.5. It is for the State Government to decide as a matter of policy in what manner mining leases are to be granted in future but the constitutionality or legality of the decision of the State Government can be examined by the Court in exercise of its power of judicial review.

88. And we direct that:

88.1. MoEF will issue the notification of eco-sensitive zones around the national park and wildlife sanctuaries of Goa after following the procedure discussed in this judgment within a period of six months from today.

88.2. The State Government will initiate action against those mining lessees who violate Rules 37 and 38 of the MC Rules.

88.3. The State Government will strictly enforce the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013.

88.4. The State Government may grant mining leases of iron ore and other ores in Goa in accordance with its policy decision and in accordance with the MMDR Act and the Rules made thereunder in consonance with the constitutional provisions.

88.5. Until the final report is submitted by the Expert Committee, the State Government will, in the interests of sustainable development and intergenerational equity, permit a maximum annual excavation of 20 million MT from the mining leases in the State of Goa other than from dumps.

88.6. The Goa Pollution Control Board will strictly monitor the air and water pollution in the mining areas and exercise powers available to it under the 1974 Act and the 1981 Act including the powers under Section 33-A of

14 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 740

13 *Goa Foundation* v. *Union of India*, (2011) 15 SCC 791

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the 1974 Act and Section 31-A of the 1981 Act and furnish all relevant data to the Expert Committee.

88.7. The entire sale value of the e-auction of the inventoried ores will be forthwith realised and out of the total sale value, the Director of Mines and Geology, Government of Goa, under the supervision of the Monitoring Committee will make the following payments:

(*a*) Average cost of excavation of iron ores to the mining lessees;

(*b*) 50% of the wages and dearness allowance to the workers in the muster rolls of the mining leases who have not been paid their wages during the period of suspension of mining operations;

(*c*) 50% of the claim towards storage charges of Marmagao Port Trust.

Out of the balance, 10% will be appropriated towards the Goan Iron Ore Permanent Fund and the remaining amount will be appropriated by the State Government as the owner of the ores.

88.8. The Monitoring Committee will submit its final report on the utilisation and appropriation of the sale proceeds of the inventoried ores in the manner directed in this judgment within six months from today.

88.9. Henceforth, the mining lessees of iron ore will have to pay 10% of the sale price of the iron ore sold by them to the Goan Iron Ore Permanent Fund.

88.10. The State Government will within six months from today frame a comprehensive scheme with regard to the Goan Iron Ore Permanent Fund in consultation with CEC for sustainable development and intergenerational equity and submit the same to this Court within six months from today; and

88.11. The Expert Committee will submit its report within six months from today on how the mining dumps in the State of Goa should be dealt with and will submit its final report within twelve months from today on the cap to be put on the annual excavation of iron ore in Goa.

89. With the aforesaid declarations and directions, Writ Petition (C) No. 435 of 2012 is allowed. The transferred cases and IA filed by Marmagao Port Trust as well as other IAs also stand disposed of. The interim order dated 5-10-2012[4] of this Court is vacated. These matters will be listed as and when the Monitoring Committee and the Expert Committee submit their final reports and the State Government submits the scheme for the Goan Iron Ore Permanent Fund. The parties shall bear their own costs.

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4 *Goa Foundation* v. *Union of India*, WP (C) No. 435 of 2012, order dated 5-10-2012 (SC)

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

ORIGINAL APPLICATION NO. 12 OF 2014

In the matter of :

M.C. Mehta
3 A, Ring Road, Lajpat Nagar – IV,
New Delhi – 110 024

.....Applicant

Versus

1. University Grants Commission (UGC)
   (Through its Chairman)
   Bahadur Shah Zafar Marg,
   New Delhi-110 002

2. All India Council for Technical Education
   (Through its Chairman)
   7th Floor, Chanderlok Building, Janpath,
   New Delhi -110 001

3. Ministry of Human Resource Development
   (Through its Secretary)
   Government of India
   Department of Higher Education,
   Shastri Bhawan, New Delhi – 110 001.

4. Principal Secretary to Govt. of Haryana,
   Department of Higher Education,
   New Haryana Civil Secretariat Sector 17-C,
   Chandigarh – 160017

5. Principal Secretary to Govt. of Punjab,
   Department of Education, Mini Secretariat,
   Room NO. 314, 3rd Floor, Sector-9,
   New Haryana Civil Secretariat Sector 17-C,
   Chandigarh – 160009.

6. Secretary (Education) to Govt. of Chandigarh,
   Department of Education, Chandigarh Administration,
   UT Secretariat, Sector 9, 4th Floor,
   Chandigarh- 160009.

7. Principal Secretary to Govt. of National Capital Territory of Delhi,
   Department of Education, Muni Maya Ram Marg, Pitam Pura,
   Near Pitam Pura T.V. Tower, Delhi 110 088.

8. Principal Secretary to Govt. of Goa,
   Department of Education,
   New Secretariat Complex, R.No. 207, 3rd Floor,
   Porvorim, Goa – 403521.

9. Principal Secretary to Govt. of Mizoram,
   Department of Education, New Capital Complex,
   Mizorark Aizawl – 796001.

10. Ministry of Environment and Forests,
    Paryavaran Bhawan,
    CGO Complex, New Delhi.

.....Respondents

Applicant in person:

Mr. M.C. Mehta and Mr. Rahul Shukla, Advocates.

Counsel for Respondents:

Mr. Amitesh Kumar, Advocate for Respondent No.1 & 2.
Mr. B.V. Niren, CGSC, for Respondent No. 3.
Mr. Mohit Bhardwaj and Ms. Anubha Agarwal, Advocates for Respondent No.4.
Mr. Vivek Kumar Tandon, Advocate for Respondent No. 7.
Mr. Gaurav Liberhan, Advocate for Respondent No. 6.
Mr. Snigdha Pandey and Mr. Bansuri Swaraj, Advocates for Respondent No.8.
Mr. Pragyan Sharma and Mr. Heshu Kayina, Advocate for Respondent No. 9.
Mr. Vikas Malhotra and Mr. M.P. Sahay, Advocates for Respondent No. 10

ORDER

PRESENT:
Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Mr. A.R. Yousuf (Expert Member)
Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated : July 17, 2014

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The applicant states that he is a citizen of India and is concerned about the alarming rate at which environmental degradation is taking place in the country. It is the case of the applicant that in the past he had filed various cases in respect of air

and water pollution in the Supreme Court of India for the protection of cultural heritage of the country. The Supreme Court of India, in those cases, has delivered landmark judgments/orders for the protection of environment, people's lives, health and cultural heritage of India.

2. The applicant had instituted a writ petition being Civil Writ Petition No. 860/1991 titled *M.C. Mehta v. Union of India* before the Supreme Court of India which came to be disposed off by the judgment of the Supreme Court of India dated 22nd November, 1991 whereby the Hon'ble Supreme Court gave various directions to the Central and the State Governments for providing compulsory environmental education to the students of schools and colleges throughout the country. *Inter- alia*, but importantly, the Hon'ble Supreme Court of India had issued Direction No. IV in the said judgment. Direction IV of the judgment dated 22nd November, 1991 reads as under:

> **Direction IV.** "We accept on principle that through the medium of education awareness of the environment and its problems related to pollution should be taught as a compulsory subject. Learned Attorney General pointed out to us that the Central Government is associated with education at the higher levels and the University Grant Commission can monitor only the under graduate and the post graduate studies. The rest of it, according to him, is a State Subject. He has agreed that University Grant Commission will take appropriate steps immediately to give effect to what we have said, i.e. requiring the Universities to prescribe a course on environment. They would consider the feasibility of making this a compulsory subject at every level in college education. So far as the education up to the college level is concerned we would require every State Government and every Education Board connected with education up to the matriculation stage or even

> intermediate college to immediately take steps to enforce compulsory education on environment in a graded way. This should be so done that in the next academic year there would be compliance of this requirement. We have not considered it necessary to hear the State Government and the other interest groups as by now there is a general acceptance throughout the world as also in our country that protection of environment and keeping it free of pollution is an indispensable necessity for life to survive on this earth. If that be the situation, everyone must turn immediate attention to the proper care to sustain environment in a decent way."

3. As the above direction had not been complied with, the applicant again filed an IA in the above writ petition upon which the Hon'ble Supreme Court vide its order dated 18th December, 2003 reiterated the direction requiring the authorities to comply with the same. The relevant extract of the order dated 18th December, 2003 reads as under: -

> ".....we direct all the respondents- States and other authorities concerned to take steps to see that all educational institutions under their control implement respective steps taken by them and as reflected in their affidavits fully, starting from the next academic year, viz. 2004-05 at least, if not already implemented. The authorities so concerned shall duly supervise such implementation in every educational institution and non-compliance of the same by any of the institutions should be treated as a disobedience calling for instituting disciplinary action against such institutions."

4. The University Grants Commission (for short 'UGC') on 13th July, 2004 submitted before the Hon'ble Supreme Court that they have prepared a common syllabus and the same is being implemented by various educational institutions. The All India Council of Technical Education on 6th August, 2004 informed the

Supreme Court that it had already prepared a syllabus which includes 'environmental science' and which is being updated and would be introduced from the next academic year. The syllabus pertaining to environmental education has been prescribed and the guidelines have been framed but according to the applicant, the subject is being taught by teachers who are not qualified in terms of the UGC Guidelines. The teachers who have specialized in Sanskrit, Hindi, English, Electronics, Political Science, Sociology, Mathematics, Physical Education, Home Science, Computer Science etc. have been assigned the task of teaching the subject of environmental science; in the most cosmetic way, which is against the letter and spirit of the judgment/orders passed by the Hon'ble Supreme Court of India. It is also averred by the applicant that a number of States like the State of Haryana, Punjab, Goa, Mizoram, Delhi and the Union Territory of Chandigarh amongst others have not complied with the directions of the Supreme Court of India, as afore-noticed. None of these States have taken any steps to appoint qualified teachers who are competent to teach environmental science. The eligible teachers are the ones who have qualified the National Eligibility Test (NET) in Environment Science or Ph.D. in terms of UGC guidelines. The whole purpose of making 'Environment' as a compulsory subject, hence, stands defeated. While referring to some of the States, the applicant makes a particular reference to the States of Haryana and Jammu and Kashmir. The applicant stated that except for holding the meetings, the State Governments have not taken any concrete steps for

compliance or for implementation of the above directions. In fact, they have been exchanging letters on what should or should not be the qualifications of the teachers who would teach the subject of Environment Science.

5. A number of States have been impleaded as respondents in the present application along with the Ministry of Environment and Forests. The applicant submits that the action of the respondent, in not providing environment education properly in the Colleges, Institutes and Universities is against the spirit of the order passed by the Hon'ble Supreme Court of India as well as the affidavit given by the State Governments before the Apex Court. Article 48A of the Constitution provides that the States should endure to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51A(g) of the Constitution imposes as one of the fundamental duties on every citizen to protect and improve the natural environment, including forests, rivers, lakes and wildlife and to have compassion for the living creatures. While referring to these provisions the applicant submits that lack of education in environment science would prejudicially affect the spirit of these Articles and thus, the applicant has been compelled to approach this Tribunal for redressal of his grievances. In this application, the applicant has made the following prayers in paragraph 20 of the application: -

> "Under the facts and circumstances, it is respectfully prayed that the Hon'ble Green Tribunal may be pleased to:-
>
> I. issue direction/directions to the Respondents to ensure that compulsory subject of Environment studies

is taught by the qualified/eligible teachers/Astt professors having specialization in post graduate degree i.e. M.Sc Environmental Science with NET qualified or Ph.D. in terms of UGC guidelines in the State of Haryana and other States and union Territories for providing proper environmental education to the students at Under Graduate and Post Graduate level from Academic Session 2014 in both Government and Private Universities/ colleges in India.
II. take appropriate Action against the Respondents for not implementing the judgments/ orders of the Hon'ble Supreme Court given vide Direction Number IV passed on 22.11.1991 in W.P.(C) No. 860 of 1991 and subsequent orders; and
III. pass such other order/ orders as may be deemed necessary on the facts and circumstances of the case.

And for this, the Applicant as duty bound shall ever pray."

6. Different respondent States, besides taking up the plea of substantial compliance of directions of the judgment of the Hon'ble Supreme Court dated 22nd November, 1991 have primarily taken the preliminary objection with regard to maintainability of this application before the Tribunal. It is contended that on true construction of the provisions of Section 14 read with Section 18 and Schedule I of the National Green Tribunal Act, 2010 (for short 'NGT Act'), this Tribunal has no jurisdiction to entertain and adjudicate the matters raised in the present application. According to the learned counsel, it is a matter which relates to imparting of education and does not raise any substantial question relating to environment and in any case such question does not arise out of the implementation of the enactments specified in Schedule I of the NGT Act. Furthermore, it is also contended that the entire basis of the application is alleged violation of the Order of the Supreme Court dated 22nd November, 1991. The Tribunal can neither initiate

contempt proceedings against violator nor it can be an executing court for the orders passed by the Supreme Court of India.

7. In view of the above, the issue of the maintainability was treated as a 'preliminary issue' by us and arguments were heard on the maintainability of the petition without going into the merits of the writ petition.

8. The applicant responded to this objection by raising a contention that the provisions of Section 14 read with Section 18 of the NGT Act are wide enough to give cause of action to 'any person aggrieved' to file any petition before this Tribunal, in relation to any environmental issue. Education in environmental science, thus, would be within the ambit of these provisions and hence the present petition would be maintainable. Furthermore, according to the applicant Sections 16(2)(e) and 17(1)(e) of the Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Water Act') as well as under Section 16(2)(f) of the Air Act, 1981 (for short 'the Air Act', lays down a statutory function for the Central or the State Board, as the case may be, to organize through mass media, a comprehensive programme regarding the prevention and control of water pollution, organizing the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution and to organize mass education programmes relating thereto. Thus, the Subject of environmental education, would fall within the compass of these provisions and hence it would be an 'implementation' of the Acts mentioned in Schedule I of the NGT Act. Being a 'person aggrieved' in its wider sense, the

applicant is entitled to maintain the present application. He questions the averment that there is substantial compliance of the directions, as even noticed in the application. He has also contended that in terms of Articles 141 and 142 of the Constitution of India, the orders passed by the Hon'ble Supreme Court of India are law of the land and are to be executed by all Courts and Tribunals. The purpose and object of the provision in question relates to the functions of the respective Boards and for ensuring prevention and control of water pollution. The comprehensive programme through mass media, even if it is deemed to include education as a part of the programme, still the prescription and enforcement of educational qualifications of the teachers who are expected to teach environmental science, cannot be an area that would squarely fall within the dimensions of Section 16 2(e) of the Water Act. The Section elaborately states the functions of the Board, which it is expected to perform in order to promote cleanliness of the wells in the different areas of the State and subject to the provisions of the Act. In the garb of invoking the provisions of the Section 16(2)(e) of the Water Act and Section 16(2)(f) of the Air Act, the applicant cannot require this Tribunal to issue directions to the Board to perform functions or duties or issue directions which, *ex facie,* are beyond the scope of the Section 16 of the respective Acts. Thus, we must dissipate the contention of the Applicant.

9. We have already noticed that we would not be examining any other question of law or even merits of the application and would

confine our discussion to the maintainability of the present application.

10. It is the contention before us that the application squarely touches and falls within the ambit of the expression 'implementation' of the Scheduled Acts as mentioned in Section 14 of the NGT Act. Further, that it relates to the subject of environmental sciences, raising substantial environmental issues and therefore, such an application can be entertained and decided by the Tribunal in accordance with law.

11. This Tribunal is a creation of a statute and has to work within the confines of that statute. If we treat the application as a petition, requiring the Tribunal to enforce, execute or take any other appropriate action for non-compliance or violation of the Direction IV issued by the Hon'ble Supreme Court of India in its judgment dated 22nd November, 1991, then there is no provision in the statute, i.e., the NGT Act, by invocation of which such cognizance could be taken by this Tribunal. It will not be appropriate for the Tribunal either to invoke contempt jurisdiction for violation of the orders passed by the Supreme Court of India or to issue appropriate directions with regard to those orders, as it is for that Court alone to deal with the matters of this kind. This Tribunal, thus, cannot entertain such an application as it would squarely fall beyond the provisions of Section 14 read with Section 18 and Schedule I of the NGT Act.

12. This Tribunal is vested with three different jurisdictions. Firstly, it has the original jurisdiction in terms of Section 14 of the

NGT Act to deal with all civil cases raising a substantial question relating to environment and where such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. Secondly, it is vested with appellate jurisdiction against the various orders/directions/decisions as stated in Section 16 (a) to (j) of the NGT Act. Thirdly it has a special jurisdiction in terms of Section 15 to grant relief of compensation and restitution as per the scheme contemplated under that provision. Admittedly, the present application has been filed under Section 14 of the NGT Act. Thus, it must plead and raise the following:

a) It should be a civil case.
b) Where a substantial question relating to environment or enforcement of any legal right relating to environment is involved.
c) Such question arises out of implementation of enactment specified in Schedule I of the NGT Act.

13. Once these three ingredients are satisfied, then Section 14 does not appear to place any restriction on the locus or character of the Applicant who wishes to move an application under Section 14 of the Act. Similarly, Section 15 also does not describe the description of an Applicant who can move the Tribunal for seeking reliefs like compensation, restitution of the property and the environment. In contradistinction thereto, Section 16 restricts the Applicant entitled to file an Appeal to be 'any person aggrieved'. In other words, it is only a person aggrieved who can invoke the jurisdiction of the Tribunal under Section 16 and not any Applicant.

Section 18 deals with the procedure which has to be followed by an applicant or appellant, who prefers to file an application or appeal before the Tribunal. It deals with all the three jurisdictions specified under Section 14, 15 and 16 of the NGT Act. However, Section 18 (2) of the NGT Act provides the details in regard to locus and character of an Applicant who is entitled to move the Tribunal by filing an Application for grant of relief or compensation or settlement of dispute. Section 18(2) has been worded by the legislature with wide amplitude besides covering any person aggrieved and the legal representatives of the various categories. In terms of Section 16, it includes various other persons as described under clauses (a) to (d) and (f) of sub-Section 2 of Section 18. The locus and character of an applicant specified under these provisions has to receive liberal construction and would cover variety of applicants. As far as Section 14 (1) of the NGT Act is concerned, the only restriction that appears to be imposed is that it must satisfy the prerequisites stated in that Section.

14. It is a settled position of law that the Tribunal must keep in its mind and be guided by the statutory provisions of the Act and it may not be appropriate for the Tribunal to take up the subjects which do not squarely fall within the ambit and scope of its jurisdictional provisions. We may refer to a judgment of the Tribunal in the case of *Goa Foundation v. Union of India* 2013(1) All India NGT Reporter, New Delhi, 234, where the Court while dealing with some facets of Tribunal's jurisdiction and the manner in which they should be construed, explained the expression 'substantial

question relating to environment', 'any person aggrieved' and 'dispute.' The following paragraphs can be usefully reproduced at this stage:

> "23.Similarly, 'substantial question relating to environment' also is an inclusive definition and besides what it means, it also includes what has been specified under Section 2(m) of the NGT Act. Inclusive definitions are not exhaustive. One has to, therefore, give them a very wide meaning to make them as comprehensive as the statute permits on the principle of liberal interpretation. This is the very basis of an inclusive definition. Substantial, in terms of the Oxford Dictionary of English, is of considerable importance, strongly built or made, large, real and tangible, rather than imaginary. Substantial is actual or real as opposed to trivial, not serious, unimportant, imaginary or something. Substantial is not the same as unsubstantial i.e. just enough to avoid the *de minimis* principle. In *In re Net Books Agreement* [1962] 1 WLR 1347, it was explained that, the term 'substantial' is not a term that demands a strictly quantitative or proportional assessment. Substantial can also mean more than reasonable. To put it aptly, a substantial question relating to environment must, therefore, be a question which is debatable, not previously settled and must have a material bearing on the case and its issues relating to environment.
>
> 24. Section 2(m) of the NGT Act classifies 'substantial question relating to environment' under different heads and states it to include the cases where there is a direct violation of a specific statutory environmental obligation as a result of which the community at large, other than an individual or group of individuals, is affected or is likely to be affected by the environmental consequences; or the gravity of damage to the environment or property is substantial; or the damage to public health is broadly measurable. The other kind of cases are where the environmental consequences relate to a specific activity or a point source of pollution. In other words, where there is a direct violation of a statutory duty or obligation which is likely to affect the community, it will be a substantial question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal. When we talk about the jurisdiction being inclusive, that would mean that a question which is substantial, debatable and relates to environment, would itself be a class of cases that would squarely fall under Section 14(1) of the NGT Act. Thus, disputes must

relate to implementation of the enactments specified in Schedule I to the NGT Act.

25. The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the applicant's interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar's *The Law Lexicon* supra describes this expression as 'when a person is given a right to raise a contest in a certain manner and his contention is negative, he is a person aggrieved' *[Ebrahim Aboodbakar v. Custodian General of Evacue Property,* AIR 1952 SC 319]. It also explains this expression as 'a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which he is legally entitled to and not merely a person who has suffered some sort of disappointment'.

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

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

private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which pre judicially affects his interests." It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

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

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

44. The short question is as to whether the State Bar Council is a 'person aggrieved' within the meaning of Section 38 so that it has locus standi to

> appeal to this Court against a decision of the Disciplinary Tribunal of the Bar Council of India which, it claims, is embarrassingly erroneous and. if left unchallenged, may frustrate the high obligation of maintaining standards of probity and purity and canons of correct professional conduct among the members of the Bar on its rolls.
>
> 47. Even in England, so well-known a Parliamentary draftsman as Francis Bennion has recently pleaded in the Manchester Guardian against incomprehensible law forgetting 'that it is fundamentally important in a free society that the law should be readily ascertainable and reasonably clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights'. It is also needlessly expensive and wasteful. Reed Dickerson, the famous American Draftsman, said: It cost the Government and the public many millions of dollars annually'. The Renton Committee in England, has reported on drafting reform but it is unfortunate that India is unaware of this problem and in a post-Independence statute like the Advocates Act legislators should still get entangled in these drafting mystiques and judges forced to play a linguistic game when the country has an illiterate laity as consumers of law and the rule of law is basic to our Constitutional order."

27. In the case of *Maharaj Singh v. State of Uttar Pradesh* (1977)1 SCC 155, the Supreme Court observed that a legal injury creates a remedial right in the injured person. But the right to a remedy apart, a larger circle of persons can move the court for the protection or defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the lis and the plaintiff need not necessarily be personal, although it has to be more than a wayfarer's allergy to an unpalatable episode. Further in the case of *Dr. Duryodhan Sahu and Others v. Jitendra Kumar Mishra and Others* (1998) 7 SCC 270, the Supreme Court, held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. In *Jasbhai Motibhai Desai v. Roshan Kumar,* AIR 1976 SC 578 the Court held that the expression

'aggrieved person' denotes an elastic, and to an extent, an elusive concept. It stated as follows:

> "It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him."

35. The expression 'disputes' arising from the questions referred to in sub-section (1) of Section 14 of the NGT Act, is required to be examined by us to finally deal with and answer the contentions raised by the parties before us. The expression used in sub-section (1) supra is the expression of wide magnitude. The expression 'question' used in sub-section (1) in comparison to the expression 'dispute' used in sub-section (2) of section 14 is of much wider ambit and connotation. The disputes must arise from a question that is substantial and relates to environment. This question will obviously include the disputes referred to in Section 14(2). It is those disputes which would then be settled and decided by the Tribunal. These expressions are inter-connected and dependent upon each other. They cannot be given meaning in isolation or *de hors* to each other. The meaning of the word 'dispute', as stated by the Supreme Court in *Canara Bank v. National Thermal Power Corporation* (2001)1 SCC 43 is "a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other". The term dispute, again, is a generic term. It necessarily need not always be a result of a legal injury but could cover the entire range between genuine differences of opinion to fierce controversy. Conflicts between parties arising out of any transaction entered between them is covered by the term 'dispute'.

15. The above paragraphs are the precepts to the exercise of proper jurisdiction by the Tribunal. The provisions relating to jurisdiction could be construed liberally so as to achieve the object and purpose of the Act, where a narrower construction is likely to defeat the same. According to the learned counsel appearing for the

applicant, it is the implementation of the statutes stated in Schedule I of the NGT Act that would fully justify entertainment of this application by the Tribunal. It is contended that the word 'implementation' would have to be construed very widely so as to include in its ambit even education in environmental sciences (as a subject), thus, enabling the Tribunal to issue the prayed directions. In his submission, it would be a dispute relatable to environment. We are not able to find any merit in this submission.

16. The expression 'substantial question relating to environment' or 'enforcement of any legal right relating to environment' cannot be interpreted so generically that it would even include the education relating to environment. Furthermore, the expression 'implementation' understood in its correct perspective cannot be extended, so as to empower the Tribunal to issue directions in relation to service matters involving environmental sciences.

17. A phrase of significant importance appearing in Section 14 of the NGT Act is 'arises out of the implementation of enactment specified in Schedule I'. Even in this phrase, the word 'implementation' is of essence. 'Implementation' in common parlance means to take forward a decision or to take steps in furtherance to a decision or a provision of law. It sets into motion, the actions which are contemplated within the provisions of the Act to which reference is made. It is not synonymous to 'execution'. 'Execution' in law, particularly under the Code of Civil Procedure, 1908 is a known and well-defined concept. 'Implementation' in contradistinction thereto is a milder expression but again operates

within the limitations prescribed by the law or the provision in which such expression appears. Concept of 'implementation' cannot travel beyond the framework of law and in that sense it is even similar to 'execution' as it must be executed in conformity to the provisions of the Code of Civil Procedure, 1908. There are some basic similarities between 'implementation' and 'execution' but they differ in scope and enforcement.

18. We may now examine some of the definitions of the word 'implementation': -

> Oxford Dictionary, 3rd ed., 2010, "implementation"- the process of putting a decision or plan into effect; execution.
>
> Black's Law Dictionary, 9th ed., 2009, "implementation plan" in relation to environmental law means 'a detailed outline of steps needed to meet environmental quality standards by an established time.'
>
> P. Ramanatha Aiyar's The Law Lexicon, 3rd ed., 2012, "implementation'- giving practical effect to.
>
> Wharton's Law Lexicon, 15th ed., 2012, "implementing agency"- includes any department of the Central Government or a State Government, a Zilla Parishad, Panchayat at intermediate level, Gram Panchayat or any local authority or Government undertaking or non-governmental organization authorized by the Central Government or the State Government to undertake the implementation of any work taken up under the Scheme.

19. In the case of *Sanjay Gandhi Grih Nirman Sehkari Sansthan, Indore v. State of Madhya Pradesh*, AIR 1991 MP 72, where the High Court was concerned with the expression 'Implementation' appearing in Section 54 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short 'the Adhiniyam'), read in conjunction with Sections 4, 6 and 17(1) of the Land Acquisition Act, 1894. It was contended that the word 'implementation' means

commencement or completion of a decision taken under the Adhiniyam. The Court, after considering the meaning of the expression 'implementation' took the view that 'implementation' has to be construed liberally so as to ensure that the object is achieved and not frustrated. Therefore, the Court held that 'implementation' would mean that the steps under the Scheme have been taken and not that they ought to have been completed within the period of three years under Section 54 of the Adhiniyam so as to make the scheme lapse.

20. One also finds use of the expression 'implement' in the very Preamble of the Environment Protection Act, 1986 where it is stated that 'it is considered necessary further to implement the decisions afore-said' (the decision taken at the United Nations Conference on the Human Environment held at Stockholm in June 1972). List I of the Seventh Schedule of the Constitution of India in terms of Article 246 also uses similar expression in Entry 13. Entry 13 reads as follows: -

> 13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

21. The word 'implementing' as used above clearly indicates that it is a direct reference to the decision taken in the international conferences, etc. and which are sought to be implemented by taking further action thereof. Thus, when we have to construe the word 'implementation' appearing in Section 14 of the NGT Act, with reference to the Acts stated in Schedule I of the said Act, we must confine it to the 'implementation' of the provisions contained under

those Acts and that too with reference to a substantial question relating to environment and not beyond that.

22. We have already stated the ingredients which an applicant invoking the jurisdiction of the Tribunal under Section 14 must satisfy. The contention that the expression 'implementation' should receive narrower interpretation in terms of Section 14 of the NGT Act, would not be in consonance with the settled principles of interpretation. Hence, it is difficult for us to accept this contention advanced on behalf of the applicant.

23. Nexus between the dispute raised before the Tribunal for determination and the environment has to be direct. When the framers of law use the expression 'substantial question relating to environment', it clearly conveys the legislative intent of ensuring that the disputes determinable by the Tribunal have to relate to environment and not allied fields thereto. In the case of *Goa Foundation* (supra), the Tribunal clearly held that the disputes arising for decision or settlement before the Tribunal should arise out of substantial question relating to environment. The violation must be with regard to environment and it is not a generic term used by the Legislature enabling the Tribunal to expand its jurisdiction beyond the true construction of Section 14 of the NGT Act. The character of the proceeding is clearly not in reference to the relief that the Tribunal could grant, but upon the nature of the right violated and the appropriate relief which could be claimed.

24. In the case of *Kehar Singh v. State of Haryana,* 2013 (1) All India NGT Reporter, Delhi 556, the Tribunal held as under:

> The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate to environmental issues would not be 'such dispute' as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the 'cause of action' referred to under Sub-section (3) of Section 14 should be the cause of action for 'such dispute' and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act.

25. Another way in which the present controversy could be viewed is by reading the prayer of the applicant along with contents of the application. The applicant has submitted that firstly in all colleges and institutions, environmental science is not a subject and wherever it has been introduced as a subject, it is not being taught by qualified teachers. This is the substance of the application. It clearly falls within the framework of the constitution and/or service jurisprudence. It does not raise any substantial question of environmental jurisprudence understood in its correct perspective within the provisions of the NGT Act and the Scheduled Acts thereto. The contention that 'mass education' in Section 16(e) of the Water Act and 16 (f) of the Air Act would come to the aid of the applicant for issuance of such a direction, is again misconceived. Organizing through mass media a comprehensive programme regarding the prevention and control of water and air pollution, would not take in its cover the education or service jurisprudence in

relation to environmental science as a subject of education. The programmes contemplated under these provisions must relate to prevention and control of pollution and not what should be the terms and conditions of appointment of teachers and how the environmental science should be taught in an educational institution. An activity for prevention and control of pollution must be discernibly distinguished and understood as such from education and conditions of service of teachers as enumerated under the constitutional provisions or the notifications issued by the UGC or the Universities. The applicant claims that a legal right as envisaged under Section 14 of the NGT Act has accrued in his favour as a result of the Order of the Supreme Court dated 22nd November, 1991 referred supra. There cannot be a dispute to the preposition that the orders and judgments declared by the Hon'ble Supreme Court would be the law of the land and are enforceable throughout the territory of India in accordance with law. However, the direction of the Supreme Court in the above case, clearly falls within the domain of constitutional or service law. It is for the applicant to approach the appropriate forum/court for enforcement of that direction. In our considered view it would not fall within the ambit of Section 14 of the NGT Act as neither does it raise any substantial question relating to environment nor does the implementation of the Scheduled Acts arise.

26. Ergo for the reasons afore-recorded, we are of the considered view that the present application filed by the applicant under Section 14 of the NGT Act is not maintainable and the Tribunal has

no jurisdiction to entertain and grant the reliefs prayed for by the applicant. The applicant is, however, at liberty to approach the court of competent jurisdiction. This order would in no way prejudice the rights and contentions of the applicant. We, further make it clear that we have neither examined the merits of the case nor any other contention raised by the parties except to the extent afore-stated.

27. This application is, therefore, dismissed as not maintainable. However, we leave the parties to bear their own costs.

Justice Swatanter Kumar
Chairperson

Justice M.S. Nambiar
Judicial Member

Dr. D.K. Agrawal
Expert Member

Prof. A.R. Yousuf
Expert Member

Dr. R.C. Trivedi
Expert Member

New Delhi
July 17, 2014

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2014 SCC OnLine NGT 5640

Before the National Green Tribunal Principal Bench New Delhi

(BEFORE SWATANTER KUMAR, CHAIRPERSON AND M.S. NAMBIAR, J.M. AND D.K. AGRAWAL, E.M. AND R.C. TRIVEDI, E.M.)

In the matter of:

1 Krishan Kant Singh H. No. 35, Village Dhanawli - Atta Post Mudafra, District - Hapur Uttar Pradesh - 245101

2 Social Action for Forest & Environment (SAFE) through its President A - 93, Sector - 36 Greater Noida - 201308 ... Applicant;

Versus

1 National Ganga River Basin Authority through Cabinet Secretary Rashtrapati Bhawan New Delhi - 110004

2 Union of India through the Chief Secretary Ministry of Environment and Forests New Delhi

3 Central Pollution Control Board through the Member Secretary Parivesh Bhawan, East Arjun Nagar, New Delhi - 110032

4 Ministry of Water Resource through the Secretary Shram Shakti Bhawan, Rafi Marg, New Delhi - 110032

5 State of Uttar Pradesh through Chief Secretary Government of Uttar Pradesh Secretariat, Lucknow - 226001

6 Uttar Pradesh Pollution Control Board through the Member Secretary PICUP Bhawan, 2nd Floor B - Block Vihuti Khand, Gomti Nagar, Lucknow - 226001

7. Simbhaoli Sugar Mills through Chairman C - 11, Connaught Place, New Delhi - 110001

8. Gopalji Milk Food & Pvt. Ltd. Village Syana, Distt. Bulandshaer Uttar Pradesh - 2425123

9. All India Distillers Association through Chief Secretary Government of Uttarakhand Subash Road, Dehradun - 248001

10. State of Uttarakhand through Chief Secretary Government of Uttarakhand Subash Road, Dehradun - 248001

11. State of Bihar through Chief Secretary Old Secretariat, Patna Bihar - 800003

12. State of West Bengal through Chief Secretary Government of West Bengal Writers' Building Kolkata - 700001

13. Uttarakhand Environment Protection & Pollution Control Board through Member Secretary 29/20, Nemi Road, Dehradun - 248001

14. Bihar State Pollution Control Board through Member Secretary 2nd Floor, Beltron Bhawan Shastri Nagar, Bailey Road Patna, Bihar - 800023

15. West Bengal Pollution Control Board through Member Secretary Paribesh Bhavan, 10A, Block - LA, Sector III, Salt Lake City, Calcutta 700098

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16. State of Madhya Pradesh through Chief Secretary Mantralaya Vallabh Bhawan, Bhopal, MP - 462004

17. Madhya Pradesh Pollution Control Board through Member Secretary E - 5, Area Colony, Paryavaran Parisar, Bhopal - 462016

18. State of Jharkhand through Chief Secretary Government of Jharkhand Secretariat, Ranchi - 834001

19. Jharkhand Pollution Control Board through Member Secretary H.E.C., Dhurwa, Ranchi - 834004, Jharkhand ... Respondents.

M.A. No. 879 of 2013 and M.A. No. 403 of 2014 in Original Application No. 299 of 2013

Decided on October 16, 2014

Counsel for Appellant:

Mr. Rahul Choudhury along with Ms. Preeta Dhar, Advocate

Counsel for Respondents:

Mr. Vikas Malhotra and Mr. M.P. Sahay, Advocates for Respondent No. 1 & 2

Mr. Raj Kumar and Ms. Alpana Poddar, Advocates along with Mr. S.L. Gundli, Sr. Law Officer for CPCB for Respondent No. 3

Mr. B.V. Biren, Advocate for CGSC i.e. Respondent No. 4

Mr. Raman Yadav along with Ms. Savitri Pandey, Advocate for Respondent No. 5

Mr. Amit Agrawal, Advocate for West Bengal Pollution Control Board; Mr. Daleep Kumar Dhayani and Mr. Pradeep Misra, Advocates for UPPCB i.e. Respondent No. 6

Mr. Arjun Mahajan along with Mr. Vikas Malhotra, Advocates for Respondent No. 7

Mr. Arvind Kumar Shukla along with Mr. Amit Shukla and MS. Sweta Rani, Advocates for Respondent No. 8

Ms. Antima Bazar, Advocate for AIDA i.e. Respondent No. 9 Mr. Devashish Bharuka and Mr. A. Kaushiv, Advocates for Respondent No. 18

Mr. Jayesh Gaurav, Advocate for Jharkhand State Pollution Control Board i.e. Respondent No. 19

JUDGMENT

1. Whether the judgment is allowed to be published on the net?

2. Whether the judgment is allowed to be published in the NGT Reporter?

Justice SWATANTER KUMAR, (Chairperson)

The first applicant in this application claims to be a public spirited person who has been working in the field of environment conservation. The second applicant is an organisation working in the field of environment across the country. Both these applicants raise a specific substantial question relating to environment with respect to water pollution in the River Ganga, particularly, between Garh Mukteshwar and Narora, due to discharge of highly toxic and harmful effluents. It is alleged that highly toxic and harmful effluents are being discharged by the respondent units into the Sambhaoli drain/Phuldera drain that travels along with the Syana Escape Canal which finally joins River Ganga. These units had constructed underground pipelines for such discharge. According to the applicants, Simbhaoli Sugar Mills was established in 1933 and presently is operating three sugar mills and three distilleries in the State of Uttar Pradesh. The total crushing capacity of all three complexes is of 20100 TCD. The unit at Simbhaoli alone has a crushing capacity of 9500 TCD. In just outside the premises of this sugar mill, untreated effluents are being discharged into the drain which finally joins the River Ganga. The other unit, Gopalji Dairy which is producing milk and milk products of different kinds, also discharges untreated effluents in the same Simbhaoli drain. The contamination from discharge of trade effluents is so high that it not only

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pollutes the Syana Escape canal and the River Ganga but also threatens the life of endangered aquatic species such as dolphins, turtles and other aquatic life. It has also polluted the groundwater of villages from where it passes through, like Bauxar, Jamalpur, Syana, Bahadurgarh, Alampur, Paswada and Nawada village. It is the submission of the applicant that the Gangetic Dolphin is a highly endangered species and is listed in Schedule I of the Wildlife (Protection) Act, 1972. It is also submitted that the WWF India has come out with a report on Ganges and has recorded the finding that a large number of factories like sugar, chemicals, fertilizers, small-scale engineering etc. located at the bank of the river, discharge their effluents directly into the River Ganga and pollute the river to a considerable extent. It is estimated that nearly 260 million litres of industrial waste-water, largely untreated, is discharged by these units while the other major pollution inputs include runoff from the agricultural fields. It is submitted that more than 6 million tonnes of chemical fertilizers and 9,000 tonnes of pesticides are used annually within the basin. The dumping of untreated effluents has also been reported in several newspapers many times and one of the news article published in India Today dated 19th July, 2010 titled as "Ganga Chokes as Sugar Mills Dump Wastes" reported that Simbhaoli Sugar Mills has been rushing its poisonous industrial waste directly into the River. As a result thereof, the colour of green water is black and it stinks around the year. Several large fishes have died and four of the buffaloes of the villagers died after they drank the drain water.

2. It is further the averment of the applicant that the issue of pollution by the Simbhaoli Sugar Mills is very old and as back as in 1997 a book titled "*Geography and Environment* Vol. III, local issues" stated that harmful pollutants are released by Simbhaoli Sugar Mills polluting units, which are adversely affecting Simbhaoli and its environment. Sulphur dioxide is produced by fuel combustion and burning of sulphur about 3-4 times daily, for sulphitation and sugar mills and distiller. The leakage of S02 causes eye irritation and if greater in amount, even leads to acid rains. Fly ash that escapes through chimneys with CO2 not only contributes to air pollution but causes immense harm to human health. The sugar mill discharges about 1.25 lakh litres effluents approximately per hour for lagooning. The seepage of the effluents pollutes the ground water. The water becomes harder, oily and greasy and unfit for consumption. Thus, the unit causes both air and water pollution. The applicants who became particularly aware about the extent of pollution being caused by these industries, wrote a letter dated 24th June, 2013 to the Chairman of Ganga River Basin Authority, apprising them of large scale pollution by these industries. However, this letter was responded to by the said authority vide their letter dated 6th August, 2013 stating that it was outside their ambit of work and as such they would not be in a position to do anything in furtherance to the letter of the applicants. The applicants also approached the Uttar Pradesh Pollution Control Board (for short 'the UPPCB') and informed them about the extent of pollution and about the failure on the part of the Board in not controlling the said pollution. However, the applicants got no response. The Applicants to substantiate their complaint, went to the extent of collecting effluent samples from the Simbhaoli drain which finally joins the River Ganga. These water samples were collected on 7th August, 2013 from the drain at different locations and a test report was issued by the said laboratory on 25th August, 2013, *inter alia* showing extreme violation by these industries of the prescribed standards as declared under the Environment (Protection) Act, 1986 (for short 'the Act of 1986'). Some of the results in relation to Total Suspended Solid, Biological Oxygen Demand and Oil and Grease levels were shown in the Status Report as follows:

S. No.	Parameters	Results	Permissible limit for dairy	Permissible limit for sugar mill and distillery

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1.	Total suspended solid	1448 mg/1	150 mg/1	100 mg/1
2.	Biological Oxygen demand	2209 mg/1	100 mg/1	30 mg/1
3.	Oil and Grease	262 mg/1	10 mg/1-	-

Concerned with the constant discharge of untreated effluent, contamination of the River water, ground water and the environment, the applicants, while relying upon Articles 48A and 51A(g) of the Constitution of India and the judgments of the Supreme Court in *Dr. B.L. Wadehra* v. *Union of India*, (1996) 2 SCC 594, *M.C. Mehta* v. *Kamal Nath*, (2000) 6 SCC 213, *Subhash Kumar* v. *State of Bihar*, (1991) 1 SCC 598, contended that the authorities entrusted with the work of pollution control cannot be permitted to sit back with folded hands on the pretext of financial or other limitations. Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. Right to life being a fundamental right under Article 21 of the Constitution of India, includes the right of enjoyment of pollution-free water and air for full enjoyment of life. There is a vested right in the applicants and all others to have pollution free water and air in that area of which they are the residents. There itself the duty of the State to prevent and control pollution of water and air and to provide cleaner environment to the citizenry.

3. On the above premises, the applicants pray that these industries should be restricted from releasing harmful effluents in Sambhaoli drain leading to River Ganga and they should also be directed to pay the cost of restoration of the environment which the applicant is unable to quantify in the application. Respondents No. 1 and 2 have filed a common affidavit stating that there is pollution of River Ganga by discharge of untreated effluents by the industries including the Respondent Units. However, it is stated that MoEF under the aegis of NGRBA has taken several steps to check pollution in the River Ganga. The main role of checking industrial pollution as well as inspection and monitoring of industrial units, comes under the purview of the CPCB and various State Pollution Control Boards. It is averred that all the three units had been inspected by the Central Pollution Control Board (for short 'the CPCB)' on 4th September, 2013 of which one unit namely Simbhaoli Sugar unit was found not in operation due to off crushing season. Simbhaoli Sugar Mills Ltd. (Distillery Division) and Gopalji Dairy Pvt. Ltd. were found not complying with the standards for effluent disposal and the CPCB had issued directions under the provisions of the Act of 1986, to these industries to adhere to the prescribed standards.

4. UPPCB (Respondent No. 6) has filed an independent reply. According to the UPPCB, Simbhaoli Sugar Mills was having two units. One is a sugar mill and the other is a distillery unit. The sugar mill was having a capacity of 10000 TCD and the distillery unit was having the capacity of 90 KL/day. The distillery unit was subsequently made into Simbhaoli Spirits Ltd. and even prior thereto the consents for the two units were being granted separately under the Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Water Act') and the Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Air Act'). CPCB made a reference to the UPPCB and on the basis of inspection conducted by the Regional Office, Ghaziabad on 20th July, 2010 and 17th August, 2010, it had issued certain directions to both the units under Section 33A and 27(2) of the Water Act. These *inter alia* contained the following:

1. To stop manufacturing operations during rainy season,
2. To regularly operate Multi Effect Evaporator or to install one additional RO Plant.
3. To remove concrete pipeline immediately, and

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4. To deposit bank guarantee to ensure compliance of the prescribed measures.

Further, in compliance of the directions issued by the CPCB under Section 18(1)(b) of the Water Act dated 10th January, 2011, the UPPCB issued directions under Section 33A of the Water Act on 27th January, 2011, directing the distillery unit to submit a time bound action plan. On 5th July, 2011, the CPCB issued a show cause notice under Section 5 of the Environment (Protection) Act, 1986 to the distillery units, where the following observations were made:

"Sugar Division:

1. All bypass routes of water discharge from their sugar mill have been blocked.
2. Out of five lagoons, three are lined and two are unlined and normally, the unit uses the lined lagoons for the storage of the treated sugar mills effluent.
3. The remaining two unlined lagoons shall be made lined before start of next crushing season.
4. Existing drain shall be repaired before next crushing season.

Distillery Division:

1. The unit operates only up to 60-70% of the licensed capacity of 90 KLD.
2. The pipeline emanating from distillery connecting the Phuldera drain has been disconnected.
3. Vertical Multi Effect Forced Circulation, Evaporator shall be installed within eight months.
4. Zero-liquid discharge shall be achieved by RO System, Evaporator followed by bio-composting and co-processing.
5. Brick lining in the ETP area is under progress to improve the cleanliness of the area.
6. Co-processing of concentrated spent wash is being explored.
7. The storage capacity of lagoons is equivalent to two months storage of generated spent wash at full capacity."

5. The CPCB vide its letter dated 10th August, 2011 issued directions to these units and directed that production of the distillery should be restricted to 60 KL/day. On an application of the distillery unit, consent was granted from 1st January, 2012 to 31st December, 2012 vide order dated 6th March, 2012 wherein it was also directed that the unit should not discharge any effluent outside their premises. The unit was further directed that besides this, it shall install Incineration Boiler and furnish a Bank Guarantee of Rs. 5 lakhs for compliance of the consent conditions. On various complaints inspections were conducted and directions were issued reducing the production capacity of the unit to 35 KL/day. However, on subsequent events, the unit was further directed to operate properly and maintain the performance of the ETP while increasing its production capacity to not more than 60 KL/day.

6. An inspection of the distillery unit was also done on 28th May, 2013 in respect of the directions given by Sub Divisional Magistrate, Garmukhteshwar vide letter dated 28th May, 2013. At the time of inspection, it was found that no effluent is being discharged in the Phuldera Drain but sludge has been found at several places in the said drain and that colour of the water was brown. The regional office therefore, issued a notice dated 14th June, 2013 to the distillery. It also directed the distillery unit not to discharge spent wash into the drain and also start the cleaning of Phuldera drain at the earliest, failing which action would be taken against it. In reply to the above notice, it was stated that they were not discharging any effluent into the drain. However, records before us reveal that there were persistent defaults and breach of conditions of the consent granted, vide order dated 6th March, 2012. On 22nd October, 2013, the UPPCB issued a show cause notice as to why the consent to the unit should not be rejected and its operation closed by disconnecting the electricity and water and

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the Bank Guarantee furnished by it be forfeited. Reply to this show cause notice was given by the unit on 30th October, 2013. An inspection of the unit was also conducted on 28th October, 2013 after which the Board forfeited the Bank Guarantee of Rs. 5 lakhs and vide its letter dated 8th November, 2013, issued the following directions to the unit:

> "That the replying Respondent has forfeited the bank guarantee of Rs. 5 lakhs and issued directions vide letter dated 8th November, 2013 to the unit that it should make a wall all around bio composting yard by 15th December, 2013 so that no effluent can overflow in any condition to nearby well or drain. For domestic effluent separate sewage treatment plant be installed and treated effluent by mixing with treated effluent of sugar unit be used for irrigation through the drain and it should be completed by 31st December, 2013. The sludge deposited in Phuldera drain be taken out with the consent of irrigation department and be converted into bio compost. Till further orders the production be ensured to 30 KL per day in place of 60 KLD as permitted earlier and no effluent be discharged outside the premises and the time bound programme be submitted for installation of incineration boiler. Besides this, bank guarantee of 20 lakhs be submitted to the board in the prescribed proforma.
>
> That consent for the year 2013 to the sugar mill under Water Act was granted vide order dated 16th April, 2013 wherein it was mentioned that the consent is being granted for discharge of domestic effluent and no industrial effluent will be discharged. The ETP will be operated and maintained properly so that the effluent is discharged as per the standards. It was also mentioned that no solid material would be discharged so that water of any River, underground water or any other water source is polluted and the compliance of the condition of bank guarantee will be ensured. Similarly consent under Air Act was granted for the year 2013 vide order dated 16th April, 2013 wherein it was directed that wet scrubber should be operated so that emissions will be as per the norms of the Board. The unit has to install wet scrubber within two months on 77 TPH boiler which is required and for compliance of the same should submit a bank guarantee of 2 lakhs to the Board."

7. It is clear from the records before us that Simbhaoli Spirits Ltd. i.e. the distillery unit has two main sources of air pollution viz. 8 T/H bagasse fired boiler having multi tube type dust collector and 10.5 T/H bio gas fired boiler with 52 meter high combined stack. On the other hand, Simbhaoli Sugars Ltd. has three air pollution sources viz. 40 T/hr bagasse fired stand by boiler having multi vertex type dust collector & 45 meter high stack, 77 T/hr & 110 T/hr bagasse fired boiler having common E.S.P. & 52 meter high stack. During the course of hearing of the application, another affidavit dated 14th February, 2014 was filed on behalf of the UPPCB in which it was stated that vide directions issued on 8th November, 2013, the unit was to install incineration boiler for spent wash management, restrict total storage capacity of storage lagoons to 30 days of spent wash generation for composting and install Sewage Treatment Plant for management of domestic effluent, which according to the Board was not done. The unit was also directed to remove the sludge from the Phuldera drain and utilize it through bio-composting. This was also not done completely. The unit also failed to dismantle the concrete pipeline adjoining Phuldera drain in spite of specific directions in that regard. In this affidavit, it was also stated that though the unit had installed certain pollution control equipments, yet, as is evident from the water quality of Phuldera drain and Syana Escape during inspection on 13th February, 2014, the unit is not ensuring Zero liquid discharge. At this stage, it will be relevant to refer to the observation and conclusions drawn upon the joint inspection of the above stated units conducted on 13th February, 2014 by the Member, Secretary, CPCB and Member Secretary, UPPCB jointly in compliance of the order of the Tribunal dated 12th February, 2014:

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(i) "With regard to Simbhaoli Spirits Ltd., it was observed that some effluents from this unit were let-out by a cement pipe into the adjoining Phuldera drain and to stop this practice, the CPCB has already directed in its show cause notice issued to the unit on February 10, 2014 (Annexure-I) to dismantle this arrangement. Moreover, UPPCB has also directed the Unit to dismantle the same in the year 2010 and 2011 (Annexure-II). It has further been observed that effluent treatment facilities such as reverse osmosis plant, bio-digesters and bio-composting were in operation. However, Multiple Effect Evaporator (MEE) was not in operation. Further, it has been observed that lined lagoons built by the unit have storage capacity for more than 30 days and this storage capacity has to be reduced. It has further been observed that adjacent to the lagoon, rain water mixed with spillages of effluents were seen and such practices has to be stopped.

The unit Simbhaoli Spirits Ltd. has to explain the show cause notice served to it on or before 25th February, 2014 based on which CPCB proposes to pass further appropriate directions.

(ii) With regards to Simbhaoli Sugars Ltd., it was observed that effluent treatment plant was in operation. It has been further observed that the treated effluents from the Sugar unit are stored in the lagoons and since the effluents are not utilized for irrigation purpose, they are stored and causing septicity in the lagoons due to its unutilization for irrigation. It has also been observed that the effluents after treatment are also disposed in the adjacent municipal drain which ultimately joins Phuldera drain. CPCB has issued direction to this unit on 10th February, 2014 and shall monitor the compliance as per the directions served which *inter alia* also include prohibition of any by-pass of the effluent. The unit has to respond to the directions issued before 25th February, 2014.

(iii) With regards to Gopaljee Dairy Foods Pvt. Ltd., the unit was operating the effluent treatment plant and its effluent disposal was noticed in the Siyana Escape which ultimately after travelling for a distance of abput 10 KM is joining the River Ganga. The samples of treated effluents have been collected for verification of compliance. This unit has also been issued the directions on February 10, 2014 by CPCB and compliance will be monitored. As such, no specific observations are made regarding this unit and after analysis of samples, appropriate actions as per the directions issued will be followed up.

That both the Member Secretaries all along the Phuldera drain and observed that the combined effluent (sugar and distillery) which might have discharged intermittently by Simbhaoli Sugar and Distillery divisions that was found in the drain all along till it joins the Siyana Escape which ultimately joins the River Ganga. This drain is also carrying untreated domestic sewage of adjoining localities of Simbhaoli and Bauxer. In this context, the directions issued by the CPCB on 10th February, 2014 will stand as it is and unit shall face closure in case, by pass pipeline to the Phuldera drain not dismantled. In case of Sugar division, the unit has to comply with the standards applicable for disposal into the drain and unnecessary storage of effluents in the lagoons should be avoided which are causing septicity and may be serving as breading ground of vetrors/mosquitoes."

After the above inspection report was examined by the consent Board, the UPPCB vide its letter dated 17th February, 2014, keeping in view the failure of the unit to comply with the directions stipulated in the various orders and in public interest, refused consent to the distillery unit for discharge of effluent in terms of Section 25/26 of the Water Act. The inspection was also conducted of Gopalji Dairy and consent to that unit was also declined vide order dated 28th February, 2014.

8. It should be noted here that various affidavits have been filed by the CPCB at different stages of the case. In its first affidavit filed on 11th November, 2013, the

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CPCB, (Respondent No. 3) took the stand that both Simbhaoli Sugar Mills Ltd., its distillery unit as well as Gopaljee Dairy Pvt. Ltd. are discharging effluents into the Sambhaoli drain which ultimately meets the River Ganga. The CPCB regularly monitors the water quality of Rivers and drains and the water quality of the Simbhaoli drain as monitored by it during the period of April-May, 2012 was clearly violative of the prescribed standards, recorded as follows:

Sampling Location	pH	BOD (mg/1)	COD (mg/1)	TSS (mg/1)	Cl-(mg/1)	Flow (MLD)
Haroda Village	7.88	47	215	235	87	5
Pooth Village (at confluence with River Ganga)	7.78	109	724	38	108	32

From the records before the Tribunal, it is evident that in furtherance to the inspection of Simbhaoli Sugars Ltd. conducted by the CPCB on 4th May, 2005, show cause notice for closure under Section 5 of the Act of 1986 was issued to the Unit on 11th July, 2005. Even subsequently the unit was inspected by the officials of CPCB on 25th January, 2006 and directions in relation to removal of underground pipelines up to Phuldera drain were issued and the unit was required to apply concentrated bio-methaned spent wash for composting through auto sprayer cum tilting machine. This unit was again inspected by CPCB on 31st May, 2011 and further directions were issued under Section 5 of the Act of 1986 on 10th August, 2011. These directions *inter alia* included that the unit shall provide adequate treatment to the effluent generated from the Sugar Mill so as to meet the prescribed effluent discharge standards and untreated effluent shall not be bypassed from ETP system. The unit shall either dismantle or provide with impervious lining to the unlined lagoons for storage of treated effluent generated from the Sugar Mill, shall restrict its manufacturing operation to 60 KLD till commissioning of additional RO and MEE plants and shall seek permission from CPCB for restoration of manufacturing operation from the Board.

9. According to the CPCB, it is monitoring the water quality of River Ganga for last many years between Garhmuketeswar and Narora and the data collected indicates that it is in conformity with the primary water quality criteria for outdoor bathing. In an inspection conducted on 4th September, 2013, the Sugar unit of Simbhaoli Sugar Mills was not in operation due to off crushing season, while the distillery division of the unit was found not complying with the directions issued on 10th August, 2011. Gopaljee Dairy Pvt. Ltd. was found not complying with the prescribed standards for effluent disposal. On 4th September, 2013, the samples that were collected from the distillery unit of the division show the results indicating presence of distillery effluents in the drain. They were stated to be as under:

> "The CPCB collected the samples of waste water from Phuldera/Simbhaoli drain originating from Simbhaoli Sugar Mills Ltd. (Distillery division) on 4th September, 2013 and analysis result showed pH-7.98, TSS-1032 mg/1, TDS-8920 mg/1, BOD-661 mg/1 and COD-6926 mg/1 indicating presence of distillery effluent. The discharge effluent sample, collected on 4th September, 2013 from Gopal Jee Dairy Pvt. Ltd. showed pH-7.08, TSS-265 mg/1, TDS-916 mg/1, BOD-152 mg/1 and COD-462 mg/1."

In the affidavit filed by the CPCB on 14th February, 2014, it has taken up the stand that it carried out inspection of the Simbhaoli Sugar Mills Ltd. along with its distillery division as well as of Gopaljee Pvt. Ltd. along with water quality of Simbhaoli drain on 3rd December, 2013. It also refers to the directions issued by the UPPCB under Section

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33 of the Water Act on 8th November, 2013, allowing respondent no. 7 to operate at a reduced capacity of 30 KLD with conditions of zero effluent discharge to Phuldera/Simbhaoli drain and desludging of Phuldera drain. The inspection report states that the operating rate of the unit was 51 KLD. It utilizes nearly 922 KLD of fresh water and also that it had not installed flow measuring devices to record the volume of spent wash generated. It has been recorded in the report that the non-processed effluent is discharged to Phuldera drain. Though, there was a shed to store the prepared compost but it was damaged. No storage sheds were provided for press mud. Compost yard is lined but the catch pits and drains have been damaged on many places and press mud stored on underlined area. Incineration boiler was not installed. On the basis of the inspection and noticing the pollution cost and shortfall in compliance with the prescribed parameters, the CPCB re-inspected the unit on 16th January, 2014. The analysis results showed the unit as non-compliant and it proposed action against the unit. The analysis results recorded are as follows:

1. "The MLSS in aeration tank was 2333 mg/1, which need to be improved.
2. The ETP outlet samples had pH-8.37, TSS-82 mg/1, TDS-1374 mg/1, BOD-21 mg/1 and COD-113 mg/1.
3. There was mixing of other effluent with ETP outlet in the mill's drain, through which effluent was taken to the lagoons. The sample collected from mill's drain had pH-7.27, TSS-164 mg/1, TDS-1408 mg/1, BOD-967 mg/1 and COD-1439 mg/1, indicating non compliance of prescribed norms for irrigation i.e. TSS-100 mg/1 and BOD-100 mg/1.
4. The unit has 03 lined storage lagoons and 02 unlined storage lagoons. Total capacity of lined lagoons is 15000 m^3 and approx 8000 m^3 of effluent was stored.
5. The effluent stored in lagoons had pH-5.84 mg/1, TSS-105 mg/1, TDS-1764 mg/1, BOD-324 mg/1 and COD-959 mg/1 indicating non compliance of prescribed norms for irrigation i.e. TSS-100 mg/1 and BOD-100 mg/1.
6. BOD of ETP outles, mill's drain and storage lagoons are 21, 967 and 324 mg/1 respectively, which indicates that untreated effluent from the Sugar Unit is discharged into lagoons through mill's drain. Since the Sugar unit is found non-compliant, appropriate action is being taken."

10. The CPCB team also collected samples up and down stream of the Phuldera drain with reference to the lagoons of these units. They noticed that the water of Phuldera drain was brown coloured, when it should be colourless and the comparison of up and down stream was recorded as follows:

Sample Location	pH	TSS (mg/1)	TDS (mg/1)	COD (mg/1)	BOD (mg/1)
Phuldera drain upstream	7.32	276	848	182	29
Phuldera drain downstream (at discharge point of the unit)	7.14	327	772	530	282
Phuldera drain downstream (at Ganga Barrage	7.18	176	598	437	143

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Bauxer)					
#Phuldera drain downstream at Siyana (at 100 m. from confluence point of Phuldera drain, Discharge from Gopaljee Dairy and Ganges Canal)	7.86	472	210	09	03
Prescribed Limits	5.5 to 9.0	100	--	250	30
# There was heavy discharge from the Ganges canal during inspection as compared to the discharge from Phuldera drain and Gopaljee diary.					

The analysis of the above reports clearly demonstrated that this unit was a polluting unit.

11. However, in relation to Gopaljee Dairy Pvt. Ltd., a detailed inspection was conducted, copy of which is annexed to the inspection report as Annexure 3. It was found that the unit was complying with the prescribed effluent norms except that there were no flow measuring devices at the outlet of the ETP.

12. Still another affidavit was filed on behalf of the Board in furtherance to the inspection conducted on 16th January, 2014 wherein it was observed that the unit was in operation and found bypassing/discharging untreated effluent into mill's lagoons through mill's drain, which is used for irrigation in nearby fields of farmers.

13. Consequently, on 10th February, 2014 the CPCB issued show cause notice to Simbhaoli Sugar Ltd. as to why the unit be not ordered to be closed for all its manufacturing operation till the direction contained in the order dated 10th August, 2011 are complied with, to its satisfaction. Objections from the unit were invited. In this show cause notice and with reference to different inspections, it was specifically stated that "it is evident that the unit has not complied with the CPCB directions dated 10th August 2011 and found discharging the commissioned effluent exceeding prescribed limitations into the Phuldera drain." It may be noticed that such high officials of respective Boards not only filed inspection reports simplicitor, but photographs showing various activities by this unit which were generating pollution in both ground and surface water. The analysis reports of the samples collected on 13th February, 2014 showed that the discharge levels were beyond the prescribed limitations. Leachate along with run off rain water, stored into an unlined pit near storage lagoons, showed very high quantity of pollutants like pH 8.15 TSS (mg/1) 840, TDS (mg/1) 12280, BOD (mg/1) 1700 and COD (mg/1) 5403. Deficiencies were noticed and consequently, the sugar unit was directed to install incineration boiler for spent wash management. It was directed to dismantle unlined lagoons which had not also not been done up till then. The unit was also directed to carry out monitoring of the impact of using treated effluent for irrigation on the ground water through the piezometric wells which had also not been installed.

14. Simultaneously, Gopaljee Dairy Pvt. Ltd. was directed to stabilize the aeration

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tank and maintain the desired level of MLSS and to confer to the prescribed norms. It was contended on behalf of the UPPCB that in view of persistent defaults on the part of this unit, either the Tribunal may issue appropriate directions or the unit should be ordered to be closed down.

15. Respondent No. 7, Simbhaoli Sugar Mills, has filed various affidavits in response to the main application filed by the applicant. In its affidavit filed on 11th December, 2013 the stand of the unit was that Simbhaoli distillery is one of the latest industries in the area and was established in the year 1943. It is situated in a low lying area along-side other nearby villages where more than 250 families are residing. On the one side of the factory, there are railway tracks and on the other side, there is Nawada Road, an irrigation canal and then the Phuldera drain. Agricultural land, residential houses, educational institutions, and a Gurdwara are also situated in nearby vicinity. It is the case of the Sugar unit that it is because of the low lying area, that the domestic waste water from the habitants of worker's colony and residents of nearby villages as well as rain water, flows into the Phuldera drain through a pipeline constructed upon the Anoopshahar branch of the Ganga canal. This is in existence for a long time. In replying to the allegation of brown colour of the drain, it is stated that milky blackish water which is sometimes observed in Phuldera drain is attributable to the flow of rain water along with the domestic water of village situated near that drain. The respondent unit claims to be regularly following all rules and regulations and directions issued by the concerned Boards and regional offices from time to time. This respondent further states that they have already disconnected the starting point of Phuldera drain from the factory side and information was sent long back to the Board. It claims to have installed the MEE after which it has full facility to control and treat the effluent. The distillery effluent is properly treated to be discharged. It is primarily treated for reducing its BOD, COD and obtained methane gas is used in its boilers and then concentrated through Reverse Osmosis Plant and MEE to achieve the required levels. The effluents then is stored in lagoons and used in bio-composting process for making good quality bio-manures. It is stated that the allegation of contamination of ground water is baseless and not supported by any evidence. For the period starting from 1st October, 2010 to 30th September, 2013, the unit of the respondent has earned Rs. 293.43 lakhs after selling 5.24.730.65 quintals of organic bio-manure. It is further the case of the said respondent unit that the Simbhaoli drain does not exist and it is only the Phuldera drain which originates from Phuldera village and carries domestic waste, rain water, village effluent and animal dung waste, as a number of villages are situated near to this drain. In the study stated by the applicant which was carried in 82 km stretch of upper Ganga River region from Brijghat to Narora. The study was published in 2005. The area was found to be rich in biodiversity. The area was declared as Ramsar site where various species of dolphins and hundreds of wetland birds and crocodiles etc. were recorded to be the part of this biodiversity. This itself is a good evidence that units are not polluting Ganga River and the allegation of pollution from industries, including the respondents are baseless. The respondent unit has adopted latest technology for producing sulphur free refined sugar and sold under the brand name TRUST and the customers of its refined sulphur free sugar are IRCTC, Air India, Hotel Taj and many other organizations. All these purchasers are quality sensitive. It is the case of the respondent unit that since the sugar mill is producing sulphur free refined sugar, now the question of gas emission arises no more. Boiler of both the units are carrying stack monitoring as per norms prescribed by the UPPCB and obtaining air consent every year, to keep check on CO_2 levels. The factory also carried assessment of ground water quality near the sugar and distillery units by a competent authority and the results have been found to be within the parameters. In all, the answering respondent state that they are not discharging any industrial effluent into the Phuldera drain and that they have installed all the pollution control

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equipment/devices like anaerobic digesters for reduction of COD and BOD level of effluent, reverse osmosis plant of 720 KL and MEE having capacity 720 KL. The unit contended that the samples collected and as disclosed in the articles published in 2010 in various newspapers, were without notice to the replying respondent and they are even contrary to the facts existing on site. Some photographs have been placed along with this reply to show that the flooding takes place during the rainy season and flooding the plant, machinery and the lagoons of the unit. In the affidavit filed on 10th February, 2014, it is stated that the Respondent unit had consent till the year 2013 and for the years 2014-2015, it has deposited the requisite fee and is awaiting formal order. In furtherance of the order of the Tribunal dated 10th February, 2014, the Respondent unit had applied for renewal of the consent. It is also averred that the Respondent unit purchases/receives molasses and sends it for fermentation and distillation in alcohol-manufacture division of the Distillery unit and has provided details thereof. In its affidavit dated 3rd March, 2014, it was stated by the Respondent unit that the distillery unit has disconnected and dismantled the pipeline existing within its premises in the year 2008 after receipt of show cause notice dated 25th January, 2008.

16. We may also notice here that surprisingly this Respondent unit filed objection to the report prepared by the experts of the CPCB and UPPCB on the basis of inspection visit held on 24th February, 2014. It is stated that the report of the CPCB is not sustainable and admissible as the visit was done ex parte and the samples were taken in violation of the provisions of law, it is submitted that while the visit was on 24th February, 2014, the distillery unit of Respondent No. 2 had stopped operating and was lying closed since 20th February, 2014 following the rejection of consent by the CPCB vide order dated 17th February, 2014. There was no discharge through concrete pipeline but still the inspecting team went to notice that brown colour effluent was seen in the Phuldera drain at the time of the inspection. It specifically denied that it was found to be discharging untreated effluent into the municipal drain which runs outside the boundary of the unit. Still by another affidavit dated 20th March, 2014, it was stated by the replying respondent unit that analysis reports and results cannot be relied upon which had been collected by the team of experts on 13th February, 2014 as they were not collected in accordance with law. It is stated that the laboratory established and recognised by CPCB can only take samples in the area situated in the Union Territory. Thus it finally submitted that the joint inspection report dated 13/2/2014 conducted by the Respondent Boards cannot form the basis for declining consent to the unit and the order declining consent under the Water Act and the Air Act may be re-considered by the Authorities.

17. Like Respondent No. 7, Respondent No. 8 has also filed different affidavits. First affidavit by this respondent no. 8 i.e. Gopaljee Dairy Food Pvt. Ltd. is dated 13th January, 2014. It is stated that livelihood of about 1 lakh small farmers/family members are dependent upon the answering Respondent as they regularly supply raw milk to this unit. The unit claims to be complying with all environmental laws and that it has installed all devices and machineries which are required under the terms of the consent given by the respective Boards. The unit also states that it has installed ETP and it has full facility to control and treat all its effluent to bring the desired parameters. According to this respondent also, the Simbhaoli drain does not exist and there is only the Phuldera drain in which villages discharge domestic and other wastes. It is not contaminated because of discharge from the respondent unit and that reports which found pollutants in the River Ganga are because of other factors and not as a result of effluents being discharged by the Respondent Unit. The Respondent unit got its effluents analysed by EKO PRO Engineers Pvt. Ltd. on 30th October, 2013 from the ETP installed and reports were found to be satisfactory.

18. In the affidavit dated 18th February, 2014, respondent no. 8 stated that earlier

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it was running its dairy on the basis of the lease taken by Milan Dairy Foods Pvt. Ltd. but in 2008 the unit was brought under the umbrella of Gopaljee Dairy Food Pvt. Ltd. It was given consent to establish in the year 1983 which was renewed from time to time. The unit was given consent to operate from year to year basis. It had applied for seeking consent of the UPPCB to operate in December 2013 for the year 2014-2015 which is stated to be pending with the respondent-Board. Further, it is averred that the unit completely understands its corporate social responsibility and has been involved in recycling of water, thereby continuously endeavouring to reduce the water extraction from the earth. The milk silos are cleaned through automatic centralized CIP System and the CIP solution is collected and re-circulated through close pipelines in CIP tanks and only a small quantity of pre-rinsed water is wasted/drained.

19. This respondent also disputes the finding returned by the Joint Inspection Team comprising of Member Secretary, CPCB and the Member Secretary, UPPCB, on 13th February, 2014 as well as the result of the water analysis taken by them. With reference to the various tests conducted by the UPPCB and certain tests that the said respondent got conducted from the laboratories recognised by the MoEF, attempt is made to show that the unit is not causing any serious pollution. Further, according to this respondent, it has requested the UPPCB and the Nagar Palika to allow disposal of ETP water in the sewer lines. The Nagar Palika had in turn written to respondent no. 6. However, the matter is pending with the Board for a period of nearly two years. In another affidavit dated 3rd March, 2014, it is averred by respondent no. 8 that the sample has been collected by the joint inspection team in violation of the provisions of law and the results thereof cannot be relied upon by the Tribunal. It is the case of respondent no. 8 that since the inspection team itself noticed that the MNSS records the reading of 3109 mg per unit, which itself show that the BOD, COD would remain within the parameters prescribed. The action plan within the acceptable operating range indicates a healthy aeration system capable of achieving the prescribed norms for effluent quality. It is important to note that the affidavit file by the Respondent No. 3 and 6 clearly observes that the ETP was properly functioning. Respondent no. 3, on the basis of the inspection conducted on 3rd December, 2013 had issued the directions on 10th February, 2014 and the compliance report was required to be filed within 60 days. This was complied with and the respondent claims to have submitted the compliance even prior to the expiry of 60 days vide letter dated 26th February, 2014 wherein they even requested to conduct re-inspection of the premises.

20. Still another affidavit dated 12th March, 2014 was filed on behalf of respondent no. 8. There the respondent stated that vide letter dated 28th February, 2014, Respondent No. 6 has declined the consent to operate under Section 25, 26 of the Water Act on the ground referred to in the joint inspection report dated 13th February, 2013. The consent to operate was also declined under the Air Act. It further stated that it was taking all steps to further improve the ETP functioning. It proposes to construct an additional oil and waste trap to reduce the load on the operational ETP. The sludge generated during centrifugal separation of milk shall now be collected and sold to poultry farm as poultry feed, as the sludge is nothing else but milk solids that is, protein, carbohydrate etc. The water used in bottled rinsing/washing shall be re-used in crate washer for washing the crates. Paneer milking water was to be re-utilized for reconsideration of skimmed milk powder after reprocessing it. An additional tank of 1 lakh ltr. capacity is also planned to be installed at the ETP, to store effluent up to 12 hours to ensure maximum retention and maximum efficiency in ETP. For this, the said respondent had prayed for grant of four months time and after these modifications it was stated that the unit would be absolutely pollution free and would be a no discharge unit.

Discussion on prevention and control of water and air pollution by these units in furtherance to the directions issued by respondents no. 3 and 6 during the

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pendency of the application:

21. Having discussed the stand of the various parties to the lis, now we have to dwell upon the cumulative effect of the pleaded cases upon environmental issues, falling for consideration of the Tribunal. Since a specific case had been made out by the applicant duly supported by Respondent no. 3 and 6 as well as the various inspection/analysis reports stating that respondents no. 7 and 8 are polluting units. Respondent no. 7, particularly, appears to be a serious polluter and is responsible for polluting the ground/surface water. We will now be discussing in some detail, the extent of quantitative and qualitative pollution caused by this unit in the later part of this judgement. At this stage, we must notice that both the respondent nos. 7 and 8 had, during the pendency of the application, somewhat shifted their stand and they came forward to take further steps and installed anti pollution devices to ensure further prevention and control of pollution in the interest of environment. As is evident from the affidavits filed by the respective respondents, both respondents had taken steps to improve performances of their anti-pollution devices. These respondents not only made improvements in existing devices but even made additions to ensure further reduction in the pollutants resulting from their respective activities.

22. On 12th February, 2014, the Tribunal after hearing the counsel for the parties at great length noticed that according to the CPCB there is a pipeline laid down till Phuldera drain which ultimately meets Ganga, by which the effluents are discharged by respondent no. 7. In the consent application filed, it had been stated by these units that they are discharging the trade effluents on their own land. Expressing dissatisfaction over the conduct and records of the UPPCB, a query was also put to this Board as to why despite persistent and admitted defaults since the year 2010, consents had been renewed by the said Board. The Tribunal therefore constituted a special inspection team headed by the Member Secretary of the Central Pollution Control Board and Member Secretary of the UPPCB to inspect the premises and submit a report in relation to both respondents no. 7 and 8.

23. Further direction was issued in the said order to report if both these units had complied with the directions that had been issued by the Boards, right from the year 2010, at least. A number of deficiencies had been pointed out by the respective Boards, which were noticed in the order of the Tribunal dated 12th March, 2014. There it was pointed out that even the maps submitted by the project proponent which are placed on record before the Tribunal, were not depicting the correct position at site. The State of Uttar Pradesh as well as the CPCB pointed out the following shortcomings and objections:—

"According to the Uttar Pradesh Pollution Control Board inter alia but primarily following are the main shortcomings:

i. The concrete pipeline should be demolished from sump well as shown in the map (it is the sump well of the Project Proponent itself and the pump adjacent thereto to Phuldera drain should be demolished).

ii. MEE should be made operative to its optimum capacity.

iii. Incinerator should be installed to incinerate the wasta and to ensure no discharge.

iv. The Project Proponent should have its own STP for its domestic discharge of the colonies of its employees.

According to the Learned Counsel appearing for the Central Pollution Control Board in relation to the above they have the following objections:

i. There should be a separate settling tank and lagoon should not be used for settling of the effluents.

ii. Lagoon capacity should be ensured on 30 days basis.

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iii. The leachates are being stored in an unlined tank thus causing pollution of the underground water."

24. Vide order dated 24th March, 2014, the Tribunal directed the concerned engineers of the respective Boards and the project proponent to prepare a Joint report in regard to some of the material issues, which had been stated in the order, that is, blockage of drains, not the main drain at Points B and C of the Map prepared by the UPPCB, establishment of STP, installation of incinerators, raising of the effluent from Lagoons to the fields for agricultural purposes and possible points of discharge in the Phuldera drain. Persistently, there had been serious disputes regarding installation of anti-pollution devices and measures and the above issues remaining unresolved over a considerable period of time and more particularly, the fact that the project proponent/Units had been claiming that they had been taking anti-pollution measures effectively and they were not polluting the surface/ground water. To put an end to this persistent controversy and to ensure that the environmental interest does not suffer any further and the matters are dealt with in their correct perspective expeditiously, the Tribunal on that date also directed that the Hon'ble Expert Members of the Tribunal would visit the site on the date and time convenient to them.

25. The provisions of Section 19 of the NGT Act state that the Tribunal is empowered to regulate its own procedure and is to be guided by the principles of natural justice. In terms of Section 19(4)(c) of the NGT Act, the Tribunal has the same powers for issuance of Commission as are vested in a civil court under the Code of Civil Procedure, 1908 (for short 'the CPC') while trying a suit. The Bench of the Tribunal consists of Judicial as well as Expert Members. Thus, wherever it considers it appropriate and in the interest of justice, the Tribunal can direct inspection by the Court/Tribunal as is even contemplated under Order XVIII Rule 18 of the CPC. The Members can prepare an inspection note/memorandum, which would be part of the records. Such an approach has been adopted by the Tribunal even in other cases. The order of the Tribunal directing inspection by Expert Members has been upheld by the Supreme Court in Civil Appeal No. 8781-83/2013 titled *Ministry of Environment & Forests* v. *Nirma Ltd.* decided on 4th August, 2014 where the Supreme Court held as under:—

> "The primary challenge appears to be in respect of the determination of the National Green Tribunal (hereinafter referred to as 'the Tribunal') requiring two of its technical members to J.S. visit the site, and make a report after carrying out a personal inspection thereof. We find nothing wrong with the above procedure adopted by the Tribunal. The aforesaid procedure is well-known to law and is also contemplated under Order XVIII Rule 18 of the CPC."

26. In furtherance to the order of the Tribunal dated 24th March, 2013, the Expert Members of the Tribunal visited the units of Simbhaoli Sugar and Distillery Units as well as Gopaljee Dairy. As already noticed, the Member Secretary of the UPPCB as well as the CPCB had visited the sites of these units and submitted a report over which the industries had expressed certain reservations on the ground that their concerns had not been duly addressed. Thus, considering the submission of the parties and even with their consent, order dated 24th March, 2013 was passed. Three Expert Members of the Tribunal visited the site on 29th March, 2014 to assess the adequacy and appropriateness of all the anti pollution measures taken by the industries and by giving due considerations to the ground situation.

The report prepared by the Expert Members was placed on record of the file and copies provided to all the parties.

27. In the report, the Expert Members noticed various defects and shortfalls in the functioning of these units and that they still were a source of serious pollution. It was particularly noticed that the effluents flowing in Phuldera drain was having high level

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of pollution and that such level of pollution was not possible, especially the BOD, COD and TDS, except due to discharge of sugar mill effluents. The anaerobic digestors were not operating satisfactorily as the BOD was still 12,042 mg per litre. The samples collected from the Phuldera drain showed TDS 8920 mg/1, BOD 661 mg/1 and COD 6926 mg/1. Such highly concentrated pollutants would only result from a sugar factory and not even from any sewage discharge. The distillery unit had provided treatment facility but the treatment units were not adequately working. The concept of Zero Liquid Discharge was also not adhered to. The unit had no separate arrangement for collection, treatment and disposal of leachate and storm water, therefore, the entire storm runoff gets contaminated by spent wash, press mud or bio-compost as it is all in open and is exposed to rain. The sugar mill ETP was found to be operational, however, the lagoon receiving its treated effluent was having very high level of pollution. The RO Plant was not operating for which the excuse given was that of team shortage, which found no favour with the Expert Members as the Unit could always provide external source of energy to clean the water and avoid continuous pollution. The Expert Members, taking advantage of the site inspection even provided a "way ahead", giving different suggestions and steps that the Unit should undertake to ensure no pollution. Out of the 14 suggestions made, 13 related to the Simbhaoli Sugar Mills and Distillery Unit for preventing and controlling the pollution resulting from their activities. Only Suggestion 14 related to Gopaljee Dairy where they were required to establish an automatic continuous online monitoring system for assessing the quality of final effluent, using some important indicator parameters. It was also suggested that the data transmitted to the UPPCB and CPCB should be reviewed by these Boards and all abnormal situations should be brought to the knowledge of the industry along with corrective measures.

28. On 30th May, 2014, detailed arguments were heard with reference to the report submitted by the Member Secretaries of the respective Boards as well as the suggestions that had been advanced by the learned Expert Members of the Tribunal.

29. Having considered various aspects, the reports on record and the extent of pollution that was resulting from the activities of these respondents no. 7 and 8 respectively, vide a detailed order dated 31st May, 2014, the Tribunal passed the following directions in relation to respondent no. 7 in paragraph 8 of the order, which reads as under:—

> "After hearing the parties we found it necessary and formulated the following directions to be complied to remedy the problems and directed them to be considered in the meeting after furnishing copies of the same to all the concerned:
>
> i. The Unit shall operate the various plants/equipment in a manner that the performance standards in relation to environmental norms are complied with. For example, primary treatment i.e. digesters is expected to achieve BOD level of 4000 mg/1 against which the present level of BOD achieved from digester is about 12042 mg/1. Therefore, the unit should immediately improve the performance of anaerobic digester by upgrading it or installing the new ones. Similarly, the industry should have adequate capacity for achieving desired concentration of the entire spent wash through RO and MEE.
>
> ii. After concentration, the spent wash should be incinerated for which the unit should make arrangements for co-processing with cement plant or should install its own incinerator with boiler apropos to its requirement. The excuses for poor performance of any of the units based on non-availability of biogas, effluent quantity or any other reason should not be permitted.
>
> iii. The industry should dismantle all by-pass arrangements both in distillery and sugar unit including concrete channel crossing Gang canal, pipelines and portable/fixed pumping network immediately. All underground by-pass

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arrangements should also be dismantled.

iv. The industry should plan and construct a well-designed viable arrangement for draining the run-off water only from their area (both sugar and distillery units) which in any case should not mix with domestic or industrial effluent/leachate or compost/press mud or any other solid wastes.

v. Since, the present compost plant is exposed to the rainwater and is causing serious rainwater pollution; this plant should be closed down immediately. The industry should make arrangement for incineration of their concentrated effluents to achieve zero discharge.

vi. The sugar unit should dismantle the unlined lagoon which in any case is on the other side of National Highway and hence no possibilities exist for repair and maintenance of the underground pipeline that transfers treated effluent from its ETP.

vii. The ETP of the sugar unit should be operated round the clock in a manner that the prescribed environmental standards for effluent discharge are strictly adhered to.

viii. Upon dismantling of all underground and surface bypass arrangement and segregating the storm water mixing with effluent, the industry should conceive and construct drain/pipe network for discharge of treated effluent to Phuldera drain such that the same could be utilized for irrigation purposes, if needed.

ix. For the purposes of achieving desired output, the industry can take help from Irrigation & PH and Public Works Departments for obtaining technically viable options.

x. Both the units should have online automatic monitoring arrangements for compliance of adherence to environmental standards. For this facility of transmission of real time data on BOD/COD/TOC, Turbidity and Conductivity should be created for Digester, RO, MEE, and ETP. These units should also be connected to power backup such that these are operating even during power failure. The data transmitted to the UP-PCB and CPCB should be reviewed by 10 these Boards and all abnormal situations should be brought to the knowledge of the industry along with corrective measures.

xi. The units (both sugar and distillery) should reduce its water consumption as per the national norms. At present, the units are drawing substantial ground water for which online water consumption meter should be installed and accordingly, the water cess should be levied.

xii. The entire stretches of Phuldera drain from distillery unit upto its confluence with Siana Escape Canal should be properly dredged and aligned to clear any leachate/sludge deposition.

xiii. The industry should submit an action plan incorporating the above suggestions along with time line. The renewal of consent and permission to operate shall be considered only after the action plan and implementation schedule are found satisfactory.

xiv. The sugar and distillery industry should be asked to pay appropriate cost for environmental damages for causing water pollution all these years.

30. After the Tribunal had passed the above directions for compliance by the unit, it was contended on behalf of Respondent No. 7 that they would be able to comply with the directions of the Tribunal and install appropriate anti-pollution devices with the exception of a few directions, which according to the unit could not be complied with due to economic considerations or because it was not within their authority to comply with them. These aspects also came to be examined by the Tribunal on subsequent hearings.

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31. After the visit of the Expert Members and passing of the directions by the Tribunal vide its order dated 31st May, the UPPCB filed an affidavit dated 23rd July, 2014 stating that separate water drain should be constructed and till that is done, the unit should not be permitted to operate. The Board officers had visited the unit on 5th July, 2014 and found that cleaning of bio-compost yard has not been done despite the fact that the rainy season was approaching. According to the Board, the unit should also be directed to collect all processed polluted effluents effectively in lagoons and treat it with RO and MEE plant. They should not be permitted to discharge the effluents directly into the drain and in any case not before the effluent was fully treated through separate ETP. At that point of time, the unit had not installed any ETP. The unit should also get the concrete pipeline demolished and no effluent generated in distillery should be discharged outside the premises. Lastly, it was stated that the Board has already refused consent to operate to the unit in terms of Section 25/26 of the Water Act.

32. The CPCB also filed a rejoinder affidavit dated 17th September, 2014, dealing with the contentions raised by the unit. Firstly, it was noticed that real progress in the field has not been made in the matters of laying of alternative pipelines for storm water discharge and installation of STP. The unit is not complying with the environmental norms and it was necessary for the unit to install incinerators. Reference was made to the 147th meeting of the CPCB held on 23rd May, 2008 where after considering the recommendations and the problems of pollution resulting from distillery unit, it was stated that treatment methods of composting from irrigation and one time land application of spent wash vis-a-vis emerging technologies including evaporation, concentration and incineration of concentrated spent wash of power generation, were discussed. It was decided that the existing distilleries (both stand alone and those attached with sugar units) that are not complying with the required environmental standards may be asked to switch over to emerging technologies from existing technologies of composting, ferti-irrigation and one time land application of spent wash in a time bound manner by installation of incinerator etc. As the unit was found not complying with the environmental standard despite repeated directions, it was directed that it must install incinerator as it was essential for spent wash treatment. The CPCB had also stated that the incinerator is a better technology to bio-composting for treatment of spent wash because bio-composting of spent wash creates certain other adverse effects on the environment. The latest trend according to the Board for solving the problem is by adoption of incinerators. Respondent No. 7 made an attempt before the Tribunal to demonstrate that it had made progress towards the compliance of the directions contained in the order of the Tribunal dated 31st May, 2014 by filing an affidavit dated 5th September, 2014. In this affidavit it was contended that definite progress has been made by respondent No. 7 towards laying of pipeline under the existing railway track and that it has written to the Railways for permission for drilling and laying underground pipeline, which they are likely to resolve shortly. It is also averred by Respondent No. 7 that it has commenced the process of thorough cleaning of Phuldera drain and had issued the work order to Hariom Builders on 21st August, 2014 in that regard. The work is likely to be completed by 20th September, 2014. The unit also claims that it has undertaken detailed discussion with agencies for installation of STP. The work would be awarded in consultation with the Pollution Control Boards which is likely to commence shortly.

33. In regard to installation of incinerators, it is the stand of the unit that since it is already using technologies of bio-composting and bio-methanation, it may be permitted to continue with the same and achieve Zero Liquid Discharge through it and if after an assessment of the Pollution Control Boards, the unit is unable to achieve Zero Liquid Discharge then the unit may consider implying alternative suitable technology. It was also stated that the Ministry has permitted use of alternative

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suitable technology to incinerators, even in the recent time by permitting bio-composting process to other units. We have already noticed above the stand of respective Boards in regard to the points raised by the unit. After noticing persistent default and the resulting pollution, certainly there is need for stringent measures to be taken by the unit before it can really be permitted to recommence its production and operate both sugar and distillery units.

Why Incinerator

34. Under clause 2 and 5 of Para 8 of the order dated 31st May, 2014, the Tribunal had directed that the unit should incinerate its spent wash and concentrate effluents to achieve zero discharge. At that stage also Respondent No. 7 had submitted that installation of incinerator may not be insisted as it will cause unnecessary functional difficulties to the unit and when most of the industries have not installed incinerators, it would be a discriminatory direction against it. Further, the unit also stated that process of bio-composting was effectively functioning, thus, raising no occasion for issuance of such direction. The respective Pollution Control Boards had taken up the stand that in view of the persisted defaults, pollution is being caused by the unit and since better technologies like incinerators are available, the unit should be directed to install incinerator and attain Zero Liquid Discharge.

35. The Tribunal in its order had clearly noticed that there cannot be a negative discrimination in law and furthermore, economic burden per se cannot be raised as a tenable plea for preventing and controlling excessive pollution caused by Respondent No. 7 by its activities. There was definite damage and degradation of environment. The right of Respondent No. 7 to run its business is subject to reasonable restrictions, provided by law viz. by environmental laws to ensure that the prescribed parameters are adhered to and water and air quality is maintained. Findings of various analysis reports clearly show serious pollution being caused by this Respondent No. 7 and particularly the fact that Phuldera drain was highly polluted and its water colour has changed to brown by excessive pollutants being continuously discharged into the drain. Various inspecting teams of highly qualified persons constituted from time to time consistently had found pollution of ground and surface water and air pollution being caused by this unit and that it was discharging its untreated effluents into Phuldera drain. The Tribunal directed Respondent No. 7 to comply with all the directions contained under para 8 of the order dated 31st May, 2014.

Having heard again all the stake holders, we do not find any merit in the twin reasons advanced on behalf of the unit for not installing incinerators. Firstly that it will be a serious financial burden on the unit to install and operate incinerators is a contention devoid of any substance. No unit can be permitted to cause pollution of water and air and more particularly continuously. This unit has operated both its sugar and distillery units for more than 80 years with definite evidence on record to show that it has been causing pollution right from the year when the Water Act of 1974 came into force and in any case since 1986. Repeated directions issued by the respective Boards fail to yield any result. The unit persisted with default with impunity. The stand of the unit that it was not discharging any untreated effluent, had been found to be factually incorrect and there is definite evidence on record that the unit is discharging its untreated effluents into Phuldera drain and finally polluting river Ganga. Defaults on the part of the industries were noticed in various fields. The numerous directions issued by the Board from time to time had not been fully and satisfactorily complied with. The unit is a regular source of pollution till the time it achieves Zero Liquid Discharge. It cannot be stated that the unit would become a compliant or non-polluting unit. The plea of financial burden cannot be permitted to raise as a defence for non-compliance of law particularly, in the field of environment and secondly, such financial implication is indispensable part of the Corporate Social Responsibility of this unit. The other contention that Board and or MoEF have even permitted other

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sugar/distillery industries to adopt the process of bio-composting and bio-methanation, suggesting that the imposition of condition of installation of incinerators is not necessary and is not uniformly complied. This contention is also without merit. Firstly, no person can claim negative discrimination and secondly, imposition of conditions by the respective authorities while granting consent to a unit to operate has to be decided on case to case basis. It will depend upon technical data, location, activity of the unit and capacity of the unit to adhere to the prescribed norm that would amongst others be the criteria for granting and/or refusing consent to a unit. It was rightly contended by the Learned Counsel appearing for the various authorities that this would depend on the facts and circumstances of the present case. There cannot be a hard and fast rule for imposition of the conditions uniformly as various factories come into play while considering the application of the unit for grant of consent to operate.

In the present case, it is an admitted position that the area of the unit is a low lying area and is surrounded by railway, road and canal on other side of the plot. This low lying area has been, according to Respondent No. 7, responsible for flooding of the area and thus, getting the molasses, spent wash and the press mud etc. getting mixed up with the flood water and thus, polluting both the surface and ground water. Despite its efforts, the unit has failed to become zero liquid discharge unit now for years. The unit cannot claim a right to pollute the environment indiscriminately and in perpetuity.

36. Even the documents published by the CPCB on corporate responsibility for environmental protection notices that an unit dealing with distilleries could be required to adopt any or combination of the following measures:

I. "Compost making with press mud/agricultural residue/municipal waste

II. Concentration and dying/incineration

III. Treatment of spent wash through bio-methanation followed by two stage secondary treatment and dilution of the treated effluent with process water for irrigation as per norms prescribed by CPCB/MoEF.

IV. Treatment of spent wash through bio-methanation following by secondary treatment (BOD 2500 mg/1) for controlled discharge into sea through a proper submerged marine outfall at a point permitted by SPCB/CPCB in consultation with National Institute of Oceanography (NIO), so that Dissolved Oxygen in the mixing zone does not deplete.

V. For taking decision on feasibility of one time controlled land application of treated effluent, a study will be undertaken within three months.

The road map for utilization of spent wash by the distilleries to achieve zero discharge in inland surface water courses will be as below:

50 % utilization of spent wash—By March, 2004

75 % utilization of spent wash — By March, 2005

100% utilization of spent wash By — December, 2005

Till 100% utilization of spentwash is achieved, controlled and restricted discharge of treated effluent from lined lagoons during rainy season will be allowed by SPCB/CPCB in such a way that the perceptible colouring of river water bodies does not occur."

37. This very document further provides that monitoring is essential and feasibility study for adoption of cleaner technologies should be undertaken. The bare reading of the above shows that anyone or a combination of the technologies stated above can be provided by the Board to ensure adherence to the prescribed standards.

In light of the above, now we may consider the reasons for passing the direction for installation of incinerator:

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a. "Apart from the view of the Expert Inspection Team of NGT, MoEF, CPCB and UPPCB have also recommended that the Unit should not resume its production without installing incinerator.

b. UPPCB has a right to make the standards more stringent if situation demand so (we may refer to MoEF Notification in this regard). We see therefore full justification in their stand in the present situation, where the unit is located in low lying area and close to Ganga River, which is very important river for the country and it cannot be allowed to continue its pollution in larger interest of society.

c. The contention related to affordably of cost of incinerator of the order of Rs. 20 crores, we are of the opinion that there are more than 50 sugar and distillery plants in the country who already adopted this technology. The Unit can always increase the cost of alcohol to compensate part of the investment and part of it can be recovered through electricity and fertilizer generated out of incinerator. The unit can also claim carbon credit. This will be beneficial in long term.

d. We are afraid that under the circumstances, the unit can be allowed to operate even at a reduced capacity without any time bound commitment for compliance of directions as mentioned in our interim order in para 8(xiii)"

Besides the above compelling reasons for installation of incinerator, there are definite benefits in addition to control of pollution which *inter alia* are:

a. "55 to 60% solids concentrate of spent wash powder is fired ina specially designed boiler with or without subsidiary fuel.

b. Steam generated runs a TG (turbine generator) set to generate electricity.

c. Exhaust steam is used in distillery and evaporation plant operations.

d. Potash rich ash as a by-product, which is a good fertilizer.

e. Hence, the Unit would get power and fertilizer out of incinerator."

38. Having found no merit in the contentions raised on behalf of Respondent No. 7 either on law or on the facts of the case, we thus directed the unit to install incinerators to treat its effluents discharge and the spent wash and achieve zero discharge within a period of 6 months from the date of passing of this order. However, if the unit within three months from the date of passing of the order is able to attain zero liquid discharge for the installed/sanctioned capacity, whichever is higher as well as fully complies with the directions issued by the respective Boards and as contained in the order of the Tribunal dated 31st May, 2014, we grant liberty to the unit to move the CPCB as well as UPPCB for grant of permission to operate without installing incinerators. In that event alone, an inspection shall be conducted by Member, Secretary, CPCB, Member Secretary, UPPCB and a representative (Sr. Scientist, MoEF) from the Ministry of Environment and Forests, on the request of the unit and then recommend to the Tribunal if there is any possibility of accepting such a request of the unit for non-installation of incinerators. The report that would be submitted to the Tribunal shall be complete and comprehensive report in relation to all matters including zero liquid discharge and compliance of all other conditions.

Continuous Environmental Pollution caused by Respondent No. 7, Breach of Precautionary Principle and its Resulting liability on the Polluter Pays Principle

39. There is ample documentary evidence in the form of affidavits, inspection reports and analysis reports to show that Respondent No. 7 is not only been a source of continuous pollution particularly surface and ground water but also failed to take precautions of its own accord and even in terms of the directions issued by the respective Board from time to time. Thus, it has endorsed itself to incurring a liability for relief and compensation for causing damage and for restitution of environment in the concerned areas.

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40. Undisputed facts, as they emerged from the records, are that the sugar unit was established and is operating since 1933 while its distillery unit started its operation in the year 1940. Apparently, it had taken no environmental precautions. However, with the coming into force of the Water Act in the year 1974, the said Act noticed problem of the pollution of rivers and stream which had assumed importance and urgency in those areas as a result of growth of industries and increasing tendency to urbanization. The purpose was to ensure that domestic and industrial effluents are not allowed to be discharged into water sources without adequate treatment. Section 24 of the Water Act mandates that no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter into any stream or well. Violation thereof was made punishable under the Act. Section 25 of the said Act further provided that no person shall, without the previous consent of the State Board, establish or take any steps to establish any unit, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well etc. It also prohibited any person bringing into use of any new or altered outlet for discharge of sewage and/or beginning to make any new discharge of sewage. The application for obtaining consent from the Board was required to be moved by such person and was to be dealt with by the Board in accordance with the provisions of the Act, default thereof was made punishable. Section 26 of the Act required that where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream or well or sewer or on land, the provisions of section 25 shall, so far as may, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent be made under sub-section (2) of that section within a period of three months of the constitution of the Board. Of Course, this was amended by Act 44 of 78 to be the date as may be specified by the State Government. On the plain reading of the above provisions, it is clear that it was obligatory on the part of Respondent No. 7 to obtain consent of the Board within three months from the date the Board was constituted. It is the duty of every person, certainly of any unit, dealing with sugar manufacturing industry having distillery unit to comply with the environmental requirements without default and delay, which the unit, Respondent No. 7, failed to comply. It has been brought to our notice on behalf of the UPPCB that the Respondent No. 7 had not obtained consent of the Board till the year 1991. During the period 1992 to 1999, the unit had applied for obtaining the consent of the Board but the consent was not granted. Thereafter additional consent to operate was granted and the unit is operating from 2000 onwards but violation of the conditions imposed in the consent orders, passed from time to time.

41. The UPPCB as back as on 15th December, 1986 filed an application before the special judicial court in Lucknow, Uttar Pradesh submitting that the unit was operating without consent or discharging its untreated effluent resulting in pollution of the surface and ground water. It was stated in that application that notices have been given to the unit, further that a sample was collected as per the analyst report BOD was found to be 1266.7 mg/1 while COD was 2866.7 mg/1 and even other parameters which are quite in excess of the prescribed parameters. Even other parameters were found to be beyond prescribed standards. An application for obtaining consent has been moved. The special court vide its letter dated 25th October, 1991 directed the unit to discharge its trade effluent only in accordance with the prescribed standards specified by the Board and also directed the UPPCB to inspect the units from time to time to ensure compliance. Documents have been placed on record to show that the consent had been refused even in the year 1992 as the parameters were found to be excessive. Test report dated 29th June, 1996 showed the following violative parameter:

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"FLAG 4 — document dated 29th June 1996, which is the test report of the unit in 1996.

BOD of 2400 mg/1 - Against the standard of 30 mg/1

COD of 7520 mg/1 - Against the standard of 250 mg/1 and SS of 450 mg/1 — Against the standard of 100 mg/1."

42. Further, from the record, it appears that in view of persistent default and non-compliance of the unit, Respondent No. 7, the Board vide its order dated 2nd July, 1996 for the first time passed a closure order of the unit due to unsatisfactory performance of effluent discharge resulting in pollution of ground water source and unsafe disposal of hot ash. At the request of the unit, this closure order was suspended on 30th July, 1996 and the unit was permitted to resume its production capacity which was reduced from 60 KL/day to 30 KL/day. Finally the Board revoked the order of closure by additional order dated 21st March, 1997. Subsequently the effluent samples that were taken on 9th June, 1997 were found to be violative of the prescribed parameters. Therefore, the Board refused to grant consent to operate vide order dated 27th August, 1997. On 26th September, 1998, the unit again applied for consent which was refused. The BOD was found to be 960 mg/1 and thus, the consent was again declined vide order dated 28th May, 1999. In face of the assurance for compliance given by the unit and it having furnished the requisite bank guarantee as required by the Board on 25th March, 2000 having established a bio-compost plant along with storage and the consent to operate was granted to the unit. In violation to the conditions of the consent order, the industries were discharging effluents into the drain. The bank guarantee furnished was returned to the unit for revalidation.

43. The unit was subjected to inspection by the concerned authorities even in the year 2006, when it was found that the conditions of the consent order had not been complied and the unit was still persisting with serious environmental pollution issues. *Inter alia* it was stated (a) colour of the water was brown, (b) bio-compost plant was not working satisfactorily, (c) the pipeline had not been dismantled/removed. We may also notice that vide letters dated 26th September, 1998 and 28th May, 1999, the consent applied for was refused for the years 1998 and 1999 respectively. It was upon installation of bio-compost plants that the consent was granted, conditions of which again was not adhered to by the unit. Show cause notice was issued on 8th May, 2002 bringing to the notice of the unit the violation and requirement to furnish the bank guarantee. The consent was again granted on 24th May, 2003 permitting the unit to increase its production capacity to 90 KLD provided, they become zero discharge unit through bio-composting method. At that Stage, the CPCB came into picture and issued directions under Section 5 of the 1986 Act on 17th May, 2006 and 16th May, 2007 requiring installation of MEE plant. Since there was breach of conditions imposed and directions issued the bank guarantee of Rs. 30000 was forfeited on 29th January, 2008. After RO plant was installed along with MEE, consent was again granted with a clear stipulation that effluent discharged up to Phuldera drain shall be removed and new MEE would be installed in view of the fact that the existing MEE was not working efficiently. Emphasis was again laid on zero discharge.

44. The unit was inspected by the officials of the Regional Office of the UPPCB on 8th January, 2010 reiterating the conditions earlier imposed and the unit was called upon to furnish a bank guarantee of Rs. 5 lakhs. The unit was required to restrict production in such a way that effluent is consumed through bio-composting or stored in lagoon till they restart MEE or install additional RO. The unit was specifically directed to disconnect the pipeline up to Phuldera drain and become zero liquid discharge. The unit was again inspected by the District Level Committee as per District Magistrate orders dated 29th October, 2010 on 21st December, 2010, 30th December, 2010, 18th January, 2011, 28th January, 2011. Upon inspection on 19th May, 2011 it was found

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that the unit was operating the RO plant and bio-composting plant and MEE was not operated. The CPCB also issued directions on 10th August, 2011 which were incorporated by the UPPCB as well. Again unit was inspected by the Regional Offices of the Board on 30th December, 2011 and 25th January, 2012. A direction was issued on 6th March, 2012 directing the unit to install incinerator boiler and to ensure zero discharge and they were required to restrict their production to 60 KLD and furnish a bank guarantee of Rs. 5 lakhs. However, again on the basis of non-compliance of these directions found on inspection dated 18th December, 2012, the unit vide order dated 31st December, 2012 was directed to make no production till it reduces stored effluent in storage lagoon by MEE, RO, Bio-composting up to the storage capacity. In the beginning of 2013, it was found that the unit was complying with the conditions of the consent order. When the unit was inspected again on 8th October, 2013, it was found that the RO and bio-composting was in operation but MEE was not in operation. At that time, there was no discharge in the Phuldera drain during the inspection as Sugar unit was shut but the colour of the Phuldera drain was dark brown up to Syana Escape before meeting river Ganga which indicated heavy pollution of the drain and resultantly river Ganga. Thus, a Show Cause notice was issued on 22nd October, 2013 and unit was again inspected on 28th October, 2013. The Board even forfeited a bank guarantee of Rs. 5 lakh on 8th November, 2013 due to non-compliance of operation of MEE and non-installation of incineration boiler which were required to further reduce the quantity of spent wash for better utilization in bio-composting and the unit was also directed to restrict the production to 30 KLD and not to discharge any effluent outside the premises. The unit was required to furnish a bank guarantee of Rs. 20 lakhs. The compliance report was submitted on 18th January, 2014. In view of the persistent default, the Board rejected the consent to operate vide its order dated 17th February, 2014. Application of renewal was filed by the unit on 19th September, 2014 which is stated to be under process.

45. According to the CPCB, the compliance was made and a query was raised in the Lok Sabha, the unit was inspected by the zonal office of the Central Pollution Control Board on 15th July, 2005 when it was observed that bio-compost yard is not adequate and coloured effluent/spent wash is reaching Phuldera drain. Directions were issued to the unit on 3rd March, 2006 and they were also required to furnish a bank guarantee of Rs. 10 lakhs. Direction in regard to demolition of pipeline was issued, upon which the unit wanted reconsideration by the CPCB with the assurance that no quantity of industrial effluent shall be discharged in to the drain. The Bank Guarantee was also furnished by the unit. The bank guarantee was revalidated from time to time. There was compliance noted in 1st August, 2006 and since the bank guarantee was expired, the same was returned to the unit and they were directed installation of MEE and augmentation of compost yard. Here again public complaints were received and unit was inspected on 12th January, 2009. A letter of shortcomings was thus issued in 20th April, 2009 requiring the unit to take corrective measures. Defaults persisted and a Show Cause notice under Section 5 of 1986 Act was issued on 5th July, 2011 as major violations were observed including existence of bypass arrangements in both the units, non-operation MEE and presence of distillery effluent and sludge deposit in Phuldera drain. After examining, the unit was directed to restrict its production to 60 KLD, demolish the pipe line to Phuldera drain to block all other arrangements and furnish bank guarantee of Rs. 20 lakhs which were submitted by the industries. The unit was again inspected on 4th September, 2013 and 3rd December, 2013 to verify the compliance of directions and it was found not complying with some of the directions issued by the CPCB vide its letter dated 10th August, 2013. Result of analysis of sample collected from Phuldera drain indicated presence of distillery effluents. Vide order dated 10th February, 2014, the unit was directed to close all its manufacturing operations till compliance of the directions issued by CPCB. The unit substantially was

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lying closed because of consent rejection by the UPPCB.

46. The Learned Counsel appearing for the unit submitted that they have been taking measures and installing anti-pollution devices in furtherance to the various directions issued by the CPCB and conditions of the consent order passed by UPPCB. According to it, the unit is not causing any serious pollution. Further, it is contended that the various bank guarantees were returned to the unit, thus, implying that the unit was compliant and non-polluting. In this regard, they had placed on record certain documents and also contended that it is not necessary for the unit to install incinerators.

47. As far as the last contention in regard to non-installation of incinerator is concerned, we have already dealt with this contention in detail and passed appropriate directions. Contentions we may notice that they are based upon mis-apprehension of the relevant documents. The applicant itself had filed documents to show that they were called upon to furnish bank guarantees from time to time, which they were furnished. As far as encashment of the bank guarantees is concerned, vide letter dated 27th September, 2006 original bank guarantee of Rs. 10 lakhs was returned to the unit. This was not returned because the unit had satisfactorily complied with the directions of the Central Board but for the reasons that the validity of the bank guarantee since had expired on 31st August, 2006 as evident from the letter itself where it is so recorded. Not only this, the unit vide its letter dated 30th September, 2006 addressed to the General Manager, SBI had written to the same effect. The contention that non-encashment of the bank guarantees ipso facto shows that the conditions/directions had duly been complied with by the unit is again without any merit. Firstly, one of the bank guarantees had been duly encashed by the concerned Board of Rs. 30000. Subsequently, the bank guarantees were extended by the unit from time to time and in terms of various directions issued by the Board, the unit had furnished bank guarantees for various amounts and last of them being for a sum of Rs. 20 lakhs was furnished by the unit on 19th September, 2011. Even vide their letter dated 12th April, 2012, the unit had assured the Board that they would made their best efforts to comply with the Board directions and keep the said bank guarantee in force. Similar was the stand taken by the unit even vide their letter dated 13th May, 2013 and 12th August, 2013. Unit had applied for the renewal of the consent to operate vide their letter dated 22nd November, 2013 which was refused by the UPPCB vide their letter dated 17th February, 2014 and they were directed to close down their operations.

48. It requires to be noticed at this stage that at no point of time, the unit had ever written unconditional letter over this long period, to any of the Boards or concerned authorities that it was a unit which was entirely compliant and non-polluting. All through, it has been the case of the unit itself that it is making its best efforts to resolve environmental issues by taking measures and installing anti-pollution devices. The above documentary evidence clearly demonstrates that the unit has been a polluting unit for all this period. The allegation between the parties for environmental offences started as back as 1986. Since then continuously the unit has been found to be a defaulting, non-compliant and a polluting unit. The various inspections and analysis reports support this fully. The observation and conclusions of the joint inspection conducted by the Member Secretary of the CPCB and the Member Secretary, UPPCB based on inspection of 13th February, 2014 clearly finds that the Phuldera drain and even the municipal drain that joins Phuldera drain and then river Ganga was containing pollutants. Press mud was found stored on unlined land and leachate along with runoff from rainwater is also stored into an unlined separate pit. The samples had been collected. The Expert Members noticed serious issues and violation in relation to surface and ground water. Various shortfalls, defects and malfunctioning were noticed by the Expert Members who have suggested the way

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ahead. The ground water samples which were collected as late as 24th to 26th June, 2014 showed excessive parameters to the prescribed limitations. The ground water sampling was carried out and as many as 19 samples were collected along Phuldera drain, upstream and downstream. On examination downstream samples were found to be polluted. These samples are entirely suggestive of effluent discharge from the unit containing in permissible parameters.

49. Despite repeated notices from the Boards, violation of conditions of the consent orders, closure orders passed by the Court as back as in the year 1986 and directions issued by the CPCB under Section 5 of the 1986 Act from time to time, the unit had persisted with untreated effluent or pollutant discharge into the municipal/Phuldera drain and caused serious pollution of river Ganga. The unit has been discharging trade effluents on land. The effluent containing molasses which was being stored in the lagoons were washed away because of overflowing, resulting from floods and, in turn, polluted the ground water. Undisputedly, for all this period, the unit was responsible for causing serious problem of the ground and surface water in and around its premises as well as in Phuldera drain, finally leading to river Ganga. The seriousness of the extent of pollution is evident from the fact that even when the unit was non-functional, expert team found the Phuldera drain water being brown in colour and containing discharge from distillery and sugar factory. This Unit has been causing pollution for years. In any case, right from 1975, even one year after the coming into force of the Water Act of 1974, they have failed to discharge their statutory obligations. They have intentionally avoided to discharge their Social Corporate Responsibility. The unit did not even take the various precautions to prevent and control pollution of ground/surface water despite notices and directions by the competent authorities. Such industries, which had been making profit for all these years are expected to obey the law without demur and delay. Every unit is expected to aid the State in discharge of its Constitutional obligations, to provide clean and decent environment to the citizenry. There is no cause, much less a plausible reason, for the Tribunal to not to fasten the liability which ought to be imposed upon this unit in consonance with the principle stated under Section 15 read with Section 20 of the NGT Act, particularly in view of the conduct of the unit over such a long period.

50. Some of the obvious points emerging from the record before the Tribunal which show the extent of pollution caused by the unit and the circumstances attendant thereto are:

a. “The Sugar Unit has been working since 1933 and the distillery Unit is working since 1943 and polluting Ganga River and the land around the unit by discharging its effluent into the Phuldera drain — almost a stretch of around 18 kms.

b. In addition, 22 acres land that is being used as Bio-compost Yard has been a continuous source of pollution of land and groundwater.

c. The leachate along with run-off water was found having BOD as high as 1700 mg/1 and COD as 5403 mg/1, with TDS as 12280 mg/1 as observed by the Inspection Team comprising of Member Secretary, CPCB and Member Secretary, UPPCB carried out during 24.02.2014 under the order of this Tribunal.

d. The surface water once polluted can be restored during monsoon due to high dilution and its flushing away through stream, however, groundwater needs much larger restoration time (sometimes more than 20 years), even if the polluting sources are removed.

e. Water, soil and sludge samples collected from Phuldera drain in June, 2014 by CPCB and UPPCB under the order of this Tribunal dated 31st May, 2014 indicate pollution in terms of Potassium and organic matter, in spite of both Sugar and Distillery being closed, which indicates that residual pollution persist in the

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Phuldera drain and groundwater. Some of the handpumps are having organic pollution, as reflected by COD. The groundwater sample PDGW-5, which is a handpump at Buxor village is having colour in the order of 40 Hz Units and BOD 8 mg/1 and COD 52 mg/1, which is definitely not fit for human consumption."

51. It is not possible to assess exact environmental damage and the cost of restoration thereof in view of the long period involved in the present case and the fact that the statutory Boards empowered to prevent and control pollution have not performed their statutory duties in accordance with the spirit and object of the environmental Acts and jurisprudence. This unit is responsible for causing great environmental pollution of different water bodies including Phuldera drain, the Syana Escape canal, the River Ganga and even the groundwater in and around the area of this industrial unit. Besides scientific data of inspection by the Expert teams, officers of the Pollution Control Board, analysis report and the fact that the water in the Phuldera drain had turned brown, even to the naked eye, demonstrates the extent of pollution caused by this unit. Considering the magnitude of the pollution caused by the unit, its capacity and prosperity, responsibility of the unit to pay compensation cannot be disputed on any plausible cause or ground. The Supreme Court in the case of *Sterlite Industries (India) Ltd.* v. *Union of India* (2013) 4 SCC 575, enunciated the principle that a company which has caused the damaged to the environment and for operating the plant without valid renewal of consent for a fairly long period would obviously be liable to compensate by paying damages. While relying upon the judgment of the Constitution Bench of the Supreme Court in the case of *M.C. Mehta* v. *union of India* (1987) 1 SCC 395, the Court further stated that the plea of reasonable care and that the damage to environment occurred without specific negligence on the part of the unit is not a sustainable defence to a direction for payment of compensation for causing environmental damage. The court further held that magnitude, capacity and prosperity of the unit are the relevant considerations for determining the extent of the liability in such case. Applying these principles to the facts of the present case, there can hardly be any dispute that it is a polluting unit. It is also beyond controversy that this unit has operated without consent of the Boards from 1974 till the year 1991, thereafter, it committed default in compliance of the conditions of the consent right up to the year 2000. Even thereafter, it did not strictly comply with the conditions and directions issued by the respective Boards. This unit is a direct source of polluting River Ganga.

The unit is a profit making unit. No record has been produced before the Tribunal to establish anything to the contrary. Though, it may not be possible to determine with exactitude the exact amount of compensation payable on account of damage to environment because of the long period involved and also for the reason that even scientifically the extent of damage and amounts required for restoration and restitution thereof cannot be determined at this stage now. Cleaning and removal of sludge from Phuldera drain, treatment of other pollutants flowing in the said drain, preventing any discharge into the Syana Escape Canal and making River Ganga pollution free are the basic needs which require attention of the Expert bodies particularly, in the facts and circumstances of this case. We fix a compensation of Rs. 5 crores which shall be deposited with the UPPCB and shall be spent for that purpose alone by and joint team of CPCB, UPPCB, MoEF including for removal of sludge and all pollutants in the Syana Escape Canal till it joins river Ganga. This amount shall also be used for preventing ground water pollution.

The unit has caused serious pollution persistently. There is sufficient material before the Tribunal to establish both direct and indirect pollution being caused by this unit. The unit has even intentionally failed to comply with the directions and conditions of the consent order passed by the respective Boards. Not even submitting an application to the Board for obtaining consent to operate shows complete disregard towards law

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and its statutory obligations by the unit. It is not a only case where it is a threat to cause environmental pollution but is a case of causing environmental pollution, in fact. Right to carry on business cannot be permitted to be misused or to pollute the environment so as to reduce the quality of life of others. Risk to harm to environment or to human health is to be decided in the public interest according to 'a reasonable person's test'. The man's perception with reference to the facts of this case cannot return a finding any different than the one recorded by us.

52. Another aspect of this case is that during the course of inspection, even the expert members of the Tribunal and other inspecting team have found very heavy deposits of sludge in the Phuldera drain and even along the drain. Such collection apparently has resulted from discharge of effluents and even untreated effluent by the unit into Phuldera drain. The learned Counsel appearing for the unit stated that the work for removal of sludge from the drain as well as on the site was going on. As already noticed above, the unit claims to have even wanted removal of sludge from the site of the unit. Thus, we direct that this work should be completed within two months from the date of passing of this order and matter reported to the UPPCB for inspection and compliance.

53. Another aspect of this, may be an ancillary matter that has been raised before the Tribunal, is that the application for renewal of consent having been filed, the unit cannot be said to have operated without consent. In view of the clear provisions of Section 22 to 27 and the scheme of the Water Act, it cannot be said that filing of application even for renewal of consent, be treated as deemed consent in law. If any such practise is being adopted by the Boards whether Central or State will be contrary to the scheme of law. Where consent is given for a definite period, it would come to an end on the last date of the stated period, unless it is renewed for a further period but definitely on and before the date on which the consent expires. Therefore, we will direct the Board to stop such practise if is being followed by them presently and grant consent for a specific period preferably 3 months or 6 months. It will be more appropriate for the Boards to grant consent, minimum annually and preferably 2 to 3 years depending upon the facts and circumstances of the given case. This is for the reason that the Board is vested with vast powers of inspection and revoking consent or even directing closure of a unit.

Gopaljee Dairy Pvt. Ltd.

54. This is the industry which is carrying on the business of manufacturing of milk and milk products. From the records before the Tribunal, it appears that the industry was established in the year 1983 by the predecessors and in the interest of present Respondent No. 8, i.e., Gopaljee Dairy Pvt. Ltd. Their consent was renewed from time to time. The present management of the industry have been granted consent to operate in the year 2008 from where onwards, the industry is adhering to the prescribed standards of treatment for effluent discharge in terms of pH, Total Suspended Solids (TSS), COD, BOD, and Oil & Grease with minor variations. Sometimes the test reports have shown effluent containing high parameters in comparison of the prescribed parameters. The industry was required to stop discharging trade effluent into the Syana Escape canal through underground pipeline and was required to discharge the effluent in the municipal drain. There is no specific permission granted by any competent Authority permitting them to discharge the trade effluent into the Syana Escape canal. The UPPCB took note of this fact and even initiated action against the industry. According to the industry, they have already approached the local Nagar Palika for permission to discharge their effluent in the municipal drain and the matter is pending for considerable time with the said Nagar Palika.

55. We may also notice that the complaint had been made on 24th June, 2013 to

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the Chairman, National Ganga River Basin Authority stating that Respondent No. 8 was discharging effluent in and around the Syana Escape canal and was polluting river Ganga and the groundwater of the surrounding villages. It was complained that this industry has least regard for law (prescribed standards). In support thereof, an effluent analysis report dated 25th August, 2013 by Noida Testing Laboratory was produced by the Respondent No. 8 showing trade effluent containing high parameters in comparison to the prescribed parameters. For instance, the TSS was 1448 mg/1 as against permissible 100 mg/1 while the COD was 4640 mg/1 as against 150 mg/1 and BOD 2209 mg/1 as against 30 mg/1. Of course we cannot place total reliance on this Report as effluent was not collected by the Officials of the Board and in any case and in terms of Section 21 of the Water Act. However, even the joint inspection team appointed under the orders of the Tribunal had found certain shortfalls. Of course they noticed that it was not a seriously polluting industry. A joint inspection report had specifically noticed that the unit had installed ETP but the treated effluent is discharged through underground pipeline of 1 km to Syana Escape canal and ultimately meets river Ganga. It also noticed that the industry was asked by CPCB vide their directions dated 10th February, 2014 to stabilize the aeration tank, install flow measuring devices at the outlet of ETP and provide acoustic enclosure to remaining two DG sets and that the unit had valid consent up to 31st December, 2013. The unit had filed an affidavit rasing some objections to the joint inspection team. The said objections are found to be totally without substance as no supportive documents have been placed by the unit on record to show that the observations recorded by the joint inspection team were erroneous and were not the factual description of the site. Further and as already noticed, the Learned Expert Members of the Tribunal had themselves visited the premises of Respondent No. 8. It was found that the unit generates about 300 KLD effluent. It had installed ETP which had equalization tank, anaerobic digester, aeration tank, secondary clarifier, sand and carbon filters. The trade effluent coming out from the plant was found to be more or less colourless. The Trade effluent was being discharged into the Syana Escape canal. In the final observations which were observed by the three Expert Members of the Tribunal it was directed that the unit should establish an automatic continuous online monitoring system for quality of final effluent, using some important indicator parameters and all abnormal situations should be brought to the notice of the Boards and unit should take corrective measures. Largely the unit was found operating satisfactorily.

56. As already noticed, the consent was valid till 31st December, 2013, the consent had been revoked on 6th December, 2013 and was again granted. On 28th February, 2014, the UPPCB had again rejected the consent to the unit under the water as well as the Air Act. Thereafter, the unit had prayed for fresh sample of the effluents by the Tribunal. We have already noticed that Respondent No. 8 filed an additional affidavit on 12th March, 2014 raising certain objections to the inspection conducted by the joint inspection team. However, in paragraph 4 of the said affidavit, the unit itself stated that in the inspection dated 13th February, 2014, the BOD was observed a little higher but it was for the reason that it was collected from Syana Escape and not from the ETP outlet. It was further stated in the said affidavit that the Respondent No. 8 is taking all steps to further improve the ETP functioning and the proposed steps inter alia include the following:

a. “The remaining/residual fat shall be collected from the Flushing of milk tankers and would be stored in separate tank for further reprocessing. The said shall reduce the effluent load on ETP.
b. The Ghee residue is currently treated with chilled water to remove Ghee from it but now onwards the Ghee residue shall be treated with Centrifugal Machine to remove Ghee and then utilizing it for Cattle Feed manufacturing. Thus, it would reduce the Effluent load in ETP.

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c. Water used in bottle rinsing/washing shall now be reused in crate washer for washing the crates.

d. Paneer cooling water shall now be reutilized for reconstitution of skimmed milk Power after reprocessing it.

e. The treated water from Effluent Treatment Plant shall now be utilized in the following manner:

i. For Gardening — 5000 Ltr/Day

ii. For irrigation — 25000 Ltr/Day For New and old plantations across the roads.

iii. For cooling Tower - 25000 Ltr/Day

iv. For Toilets — 15000 Ltr/Day

Thus, the water consumption would be reduced including the consumption of Raw Water.

f. An additional oil and Grease trap shall be constructed in the ETP to reduce the load on operational ETP.

g. The sludge generated during centrifugal separation of milk shall now be collected and sold to Poultry Farm for Poultry feed as the sludge is nothing but milk solids (protein, Carbohydrates and Fat). This would further reduce the load on ETP.

h. One additional tank of 1 lakh Ltr. Capacity is planned to be installed at ETP to store Effluent upto 12 hours to get maximum retention and better efficiency in ETP."

57. The unit prayed for a re-inspection and reconsideration of the revocation of consent on merits. Even in the inspection dated 3rd December, 2013, the unit was found complying with the prescribed effluent norms, however, non-compliance in regard to no flow measuring devices at the outlet of ETP, inadequate level of mixed liquor, suspended solids in the aeration tank, indicating partial stabilization, were observed and the unit was asked to take corrective measures. After the inspection by the Learned Expert Members of the Tribunal, consent to the unit was restored on 16th May, 2014 as informed during the course of arguments. It is evident from the above narrated facts which are duly supported by inspection reports and partially by the effluent analysis that this unit has been causing pollution though, not of a serious gravity. It has been discharging the effluent into the Syana Escape canal for which it had no permission. It was expected of the unit to take appropriate steps including legal steps, if necessary, for getting permission to discharge the effluents into the municipal drain from Nagar Palika or any other appropriate authority. It is not only the corporate social responsibility of the unit but even the statutory obligation to ensure no pollution. We are taking a very liberal view with regard to imposition of compensation for restoration of environment in relation to this unit primarily for the reason that it has made serious efforts to check and control the pollution and particularly as stated in their affidavit on 12th March, 2014, it has further assured to attain complete status of a 'compliant and non-polluting unit'

58. As a cumulative effect of the factors afore-discussed, we pass the following directions in relation to this unit:

a. The unit shall take all self-correcting measures as outlined by the unit itself in its affidavit dated 12th March, 2014 within three months from the date of passing of this order.

b. The unit shall install online monitoring system for relevant parameters of treated effluent discharge as agreed by UPPCB with real time data transmission facility to UPPCB within three months.

c. The unit shall obtain either consent from Nagar Palika for discharging treated effluent into Sewer line or shall obtain approval from State Irrigation Department, subject to the satisfaction of UPPCB within three months.

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d. In light of the provisions of Section 15 read with Section 20 of the NGT Act, we direct this unit to pay a sum of Rs. 25 lakhs within one month, for not strictly complying with the conditions of the consent order, directions issued by the CPCB and for discharging its effluents into the Syana Escape Canal despite the fact that it had been directed not to do so. This amount of Rs. 25 lakhs shall be paid to the UPPCB and shall be spent for restoration of the environment, for taking general remedial measures, for preventing pollution and for restoring the damage already done to the Syana Escape Canal and ground water or other water bodies.

59. Reverting to the case of *Simbhaoli* sugar and distillery unit which has been a serious polluter for all this time and has damaged the ground water as well as polluted the River Ganga through Phuldera Drain, now for years. This unit has failed to take all remedial measures despite service of show cause notices, closure orders and directions issued by the CPCB. The trade effluent discharged by the unit had often been found to be in violation of the prescribed standards. The unit had also failed to dismantle the underground pipeline through which the effluent containing the pollutants was being discharged into the Phuldera drain, despite specific directions issued by the respective Boards. Large extent of sludge which could only be generated from a sugar and distillery unit was found in the Phuldra drain and on its banks. The inspections on different occasions even noticed that the unit was bypassing the ETP and throwing untreated effluent into the drain and/or on the land. This Unit, on the one hand violated the conditions of the consent order from time to time while on the other, it even operated without consent of the Board for short duration subsequent to 1991, till which year it operated totally without consent. These are the few circumstances which fully establish the fact that this unit is a seriously polluting unit and has been polluting the different water bodies including the groundwater now for a considerable time. There can hardly be any doubt in inspecting the case advanced on behalf of the respective Boards that this unit has continuously failed to comply with the requirements of law and discharge its statutory obligations on the one hand while on the other it has also failed to fulfil its corporate social responsibilities. Therefore, the unit is liable to make good and to restore damage, degradation and pollution of environment caused by its activity particularly, the water bodies and with greater emphasis, the River Ganga. Thus, in our considered view, this unit must be held liable to pay heavy compensation for restitution, restoration, prevention and control of pollution of various water bodies and more emphatically River Ganga. Consequently, in exercise of the powers conferred upon this Tribunal under Section 15 and all other enabling provisions of the NGT Act and the legislative mandate contained under Section 20 of the said Act, we pass the following order:

i. For restoration and restitution of the degraded and damaged environment and for causing pollution of different water bodies, particularly River Ganga, directly or indirectly, resulting from its business activities carried on for a long period in the past, we direct the Unit to pay a compensation of rupees Five Crores (Rs. 5,00,00,000/-) to UPPCB within one month from the date of passing of this order. Such direction is completely substantiated and is based on the Polluter Pays Principle, in the facts and circumstances of the present case.

ii. The amount of compensation received by the UPPCB shall be utilised for the cleaning of Syana Escape Canal, preventing and controlling ground water pollution, installation of an appropriate ETP or any other plant at the end point of Phuldera Drain where it joins river Ganga in order to ensure that no pollutants are permitted to enter River Ganga through that drain. The amount should also be utilised for restoring the quality of the groundwater.

iii. The amount shall be spent under and by a special Committee consisting of Member Secretary, CPCB, Member Secretary, UPPCB and a representative of

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MoEF, only and exclusively for the purposes afore-stated.

iv. The unit shall carry out the removal of sludge and cleaning of Puldhera drain in terms of our order dated 31st May, 2014 as the work in furtherance thereto has already started, as stated by the unit. If the work of cleaning and removal of sludge in and along the Puldhera drain is not completed within three months by the industry, in that event, it shall be liable to pay a further sum of Rs. 1 crore, in addition to the amount afore-ordered to UPPCB. This amount of one crore will be used by the Committee only for cleaning of and removal of sludge in and along Phuldera drain.

v. We direct the unit to install incinerator as directed above within a period of 6 months from the date of passing of this order. However, if within a period of 3 months, the unit applies to the 'special committee' afore-constituted to inspect the premises and to show that it has become a 'no discharge unit' for the installed/sanctioned capacity, whichever is higher and is absolutely a compliant and non-polluting unit, in that event, the said special committee may consider the request of the unit for such inspection. Thereafter, if the Committee is of the opinion that it was possible to dispense with the condition of installation of incinerator, then it may recommend to this Tribunal for waiver of such condition. Even if the Committee is of the opinion that it would not be necessary to enforce the condition of installation of incinerator against the unit, still, it would re-inspect the premises in the coming rainy season and the Committee will then submit a report to the Tribunal stating that the unit has become no discharge unit, is absolutely compliant and non-polluting and despite collection of water, there is no possibility of overflow of effluents from the premises of the unit. Such recommendation then would be considered by the Tribunal in accordance with law. We grant liberty to the unit as well as any of the Boards to move such an application before the Tribunal.

vi. The unit shall, within a period of three months, comply with all the directions contained in our order dated 31st May, 2014 without fail. We make it clear that subject to the above specific directions, the unit would be granted no further time to comply with all the directions and conditions contained in Paragraph 8 of the order of the Tribunal dated 31st May, 2014, which have been necessitated in view of the Precautionary Principle and to ensure that there is no pollution caused by this unit in future.

vii. The unit would be permitted to operate for the current crushing season but continuance of grant of consent to the unit in terms of the provisions of the Air Act, 1981 and the Water Act, 1974 would depend upon the inspection report of the special committee constituted under this order. The first of such inspection would be conducted by the committee within one month from the date of passing of this order.

viii. The UPPCB shall consider and primarily rely upon the report of the said special committee, while granting or refusing consent to operate to the unit.

ix. The unit shall dismantle the underground pipeline leading to the Phuldera drain within two weeks from today, if not already dismantled. All authorities are directed to fully co-operate in the dismantling of such pipeline, to ensure that there is no discharge of effluent through that pipeline into the Phuldera drain.

x. If the special Committee during its inspection finds the unit to be non-compliant, pollutant or a violator of any of the conditions or directions contained in this order including payment of Rs. 5 crores, it shall so inform the UPPCB, which in turn shall withdraw the consent to operate and shall direct closure of the unit forthwith. Such direction can also be issued by the CPCB keeping in view the fact that the unit in the event of default, would be a serious threat to environmental

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protection and would be a potent polluter.

60. With the above directions, this Original Application 299 of 2013 is finally disposed of while leaving the parties to bear their own costs.

Miscellaneous Application

61. In view of the disposal of the Original Application 299 of 2013, M.A. 403 of 2014 does not survive for consideration and the same is also disposed of.

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2015 SCC OnLine NGT 5

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

In the National Green Tribunal, Principal Bench New Delhi

(BEFORE SWATANTER KUMAR, CHAIRPERSON, U.D. SALVI, J.M., DR. D.K. AGRAWAL, E.M. AND PROFESSOR A.R. YOUSUF, E.M.)

In the Matter of:

Forward Foundation A Charitable Trust Having its registered office at 24/B, Haralur Village, HSR Layout Post Bangalore-560102 Through its Secretary and Others ... Applicants;

Versus

State of Karnataka, Vidhana Soudha Bangalore-560001 Through its Chief Secretary and Others ... Respondents.

Original Application No. 222 of 2014

Decided on May 7, 2015, [Reserved on: January 27, 2015]

Counsel for Applicant:

Mr. Raj Pajwani, Sr. Adv. Along with Ms. Megha Mehta Agrawal, Advocate

Counsel for Respondents:

Mr. Devraj Ashok, Advocate for Respondent No. 1, 3, 4 & 5

Mr. B.R. Srinivasa G., Advocate for Respondent No. 7

Mr. R. Venkatramani, Sr. Advocate, Mr. Shekhar G. Devasa, Mr. D. Mahesh, Advocates for respondent No. 9

Mr. Raju Ramachandran, Mr. Devashish Bharuka, Mr. Vaibhav Niti and Mr. Suraj Govindraj, Advocates for Respondent No. 10

Mr. Sajan Poovayya, Sr. Advocate and Mr. Sumit Attri, Advocate for Respondent Nos. 11 & 12

JUDGMENT

1. Whether the judgment is allowed to be published on the net?

2. Whether the judgment is allowed to be published in the NGT Reporter?

SWATANTER KUMAR, (CHAIRPERSON):— All the three applicants have approached the Tribunal under the provisions of the National Green Tribunal Act, 2010 (for short 'the NGT Act'), with a common prayer that a direction be issued to respondent no. 1, the State of Karnataka to take cognizance of the Reports dated 12th June, 2013 and 14th August, 2013 prepared by respondent nos. 6 and 2 respectively, and take coercive and punitive action including restoration of the ecologically sensitive land. Further the applicants also prayed for issuance of a direction that the valley land is to be maintained as a sensitive area, without developments of any sort, so that the ecological balance of the area is not disturbed. Besides this, they even prayed for issuance of such other order or directions as the Tribunal may deem fit in the circumstances of the case and render justice.

The three applicants are either a registered charitable trust and/or a Society, registered under the relevant laws in force. They claim to be keenly interested in protecting the environment and ecology, particularly, in the State of Karnataka. Their principal grievance is in relation to certain commercial projects that are being developed by respondent nos. 9 & 10 in a large-sized, mixed use development project/building complex, including setting up of a SEZ park, Hotels, Residential

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Apartments and a Mall, covering approximately 80 acres on the valley land immediately abutting the Agara Lake and more particularly identified as lying between Agara and Bellandur Lakes, exposing the entire eco system to severe threat of environmental degradation and consequential damage. According to them, it is of alarming significance that the Project has encroached an Ecologically Sensitive Area, namely, the valley and the catchment area and *Rajakaluves* (Storm Water Drains) which drains rain water into the Bellandur Lake. Thus, in the interest of environment and ecology, they have approached the Tribunal with the above prayers.

2. Shorn of any unnecessary details, the precise facts leading to the filing of this application are that, according to these applicants, the ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short the 'KIADB'), respondent no. 7 herein, to respondent nos. 9 & 10 vide Notifications dated 23rd April, 2004 and 7th May, 2004, respectively. This land was allotted for setting up of Software Technology Park, Commercial and Residential complex, hotel and Multi Level Car Parks. The Master Plan formulated by the Bangalore Development Authority (for short the 'BDA'), respondent no. 8, identifies the allotted land as 'Residential Sensitive', though the same land was identified in the draft Master Plan as 'Protected Zone'. It is stated by the applicant that the Revenue Map in respect of properties as referred in the land lease Agreements has multiple *Rajakaluves*. The development projects in question sit right on the catchment and wetland areas which feeds the *Rajakaluves*, which in turn drain rain water into Bellandur Lake. The project will thus encroach two *Rajakaluves* of 1.38 acres and 1.23 acres each. The satellite digital images of the area from year 2000 to 2012 clearly show encroachment upon these *Rajakaluves*, as well as, the manner in which they are covered by this construction. The State Level Expert Appraisal Committee (for short the 'SEAC'), which was to assist State Level Environment Impact Assessment Authority (for short the 'SEIAA'), held its meetings on various dates to examine the project. It had required respondent no. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short the 'BWSSB'), respondent no. 5 herein, for the project in question. It was also observed that the project lies between the above stated two lakes. Respondent no. 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11th November, 2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

3. It is the case of respondent no. 5 that such NOC was issued but it covers only an area of 17,404 sq mtr, whereas the total built-up area as noted by the SEAC is 13,50,454.98 sq mtr. It is alleged by the applicants that respondent no. 9 obtained NOC from respondent no. 5 by concealing material facts and by misrepresenting that NOC is required only for residential units, which forms a very minuscule part of the total project. Respondent no. 9 had approached the Karnataka State Pollution Control Board (for short the 'KSPCB'), respondent no. 4 herein, for obtaining clearance which was granted on 4th September, 2012, subject to the fulfillment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. The applicant contends that the grant of consent by the KSPCB to respondent no. 9 also contained a condition with regard to obtaining Environmental Clearance from the Competent Authority and no construction was to commence until such clearance was granted.

4. According to the applicants, respondent no. 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of the SEAC, in relation to buffer zone and construction over *Rajakaluves*. The construction has been commenced over the ecologically sensitive area of the Lake Catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities the applicant submits that the

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conversion of land from 'Protected Zone' to 'Residential Sensitive' area is violative of the law. The Project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the *Rajakaluves*. It is also alleged that respondent nos. 9 & 10 have started to level the land by filling it with debris, thus causing damage to the drains. It is further stated that the conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the *Rajakaluves* have been violated. This has in turn, affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is also in violation of Rule 4 of Wetlands (Conservation and Management) Rules, 2010 (for short Rules of 2010). It is submitted that SEIAA in its meeting dated 29th September, 2012, decided to close the file pertaining to respondent nos. 10 due to non-submission of requisite information and the application therefore was rejected in November, 2012. Despite the rejection, respondent no. 10 commenced construction on the project in full swing.

5. The applicants have also relied on the findings of the Joint Legislative Committee, constituted under the chairmanship of Sh. A.T. Ramaswamy in the month of July, 2005, which stated that there were 262 water bodies in Bangalore city in 1961, which drastically came down because of trespass and encroachments. It was also affirmed that about 840 Kms of *Rajakaluves* have been encroached upon in several places and have become sewage channels.

6. The Hon'ble High Court of Karnataka in *Environment Support Group* v. *State of Karnataka*, Writ Petition No. 817/2008 appointed a Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil to suggest immediate remedial action in order to remove encroachments on the lake area and the *Rajakaluves* and preservation of the lakes in and around Bangalore city. Other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for Preservation, Restoration or otherwise of the existing tanks in Bangalore Metropolitan Area, 1986 which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tanks is not polluted. The findings of the Environmental Information System (ENVIS), Centre for Ecological Science, Indian Institute of Sciences, Bangalore, in May 2013 on the Conservation of the Bellandur Wetlands obligation of Decision Makers is ensure Intergenerational Equity recommended restoration of wetlands and cessation of plan to set up the SEZ in the area. Even the Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas.

7. The applicants claim to have obtained the monitoring report of the project by respondent no. 2 through RTI on 21st August, 2013. The report dated 14th August, 2013 revealed that the Project Proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that the Bellandur lake is not affected by the construction or operational phase of the project. This breach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

8. The Lake Development Authority (for short 'the LDA'), respondent no. 6 herein, had initiated an inspection in the catchment area of the Bellandur Lake. The report dated 12th June, 2013 confirms that the project will have disastrous impact, including deleterious effect on the Bellandur Lake. This report was brought to the notice of respondent no. 7 vide letter dated 7th July, 2013. Respondent no. 6 has also opined that the land should be classified and maintained as Sensitive Area. Respondent no. 7 in furtherance thereto had called upon respondent no. 9 to comply with rules of

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Ecology and Environment Department and to obtain necessary approval from respondent nos. 6 and 4. It is alleged that a vague reply had been submitted by respondent no. 9 making certain misrepresentations. Despite all this, respondent nos. 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardizing the ecological balance in this sensitive area. The applicants also rely upon the fact that the revised Master Plan, 2013 issued by Respondent no. 8 specifically provides that 30 meters buffer zone is to be created around the lakes and 50 meters buffer zone to be created on either side of the *Rajakaluves*. It is also the case pleaded by the applicant that Respondent no. 9 had obtained the NOC from Respondent no. 5 only with regard to residential units and not for the entire project and that the Environmental Clearance obtained by the Respondent No. 9 is based upon the said partial NOC issued by Respondent no. 5 which itself is a misrepresentation. The applicants have pleaded that the projects are bound to create water scarcity as the requirement of project of Respondent no. 9 alone is approximately 4.5 million liters per day, i.e. 135 million liters per month, which is more than what Respondent no. 5 supplies to the entire Agaram Ward. It is stated by the applicants that the construction of respective projects by respondents No. 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in topography of the area, posing potential threat of extinction of the Bellandur lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the water bodies.

The applicants have stated that they have filed the application against threat posed to the ecological balance from the ongoing commercial constructions project near Agara Lake and Bellandur Lake, and the same is continuing every day in violation of the law. With these allegations, the three applicants have instituted this application with prayers afore-noticed.

9. Different respondents in the application have filed independent replies as already noticed. Respondent nos. 9 and 10 are the Project Proponents against whom the applicant has raised the principal grievance. Thus, first we may notice the case advanced by respondent nos. 9 and 10. In its replys, respondent no. 9 has submitted that the said respondent corporation was incorporated with the objective of establishing an Information Technology Park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. This respondent had submitted the proposal to establish such Information Technology Park and other facilities to the State Government and requested for allotment of land for the project. Proposal of respondent no. 9 was considered in 78th High Level Committee meeting held on 21st June, 2000 and after examining the proposal, the same was approved by the government on 06th July, 2000. Before the State High Level Committee, the Respondent had mentioned that it would require 110 acres of land, 25MW of power from the Karnataka Power Transmission Corporation Limited (for short the 'KPTCL'), and 4 lakh litres of water per day from respondent no. 5. The lands for the project were initially notified by the BDA. However, later the lands were de-notified vide notification dated 10th February, 2004. Subsequently, the lands were allotted to the replying respondent vide letter dated 28th June, 2007 for which lease-cum-sale agreement was signed on 30th June, 2007. Considering the overall development of the State of Bangalore, the said Respondent proposed a Mixed Use Development Project consisting of an Information Technology Park, residential apartments, retail, hotel and office buildings with a total built up area of 13,50,454.98 sq mtr. The Project was conceived as a zero waste discharge project. According to this Respondent, the project is located one and a half kilometres away

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from the southern-side of the Bellandur Lake. Towards the North adjacent to the Project site, lie vast stretches of lands belonging to the Defence, and towards the East, which is completely developed lies the Project of Respondent no. 10 and that another developer is also developing a project on the western side. Respondent no. 9 has submitted that it has obtained sanction plan on 4th July, 2007 which was being renewed from time to time. The Respondent also claims that it has obtained No Objection Certificate from Airport Authority of India on 9th April, 2010, certificate dated 15th April, 2010 from Dr. Ambedkar Institute of Technology and that the Bharat Sanchar Nigam Ltd., vide its communication dated 16th April, 2010, granted clearance for the project construction. BWSSB, respondent no. 5 herein vide its communication dated 26th April, 2011 issued No Objection Certificate for portion of the proposed construction to be built. Bangalore Electricity Supply Company Limited also granted No Objection Certificate for arranging power supply to the proposed residential and commercial building in favour of the Respondent no.

10. Environmental Clearance was granted by SEIAA vide communication dated 17th February, 2012. Director General of Police issued No Objection Certificate and KSPCB vide order dated 4th September, 2012 accorded its consent for construction of the said project site subject to the conditions stated therein.

Respondent no. 9 further states that after grant of the Environmental Clearance on 17th February, 2012, the same was published in the leading newspapers "*Kannada Prabha*" and the "*Indian Express*" on 12th and 14th March, 2012 respectively.

11. Respondent no. 9 later modified the building plan and the same was approved by Respondent no. 7 vide its letter dated 30th August, 2012, which was valid up to 10th August, 2014. It is further claimed that they started the construction of the project in November, 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. The respondent further submitted that he has raised the constructions in accordance with the plans and conditions of the Environmental Clearance and consent orders. According to him, he has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. The allegation with regard to the covering and blocking the Rajakaluves (Storm Water Drains) drying the wetland and raising of the construction thereupon adversely affecting the lake, are specifically disputed and denied. The Respondent claims that it has already spent a sum of Rs. 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities etc., that it has availed financial assistance from various banks and financial institutions towards the construction and proper execution of the project and that various contracts have been signed with third parties.

12. It is specifically stated by this Respondent that certain print media had published articles stating that construction was unauthorized, illegal and that it was prejudicial to the environmental and ecological interest of that area. Not only this, Namma Bengaluru Foundation, Citizen's Action Forum, Koramangala Residents Association and others, on the basis of a report prepared by Professor T.V. Ramachandra, filed a Public Interest Litigation in the High Court of Karnataka (Writ Petition No. 36567-36574/2013). Besides making the above allegation, it was also alleged in those petitions that the project would adversely affect the Bellandur Lake and prayed for stay of the construction activity. The Hon'ble High Court of Karnataka after hearing the parties issued notice, however, denied to pass any interim order of stay as prayed by the petitioners. The said petition is stated to be pending before the Hon'ble High Court.

In the meanwhile, Bruhat Bengaluru Mahanagara Palike (for short the 'BMP') issued a stop work notice to the said respondent in regard to illegal and unauthorized construction as well as its adverse impacts on the lake. Aggrieved from the stop work

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notice dated 23rd December, 2013, Respondent no. 9 filed a Writ Petition before the Hon'ble High Court being Writ Petition No. 366-367 of 2014 and 530-625/2014 in which the Hon'ble High Court vide its order dated 21st January, 2014 stayed the operation of the stop work notice dated 23rd December, 2013. Another notice was also issued by respondent no. 7 directing stoppage of work on 2nd January, 2014, which was again challenged by the respondent no. 9 in Writ Petition No. 792 of 2014 before the same High Court and vide its order dated 7th January, 2014 the operation of the stay order was also stayed by the Hon'ble High Court. Replying respondent has taken up specific pleas with regard to the present application being barred by time because the Environmental Clearance was granted on 17th February, 2012 and even article in the newspapers were published on 3rd June, 2013 as such the present petition has been filed beyond the prescribed period of limitation and the Tribunal has no power to condone the delay which in fact has not even been prayed by the Applicant. According to respondent no. 9, this Tribunal has no jurisdiction to entertain and decide this application in the form and content in which it has been filed, as no question or substantial question of environment has been raised in relation to the Scheduled Acts under the NGT Act, 2010. Another objection raised by respondent no. 9 is that the applicants are guilty of suppression and misrepresentation of material facts and have not approached the Tribunal with clean hands and also that the proceedings before the Tribunal ought to be dismissed in face of the proceedings pending before the Hon'ble High Court of Karnataka in the Writ Petitions afore-referred. If the dates as stated by the applicant are taken to be correct, even then the application should have been filed within 30 days of the constitution of the Tribunal i.e. 18th October, 2010 and in any case within 60 days thereafter, by showing that they were prevented by sufficient cause. Since the application has been filed much beyond the prescribed period, it is barred by time and suffers from the defect of latches.

13. Respondent no. 10 besides raising the same preliminary objection with regard to the maintainability of the application and jurisdiction of the Tribunal, as raised by respondent no. 9, has also stated that application of applicant is hit by the Principle of *Falsus in Uno, Falsus in Omnibus*. It is also averred that the present application is a cut-paste of the Public Interest Litigation filed before the Hon'ble High Court of Karnataka and that the allegations made therein and in the present application are similar. On merits it is contended that averments made in the application are factually incorrect.

According to respondent no. 10, crux of the dispute is with regard to the allocation of the land and its conversion from 'Protected Zone' to 'Residential Sensitive' in the Master Plan, without giving any reason, which does not fall within the jurisdiction of the Tribunal. The applicants have raised multifarious proceedings against respondent no. 10 which is an abuse of the process of law and are *mala fide*. The applicant has not only stated identical facts in their application before the Tribunal, but have even submitted the same set of documents as were filed before the Hon'ble High Court of Karnataka, which clearly shows that the application before the Tribunal lacks *bona fides* and there is suppression and misrepresentation of material facts.

14. On merits respondent no. 10 has stated that the State of Karnataka has formulated a policy to invite investment in Karnataka and for that purpose the Karnataka Industries (Facilitation) Act, 2002 had been promulgated. Under this Act, State Level Single Window Clearance Committee and State High Level Clearance Committee were created to examine and clear the projects. All investment projects submitted to Karnataka Udyoga Mitra were forwarded to Single Window Agency, if it was less than the value of Rs. 50.00 crores for necessary processing and clearance and for value above Rs. 50.00 crores, is placed before the State High Level Clearance Committee for processing and approval. Respondent no. 10 had submitted a proposal for developing of a Software Technology Park with an investment of 48.75 crores in 25

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acres of land along the outer ring road in Bangalore to which the clearance certificate dated 27th March, 2004 was issued. Respondent no. 10 submitted a revised proposal in respect of the same project and to obtain fresh clearance on 31st August, 2007 and revised proposal was with the investment of Rs. 179.22 crores. The State High Level Committee had cleared the project which was communicated to Respondent no. 10 on 25th January, 2008. According to Respondent no. 10, properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drain and secondary storm water drains that exist in the above properties. The application by respondent no. 10 seeking sanction of development and building plan in respect of the above properties into a Software Technology Park, Hospitality, Commercial and Residential Complex was also allowed and as per the directive of respondent no. 7, respondent no. 10 has deposited a sum of Rs. 1,28,56,830. Respondent no. 10 had also taken clearance from various authorities including Environmental Clearance and consent for establishment. The details of the same are as follows:

Sl. No.	Date	Document No.	Nature of Document	Issued by	Annexure
1	17.3.2011	ASC/CM(AO)/181/HAL: BG:58/2011	No Objection Certificate	Airport Services Centre, Hindustan Aeronautics Limited, Bangalore Complex	'R22'
2	30.07.2011	AGM(TP)/S:6/IX/2010 –11.	No Objection Certificate	Bharat Shanchar Nigal Ltd., CGM, Telecom, KTK Circle, Bangalore	'R23'
3	22.05.2012	CEE(P&C)/SEE/ (Plg)/EEE(plg)/K CO-95/F-46611/2012–13./R-50 (75)	No Objection Certificate	Karnataka Power Transmission Corporation Ltd., Chief Engineer, Electric City, Cauvery Bhavan, Bangalore	'R24'
4	03.08.2012	GBC(1)478/2011	No Objection Certificate	Office of Director General, Karnataka State Fire & Emergency Services	'R25'
5	04.04.2013	BWSSB/EIC/ACE ®/DCE(M)-II/TA(M)-II/137/2012–13.	No Objection Certificate	Bangalore Water Supply & Sewerage	'R26'

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				Board, Cauvery Bhavan, Bangalore	
6	03.06.2013	PCB/136/CNP/12/H321	No Objection Certificate	Karnataka State Pollution Control Board, Church Street, Bangalore	'R27'
7	30.09.2013	SEIAA:37:CON: 2012	No Objection Certificate	State Level Environment Impact Assessment Authority, Karnataka	'R28'

Certain sections of the media had raised some queries to respondent no. 10 to furnish the copy of the Consent to Establish and Environmental Clearance certificate on 30th September, 2013. They had also expressed that the project had started without such clearances. However, upon issuance of Consent to Establish and Environmental Clearance dated 4th June, 2013 and 30th September, 2013 respectively, same were furnished to the reporter of newspaper. The Hindu', vide letter dated 11th October, 2013. According to respondent no. 10, around this project, much development has already taken place, even around various lakes, but it has not caused any damage to the lakes and similarly, project of respondent no. 10 would also not cause any damage to the area and the lakes. Respondent no. 10 has also referred to the Writ Petition 36567-36574 of 2013, where relief of resumption of land from both the respondent nos. 9 and 10 was prayed. Notice dated 28th February, 2014 was issued by respondent no. 7 to respondent no. 10 containing direction to stop work/construction activity against which respondent no. 10 had also filed a Writ Petition in the Hon'ble High Court of Karnataka, being Writ Petition No. 18119 of 2014. The Writ Petition was pending and Interim Order was passed. This Respondent claims that they are entitled to develop the projects, having received all clearances. It is specifically stated that the Bellandur Lake does not support any fishing activity or forms a source of water for domestic purpose nor is the agricultural activity carried out at the said area. There are no wetlands and none of the functional aspects of the wetland exist on the site in question. It is also denied that the project carried out by respondent no. 10 on the property belonging to it has any adverse impact on environment. Respondent no. 10 further states that the ENVIS report relied upon by the applicant is prepared by persons interested in opposing his project. In any case, the said report dated 14th August, 2013 stood superseded by the Environmental Clearance dated 30th September, 2013, wherein, respondent no. 3 has accorded consent to the project after considering the actual facts, after due application of mind and by subjecting respondent no. 10 to strict terms and conditions as mentioned in the clearance dated 30th September, 2013. On these averments, respondent no. 10 prays that the application should be dismissed and no relief should be granted by the Tribunal to the applicants.

15. Respondent no. 7 has filed a short reply. He submits that after the possession of the land was handed over to respondent no. 9 and 10, one year time was granted to implement the project, which was extended from time to time. According to

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respondent no. 7, the building drawings were approved on 4th July, 2007, modified building drawings were approved on 26th April, 2011 and 30th August, 2012 with specific conditions. In the meeting of the KIADB held on 16th July, 2013, it was resolved to inform respondent no. 9 to fully comply with the Ecology and Environment rules as well as to obtain approvals from the respondent no. 6, LDA and respondent no. 4, KSPCB. Respondent no. 6, LDA vide its letter dated 24th September, 2013, had informed respondent no. 7 that the construction activity in the catchment area in the Bellandur Lake could drastically impact the Lake, with deleterious effects and asked the Respondent no. 7 to stop construction activity of respondent nos. 9 & 10, however, the validity of the building drawings was again extended up to 10th August, 2014. The Lokayukta on 17th December, 2013 had written a letter in respect of complaint filed by South East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21st December, 2013 to keep in abeyance the approval accorded and even the revalidations of plans. This was also informed to respondent no. 9. The Board took a decision which was communicated to respondent no. 9 on 2nd January, 2014, wherein it asked the said respondent no. 9 to stop all construction activities on the allotted lands. It is admitted that the said communication was challenged by respondent no. 9 and on the stop work notice, stay was granted by the Hon'ble High Court of Karnataka. Stop work notice issued by BBMP dated 23rd December, 2013 was also challenged before the Hon'ble High Court and operation of the said communication was stayed vide order dated 21st January, 2014. It is submitted by respondent no. 7 that the project of respondent nos. 9 and 10 had been approved by the Government. It is specifically submitted that the answering respondent had not acquired any '*Rajakaluves*' and the land allotted by respondent no. 7 to respondent no. 10 does not consist of the same. Respondent no. 7 further states that the Storm Water Drains are not always flowing in strict or permanent path and are prone to flow in different paths from time to time. Respondent no. 7 further states that it had allotted 17 acres 33½ guntas of land in favour of respondent no. 10 for the purpose of establishing Software Technology Park, Hospitality, Commercial and Residential Complex and has executed lease-cum-sale agreement on 20th March, 2008.

16. Respondent no. 6 has taken a stand that it was not at all aware of the project initiated by respondent no. 7, KIADB. The said respondent claims it came to know about the entire project only when certain newspaper reports surfaced during the month of June, 2013 and till that time respondent no. 6 was in the dark. After the complaints, the said respondent immediately inspected the Bellandur Lake and the Agara Lake on 12th June, 2013 and prepared an inspection report. In the report, it was noticed that the large scale construction activities in the catchment area of Bellandur Lake was going on and there was a change in the land use which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk which originally formed the irrigation area for the adjoining agricultural lands. Respondent no. 6, vide its letter dated 6th July, 2013, had questioned the decision of respondent no. 7 and even requested to stop the construction activity and to reclassify the land as non-SEZ area. It was thereafter on 31st August, 2013 that respondent no. 9 wrote a letter to respondent no. 6 for according approval for the proposed development projects. However, vide its letter dated 23rd September, 2013, respondent no. 6 informed respondent no. 7 that the replying respondent had no authority to grant or deny construction projects but at the same time it also communicated their objections to respondent no. 7, mentioning that construction activity would be in contravention to the directions of the Hon'ble High Court of Karnataka as well as of the Hon'ble Supreme Court. Despite these warnings, respondent no. 7 granted approval to the extension of building drawings of the project in favour of respondents no. 9 & 10 on 11th October, 2013 and 3rd January, 2013 respectively, with certain conditions like ensuring that all natural valleys, valley zone,

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irrigation tanks and existing roads leading to villages in the said land should not be disturbed; further, that the natural sloping pattern of the project site shall remain unaltered and the lakes and other water bodies within and/or at the vicinity of the project area should be protected and conserved. Despite these objections by respondent no. 6, the plans were approved and approvals extended from time to time. Therefore, respondent no. 6 submits that these projects, as approved by respondent no. 7 would have adverse impacts on Bellandur Lake and Agara Lake.

17. Respondent nos. 1, 3 and 5 though have filed separate replies but they have taken up the stand that the projects have been granted, No Objections Certificates and Environmental Clearance by SEIAA, subject to the conditions noticed above. According to these respondents, if there is any breach, the same would be dealt with in accordance with law. According to respondent nos. 1 & 3, the file of respondent no. 10 was closed by SEIAA, Karnataka on 16th November, 2012 for non-submission of the required information but was later revived in the meeting held on 27th June, 2013 and Environmental Clearance was granted on 30th September, 2013. Both the projects are ongoing projects. The proposals have been considered in accordance with law.

18. Vide order dated 25th July, 2014 of the Tribunal, respondent nos. 11 and 12 were impleaded on their applications. Both these respondents are registered as charitable trust or a society. Replies by both these respondents have been filed wherein they have raised specific objections with regard to allotment of land in Ecologically Sensitive Area in the catchments of the Bellandur Lake for the construction of IT Park and related infrastructure, in flagrant violation of the applicable rules and regulations. According to respondent nos. 11 and 12, the allotment of this land is in contravention of the directions laid down by the Hon'ble Supreme Court in the case of *Karnataka Industrial Areas Development Board* v. *Sri. C. Kenchappa*, (2006) 6 SCC 371. It is further stated that the fact that these projects would essentially result in alteration of natural hydrology of the area and sloping pattern of the project site, clearly shows that there was no application of mind on the part of the concerned authority for granting approvals. The plans sanctioned in favour of respondent nos. 9 and 10 are replete with irregularities and illegalities and despite objections from respondent no. 6, the plans have been renewed contrary to law. For instance, respondent no. 9 had first represented that the project will have a built up area of 1.75 lakh sq.ft. while seeking approval from respondent no. 6, while in reality the built up area is 1.30 crore sq. ft./9.54 lakh sq. mtr., which is evidenced by respondent no. 9's own admission, and is not even disputed by him. The water requirement of the project would be nearly 135 million litres per month, which would exert excessive pressure over the wetland and would also lead to scarcity of water for the residents of the nearby areas. As already stated, the execution of the project will necessarily result in altering the hydrology of the area and the natural sloping pattern of the project site. Therefore, the conditions imposed in the Environmental Clearance are incapable of being complied with. According to these respondents, the Google satellite images that have been placed on record, reveal that the excavation work by respondent nos. 9 and 10 commenced much prior to obtaining approvals by them in 2012 & 2013 respectively, making the construction unauthorised and illegal. The matters before the Hon'ble High Court are stated to be restricted to the prayer for resumption of land and not connected with these proceedings before the Tribunal. According to these respondents, the stop work orders for the construction of the project have been stayed in terms of the orders of the Hon'ble High Court of Karnataka and are subject to the result of the Writ Petition and the Project Proponents are entitled to claim their equities in the event they failed before the Hon'ble High Court. The Hon'ble High Court had granted the interim order staying the stop work orders primarily on the ground that BBMP did not have jurisdiction to issue such order. According to respondent nos. 11 and 12, respondent no. 10 obtained the

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Environmental Clearance on 30th September, 2013, but it still does not have the mandated clearance from the BDA which was one of the conditions imposed by the State High Level Clearance Committee on 25th January, 2008. The project consists of residential block and commercial block, among other constructed areas. It is averred that as of present, a very small part of the project has been completed and if the construction of the project is permitted to be completed in all respects, the environment and ecology of the area would suffer and residents and public at large would have to face severe and fatal environmental consequences. These adverse consequences would not only be limited to flooding, water shortage, geological instability but would also affect the Bellandur Lake, which is one of the largest lakes in Bangalore, gathering an area of 338.28 hectares, with catchment area, of approximately 171.17 square kms.

As already noticed, respondent nos. 11 and 12 were ordered to be impleaded as respondents in this case on the condition that they would withdraw the Public Interest Litigation filed by them before the Hon'ble High Court of Karnataka. These Respondents had thus moved the Hon'ble High Court for withdrawal of the Writ Petitions. However, the Hon'ble High Court only permitted these two Respondents to withdraw themselves from the Writ Petitions in terms of the undertaking given by them before the Tribunal. The Petitioner before the Hon'ble High Court who had not given any undertaking before the Tribunal, their Writ Petitions are still continuing before the Hon'ble High Court. They have denied the allegation that any of them has committed violation of the order of the Tribunal or abused the process of law. It is also denied that the averments made and stand taken by them is false, incorrect and vexatious. Respondent no. 7 had first issued a letter dated 14th August, 2013 requiring respondent no. 9 to comply with the ecology and environmental rules and also to take necessary approval from the LDA, Bangalore and KSPCB before taking up any further activity of the project. Then, it issued the order dated 2nd January, 2014 informing the said respondent that the layout plan has been kept in abeyance and thus the Project Proponent should stop all construction activities in the allotted land until further orders. It is also the case of respondent nos. 11 and 12 that the report by Dr. T.V. Ramachandra is not a report by interested persons, but is part of scientist's social responsibility and the report published in May, 2013 gives the complete and correct position at site. It is their case that the cause of action has arisen on various dates, including first on 11th October, 2013 when respondent no. 7, despite objections from various authorities, extended its approval of plan, on the conditions stated therein. They have, therefore, submitted that the application is neither barred by time nor can it be contended that it does not raise a specific question of environment within the ambit of the Scheduled Acts under the NGT Act, 2010.

19. From the above pleaded case of the respective parties and the submissions advanced on their behalf, the following questions fall for consideration and determination of the Tribunal:

1. Whether the application filed by the applicants and supported by respondent nos. 11 and 12, is barred by time and thus, not maintainable?
2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application, under the provisions of NGT Act, 2010?
3. Whether the present application is barred by the principle of *res judicata* and/or constructive *res judicata?*
4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petition 36567-74 of 2013 before the Hon'ble High Court of Karnataka?
5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in

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the interest of environment and ecology issue any directions and if so, to what effect?

Discussion on Merits

1. Whether the application filed by the applicants and supported by respondent nos. 11 and 12, is barred by time and thus, not maintainable?

20. According to respondent no. 9, it had submitted a proposal to establish Information Technology Park, R & D Centre, Residential Complex and other facilities and sought for allotment of lands for the project in the year 2000. On 15th January, 2001, the Government in exercise of powers conferred upon it under Section 3(1) of the Karnataka Industrial Area Development Act, 1966 declared the land in question as an Industrial Area. Preliminary notification for acquisition of land in question was issued on 15th January, 2001 by KIADB and final Notification for acquisition of the land was issued on 23rd April, 2004, which was preceded by a Global Investor meet held on 10th February, 2004. On 28th June, 2007, respondent no. 7 issued the letter of allotment to respondent no. 9 allotting 63 acres 37½ gunta in Agara and Jakkasandra village. The possession certificate in favour of respondent no. 9 was issued on 29th June, 2007 in furtherance to which said respondent had paid the amount and executed the lease-cum-sale agreement. Project lease was sanctioned on 4th July, 2007. Airport Authority issued the NOC on 9th April, 2010. Clearance for the project construction was issued by BSNL on 16th April, 2010. BWSSB issued NOC on 12th May, 2011. Bangalore Electricity Supply Company Ltd. issued NOC on 27th April, 2011. After meetings of the State Level Expert Appraisal Committee and SEIAA, proposal was considered and Environmental Clearance was granted to respondent no. 9 on 17th February, 2012 for which notice was published in 'Kannada Prabha' and 'Indian Express' on 12th March, 2012 and 14th March, 2012 respectively. Modified building plan had been approved by respondent no. 7 on 30th August, 2012 which was valid up to 10th August, 2014. On 4th September, 2012, KSPCB issued consent for establishment under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as per conditions stated in the NOC. On 12th June, 2013, the LDA made a report stating that the KIADB has initiated a colossal mixed-use development project in the catchment area of Bellandur Lake. With reference to these dates and events, respondent no. 9 had advanced the plea that the application is barred by limitation. It is the contention of respondent no. 9, that all material events that would give rise to filing of an application under the provisions of NGT Act, 2010, had occurred on and prior to 17th February, 2012 and as the application was filed before the Southern Zone Bench of the Tribunal on 13th March, 2014, thus, same is hopelessly barred by time and is liable to be rejected on that short ground alone.

Similar events had taken place in regard to the project of respondent no. 10 who had been granted Environmental Clearance on 30th September, 2013. The contention raised by this respondent, which is, without prejudice to its other contentions, is that the grant of Environmental Clearance would put an end to all other challenges and even if the reports dated 12th June, 2013 and 14th August, 2013 are taken into consideration, even then the application had to be filed within a period of 6 months from the date on which the 'cause of action for such dispute has first arisen' in terms of Section 14 of the NGT Act, 2010. Admittedly, present application has been filed in March, 2014 i.e. much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Even otherwise, the period of 60 days beyond the prescribed period of limitation has long expired and as such the Tribunal will have no jurisdiction to condone the delay. The Applicants contend, which contention is also duly supported by respondent Nos. 11 and 12 that the present application is not an application simplicitor under Section 14 of the NGT Act. It is an application where a specific prayer has been made with reference to the reports dated 12th June, 2013 and 14th August, 2013 for restoration of

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the Ecologically Sensitive Land and for maintaining the sensitive area in its natural condition, so that ecological balance of the area is not disturbed. This being a petition under Section 15 of the NGT Act, it could be filed within five years from the date on which the cause for such compensation or relief 'first arose'. According to the applicants, the present application is even filed within the period of limitation as contemplated under Section 14 of the NGT Act, 2010, for the reason that with reference to the inspection reports dated 12th June, 2013 by respondent no. 6 and 14th August, 2013 by respondent no. 2, various actions had been taken by different authorities, fully substantiating the plea of the applicant that such huge construction activity in the catchment area of the lakes is bound to have adverse impact on the environment and ecology. According to them, it is evident from the record that on 14th August, 2013, respondent no. 7 had issued a communication to respondent no. 9 to comply with Ecology and Environmental Rules, as well as to take approval from the LDA. Various letters were exchanged between different authorities and the Project Proponent about the progress of the project and its irregularities. A letter of stop work notice was issued by the BBMP on 23rd December, 2013. KIADB also issued a stop work notice to respondent no. 9 on 2nd January, 2014. According to these applicants, in light of these facts, it is the case of 'continuing and/or recurring' cause of action relatable to environmental issues. Thus, the application had been filed within the prescribed period of 6 months even in terms of Section 14 of the NGT Act and the limitation would trigger from each of these dates mentioned above.

21. Sections 14 and 15 of the NGT Act, 2010 to a large extent are self contained provisions. They deal with the remedies that an aggrieved person is entitled to invoke. The present application, if treated as an application under Section 15 of the NGT Act, viewed from any angle, is within the prescribed period of limitation. The Environmental Clearance was granted to respondent no. 9 vide order dated 17th February, 2012 and all events have occurred thereafter till institution of the petition. The applicant has prayed for relief and restoration of ecology particularly with reference to the catchment areas of Bellandur Lake & Agara Lake. The applicant could not have availed of any remedy before the Tribunal, prior to 2nd June, 2010 and/or 18th October, 2010 respectively, i.e. the dates on which the Act came into force and the Tribunal was constituted. Thus, the period of limitation would start running at best from these dates. The present application for the purposes of Section 15 has been filed within 5 years there-from and thus, has to be treated as within time.

However, what needs to be deliberated upon is whether in terms of Section 14 of the NGT Act, 2010, the present application has been filed within the prescribed period of limitation or not. Section 14(3) mandates that no application for adjudication of dispute under Section 14(1) shall be entertained by the Tribunal unless it is made within the period of 6 months from the date on which the 'cause of action for such dispute first arose'. The jurisdiction of the Tribunal under Section 14 is over civil cases where a substantial question relating to environment, including enforcement of any legal right relating to environment, is involved and such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. The dispute or questions that the Tribunal is required to settle must fall within the ambit and scope of Section 14(1) of the NGT Act. In other words, it must be a dispute raising a substantial question relating to environment.

22. The contesting respondents while relying upon the language of Section 14 read cumulatively, contend that the expression 'within the period of 6 months from the date of which the cause of action for such dispute first arose' mandates that the period of limitation has to be reckoned when the cause of action for such dispute first arose and not thereafter. In the present case, the Environmental Clearance had been granted to respondent no. 9 on 17th February, 2012 and therefore it is their contention

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that the application could at best be filed by 16th August, 2012 and not thereafter.

23. 'Cause of Action' as understood in legal parlance is a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed. It is the foundation of a suit or an action. 'Cause of Action' is stated to be entire set of facts that give rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In other words, it is a bundle of facts which when taken with the law applicable to them gives the plaintiff, the right to relief against defendants. It must contain facts or acts done by the defendants to prove 'cause of action'. While construing or understanding the cause of action, it must be kept in mind that the pleadings must be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or passage and to read it out of the context, in isolation. Although, it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, from the pleading taken as a whole. [Ref. *Shri Udhav Singh* v. *Madhav Rao Scindia*, (1977) 1 SCC 511, *A.B.C. Laminart Pvt. Ltd.* v. *A.P. Agencies*, AIR 1989 SC 1239].

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

Furthermore, the 'cause of action' has to be complete. For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as afore-stated would have to be considered as to when it first arose.

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law. 'Cause of action first arose'

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would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of *Bal Krishna Savalram Pujari* v. *Sh. Dayaneshwar Maharaj Sansthan*, AIR 1959 SC 798.

26. In the case of *State of Bihar* v. *Deokaran Nenshi*, (1972) 2 SCC 890, Hon'ble Supreme Court was dealing with the provisions of Section 66 and 79 of the Mines Act, 1952. These provisions prescribed for a penalty to be imposed upon guilty, but provided that no Court shall take cognizance of an offence under Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the provision specifically provided that if the offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence continues. The Hon'ble Supreme Court held as under:

> "5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

27. Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of 'continuing wrong or offence'. For instance, using the factory without registration and licence was an offence committed every time the premises were used as a factory. The Hon'ble Supreme Court in the case of *Maya Rani Punj* v. *Commissioner of Income Tax, Delhi*, (1986) 1 SCC 445, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not, the Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assesse does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. Hon'ble High Court of Delhi in the case of *Mahavir Spinning Mills Ltd.* v. *Hb Leasing and Finances Co. Ltd.*, 199 (2013) DLT 227, while explaining Section 22 of the Limitation Act took the view that in the case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury which renders the doer of the act responsible and liable for consequence in law.

Thus, the expressions 'cause of action first arose', 'continuing cause of action' and

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'recurring cause of action' are well accepted cannons of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case. It is not possible to lay down with absolute certainty or exactitude, their definitions or limitations. They would have to be construed with reference to the facts and circumstances of a given case. These are generic concepts of civil law which are to be applied with acceptable variations in law. In light of the above discussed position of law, we may revert to the facts of the case in hand.

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: *Khatri Hotels Private Limited* v. *Union of India (UOI)*, (2011) 9 SCC 126, *Bal Krishna Savalram Pujari* v. *Sh. Dayaneshwar Maharaj Sansthan*, AIR 1959 SC 798, *G.C. Sharma* v. *Municipal Corporation of Delhi*, ILR 2 Delhi 771, *Kuchibotha Kanakamma* v. *Tadepalli Ptanga Rao*, AIR 1957 AP 419].

29. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011, shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and therefore, there is exclusion of the concept of the 'joinder of causes of action' under the Rules of 2011. The multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time. In first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may gives rise to a fresh cause of action.

To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the

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action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of *M.R. Gupta* v. *Union of India*, (1995) 5 SCC 628, the Court held that:

> "The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that it the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.
>
> The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China Subba Rao* v. *Mattapalli, Raju*, AIR (1950) FC 1."

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It

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may have even be *de hors* the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: *Ex. Sep. Roop Singh* v. *Union of India*, 2006 (91) DRJ 324, *Bengal Waterproof Limited* v. *Bombay Waterproof Manufacturing Company*, (1997) 1 SCC 99].

32. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not *de bar* a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose.

33. The Environmental Clearance was granted to the project of Respondent no. 9 on 17th February, 2012 and to Respondent no. 10 on 30th September, 2013. Both these Environmental Clearances being appealable in terms of Section 16 of the NGT Act, 2010, their legality and correctness could be challenged within the prescribed period of limitation i.e. 30 days (or within the extended period of 60 days) which has not been done and as already noticed there is no challenge in this application to the grant of the Environmental Clearance. The applicants have primarily raised a challenge within the ambit and scope of Section 14 and 15 of the NGT Act. As already discussed, the application in so far as it prays for the relief of the restoration, it is within the period of limitation of 5 years. According to the applicants, the facts on record disclose violations of the condition of Environment Clearance and poses serious threat to the environment and ecology because of the reckless construction in the catchment areas of the lakes. During the period of August, 2012 to January, 2014, various notices have been issued by different authorities in relation to the modification of building plans. These stop work notices/orders and the inspection reports including report by LDA clearly demonstrates that the development project in the catchment area of Bellandur Lake as implemented would probably have adverse effect on the Bellandur Lake. The applicant may not challenge the grant of Environmental Clearance *per se* but upon commencement of the project and in view of their being definite documentary

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evidence supported by data, that the Project Proponent has committed breaches and implementation of the project is bound to have serious adverse impacts on ecology, environment and particularly the water bodies would give an independent 'cause of action' to him *de hors* the grant of Environmental Clearance. The averments in the application and the record fully satisfy the ingredients of Section 14 of the NGT Act. From those occurrences particularly of January, 2014, a fresh period of limitation has to be reckoned. The applicant may rely upon various reports, notices and orders in support of its claim. Whether the applicant succeeds on merits or not, is a different issue. However, for the purpose of limitation, the dates of these reports, stop work orders and notices would be relevant dates, which would provide the 'recurring cause of action' to the applicant and thus, the application will be within the prescribed period of limitation. In addition to this, the applicant has also prayed for taking action in accordance with law on the basis of the report dated 14th August, 2013, communication letter of LDA dated 23rd September, 2013, communication dated 12th December, 2013 by LDA to Respondent No. 9, stop work notice dated 23rd December, 2013 issued by BBMP to Respondent No. 9 and stop work notice issued dated 2nd January, 2014 by KIADP to Respondent No. 9. Thus, the application having been instituted on 13th March, 2014 is well within the period of limitation under Section 14 of the NGT Act and for the reasons afore-recorded, we find no merit in the plea of limitation raised on behalf of the Respondents.

2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application, under the provisions of NGT Act, 2010?

34. It is a settled principle that while determining whether the application discloses a cause of action, which would squarely fall within the ambit and scope of the provisions of the NGT Act, the petition has to be read as a whole by the Court or the Tribunal. Thus, we have to examine the cumulative effect of the averments made in the application, read in conjunction with the prayer clause. If upon reading of the entire application together, such cause of action is disclosed, that would fall within the jurisdiction of this Tribunal, the Tribunal would be obliged to entertain and decide such pleas. In the case in hand, the applicant has made reference to various activities in general and illegal and unauthorised activities of respondent nos. 9 and 10 in particular, which are having adverse effect on the water bodies as well as the water supply to the city of Bangalore. It is alleged that the construction activity that is being carried on by respondent no. 9 is in violation of all the stipulations of the Environmental Clearance. Rampant construction work is being carried on in the buffer zone as well as over and around the Rajakaluves. While pointing out the blatant irregularities, it is also averred that the project is in the midst of fragile wetland area and is bound to severely disturb and damage the Rajakaluves. In terms of the Environmental Clearance, a condition has been imposed that the project proponent shall not disturb the storm water drains, natural valleys, etc. and buffer zone area around the Rajakaluves was to be maintained. However, according to the applicant, the project area is located between two lakes and therefore, the construction is in violation of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010. There has been violation of maintaining the buffer zone in accordance with the revised Master Plan of 2015. There has to be 30 meter buffer zone created around the lakes and 50 meter buffer zone created on either side of the Rajakaluves. This has also not been adhered to. Further, the consent had been granted to respondent no. 9 for residential units and not for other activities.

35. While referring the water shortage, the averment is that the project requires 4.5 million litres of water per day i.e. 135 million litre water per month. Such requirement of the project would be beyond the capacity of respondent no. 5, as the quantity of water required for the project would still be more than the water supply

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being made by respondent no. 5 to the entire Agaram ward in Bangalore. The NOC issued by respondent no. 5 covers an area of only 17404 sq. meters whereas the total built up area of the construction is 13,50,454.98 sq. meters. Thus, the NOC was partial. Therefore, it is clear that even the Environmental Clearance had been obtained by respondent no. 9 without disclosure of correct facts. Further, the averments are that the construction activity has severely disturbed and damaged the Rajakaluves that run through the entire land and in fact is likely to result in disappearance of the Rajakaluves. Relying upon the two reports dated 12th June, 2013 and 14th August, 2013, it is averred that the project will have disastrous effect on the Agara Lake and the Bellandur Lake. If the construction is not stopped, the sensitive area and its ecology and environment would be at stake. Even the authorities had issued notices/stop work orders to the respondents for the breach of the conditions committed by them and for the construction activity being illegal.

On these averments, the two prayers that have been made is that the respondent - State of Karnataka - should take cognizance of the reports dated 12th June, 2013 and 14th August, 2013 and should take coercive and punitive actions against the respondents, as well as restore the ecology in the sensitive area. Further that, the Government should be directed to maintain the very land as a sensitive area and no development or construction activity should be allowed to be carried on, that would disturb the ecological balance of the area.

36. We have to examine whether on the facts afore-noticed, the prayers made would squarely fall within the scope of implementation of any of the Acts specified under Schedule I to the NGT Act. This Tribunal has three jurisdictions - original, appellate and special jurisdiction, enabling it to grant reliefs of compensation and restitution of property and environment both. Section 14 gives a very wide jurisdiction to the Tribunal to resolve and pass orders in all civil disputes, where substantial question relating to environment including enforcement of legal right relating to environment is involved and such question arises from the implementation of the enactments specified under Schedule I. Section 16 provides that appeal would lie to the Tribunal against the certain orders passed by authorities and Boards, in relation to the orders specified in clauses (a) to (j) of section 16, which also includes appeal against an order refusing or granting Environmental Clearance for carrying out of any activity, operation or process. Section 15 of the NGT Act gives to the Tribunal jurisdiction to grant relief, compensation and restitution in the event there is a victim of pollution and other environmental damage arising under the enactment specified in Schedule I of the NGT Act, for restitution of property damage as well as for restitution of environment in such areas.

37. The definition of 'environment' under Section 2(c) of the NGT Act again is widely framed. It is comprehensive enough to take within its ambit all matters in relation to environment. This definition practically covers every activity that will have water, air and land and inter-relationship, which exists among and between these and the human being, other living creatures, plants, microorganism and property. This definition is identical to the definition of 'environment' as provided under section 2(a) of the Act of 1986. In terms of the object and purpose of the Act of 1986, it has primarily been enacted to protect and improve the environment and for prevention of hazards to human being, other living creatures, plants and property.

Therefore, both protection and improvement of the environment are two very fundamental aspects of these legislations. Certainly, the applicant has not raised specific challenge to the Environmental Clearances dated 17th February, 2012 and 30th September, 2013 in the present appeal, but what is being questioned is the disappearance and further likelihood of complete extinction of the water bodies in the area in question in the city of Bangalore. Furthermore, since studies have shown

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serious adverse impacts upon the ecology and environment of the area, the authorities concerned, including the State Government, should take appropriate steps in accordance with law and the ecological degradation or damage should be directed to be restored. Once these reliefs are read in conjunction with the averments made in the record and examined within the domain of Order VII Rule 11 of the Code of Civil Procedure, 1908, then it is not possible to hold that the petition does not disclose a cause of action that would squarely fall within the ambit of the jurisdiction conferred upon the Tribunal in terms of Sections 14 and 15 of the NGT Act.

38. Section 15 of the NGT Act provides not only for relief and compensation to victims of pollution and other environmental damage arising under the enactments specified under Schedule I, but also for restitution of property and damage and restitution of environment for such area or areas. It is a general provision and covers victims of the pollution generally. In contradistinction thereto, Section 17 is a specific provision relating to death or specific injury which has occurred to a person, to a property or environment. Such death or injury has to result from an accident or adverse impact of activity or operation or a process, under any enactment specified under Schedule I, then the person responsible shall be liable to pay such relief or compensation for death, injury or damage, in terms of all or any of the heads specified in Schedule II of the Act and as determined by the Tribunal. This provision is person-specific and relates to such injury which results from an activity, operation or process and imposes liability on the person responsible for that activity, operation or process. Furthermore, when the provision of Section 14 and 15 of the NGT Act are examined in light of the Scheme of the Act, then it becomes clear beyond ambiguity that both these provisions operate in independent fields. They are mutually exclusive and not interconnected. Section 15 is not essentially dependent upon an order being passed under Section 14 as a condition precedent. In other words, remedy under Section 15 is not a consequential remedy to the provisions under Section 14. The legislature has provided distinct criteria, procedure and limitation under both these sections. If they were to be treated interconnected or inter dependent, there was no occasion to provide entirely different limitation within which an aggrieved person can invoke the jurisdiction of the Tribunal. The essentials to be pleaded and proved under these provisions are notably different. While under Section 14, an applicant has to show that he has raised a substantial question relating to environment, which arises out of the implementation of the enactments specified under Schedule I, under Section 15, an applicant is called upon only to show that he is victim of pollution or other environmental damage.

39. Another contention raised before the Tribunal by the respondents is that as far as grant of restoration under Section 15 is concerned, the applicant has not made out a case invoking the said jurisdiction and furthermore, that Section 15 comes into play post event. This argument cannot be accepted. Firstly, we have already noticed in some detail that the factual matrix of the case as pleaded by the applicant brings out a case for invoking the jurisdiction of the Tribunal under Sections 14 and 15 both. Secondly, Section 15 when construed on its plain language does not mandate a jurisdiction which can be invoked only post event. We are persuaded to hold so because of the clear distinction in language of Sections 15 and 17 of the NGT Act. Section 17 specifically requires that there ought to have been death, injury to any person or damage to any property or environment from an accident or adverse impact of an activity or operation or process where on the liability of the person to pay such relief or compensation shall be computed on the principle of no fault i.e. strict liability. In contradistinction thereto, Section 15 would operate both to a damage that has occurred as well as the damage which is likely to occur in relation to a property or environment. Of course, such damage will be to the victim of the pollution or other environmental damage arising under the enactments specified in Schedule I. Section

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20 of the Act places an obligation on this Tribunal to apply the three principles of Sustainable Development, Precautionary Principle and the Polluter Pays Principle, in settlement of disputes before it. Since the precautionary principle will also be part of Section 15, its applicability in a likely damage to environment or property cannot be excluded. The legislature in its wisdom has enacted two different and distinct provisions. They have to operate in their respective fields, particularly, when their language is distinct and different. A clear distinction between two is that Section 17 would operate only for compensation while Section 15 would deal both with compensation and restitution.

40. The expression 'dispute' is relatable to a question which is a substantial question of environment and such question should arise out of the implementation of the scheduled enactments under the NGT Act. It is a term of wide connotation and once a fact is asserted by one party and disputed by the other it gives rise to a 'dispute'.

41. Wherever a dispute as afore-noticed would arise, it would certainly give rise to a cause of action and accrue a right to sue in favour of an applicant in order to invoke one or the other jurisdictions of the Tribunal. At this stage it may be useful to refer to the decision of the Tribunal in the case of *Kehar Singh* v. *State of Haryana*, 2013 ALL (I) NGT REPORTER (DELHI) 556, wherein it was held:

> "16. 'Cause of action', therefore, must be read in conjunction with and should take colour from the expression 'such dispute'. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. 'Such dispute' has to be considered as a dispute which is relating to environment. The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate to environmental issues would not be 'such dispute' as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the 'cause of action' referred to under Sub-section (3) of Section 14 should be the cause of action for 'such dispute' and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act. The term 'cause of action' has to be understood in distinction to the nature or form of the suit. A cause of action means every fact which is necessary to establish to support the right to obtain a judgment. It is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. It is what a plaintiff must plead and then prove for obtaining the relief. It is the factual situation, the existence of which entitles one person to obtain from the court remedy against another. A cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It does not comprise evidence necessary to prove such facts but every fact necessary for the plaintiff to prove to enable him to obtain a decree. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In wider sense, it means

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

17. Upon analysis of the above judgments of the Supreme Court, it is clear that the factual situation that existed, the facts which are imperative for the applicant to state and prove that give him a right to obtain an order of the Tribunal, are the bundle of facts which will constitute 'cause of action'. This obviously means that those material facts and situations must have relevancy to the essentials or pre-requisites provided under the Act to claim the relief. Under the NGT Act, in order to establish the cause of action, prerequisites are that the question must relate to environment or it should be a substantial question relating to environment or enforcement of any legal right relating to environment. If this is not satisfied, then the provisions of Section 14 of the NGT Act cannot be called in aid by the applicant to claim relief from the Tribunal. Such question must fall within the ambit of jurisdiction of the Tribunal i.e. it must arise from one of the legislations in Schedule I to the NGT Act or any other relevant provision of the NGT Act. For instance, the Tribunal would have no jurisdiction to determine any question relating to acquisition of land or compensation payable in that regard. However, it would have jurisdiction to award compensation for environmental degradation and for restoration of the property damaged. Thus, the cause of action has to have relevancy to the dispute sought to be raised, right to raise such dispute and the jurisdiction of the forum before which such dispute is sought to be raised."

42. The plea raised by the respondents that the application does not disclose any cause of action within the four corners of the statutory jurisdiction of the Tribunal is, therefore, liable to be rejected. The respondent can raise such plea only while on the assumption that the allegations made in the application are correct. In other words, such plea of rejection of plaint is a plea of demurer. Whether the applicant would ultimately be entitled to any relief or not, is a matter different from rejecting the application on the ground of non-disclosure of any cause of action.

43. Specific averments have been made in the application with regard to the construction activities being carried on in an irregular manner, in violation of Environmental Clearance conditions and its adverse impacts upon environment and ecology, particularly, the water bodies in the area. Furthermore, submissions have been made on the basis of reports that refer to the restitution of degraded and damaged ecology and environment, particularly with reference to the water bodies in the concerned areas. A general question with regard to adverse impacts on water supply and water bodies has been prominently raised. These averments have been denied by the project proponents. The authorities which had issued stop work notices to the project proponents have partly supported the case of the applicant, while some other respondents, including official respondents, have supported the project. Thus, these are the matters which certainly raise a substantial question relating to environment and which arise in relation to implementation of the enactments specified

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in the Schedule to the NGT Act. Once, such disputes are raised which require determination by the Tribunal, it can hardly be contended that the application does not disclose any cause of action falling within the jurisdiction of the Tribunal.

44. Applicant can make a prayer of restitution of property damaged or of environment of such area under Section 15 of NGT Act. However, applicant has to show that it arises under the enactments specified under Schedule I. Thus, there is hardly any commonality in cause of action and ingredients thereto, required to be pleaded and proved and in the scope of jurisdiction exercisable by the Tribunal under sections 14 and 15 of the NGT Act. Therefore, these provisions are mutually exclusive and contentions of the Respondents that jurisdiction under Section 15 can only be invoked as a consequence of invocation of jurisdiction and orders of the Tribunal either under Section 14 or Section 16 of the Act is devoid of any merit.

45. The Learned Counsel appearing for the respondents, particularly the Project Proponents, while relying upon the judgement of the Hon'ble Supreme Court in the case of *T. Arivandandam* v. *T.V. Satyapal*, (1977) 4 SCC 467 and *ITC Ltd.* v. *Debt Recovery Tribunal*, (1998) 2 SCC 70, contended that the application before the Tribunal does not disclose a cause of action, is a vexatious litigation without merits and is cleverly drafted to create an illusion of a cause of action and therefore the application should be rejected. In our considered opinion, the respondents cannot take any advantage from any of the judgements cited by them. Firstly, these were the judgements on their own peculiar facts. In the case of *T. Arivandandam* (supra), the Hon'ble Supreme Court was dealing with an appeal against the order of Hon'ble High Court of Karnataka dismissing the revision petition of the petitioner for granting injunction or stay on the order of the Trial Court directing vacation of premises. The Apex Court observed that it was an audacious attempt by the petitioner for seeking more and more time in vacating premises by filing these fake litigations. It was held by the Hon'ble Supreme Court that the plaint was manifestly vexatious and meritless in the sense of not disclosing a clear right to sue and, therefore, the plaint should be rejected. On the other hand, in the case of *ITC Ltd.* (supra), the appeal was filed against the judgment of the Learned Single Judge of High Court of Karnataka, dismissing the Writ Petition filed by the appellant against the orders of the Debt Recovery Tribunal and Appellate Tribunal, rejecting the application of the appellant under Order VII Rule 11 of the Code of Civil Procedure, 1908. The Hon'ble Supreme Court had therein observed that non-movement of goods can be for a variety of tenable or untenable reasons but that by itself will not give a reason to the plaintiff to use the word “fraud” in the plaint and cleverly get over any objections that may be raised by way of filing an application under Order VII Rule 11. In these circumstances, it was held that if the plaint in fact did not disclose a cause of action, clever drafting cannot create illusionary cause of action. Hon'ble Supreme Court also stated that there was gross abuse of process of law repeatedly and observed that a plaint on a meaningful and not formal reading, should disclose the cause of action.

46. In the case in hand, as has already been held by us before, the litigation pending before the Hon'ble High Court of Karnataka and the Tribunal, fall under different jurisdictions. Even the Project Proponents themselves have filed Writ Petitions before the Hon'ble High Court of Karnataka challenging the stop work notices issued to them. In our considered view, on a meaningful reading of the application, particularly seen in light of the reports and other documents placed on record, the application does disclose a cause of action that would squarely fall within the ambit of jurisdiction of this Tribunal vested in it under Sections 14 and 15 of the NGT Act.

3. Whether the present application is barred by the principle of *res judicata* and/or constructive *res judicata?*

4. Whether the application filed by the applicants should not be entertained

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or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petition 36567-74 of 2013 before the Hon'ble High Court of Karnataka?

47. The Respondents have raised the plea that the present application of the applicant is barred by the Principles of *res judicata*, constructive *res judicata* and in any case principle analogous thereto. This plea is found on the averment that some petitioners including Respondent Nos. 11 and 12 had filed a Writ Petition being Writ Petition No. 36567-574 of 2013, before the Hon'ble High Court of Karnataka with the following prayers:—

"PRAYER

In the above premises, it is prayed that this Hon'ble Court may be pleased to:

(a) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 8 vide Lease cum sale agreement dated 30.06.2007 at Annexure "B", more fully described in the schedule to the said agreement;

(b) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 9 vide Lease cum sale agreement dated 20.03.2008 at annexure "C", more fully described in the schedule to the said agreement.

(c) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from, in any manner, further alienating the public land, described in the schedule of the Lease cum Sale Agreement at Annexure B and C, in the vicinity of Agara lake to any private individual/institution/trust/societies/nongovernmental associates and organizations without following the due process of law;

(d) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from allotting the said land, described in the schedule to the Lease cum Sale Agreement at Annexure B and C, for purpose which may have an adverse consequences on the environment and, in particular the land in issue;

(e) Direct the Respondent no. 1 to appoint a Task Force to look into illegal allotment of land in favour of private persons at the cost of environment and ecology and report to the Respondent no. 1 take action over them;

(f) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case.

INTERIM PRAYERS

Pending consideration of this writ petition, this Hon'ble Court be pleased to:

(a) Pass an order staying all construction activity under the project being carried out on the land in issue;

(b) Pass an order restraining the Respondent Nos. 8 and 9 from alienating the land described in the schedule to the Lease cum Sale Agreement at Annexures B and C, or creating any third party rights or encumbrances on the land in issue; and

(c) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case."

48. It is alleged that in the above mentioned Writ Petition, averments similar to that of present application had been made and in fact averments identical to the present petition were made in paragraphs 52 to 55 of the Writ Petition. Furthermore, the applicants did not disclose the factum of filing the Writ Petition before the Hon'ble High Court to this Tribunal. Also, the parties to both the proceedings to some extent are common.

It is also argued that respondent nos. 9 and 10 have also filed two Writ Petitions

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before the Hon'ble High Court of Karnataka being Writ Petition No. 792 of 2014 and Writ Petition No. 366-367 of 2014, challenging the stop work notices issued to the respective respondents on 23rd December, 2013 and 2nd January, 2014 and that the operation of these notices have been stayed by the Hon'ble High Court on 21st January, 2014.

Thus, it is contended that the issues in the present application are directly and substantially in issue before the Hon'ble High Court of Karnataka and therefore, the present proceedings are barred by the Principle of *res judicata* and/or constructive *res judicata*. Neither the applicant nor respondent nos. 11 and 12 have disputed the filing of these Writ Petitions before the Hon'ble High Court, but have vehemently contended that neither the parties are common nor the issues in both the applications are directly and substantially the same. According to them, there is no commonality of cause of action or likelihood of a conflict between the judgments. It is therefore, their contention that the application is not liable to be rejected on that ground.

49. The pendency of the Writ Petitions before the Hon'ble High Court would not directly or incidentally render the proceedings before the Tribunal unsustainable. The scope of those Writ Petitions and the reliefs claimed therein are distinct and different. The matters relating to environment or the matters raising serious environmental issues are to be more appropriately tried before the Tribunal. We may at this stage refer to a recent judgment of the Supreme Court of India in the case of *Union of India* v. *Shrikant Sharma*, Civil Appeal No. 7400 of 2013 decided on 11th March, 2015. The Supreme Court in that case was dealing with a question of law whether the right of appeal under Section 30 of the Armed Forces Tribunal Act, 2007 against an order of the Tribunal with the leave granted by the Supreme Court against such orders, under Article 136(2) of the Constitution of India will bar the jurisdiction of the High Court Under Article 226 of the Constitution of India. After discussing the various provisions of the Act and various judgments of the Supreme Court in relation to basic principle for exercising power under Article 226 of the Constitution stated:

> "34.
>
> (iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.
>
> (Refer: *Nivedita Sharma).*
>
> (iv) The High Court will not entertain a petition Under
>
> Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: *Nivedita Sharma).*
>
> 36. *In Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO)* this Court observed that it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.
>
> In *Chhabil Dass Agrawal* this Court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

The Court then proceeded to examine the likelihood of analogous situation that could arise by exercise of such jurisdiction and finally concluded held as under:

> "37.
>
> ...Once, the High Court entertains a petition Under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal Under Section 30 with leave to appeal Under Section 31 of the Act against the

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order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court Under Article 226 of the Constitution Under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court Under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy Under Section 30 read with Section 31 Armed Forces Act.

38. The High Court (Delhi High Court) while entertaining the writ petition Under Article 226 of the Constitution bypassed the machinery created Under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions Under Article 226 and directed the writ Petitioners to seek resort Under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition Under Article 226 of the Constitution of India.

39. For the reasons aforesaid, we set aside the impugned judgments passed by the Delhi High Court and upheld the judgments and orders passed by the Andhra Pradesh High Court and Allahabad High Court. Aggrieved persons are given liberty to avail the remedy Under Section 30 with leave to appeal Under Section 31 of the Act, and if so necessary may file petition for condonation of delay to avail remedy before this Court."

50. Now firstly, let us examine if the parties in both these proceedings are common. The present application was instituted by 3 applicants and none of them is a party to the Writ Petition before Hon'ble High Court of Karnataka. The official Respondents are common in both the proceedings. Respondent Nos. 11 and 12 were the petitioners No. 1 and 2 in the Writ Petition before the Hon'ble High Court. However, at a later stage of pendency of this application, they filed M.A. No. 139 and 140 for being impleaded as party to the present application. This application was contested by the respondents including Respondent no. 9 and 10 in the present application and the same was allowed vide order dated 25th July, 2014 passed by the Tribunal. In the said order, it was recorded that both these Respondent Nos. 11 and 12 have given an undertaking to the Tribunal that they would withdraw the Writ Petition that they had filed before the Hon'ble High Court of Karnataka. In compliance to the undertaking given to the Tribunal, these two Respondents filed an application before the Hon'ble High Court and vide order dated 1st August, 2014 passed in Writ Petition No. 36567 of 2013, the name of these two Respondents as Petitioner Nos. 1 and 2 were ordered to be deleted. Thus, as of today, none of the above applicants is the party in the Writ Petition before the High Court and in fact, they have been impleaded as Respondent Nos. 11 and 12 in consonance with the order of the Tribunal and that of the High Court as afore-referred. Now, we may proceed to deal with the content and scope of these proceedings. Undisputedly, the jurisdiction of the High Court under Article 226 of the Constitution of India is very wide. The jurisdiction of the Tribunal is very limited and it has to exercise it within the limitation of the Statute that created it. There are similar and at some places even identical contentions raised by the applicants in the present application, to the facts averred in the Writ Petition by the Petitioners before the High Court of Karnataka. The prayers in the Writ Petition as referred to above, both generally and substantially relate to acquisition of land, requiring the respondent authorities to resume the land in question, to examine the question of illegal allotment of the land and stop allotment and alienation of land. While the prayers before the Tribunal are and have to be restricted to environmental degradation and its restoration along with treating the areas in question as sensitive areas. The rampant development activities carried out by Respondent Nos. 9 and 10 are stated to have adverse impact on ecology, environment and the water bodies. It is

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further prayed before tribunal that there should be restoration of ecology of sensitive area. Thus, it is evident from the prayers and genesis of the respective proceedings that they are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment, ecology and its restoration and have to be essentially a civil proceeding. While the proceedings before the High Court relate to entirely different issues i.e. the acquisition of land, its allotment and its transfer to third party. Thus, the issues in both the proceedings are neither substantially nor materially identical. Both jurisdictions have to operate in different fields governed by different and distinct laws. The objection taken by the Respondent does not satisfy the basic ingredients to attract the application of *res judicata* or constructive *res judicata*.

51. One of the tests in regard to the above is that a 'cause of action' should culminate into a judgment and lose its identity by merging into the result of the judgment. Once a 'cause of action' is culminated into the judgment, the general principle of *res judicata* or *constructive res judicata* bars re-agitating the same issue all over again. The object is to prevent abuse of process of law by re-agitating the same issues in different courts.

For these reasons, we find no merit in this contention of respondent Nos. 9 and 10. The purpose of the doctrine of *res judicata* is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of re-agitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality in so far as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The 'cause of action' in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor *constructive res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of judicial propriety', because of the Writ Petitions pending before the Hon'ble High Court of Karnataka.

In light of the above law enunciated by the Supreme Court of India, the contention raised on behalf of the applicant that this Tribunal should entertain and decide the application despite pendency of Writ Petitions before the High Court, deserves to be accepted.

5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

52. Discussion on this issue with reference to the facts of the case would require the Tribunal to decide as to what relief, if any, could be granted to the applicant and whether there is any need for the Tribunal to pass any direction in the interest of environment and ecology in the peculiar facts and circumstances of the case. As already noticed in the afore-indicated discussions, the serious objection herein is that these projects commenced their construction activities without seeking Environmental Clearance and therefore, the constructions are illegal and unauthorised. These huge constructions of residential, commercial and other purposes are located on the wetlands of different water bodies in the city of Bengaluru. The constructions have been raised even on the catchment areas of the water bodies. With reference to the

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reports afore-noticed, averments are that these constructions have adversely affected the environment, ecology and particularly the water bodies and their biodiversity. These constructions would have tremendous impact on the water supply to the city of Bengaluru and that there is a likelihood of complete extinguishment of these historical lakes, which have been the basic factor behind maintaining the environmental and ecological balance in the city of Bengaluru.

53. One of the most important facets of deliberation on this issue would be the alleged construction on the wetlands and catchment areas of the water bodies, i.e. the Agara and the Bellandur Lakes. In common parlance, 'wetlands' are the areas where water is the primary factor controlling the environment and the associated plant and animal life. They occur where the water table is at or near the surface of the land or where the land is covered by water.

54. Ramsar Convention uses a broad definition of wetlands. It includes all lakes and rivers, underground aquifers, swamps and marshes, wet grasslands, peatlands, oases, estuaries, deltas and tidal flats, mangroves and other coastal areas, coral reefs, and all human-made sites such as fish ponds, rice paddies, reservoirs and salt pans.

55. The Indian definition of a 'wetland' means "an area or of marsh, fen, peatland or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six meters and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification of the Government of India in the Ministry of environment and Forest, S.O. number 114(E) dated the 19th February, 1991."

56. Wetlands are amongst the most productive ecosystems on the Earth, and provide many important services to human society. However, they are also ecologically sensitive and adaptive systems. "Free" services provided by wetlands are often taken for granted, but they can easily be lost as wetlands are altered or degraded in a watershed. Estimates of the per acre value of wetland services run as high as $370,000/acre in 1992 dollars (Heimlich *et al.* 1998). The exact value can be attributed to the type and location of the wetland, the services it provides, and the economic methods and assumptions used.

57. Ecosystem goods provided by the wetlands mainly include: water for irrigation; fisheries; non-timber forest products; water supply; Pollutant removal, Flood attenuation, Groundwater recharge, Shoreline protection, Wildlife habitat and recreation. Major services include: carbon sequestration, flood control, groundwater recharge, nutrient removal, toxics retention and biodiversity maintenance (Turner et al., 2000).

58. Various services provided by wetlands include Carbon Cycle/Carbon Sequestration: Swamps, mangroves, peat lands, mires and marshes play an important role in carbon cycle. Though wetlands contribute about 40% of the global methane (CH4) emissions, they have the highest carbon (C) density among terrestrial ecosystems and relatively greater capacities to sequester additional carbon dioxide (CO2). Wetlands provide for habitat for more aquatic, terrestrial, and avian species on an area basis than any other habitat type, making them one of the most ecologically and economically important ecosystems on earth. Thus, wetlands provide for soil life, habitat, biodiversity maintenance and recreation. Wetlands are a service provider to Nutrient Removal, Flood attenuation and Water supply and Ground water recharge and even are a source of employment [Ref: Pant *et. al*, 2003; Groffman and Crawford, 2003; Juliano and Simonovic, 1999; Olewiler, 2004; MFPED, 2004]. It is essential to

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provide an effective institutional framework to manage water bodies through governmental and even non-governmental organizations.

59. Bengaluru has many artificial lakes, built for various hydrological purposes and mainly to serve the needs of irrigated agriculture and other allied purposes. The studies placed on record show that lakes of Bengaluru occupy about 4.8 per cent of the city's geographical area (640 square meters) covering both urban and non-urban areas (Krishna M.B. *et al.*, 1996). The number of these lakes has rapidly fallen from 262 in 1960 to 81 in 1985. The quality of water has reduced due to discharge of industrial effluents and domestic sewage. Conversion of lakes for residential, agricultural and industrial purposes has engulfed many lakes. Similarly, between 1973 and 2007, this region lost 66 lakes with a water spread area of around 1100 hectares due to urban sprawl (Nitin Bassi *et al.*, 2014). General factors affecting wetlands especially lakes are Eutrophication, low dissolved oxygen and pH, sedimentation and heavy metal pollution, biodiversity loss, etc.

60. Studies also reflect that a comparative analysis of drainage network between the Bengaluru urban and rural areas showed that the water bodies in Bengaluru urban district were subjected to intense pressure due to the process of urbanization and increasing population, resulting in loss of interconnectivity, in contrast to water bodies in rural Bangalore, where less pressures from direct human activities were noticed. At Madivala and Bellandur, there is interconnectivity of lakes with the adjacent lakes. Due to conversion and encroachment of two water bodies, connectivity between Yelchenahallikere and Madivala is lost as in the case of *Bellandur* and *Ulsoor lakes* with the conversion of Challegatta tank into a golf course. The GIS analysis revealed that due to developmental activities in the catchment area, the drainage connectivity between the water bodies has been lost.

61. The loss in wetland interconnectivity in Bangalore district is attributed to the enormous increase in population and the reclamation of tanks for various developmental activities. Analysis of Madivala and Bellandur drainage network revealed that encroachment and conversion has resulted in the loss of connectivity between Yelchenhallikere and Madivala. Similarly the drainage network between Bellandur and Ulsoor is lost due to conversion of Chelgatta tank into a golf course (Status of wetlands in Bangalore).

62. In 1995, the National Lake Conservation Authority (NLCA) came up with National Lakes Conservation Plan (NLCP) for Bangalore, specifically aimed at raising the highest state of environmental alarm for dwindling quality of the remnants of the city's lakes. The National Lake Conservation Plan for Bangalore came with the theme of "*Integrated Lake Ecology with Water Quality*. This plan aimed at improving urban sanitation and health conditions, especially for the weaker sections of the society living within the lake catchment area. The plan also called for eco-friendly, low-cost, waste management bio-systems like "engineered wetlands". A total of 4 sub-systems comprising of around 20 lakes were selected for the first phase of the NLCP. These four subsystems included Agara Lake System (Hulimavu, Doddabegur, Madiwala, Puttenahalli; Agara Kere); Hebbal System (Narasipura I and II; Dodda Bomassandra, Hebbal Kere, and Nagavara); Bellandur Lake System (Ulsoor, Bellandur, Vartur); and Dorekere System (Vasanthapura, Janardhana, Dorekere, Moggekere). Rs. 5.542 Crore were sanctioned for the restoration of the Bellandur Lake under NLCP in January 2003. The proposal specified the following tasks for the restoration: de-silting of lakes, fencing around the lakes, afforestation and gardening, sewage water treatment, interception chambers, diversion channels, oxidation ponds, de-weeding of lakes, community sanitation, solid waste and garbage disposal, recreational facilities. This was to be a five year phasing project (1995–2000.) divided into the catchment area development (CAD); Sewage diversion channels; De-silting and Weed control; Face-lifting of lake; Biological studies and public awareness program; land acquisition, and

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others. The total cost for five years was estimated at Rupees Twenty-One Crores, Twenty Lakhs and Thirty five thousands.

63. In late 2000, the Research and Development wing of KSPCB published its report on comprehensive monitoring of lakes in and around Bangalore Metropolitan area to assess the state of the water quality. This was an interesting report given the weight of the output carried after the first phase of the city's lakes restoration process. KSPCB's results as a result of water quality monitoring on 44 selected lakes (including all but 2 in the NLCP list) revealed that most lakes still remained highly polluted.

64. The LDA instituted in January 2002, identified about 60 lakes for immediate restoration soon after it was established. This program, like the NCLP one previously was proposed to be a five year phasing project costing Rs. 250 Crores, almost ten times the estimated cost proposed by the NLCA in 1995. These selected lakes included Ulsoor Lake, Sankey tank, Agara Lake, Narasipura Lake, Lal Bagh Lake, Dodda Bamasandra Lake, Hebbal Lake, Nagavara Lake and Bellandur Lake. The LDA's main objectives were: Resuscitation of lakes to boost aquifers, Diversion and treatment of sewage to generate alternative sources of raw water; improving sanitation and health conditions; and preserving the habitat of aquatic life.

65. The wetland management program generally involves activities to protect, restore, manipulate, and provide for the functions and values emphasizing both quality and acreage by still advocating sustainable usage of them [Walters, C. 1986.]. Management of wetland ecosystems requires an intense monitoring, increased interaction and co-operation among the various agencies (state departments concerned with environment, soil, natural resource management, public interest groups, citizen groups, agriculture, forestry, urban planning and development, research institutions, government, policy makers, etc.). Such management goals should not only involve buffering wetlands from any direct human pressures that could affect the wetlands normal functions, but also in maintaining important natural processes that operate on them that may be altered by human activities. Wetland management has to be an integrated approach in terms of planning, execution and monitoring requiring effective knowledge on a range of subjects from ecology, economics, watershed management, and planners and decision makers, etc. All this would help in understanding wetlands better and evolving a more comprehensive solution for long-term conservation and management strategies.

We have noticed the above studies on record to bring clarity in regard to the importance of these water bodies and need-oriented significance to maintain the wetlands and catchment areas in the interest of environment, ecology, biodiversity and hydrological balance. The merit or otherwise, of these cases have to be examined in light of these studies, which is a matter of record.

66. It is alleged that respondents 9 and 10 had started the construction activity of their projects without grant of Environmental Clearance and it is sought to be substantiated by placing the Google Images on record. However, it cannot be disputed that subsequently both these respondents obtained ECs for the projects in question on 17th February, 2012 and 30th September, 2013, respectively. After the grant of Environmental Clearance, the respondents were expected to carry on with the projects strictly as per the terms and conditions of the orders granting them Environmental Clearance. The allegation is that they have carried out the constructions in violation of the conditions of the Environmental Clearance and have encroached upon the wetlands and catchment areas of the lakes.

67. The Environmental Information System (ENVIS), Centre for Ecological Sciences, Indian Institute of Science, Bangalore had carried out a study and submitted a report on the need for ‘Conservation of Bellandur Wetlands: Obligation of Decision Makers to Ensure Intergenerational Equity’. This report had specifically dealt with the activity of

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the SEZ projects by Karnataka Industrial Area Development Board in six zones. It was opined that this activity is contrary to Sustainable Development as the natural resources, lakes and wetlands get affected due to such activity. Removal of Rajakaluve (storm water drains) and gradual encroachment over them amounts to removal of lake connectivity, which enhances the episodes of flood and associated disasters. The Supreme Court of India, in Civil Appeal No. 1132/2011 while expressing concern regarding encroachment, particularly over lakes, had directed the State Governments to remove encroachments on all community lands. Even the High Court of Karnataka in Writ Petition No. 817/2008 had directed that the lakes should be protected across Karnataka, prohibited dumping of garbage and sewage in lakes, removal of encroachments, plantation of trees in consultation with experts lake surroundings and to declare it a 'No Development Zone' around the lakes. The report also speaks of water shortage by stating that BWSSB had not given NOC to respondent no. 9 and had communicated inability to supply such huge quantity of water on regular basis, as these projects require 4,587 kilolitres water per day (4.58 MLD per day). In this report, the Institute did not approve of the decision of the authorities to go ahead with such huge project, but also made reference to the ecological and environmental implications as follows:—

"Ecological and Environmental Implications:

- Land use change: Conversion of watershed area especially valley regions of the lake to paved surfaces would alter the hydrological regime.
- Loss of Drainage Network: Removal of drain (Rajakaluve) and reducing the width of the drain would flood the surrounding residential as the interconnectivities among lakes are lost and there are no mechanisms for the excessive storm water to drain and thus the water stagnates flooding in the surroundings.
- Alteration in landscape topography: This activity alters the integrity of the region affecting the lake catchment. This would also have serious implications on the storm water flow in the catchment.

The dumping of construction waste along the lakebed and lake has altered the natural topography thus rendering the storm water runoff to take a new course that might get into the existing residential areas. Such alteration of topography would not be geologically stable apart from causing soil erosion and lead to siltation in the lake.

- Loss of Shoreline: The loss of shoreline along the lakebed results in the habitat destruction for most of the shoreline birds that wade in this region. Some of the shoreline wading birds like the Stilts, Sandpipers; etc will be devoid of their habitat forcing them to move out such disturbed habitats. It was also apparent from the field investigations that with the illogical land filling and dumping taking place in the Bellandur lakebed, the shoreline are gobbled up by these activities.
- Loss of livelihood: Local people are dependent on the wetlands for fodder, fish etc. estimate shows that wetlands provide goods and services worth Rs. 10500 per hectare per day (Ramachandra et al., 2005).

Decision makers need to learn from the similar historical blunder of plundering ecosystems as in the case of *Black Swan event* (http://blackswanevents.org/?page_id=26) of evacuating half of the city in 10 years due to water scarcity, contaminated water, etc. or abandoning of Fatehpur Sikhri and fading out of AdilShahi's Bijapur, or ecological disaster at Easter Island or Vijayanagara empire.

It is the responsibility of Bangalore citizens (for intergenerational equity, sustenance of natural resources and to prevent human-made disasters such as floods, etc.) to stall the irrational conversion of land in the name of development

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and restrict the decision makers taking the system (ecosystem including humans) for granted as in the case of *Bellandur wetlands* by KIADB."

This report also highlighted the threats faced by the wetlands in Bengaluru with particular reference to SEZ Bellandur wetlands, which is the land in question. The report recorded as follows:

"Greater Bangalore had 207 water bodies in 1973 (Figure 6), which declined to 93 (in 2010). The rapid development of urban sprawl has many potentially detrimental effects including the loss of valuable agricultural and eco-sensitive (e.g. wetlands, forests) lands, enhanced energy consumption and greenhouse gas emissions from increasing private vehicle use (Ramachandra and Shwetmala, 2009). Vegetation has decreased by 32% (during 1973 to 1992), 38% (1992 to 2002) and 63% (2002 to 2010).

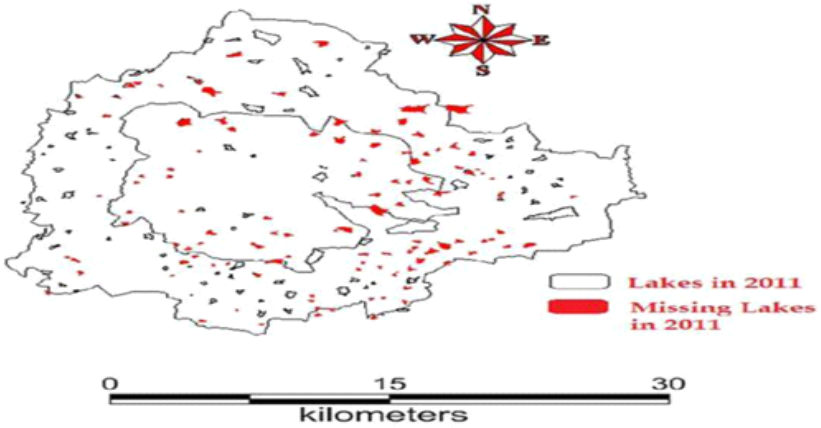

Figure 6: Lakes encroached by land mafia

Disappearance of water bodies or sharp decline in the number of water bodies in Bangalore is mainly due to intense urbanisation and urban sprawl. Many lakes (54%) were encroached for illegal buildings. Field survey of all lakes (in 2007) shows that nearly 66% of lakes are sewage fed, 14% surrounded by slums and 72% showed loss of catchment area. Also, lake catchments were used as dumping yards for either municipal solid waste or building debris (Ramachandra, 2009a; 2012a). The surrounding of these lakes have illegal constructions of buildings and most of the times, slum dwellers occupy the adjoining areas. At many sites, water is used for washing and household activities and even fishing was observed at one of these sites. Multi-storied buildings have come up on some lake beds that have totally intervene the natural catchment flow leading to sharp decline and deteriorating quality of water bodies. This is correlated with the increase in built up area from the concentrated growth model focusing on Bangalore, adopted by the state machinery, affecting severely open spaces and in particular water bodies. Some of the lakes have been restored by the city corporation and the concerned authorities in recent times. Threats faced by lakes and drainages of Bangalore:

1. Encroachment of lakebed, flood plains, and lake itself;
2. Encroachment of rajakaluves/storm water drains and loss of interconnectivity;
3. Lake reclamation for infrastructure activities;
4. Topography alterations in lake catchment;
5. Unauthorised dumping of municipal solid waste and building debris;
6. Sustained inflow of untreated or partially treated sewage and industrial effluents;

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7. Removal of shoreline riparian vegetation;
8. Pollution due to enhanced vehicular traffic.

These anthropogenic activities particularly, indiscriminate disposal of industrial effluents and sewage wastes, dumping of building debris have altered the physical, chemical as well as biological integrity of the ecosystem. This has resulted in the ecological degradation, which is evident from the current ecosystem valuation of wetlands. Global valuation of coastal wetland ecosystem shows a total of 14,785/ha US$ annual economic value. Valuation of relatively pristine wetland in Bangalore shows the value of Rs. 10,435/ha/day while the polluted wetland shows the value of Rs. 20/ha/day (Ramachandra et al., 2005). In contrast to this, Varthur, a sewage fed wetland has a value of Rs. 118.9/ha/day (Ramachandra et al., 2011). The pollutants and subsequent contamination of the wetland has telling effects such as disappearance of native species, dominance of invasive exotic species (such as African catfish, water hyacinth, etc.), in addition to profuse breeding of disease vectors and pathogens. Water qualityanalyses revealed of high phosphates (4.22-5.76 ppm) levels in addition to the enhanced BOD (119-140 ppm) and decreased DO (0-1.06 ppm). The amplified decline of ecosystem goods and services with degradation of water quality necessitates the implementation of sustainable management strategies to recover the lost wetland benefits.

SEZ in Bellandur Wetlands: Irrational decision of setting up SEZ at Bellandur wetland would affect the lake. The Mixed Use Development Project - SEZ (figure 6) is proposed along Sarjapur Road in a wetland between Bellandur and Agara Lake, extending from 77°38′28.96″ E to 77°38′57.99″E of Longitude and 12°55′ 24.98″ N to 12°55′44.43″ N of Latitude with an area of 33 hectare. The proposal of the project is to construct residential areas, offices, and retail and hotel buildings in this area.

Figure 6: SEZ

Significance of the Region:

1. Wetlands with remediation functional ability (function as *kidneys* of the landscape). Removal of wetlands will affect the functional ability of the lake and would result in the death of Bellandur lake;
2. Considering severe water shortage to meet the drinking water requirement in Bangalore, there is a need to remove deposited silt in the Bellandur lake, which will enhance the storage capacity and in turn helps in mitigating the water

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requirement;

3. Wetlands aid in recharging groundwater as soil are permeable;
4. Belanduru lake provide food (fish, etc.) and fodder;
5. Retain the excess water and prevent flooding in the vicinity;
6. Large number of farmers in the downstream is dependent on Belanduru lake water for agriculture, vegetable, etc.

Realizing these, BDA has aptly earmarked these regions in CDP 2005 for "ENVIRONMENT PROTECTION AND HERITAGE CONSERVATION". The masterplan includes the protection of valleys and tanks as part of the vision and enforcing the ban on construction over protected areas. CDP 2015: As per CDP 2015, valley region are "No Development Zone"

1. In case of water bodies a 30.0 m buffer of 'no development zone' is to be maintained around the lake (as per revenue records) with exception of activities associated with lake and this buffer may be taken into account for reservation of park while sanctioning plans.
2. If the valley portion is a part of the layout/development plan, then that part of the valley zone could be taken into account for reservation of parks and open spaces both in development plan and under subdivision regulations subject to fulfilling section 17 of KTCP Act, 1961 and sec 32 of BDA Act, 1976.
3. Rajakaluve/storm water drains categorized into 3 types namely primary, secondary and tertiary. These drains will have a buffer of 50, 25 and 15m (measured from the centre of the drain) respectively on either side. No activities shall be permitted in the buffer zone."

This technical report was prepared in the year 2013 when these projects had already commenced their constructions. Of course, as per the case of the project proponents themselves, the construction activity was not in full swing.

68. After inspection of the projects in question, another report was prepared by the Regional Office, Southern Zone (Bengaluru) of the Ministry of Environment and Forests, Government of India, in relation to the building project undertaken by respondents No. 9, which was sent to the Additional Principal Chief Conservator of Forests (Central), Ministry of Environment and Forests, Bangalore, on 14th August, 2013. It reported on the construction of mixed use development with residential, retail, hotel office, SEZ and Non-SEZ by respondent No. 9. In part III of this report, the MoEF commented upon each condition of the order granting Environmental Clearance and compliance thereto. It noticed that the projects are under initial stages, i.e. only levelling and excavation works are going on. It will be useful to refer to some of the significant observations relating to the compliance of the conditions of the Environmental Clearance in relation to the project of Respondent No. 9 in this Report. They read as follows:

Sl. No.	Conditions	Compliance
xiv)	Disposal of muck, construction debris during construction phase should not neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority	The project authorities stated that, the excavated soil from the project site would be stored in Rachenahalli village, K.R. Puram Hobli, Bangalore East Taluk which is about 10 km away from the site and further stated that, the construction debris will be reused/recycled for back filling/sub base work for roads, pavements, drains

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		etc., within the project site and the earth work excavated material will be managed through back filling between foundations on the back side of retaining walls and underground tanks/sumps and also will be reused for filing up low lying areas within the site. As on today the levelling and excavation works are going on. The foundation work of commercial block in Phase-I has been started from here the excavated earth is kept just adjacent to this foundation work within the site and agreed to reuse back.
xv)	Soil and ground water samples should be tested at the project site during the construction phase to ascertain that there is no threat to ground water quality by leaching of heavy metals and or other toxic contaminants and reports submitted to SIEAA.	Soil (one location) and ground water (…….location) samples are being tested on monthly basis through the third party. The heavy metal has not been analyzed yet and agreed to analyse in future.
xvi)	Construction spoils, including bituminous material and other hazardous materials, must not be allowed to contaminate water courses and the dumpsites for such material must be secured so that they should not leach into the ground water.	The project authorities assured that hazardous material will not be used in the site.
xx)	Fly ash should be used as building material in construction as per the provisions of fly Ash Notification of September 1999 and amended as on August, 2003.	Fly ash bricks are not used because there is no coal based thermal power plant located within 200 km of the project site.
xxiv)	No ground water is to be drawn without permission from the Central Ground Water Authority.	Agreed to comply. The project construction activities are under initial stages. As gathered that, the ground water is purchased from outside for drinking and sanitation purpose.
xxxiv)	The project authority shall maintain and operate the common infrastructure facilities created including STP and solid waste management facility for a period of 5 years after commissioning the project.	Agreed to comply.
xxxix)	The natural sloping pattern of the project site shall remain unaltered and the natural hydrology of the area be	Execution of the project will necessarily sloping pattern of the project site and the natural

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	maintained as it is to ensure natural flow of storm water.	hydrology of the area and hence specific condition no xxxix cannot be complied.
xl)	Lakes and other water bodies (if any) within and/or at the vicinity of the project area shall be protected and conserved.	The project area is in the catchment area of Bellandur lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by the project activities either during construction or during operation phase.
B. General Conditions		
ii)	All commitments made by the proponents in their application, and subsequent letters addressed to the SEAC/SEIAA should be accomplished before the construction work of the project is completed.	The project authorities have agreed to implement all the commitments made to the SEAC/SEIAA before the construction work of the project is completed.
v)	In case of any changes(s) in the scope of the project, the project would require a fresh appraisal by this Authority	Agreed to comply.
xii)	The issuance of Environmental Clearance doesn't confer any right to the project proponent to operate/run the project without obtaining Statutory clearance/sanctions from all other concerned authorities.	Agreed to comply.

There does not appear to be any such similar report in relation to the project of respondent no. 10. However, there are other general reports which deal with the project properties of respondent No. 10.

69. We have also noticed above that the High Court of Karnataka in W.P. No. 817/2008 had passed certain directions in regard to the preservation of lakes and wetlands in the State of Karnataka. These directions were based upon the report dated 21st February, 2011, submitted to the High Court by the Committee Chaired by Justice N.K. Patil, in relation to the preservation and restoration of lakes in and around the city of Bangalore. In the report, recommendation had been made with regard to preservation of lakes, noticing rapid urbanisation of Bangalore city as the main cause for reduction in water bodies. While referring to an earlier report of 1985, prepared by Shri N. Lakshman Rau Expert Committee, constituted by the Government of Karnataka, it was emphatically stated that necessity of lake preservation is more pronounced in the context of urbanization, when city takes more and more villages into its fold, as in case of Bangalore city. It stated that the lakes are the lung spaces of a city and climate moderators, adding to thermal ambience. Most importantly in this report, emphasis was made on the role of the LDA in preservation of lakes. It was referred that the LDA was constituted in the year 2002 as a registered society. Its jurisdiction extends over lakes in metropolitan cities area of Bangalore inclusive of Bangalore Metropolitan Region Development Authority area, besides this LDA has jurisdiction over the lakes in other Municipal Corporations and Town Municipal Councils within the State. It is the regulatory, planning and policy making body with nodal

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functions for protection, conservation, reclamation, restoration, regeneration and integrated development of lakes in its jurisdiction. Another important feature of this report was in relation to augmenting water supply to Bangalore city from these lakes. It stated that Bangalore population was likely to exceed 12 million by 2020 and at the current growth rate, the water shortage may lead to water crisis, if the problem is not tackled with advance planning. Report further stated that, the ground water was depleting and that bore-wells of 700 to 1000 feet deep were quite common in this city. These all were indicators of a grave situation.

70. The Hindu newspaper on 3rd June, 2013 had widely raised the issue of environmental degradation in the catchment area of the Bellandur Lake due to construction of mixed use development projects, as also undertaken by both the respondents no. 9 and 10. After this report, instructions were issued by the CEO of LDA on 4th June, 2013 to inspect the lake premises. Inspection was conducted by Shri S.R. Nagraj, EE, LDA and Sh. C. Nagesh Rao, AEE, LDA. After the inspection, a report dated on 12th June, 2013 was prepared which concluded as under:

> At the time of inspection it was observed that huge construction activities were observed in this catchment area and on enquiry it was informed that the above said land was acquired by the KIADB for SEZ and allotted for different agencies for construction of apartment complexes, malls, etc., Due to huge construction activities in this catchment area there is change of land use and directly impacting the catchment of Bellandur lake.
>
> As per the Para 2 of the report, it is reported that the wet land (a marshland ecosystem typically found around water bodies) has shrunk. It is not the wetland of Bellandur lake. It is achcutland of Agara lake. Originally Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake. It is catchment area which was shrunk due to allotment of agricultural land by KIADB to different agencies for construction of apartment complexes, malls etc.
>
> Hence KIADB's colossal “mixed - use development project in the catchment area of Bellandur will probably have adverse effect to Bellandur lake.

The above conclusions suggest that these multi-purpose construction activities of huge dimensions could have adverse environmental and ecological impacts. Of course, the report submitted by the MoEF primarily deals with the construction activity and projects of respondent No. 9 only. However, the other reports are of general nature which deals with the construction of multi-purpose projects and their adverse impacts on environment, ecology with particular reference to the water bodies like lakes etc.

71. In order to analyse the environmental and ecological impacts of these multipurpose projects appropriately, the case can be divided into two parts: First, what are the irregularities or breaches which the project proponents, i.e. respondent nos. 9 and 10 as stated to have been committed. Secondly, the likely impacts of these projects upon the environment and ecology of the area in question, particularly on the water bodies.

Proposed Mixed Use Development Project is located at Agara Village and Jakkasandra Village, Begur Hobli, Bangalore South. Special Economic Zone (SEZ) is located between the Agara Lake & Bellandur lake. The Mixed Use Development Project - SEZ is proposed along Sarjapur Road in the catchment of lakes Bellandur and Agara Lake, extending from 77°38′28.96″ E to 77°38′57.99″ E of Longitude and 12°55′ 44.43″ N of Latitude with an area of 33 hectare. Agara Lake is located at other side of 45 m wide road whereas Bellandur Lake is just 50 m away from the project boundary. Rajakaluve (Natural Drain) is running all along the project site.

Proposal envisages for construction of residential apartment with (Block-1 (Block A:

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2B+G+ 14UF; Block B: 2b+G+10 UF) + Block 2 (2B+G+14UF), retail, hotel & office building with 3B+G+11 UF, SEZ with 3B+G+11UF +Terrace and Non-SEZ 3B+G+12UF+Terrace on the plot area of 2,92,636.03 sqm. The total built-up area is 11,50,454.98 sq. m. The total water requirement is 4587 KLD and the investment is of Rs. 2347 crores.

72. In light of the above scope of the project and records before the Tribunal and the defaults on the part of the Project Proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:

1) The construction of both the projects had started prior to the grant to Environmental Clearance.
2) The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment.
3) Revenue Map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
5) Google Satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13th November, 2000 and 23rd November, 2010. Secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance.
6) Restriction in regard to extraction of ground water was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.
7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved: The inspection report by the MoEF clearly notes that condition nos. (xxxix) and (xl) in the Environmental Clearance of respondent no. 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase.

73. There are four reports on record which are suggestive enough that there would be adverse impacts of these projects upon the environment and ecology of the area, particularly on the lakes and the wetlands. The report prepared by the Committee chaired by Justice N.K. Patil filed before the Tribunal states that the lakes and the wetlands should be protected in the city of Bangalore. Measures were required to be taken in that direction and to remove encroachment in lake area and *Rajakaluves*. The large construction activity was stated to be prejudicial to the environment in those areas. Contents of this report are neither denied nor admitted by respondent no. 9 who, in its reply, has required contents of the report to be proved by the applicants. On the other hand, respondent no. 10 has submitted that there are no *Rajakaluves* or canal in his property and thus the above recommendations are not applicable to respondent no. 10. The other report on record is prepared by ENVIS, Centre for Ecological Sciences, Indian Institute of Science, Bangalore. This report focuses on possible consequences for setting up SEZ in Bellandur Lake area and also recommends restoration of wetlands in that area. In this report, how the land use changed from

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2007 to 2012 was illustrated, stating that the wetlands have decreased from 32.80 ha to 5.95 ha, whereas the Open land (Conversion of Wetlands to SEZ Construction site) has increased from 0.6 ha to 27.46 ha. Noticing the major violations, it was recorded that development in wetland violates the CDP 2015, which would result into flooding in the vicinity due to encroachment of drains, alterations in topography, encroachment of lake-bed and encroachment of lake itself by dumping debris and filling up of same; there was violation of 30 metre buffer (lake floodplain); traffic congestion and filling of a portion of lake with building debris. While respondent no. 9 termed the report as speculative and based on presumptions, respondent no. 10 denied it as frivolous and baseless and termed it as tailor made to support the case of the applicants. At this stage, we may also notice that in the column of 'Acknowledgement' of this Report, the name of Koramangala Residents Association has been mentioned. It is contended that this Association had approached Dr. T.V. Ramachandran to prepare the Report. The said Resident Association is a party to one of the Writ Petitions before the Hon'ble High Court of Karnataka. Therefore, it is argued that the report stand vitiated because of the self-interest of Dr. T.V. Ramachandran who was a member of the Committee which prepared the said report. On the other hand, the contention of the applicant and respondent nos. 11 and 12 is that Dr. T.V. Ramachandran prepared the said Report as a part of scientists' social responsibility and that the observations and findings of the report by the scientists do not become invalid/*non est* merely because the study was undertaken at the request of a concerned group of citizens.

74. The objection taken by the respondents does not appeal to us. This report was not prepared by an individual but by a team of scientists from a Government Institute. Apparently, it appears to be in discharge of his scientists' social responsibility that Dr. T.V. Ramachandran participated in preparing this report. However, this issue loses its significance, because it is the content of the report which is to be considered by the Tribunal and not the persons who have prepared the report. There is a vague denial to the contents of the report by the respondents, who have not placed any report on record to contradict the contents of this report, which itself is largely supported by three other reports placed on record.

75. Report which is placed on record by respondent no. 10 is prepared by a Private Consultant, which only mentions that there will be no adverse impacts on environment. This report does not aspire confidence, as it is not data based and in fact, does not meet any of the issues raised in the four reports placed by the applicant on record. The other two reports are the MoEF Monitoring Committee report and the inspection report prepared by the LDA, which we have already discussed in some detail above.

76. The MoEF monitoring report prepared by regional office of MoEF has forwarded on 14th August, 2013 mentions two most significant conditions which have a substantial bearing on the matters in issue before us is with regard to the preservation of the water bodies in Bengaluru and the natural slopping pattern and natural hydrology of the area to remain unaltered. These conditions having been noticed as not possible to be adhered to, we really do not understand as to how these projects have been permitted to progress any further.

77. Lastly, it is the report of LDA, which as already noticed is the Society created by the Government of Karnataka with a specific purpose of protecting the lakes and the wetlands. This report had specifically recorded that the projects are bound to have adverse impacts on the catchment area of Ballendur Lake. This report has also been denied by the respondents stating that it is frivolous and according to respondent no. 10, there are no wetlands around Bellandur Lake.

78. There is sufficient material by way of reports, google images and other documents that the Bellandur Lake and even other lakes for that matter have wetlands

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and catchment areas. There are encroachments on the Rajakaluves as well as on the catchment areas of the water bodies. The adverse impacts of this colossal mixed development projects had got the attention of all concerned, including the Press and the issue was widely raised. This resulted in the inspection by the LDA as well as other authorities, which commented on the adverse impacts of this project in the interest of environment and ecology. Furthermore, the stop-work notices issued by different authorities from time to time also suggest that the work and progress of the projects was in violation of the laws in force. Of course, these stop-work notices have been challenged before the Hon'ble High Court of Karnataka which has granted stay on these notices, but the fact of the matter remains that various authorities including the BBMP and the KIADB have found out and observed that the construction should be stopped forthwith.

79. The cumulative effect of the above discussion would be that there is a definite possibility of environment, ecology, lakes and the wetlands being adversely affected by these projects. There are multiple public authorities including SEIAA involved in regulating such projects and they are also responsible for protecting interest of environment and ecology while keeping in mind the settled canon of sustainable development. It is the contention of the respondent nos. 9 and 10 that there are large numbers of other projects located around these lakes. If that be so, then we have no hesitation in observing that various regulatory authorities including SEIAA ought to have examined the cumulative Environmental Impact Assessment in these cases on the water bodies as the protection of the water bodies, the wetland and the catchment areas of the lakes is the obligation of these authorities.

80. It was vehemently contended before us that the construction of the projects is nearing completion and huge money of respondent nos. 9 and 10 including investments made by various land and other area purchasers is at stake. Thus, according to these respondents, the application should be declined by the Tribunal only on that fact. We are not impressed with this contention at all. The respondents have started the construction even prior to the grant of Environmental Clearance and instigated the public to invest money. They cannot be permitted to take advantage of their own wrong. However, it may also not be in the interest of justice and particularly, while applying the Principle of Sustainable Development in terms of Section 20 of the NGT Act, that these properties be demolished but that does not mean that they should not be directed to take all measures and precautions, even if it results in necessary demolition of some parts of the projects in the interest of environment, ecology and protection of lakes and wetlands. It cannot be disputed that there is serious scarcity of water in the city of Bangalore. Impact of these projects on water bodies ought to have been of fundamental consideration before the authorities concerned. In our considered view, they have failed to take complete notice of this fact and act objectively in light of the laws in force.

81. The project proponents, i.e. respondent nos. 9 and 10 submitted their respective applications for grant of Environmental Clearance to the concerned authorities in the year 2011 and 2012 respectively. The Environmental Clearance was granted to the Project proponents on 17th February, 2012 and 30th September, 2013 respectively. However, construction activities had been carried out by the project proponents much prior to the grant of Environmental Clearance. There is not even an iota, much less valid, reason placed by the project proponents before the Tribunal as to why the applications for Environmental Clearance were moved at such belated stage and why construction was started prior to grant of Environmental Clearance. The provisions of the EIA Notification, 2006 which was in force at all relevant times does not permit carrying on of any construction or any other activity in relation to the project prior to the grant of Environmental Clearance. The provisions of this Notification admit of no ambiguity that specific project or activities shall not require

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prior Environmental Clearance. All steps in that direction, including site selection, are the subject matter of scrutiny at the time of grant of Environmental Clearance. The project proponents are clear defaulters of compliance of the statutory provisions. They cannot take advantage of their own wrong of raising construction prior to submission of the application for Environmental Clearance and even grant of Environmental Clearance. The respondent nos. 9 & 10 are intentional defaulters. They violated the law being fully conscious of their obligations under different laws in force. The authorities concerned had sanctioned the building plans of these respondents subject to a specific stipulation that such sanction was subject to grant of other clearances including Environmental Clearance under different laws. Since the construction and allied activities were being carried on contrary to law, they even would be deemed to have caused pollution not only of the environment but more particularly of the lakes and caused obstructions of the Rajakaluves in the area. Applying the Principle of 'Polluter Pays' as contemplated under Section 20 of the NGT Act, the project proponents must be held liable to pay compensation for restoration and restitution of the environmental pollution and degradation. There is sufficient material on record to show that there has been environmental degradation. From the date of grant of Environmental Clearance, the construction is supposed to be carried on in accordance the conditions of the Environmental Clearance and with due protection of the environment, which the respondents have failed to comply with. The project proponents are liable to pay compensation under the 'Polluter Pays' Principle, for the illegal and unauthorised construction carried on in violation of the environmental laws and prior to grant of Environmental Clearance. One who violates law renders itself liable for consequences of such violations.— Respondent nos. 9 & 10 commenced excavation and even construction prior to submission of their application for grant of Environmental Clearance. Obviously at that stage they did not take any protections in the interest of environment and ecology in relation to the project activities. The terms & conditions in that behalf came to be stipulated only in the order granting Environmental Clearance; prior thereto the entire project activity was illegal and unauthorised. The mining, excavation and construction work adversely affected the Lakes and the Rajakaluves. The possible risk and degradation, due to construction and operation of the project include actual damage and even threats to environment and ecology pertaining to pollution, encroachment, eutrophication, illegal mining of soil, loss of Biodiversity, ungoverned human activities and cultural misuse. The consequential damage and degradation of environment and ecology from the activities of these projects can broadly be placed under two distinct heads, while invoking the Polluter Pays Principle. First being the damage that has already been caused because of such activity, particularly, for the period when the activity was carried out in an illegal and unauthorised manner and without sanction of the competent authorities. Secondly, the damage and environmental degradation that is likely to occur upon completion of these projects and the liability of the concerned respondents in regard to restoration and restitution of environment. Another very important aspect which cannot be overlooked by the Tribunal is with regard to the respondent nos. 9 & 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with condition no. xxxix and xl (or alike conditions) in the order granting the Environmental Clearance. This has even been noticed by the MoEF in its monitoring report dated 14th August, 2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof.

82. It may not be possible to determine the above compensation with exactitude but that does not mean that the project proponents can avoid liability in that regard. The Supreme Court in the case of *Sterlite Industries (India) Ltd.* v. *Tamil Nadu PCB*, JT

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2013 (4) SC 388, had directed payment of Rs. 100 crores by the Company which operated without consent of the Board. It needs to be noticed that M/s Sterlite Industries was possessed of the consent from the Board prior as well as subsequent to the period for which the compensation was imposed. In order to comply with the principle stated by the Hon'ble Supreme Court in the case of *Sterlite Industries* (supra) and as followed in the case of *Sarang Yadwadkar* v. *The Commissioner, Pune Municipal Corporation*, 2013 ALL (I) NGT REPORTER (DELHI) 299, discussed hereafter, we may refer to some relevant facts and figures from the records before us. The project area of respondent no. 9 is nearly 2,92,636.03 sq. m, while the built-up area is 13,50,454.98 sq.m., with a project cost of Rs. 2,347 Crores. While in the case of respondent no. 10 the plot area is 33,333.00 sq.m., while the built-up area is 72,180.64 sq. m., with a project cost of Rs. 450 Crores. The afore-noticed project activities and construction started much prior to moving of application and grant of Environmental Clearance. The principle which has often been adopted by the Courts, including the Hon'ble Supreme Court in the case of *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590, is to direct deposit of certain percentage of the cost of the project at the first instance. In the case of *Goa Foundation*, the Supreme Court had directed deposit of 10 per cent of the value of the mineral extracted. In the case of *Krishankant Singh* v. *National Ganga River Basin Authority*, 2014 ALL (I) NGT REPORTER 3 DELHI 1, this Tribunal directed Simbhaoli Sugar Mills which had operated without consent of the concerned Board for a long period and had polluted the environment, Phuldera drain as well as the underground water, to pay a compensation of Rs. Five Crores. The said sugar factory had operated with the consent of the Board prior and subsequent to this period. The compensation was imposed for flouting the law and for causing the pollution. It may be noticed that the appeal against the said judgment of the Tribunal was dismissed by the Supreme Court in Civil Appeal No. Civil Appeal No. 10434 of 2014 vide its order dated 21st January, 2015. This liability primarily accrues on account of the illegal and unauthorised activities carried on by the Project Proponents. These are purely commercial ventures of respondent nos. 9 & 10 to make high profits, while causing environmental and ecological degradation and also by carrying on illegal and unauthorised activities, particularly, for the period prior to grant of Environmental Clearance.

83. The drawings and construction plans had been approved by respondent no. 7 vide its letter dated 4th July, 2007 and 22nd April, 2008, for respondent nos. 9 and 10 respectively. Despite this, the applications for seeking Environmental Clearance were moved much later i.e. on 3rd March, 2011 and 4th February, 2012. Even these letters granting approval of drawing and plans had mandated that these Respondents are expected to comply with all bye-laws and even other laws in force. When they applied for renewal of building plans and drawings, the same were granted vide letter dated 11th October, 2013 and 3rd January, 2013 respectively, where specific conditions were stipulated that other laws in force relating to construction and use of premises should be complied with and they were required to install ETP/STPs and use of recycled water for washing and flushing was mandated. From this, it emerges that there was clear onus on the part of these respondents to seek Environmental Clearance before commencing construction, which they intentionally and flagrantly violated and furthermore, there is nothing on record to show that the conditions with regard to setting up of ETP/STP and recycling of water have fully been satisfied. Furthermore, respondent no. 10 has been issued a specific letter on 18th March, 2013 by respondent no. 7 directing it that no construction works should commence prior to obtaining Environmental Clearance. They were also directed to obtain Consent for Establishment from KSPCB which was also not adhered to. They were required to furnish the requisite information within 7 days. These are the apparent violations of law committed by respondent nos. 9 and 10.

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84. We are conscious of the fact that the projects in question have already been granted the Environmental Clearances and that they have raised constructions in furtherance to such Environmental Clearances. Still as discussed above, the matters in relation to conditions of the orders granting Environmental Clearances, adverse impacts of these projects upon the environment, ecology, lakes and wetlands, need for taking preventive and remedial measures for restoration of the environment and ecology as well as protection of the water bodies in future, are the matters which have been examined by us above. We may also appropriately make reference to the judgment of this Tribunal in the case of *Sarang Yadwadkar* v. *The Commissioner, Pune Municipal Corporation*, 2013 ALL (I) NGT REPORTER (DELHI) 299, wherein under somewhat similar circumstances, the Tribunal had while declining to demolish the construction raised in the project, issued substantive directions in the interest of environment and ecology and for protection of River Mutha in Pune. The Respondent Corporation had preferred an appeal before the Supreme Court of India being Civil Appeal Diary No. 3445 of 2015, which was dismissed on merits on 12th February, 2015. The Project Proponent was thus directed to comply with the directions of the Tribunal including partial demolition of the project in question. We have already indicated that at this stage the entire amount of compensation payable on various counts by the Project Proponent cannot be determined with exactitude, however, liability to pay for violation of law, raising construction unauthorizedly and illegally, renders the Project Proponent liable to pay the environmental compensation forthwith. The final amounts for restoration of environment and ecology would be determined by the Committee constituted in this judgment. We are of the considered view that 10 per cent of the project cost may be somewhat on the higher side and to maintain the equitable balance between the default and the consequential liability of the applicant, we direct the Project Proponents to pay at the first instance compensation for their default at the rate of 5 per cent of the cost of the project. In light of this, Respondent No. 10 would be liable to pay a sum of Rs. 22.5 crores and Respondent No. 9 would be liable to pay a sum of 117.35 crores.

85. This is a fit case where in exercise of its jurisdiction in terms of Section 20 of the NGT Act, the Tribunal has to invoke both polluter pays principle as well as precautionary principle. Further, where the Tribunal should also apply the principles of law enunciated by the Supreme Court and this Tribunal in the case of *Sterlite Industries* (supra), *Krishankant Singh* (supra) and *Sarang Yadwadkar* (supra) and issue the following directions:

1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal *inter alia* but specifically on the issues stated herein after.
   a) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
   b) CEO of the Lake Development Authority, Karnataka State.
   c) Chief Town Planner of BBMP, Bangalore.
   d) Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.
   e) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.
   f) Dr. Siddharth Kaul, former Advisor to MoEF.
   g) An Senior Officer from the National Institute of Hydrology, Roorkee.
2) Member Secretary of the Karnataka State Pollution Control Board shall act as the Convenor of the Committee and would submit the final report to the Tribunal.
3) The Committee shall inspect not only the sites where the projects in question are

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located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the water bodies, with particular reference to lakes.

4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of respondent nos. 9 and 10 or by any of the projects in the area in question.

5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

6) The Committee shall substantially notice if any of the conditions of the Environmental Clearance order in each case of respondent nos. 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.

8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore.

9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letter dated 4th July, 2007 and 22nd April, 2008 respectively. Further, the Committee would also report whether both respondent nos. 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing etc., in terms of letters dated 11th October, 2013 and 3rd January, 2013, issued by the Karnataka Industrial Area Development Board to respondent nos. 9 and 10 respectively.

10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and water bodies.

11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both respondent nos. 9 and 10 are hereby restrained from creating any 3rd party interests or part with the possession of the property in question or any part thereof, in favour of any person.

12) The committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the water bodies in the city of Bangalore.

13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the water bodies in and around of the area in question.

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14) For the reasons stated in the judgment respondent no. 9 is liable and shall pay a sum of Rs. 117.35 crores, while respondent no. 10 shall pay a sum of Rs. 22.5 crores respectively being 5 per cent of the project value, within two weeks from today. The said amount would be paid to the KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the Project Proponent in that area, after taking approval of the Tribunal.

15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of direction 14, onto the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly.

86. Thus, we dispose of the Original Application No. 222 of 2014 in the above terms while leaving the parties to bear their own costs.

———

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2015 SCC OnLine NGT 169

Before the National Green Tribunal Principal Bench, New Delhi

(BEFORE SWATANTER KUMAR, CHAIRPERSON, U.D. SALVI, J.M., DR. D.K. AGRAWAL, E.M., PROF. A.R. YOUSUF, E.M. AND BIKRAM SINGH SAJWAN, E.M.)

Original Application No. 37 of 2015
(M.A. No. 291, 293 & 294 of 2015)
AND
Original Application No. 213 of 2014
(M.A. 755 of 2014 & M.A. No. 177 of 2015)

In the Matter of:

S.P. Muthuraman S/o. Ponnusamy, No. 204, Railway Feeder Road, Sankar Nagar Post-627357 Tirunelveli Distict. ... Applicant;

Versus

1. Union of India Rep. by the Secretary to Government, Ministry of Environment and Forests, Government of India, Paryavaran Bhavan, New Delhi-110003
2. The State of Tamil Nadu Rep. by the Secretary to Government, Ministry of Environment and Forests, Government of Tamil Nadu, Fort St. George, Chennai-600003 ... Respondents.

AND

In the Matter of:

Manoj Mishra Convener, Yamuna Jiye Abhiyaan, 178-F, Pocket-4, Mayur Vihar, Phase-I, Delhi-110091. ... Applicant;

Versus

Union of India Through the Secretary, Ministry of Environment, Forest & Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi-110003. ... Respondent.

Original Application No. 37 of 2015, M.A. No. 291, 293 & 294 of 2015, Original Application No. 213 of 2014 and M.A. 755 of 2014 & M.A. No. 177 of 2015

Decided on July 7, 2015, [Hearing on: 29th April, 2015]

Original Application No. 37 of 2015

Counsel for Applicant:

Mr. T. Mohan and Mr. A. Yogeshwaran, Advocate.

Counsel for Respondents:

Mr. Vivek Chib, Mr. Asif Ahmed, Ms. Ruchira Goel, Mr. Kushal Gupta, Mr. Joby Varghese and Mr. Ankit Prakash, Advocates for Respondent No. 1

Mr. M. Yogesh Kanna and Ms. J. Janani, Advocates for Respondent No. 2.

Mr. Ashwani Kumar, Sr. Advocate, with M/s. R. Mohan and Mr. V. Balaji

Mr. K.S. Mahadevan and Mr. Krishna Kumar, Advocate

Mr. R. Chandrachud, Advocate

Mr. Ashwani Kumar, Sr. Advocate with M/s. R. Mohan Parasawarn,

Mr. Varun Sharma and Mr. Srikantha Sriniwas

Mr. Amit S. Chadha, Sr. Advocate, Mr. R. Chandrachud, Advocate

Mr. Shyamal Anand, Mr. R. Jawahar Lal and Mr. Sarvanna Kumar, Advocates for

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Respondent No. 3 & 5.

Original Application No. 213 of 2015

Counsel for Applicant:

Mr. Rahul Choudhary and Ms. Neha Kurian, Advocates.

Counsel for Respondents:

Mr. Vivek Chib, Mr. Asif Ahmed, Ms. Ruchira Goel, Mr. Kushal Gupta, Mr. Joby Varghese and Mr. Ankit Prakash, Advocates for Respondent No. 1

1. Whether the judgment is allowed to be published on the net?

2. Whether the judgment is allowed to be published in the NGT Reporter?

SWATANTER KUMAR, CHAIRPERSON:— By this common judgment, we shall dispose of the Original Applications No. 213 of 2014 and 135 of 2014 (upon transfer from SZ Bench, numbered as Original Application No. 37 of 2015) as well as Miscellaneous Applications No. 291, 293, 294 of 2015 in Original Application No. 37 of 2015, Miscellaneous Applications No. 755 of 2014 & M.A. No. 177 of 2015 in Original Applications No. 213 of 2014 and the claims of all the seven interveners/Respondents, as common question of law on somewhat similar facts arise for determination of the Tribunal in all these cases. We may briefly notice the facts of each Original Application giving rise to their filing.

2. In Original Application No. 213 of 2014, the Applicant claims that he is a former member of the Indian Forest Service and is the convener of the "*Yamuna Jiye Abhiyaan*". The Organization is working for promotion of nature conservation as a strategy for establishment of a peaceful world.

3. According to the Applicant, the State is under a constitutional duty in terms of Article 51A of the Constitution of India, to protect and improve the natural environment, including forests, lakes, rivers and wildlife. Respondent No. 1 has issued a Notification dated 14th September, 2006 titled the Environment Clearance Regulations of 2006 (for short 'Notification of 2006'), under the powers conferred upon it by sub-Section (1) and clause (v) of sub-Section (2) of Section 3 of the Environmental Protection Act, 1986 (for short 'Act of 1986'). As per the provisions of the Notification of 2006, the project or activities falling under Category 'A' of the Schedule require prior permission from the Central Government while project and activities falling under Category 'B' require prior permission from the State Environment Impact Assessment Authority (for short 'SEIAA'). These permissions are to be obtained before any construction work or preparation of the land by the project management except for securing the land is started on project or activity. Respondent No. 1 issued the Office Memorandum dated 16th November, 2010 for consideration of proposals involving violation of the Act of 1986 and the Notification of 2006. On 12th December, 2012, the Ministry of Environment, Forest and Climate Change (for short 'MoEF') issued another Office Memorandum, superseding the Office Memorandum of 16th November, 2010. In terms of this Office Memorandum, it was stated that as soon as any case of violation with respect to the Notification of 2006 is brought to the notice of the MoEF, it will proceed to verify the veracity of the complaint through the regional offices and upon such verification the explanation of Project Proponent will be asked for. If the Ministry is satisfied that it is a case of violation, then before proceeding any further, the authorities would require the Project Proponent to submit its environment related policy, plan of action and a written commitment to ensure that violation will not be repeated within 60 days in terms of the Office Memorandum dated 12th December, 2012 and would delist the project in the meanwhile. Other detailed consequences were also provided in the Office Memorandum dated 12th December, 2012. The Office Memorandum dated 12th December, 2012 was further amended by the Office Memorandum dated 27th June, 2013, which *inter alia*, also provided as under:

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> "It is felt that in addition to these guidelines circulated vide aforesaid Office Memorandum dated 12.12.2012, in case of violation cases, the Project Proponent needs to be restrained, through appropriate directions under Section 5 of the Environment (Protection) Act, 1986 from carrying out any construction or operation activity without the required clearance or beyond the level/capacity stated in the existing clearance, as the case may be, till it procures the requisite EC/CRZ Clearance for the same."

4. According to the Applicant all the three Office Memoranda dated 16th November, 2010, 12th December, 2012 and 27th June, 2013 have been placed on record for the first time by the MoEF along with its reply filed in Appeal No. 98 of 2013. Thus, the Applicant has acquired the knowledge of these circulars only during the hearing of the said Appeal. The Applicant challenges the legality and correctness of these circulars on various grounds, including, that these Office Memoranda are contrary to and in contradiction with the provisions of the Notification of 2006; the Notification of 2006 having been issued under the provisions of Section 3 of Act of 1986, cannot be diluted, rendered ineffective or infructuous by issuance of these Office Memoranda. The Notification of 2006 requires that not only the new projects falling under category 'A' and 'B' listed in the Schedule to the Notification of 2006, but even the expansion and modernisation of such existing projects or activities would require prior Environmental Clearance from the competent authority. The Notification of 2006 further contemplates that prior Environmental Clearance would be necessary even when there is any change in the product mix in an existing manufacturing unit beyond the specified range. It is the case of the Applicant that Para 7 of the Notification of 2006 requires mandatory compliance to the process prescribed for grant of Environmental Clearance. There are four stages i.e. Screening, Scoping, Public Consultation and Appraisal prescribed under Para 7 of the Notification of 2006. This process has to be followed in terms of the Notification of 2006 before a prior Environmental Clearance can be granted to the listed projects. The Applicant alleges that impugned Office Memoranda provide for considering the project of any Applicant where construction has been done already and does not specify the compliance of these four stages prescribed under Para 7 of the Notification of 2006. Therefore, the very purpose of the provisions of Act of 1986 and the Notification of 2006 stands frustrated by these Office Memoranda. If the construction has already commenced and/or even completed, compliance to the provisions of these laws would be impossible. It is the case of the Applicant that the Notification of 2006 has been issued in furtherance to exercise of subordinate delegated legislation for satisfying and complying with the provisions of Section 3 of the Act of 1986 which mandates that Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. The law requires the Project Proponent to take prior Environmental Clearance while these Office Memoranda state exactly to the contrary, thus, encouraging people to flout the law in force on the one hand and cause environmental damage and degradation on the other.

5. In Original Application No. 37 of 2015 (Application 135 of 2014, SZ Bench), the Applicant has impugned the Office Memoranda dated 12th December, 2012 and 27th June, 2013. While raising the challenge on similar grounds as of the Applicant in Original Application No. 213 of 2014, he has further stated that the impugned Office Memoranda are against India's international obligation such as Stockholm Conference, 1972 and Rio De Janeiro Declaration 1992 and has also violated the mandate of Article 51 of the Constitution. It is submitted that environmental management or planning is the study of unintended consequences of a project. Its purpose is to identify, examine, assess and evaluate the likely and probable impacts of a proposed project on the environment and, thereby, to work out remedial action plans to minimize these

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adverse impacts on the environment. All this is required to be done at a stage before the commencement of the project. The law does not visualise such examination post-commencement and upon completion of the project, in relation to the covered projects and activities. According to the Applicant, the aim and purpose of Environmental Impact Assessment (for short 'EIA') is to inform the process of decision-making by identifying the potentially significant environmental effects and risks of development proposals and to promote sustainable development by ensuring that development proposals do not undermine critical resource and ecological functions or the well being, lifestyle and livelihood of the communities and people who depend on them. The importance of conducting an exhaustive EIA before any project is granted Environmental Clearance has been acknowledged internationally. The United Nations Environment Programme's (UNEP) Charter states that EIA should be ensured to minimize adverse effects on nature and nature assessments should be included in the fundamental elements of all planning and should be publicly disclosed and deliberated. The EIA Directive (85/337/EEC) of the European Union which is in force since 1985, requires a defined EIA to be implemented by member nations prior to official authorization for projects with potential significant environmental impacts. The very purpose of conducting an EIA before a project is granted clearance is to ensure that no development takes place without sufficient assessment of the risks and damages that would be caused to the environment due to the project's construction and development. The authorization should follow such study and imposition of conditions rather than the converse. The application for seeking Environmental Clearance has to be made in Form 1 or the Supplementary Form 1A, as the case may be. The requisites required under Form 1 have to be supplied prior to the date of commencement of the project except to the extent of arranging land. The State Level Expert Appraisal Committee (for short 'SEAC') has to assess the project as on that date and stage, then alone it has to recommend whether such project should or should not be granted such Environmental Clearance. According to the Applicant, the impugned Office Memoranda have stated that the projects which have attained substantial physical progress relating to the construction at the site shall be considered by the Expert Committee for the grant of prospective Environmental Clearance, though no Environmental Clearance was obtained prior to commencement of development, as mandated by law. Thus, the impugned Office Memoranda are contrary to law.

The impugned Office Memoranda in question provide that violations could come to the notice of the Ministry at various stages of processing of the proposals and provide for grant of Environmental Clearance even to those projects. Under these Office Memoranda, if a Project Proponent commits breach of the conditions or has already commenced or completed the construction without obtaining required Environmental Clearance for the project, then the concerned State Government is required to initiate credible action on these violations by invoking powers under Section 15 and 19 of the Act of 1986. This is an entirely unworkable system and is even contrary to the federal structure of the Constitution. If this approach and procedure is allowed to be followed then any builder/Project Proponent would complete his project causing irreversible damage to the environment and will then seek post-facto Environmental Clearance from the authorities making it a *fait accompli* situation. In that event, even the most illegal and irregular projects, which are completely violating the Environmental norms, may have to be legalised and legitimized, which would be contrary to law, would even defeat the potential penal consequences prescribed under the Act of 1986 and thus, would be unable to prevent damage to environment and ecology.

Both the Applicants have relied upon the judgment of the Supreme Court in the cases of *Lafarge Umiam Mining Pvt. Ltd.* v. *Union of India (UOI)*, (2011) 7 SCC 338 and *M.C. Mehta* v. *Union of India (UOI)*, (2004) 12 SCC 118, to contend that the

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circulars issued by the MoEF cannot nullify a statutory Notification. In the case of *M.C. Mehta* (supra), the MoEF had issued a circular dated 14th May, 2002, thereby providing an opportunity to people to seek clearance in relation to projects which were already operational but in violation of the Notification of 2006. The Supreme Court observed that it showed total non-sensitivity of the MoEF towards the principle of Sustainable Development and the object behind the issuance of the Notification of 2006. The Supreme Court in the case of *M.C. Mehta* v. *Union of India*, (1987) 4 SCC 463, held that life, public health and ecology have priority over unemployment and loss of revenue. Clearly, the grant of ex post facto Environmental Clearance has not met the approval of Supreme Court legally. According to the Applicants, the circulars are violative of the spirit behind Articles 48A and 51A(g) of the Constitution of India. Under Article 21 of the Constitution, right to a decent and clean environment is a Fundamental Right and thus, its protection by all, including the State, is a Constitutional obligation.

Before we revert to the case advanced on behalf of the respective Respondents, it is essential for us to notice that a number of applications were filed for impleadment by various Project Proponents who had taken advantage of these impugned Office Memoranda or were in the process of seeking advantage thereof. MA Nos. 232, 281, 282, 166, 97 and 110, all of 2015, were filed for impleadment by different builders. These applications came to be allowed vide order dated 12th February, 2015 and 1st April, 2015 respectively. Vide these orders, the following Respondents were directed to be impleaded as contesting Respondents:

Mr. Y. Pondurai (Respondent No. 3)

M/s Ruby Manoharan Property Developers Pvt. Ltd. (Respondent No. 4)

M/s Jones Foundations Pvt. Ltd. (Respondent No. 5)

M/s SSM Builders and Promoters (Respondent No. 6)

M/s SPR and RG Construction Pvt. Ltd. (Respondent No. 7)

M/s Dugar Housing Ltd. (Respondent No. 8)

6. M/s SAS Realtors Pvt. Ltd. has also filed an application M.A. No. 291 of 2015 for impleadment and directions. The said application was heard when the Original Applications were being heard on merits. The Applicant was permitted to address the Tribunal on the merit and otherwise of his impleadment application, as well as on the Original Applications. Since we had permitted the Applicant to participate in the proceeding and address argument, this application stood allowed and consequently, M.A. No. 291 of 2015 for impleadment of M/s SAS Realtors Pvt. Ltd. as Respondent No. 9 is also allowed.

7. MAs 293 and 294 of 2015 were filed by M/s Dugar Housing Ltd. and M/s SPR and RG Construction Ltd. respectively, for producing additional documents on record which were permitted and the documents are on the file of the Tribunal. Consequently, both these Applications No. 293 and 294 of 2015 stand allowed.

Still another set of application was filed, being M.A. No. 167, 168, 169 and 172 of 2015 by different builders for impleadment and directions. During the course of hearing, none appeared on their behalf to argue and pursue these applications and resultantly vide order dated 1st April, 2015, these applications were dismissed. However, the Applicants were granted liberty to raise their grievances before the Tribunal or if they had their independent cause of action, by taking recourse to independent remedy in accordance with law.

8. M.A. 755 of 2014 has been filed in Original Application No. 213 of 2014 praying for stay of operation of these Office Memoranda. Since we are dealing with the Original Applications finally by this Judgment, M.A. No. 755 of 2014 does not survive for consideration and is accordingly disposed of. M.A. 177 of 2015 had been filed on behalf of the MoEF for waiver of cost of Rs. 20,000 which was imposed vide order of

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the Registrar dated 16th February, 2015, for not filing a counter affidavit. Since the arguments have already been concluded and all parties have addressed their submissions, we do not consider it necessary to direct the payment of the cost imposed by the above order in the interest of justice. Resultantly, this application is allowed. The cost of Rs. 20,000 by order dated 16th February, 2015 is waived. The application is disposed of.

9. The Project Proponents upon their applications were directed to be impleaded as Respondents in the main application. The Applicants as well as these newly added Respondents submitted affidavits, documents and other details in regard to the projects in question. The Applicant in the main application in relation to M/s Y. Pondurai (Respondent No. 3), submitted that it is a construction project extending to 28,262.81 sq. mtrs. to which the planning permission was issued on 31st December, 2013. The construction was started even prior thereto on receipt of the recommendation from the Government. The application to SEIAA was filed on 21st February, 2014. On 28th February, 2014, SEIAA informed the Project Proponent that no activity should be carried on prior to grant of Environmental Clearance. SEIAA on 11th March, 2014 asked for photographs of the site to consider the application. On 21st March, 2014, the photographs of the project and an apology along with undertaking were submitted by the Project Proponent to the SEIAA. SEIAA on 1st April, 2014 wrote to Additional Secretary for initiation of prosecution against the said Respondent. The Applicant heavily relies upon this letter of 1st April, 2014 placed on record vide which, the Member Secretary of the SEIAA, Tamil Nadu had written to the Additional Chief Secretary to the Government, stating that there were repeated breaches on the part of the Project Proponent and that action needs to be taken. The relevant part of the said letter reads as under:

> "I inform that as per the EIA Notification 2006, all new projects or activities or expansion and modernization of those existing projects or activities listed in the schedule to the said Notification with capacity beyond the threshold limits prescribed there under, to obtain prior Environmental Clearance under the provision thereof.
>
> The Proponent vide letter dated 21.03.14 has forwarded the expressing regret over the commencing of construction without obtaining EC and also expressed assurance to not to repeat such violations in future. The Authority after careful consideration decided to address the Additional Chief Secretary, E&F Department, Government of Tamil Nadu to take action against the violation of EIA Notification, 2006 under provision of Environment (Protection) Act, 1986.
>
> In the light of the above and as per the clause 5(ii) of O.M. of MoEF, GOI, New Delhi dt: 12.12.2012 (copy is enclosed), it is requested to initiate action against Thiry Y. Pondurai, No. 129, Usman Road, T. Nagar, Chennai-600017., by invoking powers under Section 19 of the Environment (Protection) Act, 1986 for having started the construction work without obtaining requisite Prior Environmental Clearance. It is requested that the action taken in this regard may be informed to the Ministry of Environment & Forests, Government of India and to this office along with supporting documents to enable us to take further action in the matter."

10. On 22nd April, 2014, the Principal Secretary, FAC wrote to the Principal Secretary, SEIAA, bringing to his notice the Notification issued by the Ministry dated 28th February, 2014 which delegated powers vested under Section 5 of the Act of 1986, to all the State and Union Territory Environment Impact Assessment Authorities, under whose jurisdiction the project was located, to issue show cause notice for the violations committed. On 28th May, 2014, SEIAA wrote to the Principal Secretary that in case of violation of EIA Notification, 2006, prior to issuance of Environmental Clearance, a show cause notice should be issued and action has to be

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taken by the State Government. On 5th June, 2014, the Principal Secretary wrote to the Tamil Nadu Pollution Control Board (for short TNPCB') requesting them to take legal action in accordance with the Notification of 2006. This resulted in the issuance of show cause notice to Respondent No. 3 on 12th July, 2014 by the TNPCB, reply to which was submitted by the Project Proponent on 23rd July, 2014.

11. On 26th November, 2014, SEIAA informed the Project Proponent that there was substantial progress in the construction of its project which was noticed even during the scrutiny of the application of Respondent No. 3. An affidavit was filed before the Tribunal by the TNPCB in April, 2015 on the basis of inspection conducted by a team on 2nd April, 2015, stating that the civil construction work in all blocks had been completed, however, outer and interior works were being carried on. On 4th April, 2015, the Project Proponent responded to the TNPCB that the structural work was completed long back and the same was started as soon as the principal approval from the Government Housing and Urban Development Department and the planning permit from the Chennai Metropolitan Development Authority (for short 'CMDA') were obtained. According to the Applicant, while referring to the report submitted by SEIAA and other documents on record, it is clear that the total project cost is Rs. 148.25 Crores. It is a project for development of commercial complex consisting of Main Block — 2 basements + ground floor + 10; Service Block - basement + ground floor + 2 floors and MLCP Block - 2 basements + ground floor + 4 floors. According to SEIAA, construction work for the project was under progress at the time of submission of the apology letter and the undertaking. In inspection of 14th April, 2015, it was noticed that civil work of all the blocks were completed.

12. Vide letter dated 26th November, 2014, the Project Proponent had been informed not to carry on any construction activity. Photographs on record taken on 21st March, 2014 had shown digging or excavation of earth and some construction activity at that level. None of the blocks had been completed at that time. While the photographs taken on 14th April, 2015 show that some of the blocks have been completed and even finished internally and exteriorly. The Applicant has also pointed out that in the application for impleadment, it is averred by the Project Proponent that he had made application to SEIAA on 21st February, 2014 for Environmental Clearance, after obtaining planning permission. In the meeting dated 11th March, 2014, SEIAA had asked him to furnish additional documents to which he replied on 21st March, 2014, but in the meanwhile the Project Proponent had commenced construction activity investing huge sums of money. However, in his letter dated 4th April, 2015, a different stand was taken and it was stated that the project was completed long back and was carried out as soon as approval was granted by the Government and after granting of permission and the planning permit being issued by the CMDA. From this, it is clear that the Project Proponent had raised construction much prior to the submission of the application for the Environmental Clearance on 21st February, 2014. In the application, he falsely declared that he was planning to start the construction activity. He continued with the construction, even after filing the letter of apology and undertaking and despite show cause notice dated 12th July, 2014 continued it till 2nd April, 2015 when the premises were inspected by the SEIAA and TNPCB. In the submission of the Applicant, the entire project of Respondent No. 3 has therefore, been constructed illegally, in an unauthorized manner and by making misrepresentations to the concerned authorities.

Stand of Respondent No. 3 (Mr. Y. Pondurai):

13. The stand of this Respondent is that after obtaining the planning permission, it had applied to SEIAA on 21st February, 2014 seeking the Environmental Clearance for the Project. The Project Proponent was required to file additional documents which he had filed on 21st March, 2014. Construction had been started by the Project Proponent on receipt of the recommendation from the Government and after the Planning

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Permission had been issued. We may notice here that the Applicant however, submitted while referring to the letter of the Project Proponent dated 4th April, 2015 that even this submission of the Project Proponent is factually incorrect. In the said letter, it has been stated that the project work was structurally completed long back and the same was carried forward as soon as principal letter of approval from the Government, Housing and Urban Development Department was issued in the year 2013. The construction activity thus, had started even before filing the application before SEIAA for grant of Environmental Clearance.

According to the Project Proponent, the construction was carried out under a *bona fide* belief. The Project Proponent also claimed that it had obtained permission from the Airport Authority on 2nd November, 2012. The condition No. 2 of the letter dated 31st May, 2013 is relied by the Project Proponent to say that Environmental Clearance was to be furnished before issue of the Completion Certificate. Thus, there is no fault of the Project Proponent in raising the construction without Environmental Clearance. According to this Respondent, the main application is not maintainable either on law or on facts. Plea of limitation was also taken by this Respondent but without referring as to how the application is barred by time.

14. In relation to M/s SPR and RG Construction Pvt. Ltd. (Respondent No. 7), the Applicant has averred that planning permit from the CMDA was granted on 20th July, 2012 in which combined basement 1 & 2 + ground floor + 14 floors of block 1 to 9 residential building with 950 dwelling units was permitted. Permissions from various other authorities during the period from 25th February, 2011 to 28th April, 2011 have also been filed on record, but there is variance in the Survey Nos. given in Annexure R8 and R9 and R10, R11, R12, R13. The Project Proponent claims to have filed application to SEIAA on 28th January, 2011, which fact is not admitted by SEIAA. The Project Proponent then moved fresh application on 12th June, 2013 dated 10th June, 2013 to SEIAA for grant of Environmental Clearance. The Project Proponent had been seeking extra time from SEIAA and in regard to this, reference is made to the letters dated 20th February, 2013, 25th April, 2013 and 21st March, 2013 from SEIAA, reference of which have also been placed on record and it does not refer to the application of the Project Proponent dated 28th January, 2011. SEIAA on 12th June, 2013 acknowledged this application and passed an order that no activity should be undertaken unless Environmental Clearance was granted. On *1st* July, 2013, the Project Proponent submitted photographs with the letter of apology, pursuant to the Board meeting of Project Proponent held on 17th June, 2013, assuring non-repetition of violation. Photographs which have been placed on record show that the construction was at the very initial stages i.e. excavation work had been done and pillars were being raised. Further details were asked for by the SEIAA vide its letter dated 22nd August, 2013 clearly mentioning that if the additional particulars were not submitted by 10th September, 2013, the project would be closed without notice. The Project Proponent did not provide the requisite information within the stipulated time. On 13th September, 2013, the Project Proponent submitted some documents with the promise to provide rest of them at a subsequent date. The SEAC on 30th September, 2013 prescribed the TOR which was issued by SEIAA on 7th October, 2013. The TNPCB conducted an inspection on 10th December, 2013 and noticed that the construction activity was being carried on. Later, a compliance report of the TOR was submitted which mentions about the collection of primary data from August, 2013 to October, 2013 which is prior to even issuance of the data of the TOR. Thereafter, an EIA report was submitted on 28th April, 2014. On 22nd January, 2015, the Project Proponent wrote to the TNPCB, referring to the inspection and denying continuation of construction in violation of the undertaking provided, though a case being C.C. No. 56 of 2014 had been filed against this Respondent which was pending before the Judicial Magistrate, Ambattur. SEIAA on 19th May, 2014 wrote to the Project Proponent to furnish

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additional details. According to the Applicants, the construction was going on even at that stage. Thereafter, SEAC decided to recommend proposal to SEIAA to issue Environmental Clearance but only after obtaining and considering the information stated in the recommendations. It included even that the landscape area and green area was not to be less than 15 per cent of the total area. On 20th June, 2014, SEIAA asked for further documents from the Project Proponent. The Project Proponent had written a letter to SEIAA vide its letter dated 23rd July, 2014. This letter according to the Applicant is a departure from the CMDA's planning permit since the Project Proponent was sanctioned 9 blocks, while this letter talks of 10 blocks. SEIAA again on 10th November, 2014 required the Project Proponent not to carry out any construction of the project. The 26th November, 2014 letter of the CMDA refers to a new PPA made by the Project Proponent and states that the planning permission application would be returned in the absence of a revised plan incorporating EIA Clearance for the revised proposal. On 30th January, 2015, the Project Proponent resubmitted revised PPA without EIA and asked for further three weeks time to submit the latest developments for Clearance. The Project Proponent appointed new Consultant on 11th February, 2015 and vide its letter dated 19th February, 2015, CMDA asked for a structural stability certificate.

Pursuant to Tribunal's orders, an inspection was carried out by the Tamil Nadu Pollution Control Board on 2nd April, 2015, based on which an affidavit was filed before the Tribunal, stating that the construction is almost complete in all the blocks and that outer and inner works were going on and construction was going on even on 2nd April, 2015. On 4th April, 2015, the Project Proponent submitted a reply to the show cause notice served by District Environmental Engineer, Tamil Nadu Pollution Control Board, Ambattur, where it was stated that construction had been stopped. From the current photographs placed on record, it is clear that the construction work is at its completion stage in complete contrast to the photographs submitted at the time of the filing of the documents by the Project Proponent. Stop work notice was also issued by the Tamil Nadu Pollution Control Board on 2nd April, 2015 to which the Project Proponent responded on 3rd April, 2015 by stating that they have stopped the construction activity upon the receipt of the stop work notice. According to the Applicant, this Project Proponent had all through violated its letter of apology and undertaking given to SEIAA. It carried on construction illegally and in an unauthorized manner. It even revised its plan and raised further construction in relation to additional block for which there was no construction permission and other permissions from the authorities. Even till date, the Environmental Clearance has not been granted to this project and the project has caused serious and adverse environmental and ecological impacts.

Stand of Respondent No. 7 (M/s SPR and RG Construction Pvt. Ltd.)

15. Respondent No. 7, M/s SPR and RG Construction Pvt. Ltd. has taken a stand that they are engaged in construction of residential complexes. They intend to construct residential apartments at different Survey Nos. 137/1, 138/1, 148/5A and 148/7A Karambakkam Village, Ambattur Taluk, Thiruvallur District, TN, under the name and style of “Osian Chlorophyll”. This Respondent submitted its application to SEIAA on 28th January, 2011 for grant of Environmental Clearance for the project. This project was to have the construction of floors as already indicated with a total project area of 35786.05 sq meters with a built up area of 166479.79 sq meters at a total cost of project of Rs. 251.01 crores as proposed. SEIAA had asked for additional particulars and the Project Proponent was advised to give a presentation before the SEAC which was done by the Project Proponent on 30th September, 2013. The said Expert Appraisal Committee recommended the project for grant of Environmental Clearance subject to furnishing of certain details/approvals. The Respondent claims to have complied with those requirements. According to the Project Proponent, the term of the presiding officer of SEIAA had expired around 2nd March, 2011 and remained so till 4th March,

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2012 and no action was taken on the application submitted by the Project Proponent. While simultaneously pursuing the application with SEIAA, the Project Proponent also took NOCs from different authorities like Airport Authority of India, Chennai, Traffic Police, Chennai Water Supply and Sewage Board and planning permit from CMDA on 28th January, 2013. Because of the non-availability of the Members of SEIAA, the Project Proponents like other builders, started construction after seeking the planning permit. The planning permission was granted subject to the condition that the Project Proponents would obtain Environmental Clearance prior to seeking completion certificate for construction. The Applicant started construction under a *bona fide* belief. It is not disputed by this Respondent that the construction raised by it was objected to by the authorities, but taking into account the circumstances and in view of the circulars, Respondent continued with its construction. An undertaking cum apology was also furnished under the format given by the SEIAA on 26th September, 2013. Appraisal Committee on 17th June, 2014 recommended the project with some observation which the Project Proponents was willing to comply. The said Respondent upon enquiry and vide letter dated 10th November, 2014 came to know that since operation of the had been stayed by the National Green Tribunal, SEIAA had de-listed their application subject to the orders of the Tribunal.

16. It is the specific plea of the Respondent that he had applied for Environmental Clearance which had neither been accepted nor rejected within 45 days despite recommendation by the Expert Appraisal Committee, thus, there would be deemed sanction in favour of the Project Proponent under the Notification of 2006.

17. The authorities i.e. SEIAA, Tamil Nadu and Tamil Nadu Pollution Control Board have taken up the stand that the construction without prior Environmental Clearance was not permissible. The Tamil Nadu Pollution Control Board vide their letter dated 14th February, 2014 had informed the SEIAA that cases had been registered against violators i.e. Project Proponents. The inspection was conducted and stop work notice was issued on 2nd April, 2015 55 complaints have been filed against the violators including the Respondent - Project Proponents. However, in some cases, the proceedings have been stayed by the High Court of Madras. The unauthorized construction by the Project Proponent was brought to notice as back on 15th July, 2013 and despite orders, the construction was continued which was stopped only upon inspection as on 4th April, 2015. Even on 24th December, 2013, the Project Proponent was served with a notice that no construction should be carried out without grant of Environmental Clearance. The construction work in all the 10 blocks had been completed however some interior work was still to be carried out. The Board of Directors of the Project Proponent had furnished a resolution on 12th July, 2013 along with the letter of apology and assurance that no construction would be carried out. However, this was not adhered to. According to SEIAA, tenure of the State Level Environmental Assessment Authority was notified on 4th April, 2012 and after the completion of 3 years of tenure, the same has ended on 3rd April, 2015. Its reconstitution is awaited.

18. In relation to M/s Dugar Housing Ltd. (Respondent No. 8), according to the Applicant on 28th January, 2013, building permit for the construction of combined basement floor + combined stilt floor + first floor to third floor + two towers with fourth floor to 10th floor residential cum commercial building with 285 dwelling units, community hall, gymnasiums, swimming pool and office space at survey no. 779/2A, 2B, 2C, 2D, 2E & 2F of Korattur Village, Ambattur, Chennai was issued in favour of the said Respondent. This permission states that the Project Proponent had also furnished an undertaking to abide by the terms and conditions put by various authorities specified therein and the Project Proponent was to submit necessary applications to the authorities. However, in para 7, it has been stated specifically that this approval is not final and that the Project Proponent has to approach Commissioner of Corporation.

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Chennai for issuance of Building Permit under the Local Body Act. On 8th May, 2013, a building license from Corporation of Chennai was applied for and was granted on the same date. However, the averment of the Project Proponent that he had applied for building license on 28th January, 2013 is factually not correct. Thereafter, application for Environmental Clearance was moved to SEIAA for construction of 56,153.22 sq mtr in a total plot area of 11,789 sq mtrs. It is also pointed out by the Applicant that there is serious variance in the documents placed on record. In the letter dated 17th June, 2011 addressed by Fire and Rescue Services Department to the Project Proponent, it has been stated that plot area in the proposal is 12,006.92 sq mtr and the proposed built up area is 41,327.80 sq mtrs. Vide this letter, the Department had given 'No Objection' to accord planning permit to the proposal, but subject to the satisfaction of the conditions specified in the report. The compliance report was to be submitted before actual Occupancy Certificate is issued and the Department was to conduct re-inspection. In response to the letter and application for Environmental Clearance dated 4th June, 2013 by the Project Proponent, SEIAA had responded vide letter dated 7th June, 2013, acknowledging the receipt of the application and clearly informing the Project Proponent that as per the Notification of 2006 along with amendments therein notified by the MoEF, no activity should be taken in any part of India unless prior Environmental Clearance is granted in accordance with the objective of the National Environmental Policy. This letter specifically requires the Project Proponent not to commence any construction activity other than clearing the site, fencing the site and putting up the temporary structure for accommodation of labour etc. On 21st June, 2013, SEIAA asked the Project Proponent to furnish additional documents including approved building site plan, photographs of the building site and a commitment letter that no activity shall be carried out before obtaining the Environmental Clearance from the competent authority.

19. According to the Applicant, no additional documents or particulars were furnished by the Project Proponent till 20th July, 2013, the last date given by the SEIAA to close their application in event of default in furnishing documents or particulars, without further notice. However, some documents were submitted by the Project Proponent on 30th July, 2013. Various letters including letter dated 21st June, 2013, 8th August, 2013 and 10th September, 2013 were written by the SEIAA to Project Proponent seeking further information. Finally, vide its letter dated 24th September, 2013, SEIAA informed the Project Proponent that SEAC meeting would be held on 30th September, 2013. In the meeting held on that day, SEAC recommended the project for grant of Environmental Clearance, subject to conditions. According to the Applicant, the documents requisitioned were not placed before SEAC as the extract of minutes of meeting of SEAC makes no reference to construction in violation of Notification of 2006 and belies the submission of alleged letter dated 26th September, 2013, which claims to have enclosed Board resolution dated 12th August, 2013. The Tamil Nadu Pollution Control Board conducted inspection of the site on 20th May, 2014 and found that the ground level work had already started which resulted in issuance of a show cause notice dated 21st May, 2014. This inspection report contradicts the resolution dated 12th August, 2013 that has been placed by the Project Proponent on record and therefore, there were clear violations of the Notification of 2006. In the show cause notice, it had been specifically noticed that the construction of the work had been carried out without obtaining Environmental Clearance. The reply to this show cause notice was submitted by Project Proponent vide their letter dated 16th June, 2014, wherein it was nowhere denied that the construction work was carried on without obtaining Environmental Clearance; in fact, the stand taken was that other clearances except Environmental Clearance have been issued in favour of the Project Proponent. According to the Project Proponent, the project construction was started because there was huge investment involving client's money and the construction has

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to be taken up on time to deliver the property as committed or else it could lead to huge losses to the developer and unwarranted hassles to the end user. It was averred that after the inspection of the site, the work has been suspended.

20. Upon inspection by the Tamil Nadu Pollution Control Board, it was noticed that the unit had completed construction work of 5 blocks and interior work is under process. It is not clear that when permission was granted for building 2 blocks, how come 5 blocks were constructed. This inspection was conducted on 2nd April, 2015 and stop work notice was issued by the Board on the same day. An inspection had also been conducted on 14th April, 2015. The photographs submitted to SEIAA on 26th September, 2013 and the photographs taken on 14th April, 2015 clearly show that there are environmental violations by the Project Proponent. The entire construction has been raised without grant of Environmental Clearance and even without compliance with other laws, thus, at this stage affecting the environment and ecology of that area. Though, the Project Proponent never applied for the Environmental Clearance on the basis of the revised project but the Tamil Nadu Pollution Control Board during the course of inspection *inter alia* noticed the existence of revised plan of construction and the noncompliance to the conditions contained in the orders of various authorities.

21. In the latest affidavit of the Tamil Nadu Pollution Control Board that has been placed on record before the Tribunal on 8th April, 2015, it was observed that the unit has almost completed the civil construction work and despite issuance of show cause notice dated 21st May, 2014 and stop work notice issued by Tamil Nadu Pollution Control Board, the Project Proponent carried on with the construction work.

Stand of Respondent No. 8 (M/s Dugar Housing Ltd.)

22. The above factual position is hardly disputed by this Respondent. However, the stand taken by the Respondent is that there were vacancy in SEIAA from 2nd March, 2011 to 4th March, 2012 and therefore, they could not have sought Environmental Clearance. The construction was commenced with a view to avoid delay of the project. Though, there was objection from some of the authorities, the construction activity continued in the interest of the developer and the prospective purchasers. It is not disputed by this Project Proponent that resolution dated 12th August, 2013 was submitted to SEIAA. Finally this Respondent has raised the plea of deemed clearance. According to him, he had submitted an application for Environmental Clearance on 7th June, 2013 and it has not been given or denied till date, therefore, it would be deemed to have been granted to him as per Para 8 of Notification of 2006. Further, it is averred that in the meeting of the SEAC on 30th September, 2013, the project was not granted Environmental Clearance but recommended to SEIAA for grant of Environmental Clearance, therefore, the permission would be deemed to have been granted. It is also the plea of this Respondent that he had obtained No Objection Certificates from the Air Port Authority, Traffic Police, Fire and Rescue Services, Metro Water Supply and Sewerage Board during the year 2011–2012. He had also obtained planning permit from Chennai Metropolitan Development Authority dated 28th January, 2013 and building permission from Corporation of Chennai dated 28th January, 2013. Since the process was taking time, the construction had been started. The Project Proponent had also tendered apology to SEIAA in compliance of the letters dated 12th December, 2012 and 27th June, 2013.

In response to the above contentions raised by the Project Proponent and some of the official Respondents, it has been stated by the Applicant that the plea of vacancies in SEIAA is irrelevant as the application for Environmental Clearance was moved on 7th June, 2013 and thereafter, there was no vacancy in SEIAA, thus, no prejudice is caused to the Project Proponent on that count. The plea of *bona fide* taken by the Project Proponent is of no consequences because upon violation of the law, they

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cannot take up the plea of *bona fide*, as they intentionally carried on the construction despite objections from the authorities, show cause notice, stop work notice and even their own undertaking to the authorities not to raise any construction. Now the Project Proponent has completed the construction and therefore, the misrepresentations made by it to the authorities, including the variation in the plot and construction area, would vitiate the permissions that had been granted to the Project Proponent. Since the application for obtaining the Environmental Clearance is still pending for consideration of the authorities and the Project Proponent had been asked to submit documents, the Project Proponent cannot claim any benefit under the garb of 'deeming fiction'. This principle is not applicable to the case of Respondent No. 8 either on facts and/or on law. The meeting of SEIAA held on 30th September, 2013 had clearly noticed the unauthorized construction that they began in violation of the Notification of 2006 and resolution of the Project Proponent dated 12th August, 2013, which fact is undisputable. The plea of 'deeming fiction' and *bona fide* construction can therefore, hardly be taken by this Project Proponent. SEIAA had while requiring the Project Proponent to comply with the Notification of 2006, clearly mandated on 7th June, 2013 that no construction should be carried out. This has been violated by the Respondent No. 8 frequently. The different figures of plot size and construction area having been submitted by the said Respondent to various authorities, shows that he has not approached the authorities with clean hands and *bonafidely*.

23. According to the Applicant, this project of M/s Ruby Manoharan (Respondent No. 4) relates to the construction of basement floor + stilt pt + 1st to 15th Floor residential building with 206 Dus (ground floor pt & 1st Floor pt departmental store and 12th floor swimming pool) on Survey No. 64/2, Vengaivasal Village at Tamabaram, Velachery Main Road, Vengaivasal, Chennai. It was a project of total built up area of 22,130.944 sq meters on plot of 6,173.40 sq meters. The Project Proponent had moved an application to CMDA for his planning permit, in response to which the Authority on 24th July, 2012 wrote to the Project Proponent to pay development charges and submit other documents. The CMDA on 4th January, 2013 granted planning permit to the project. It needs to be noticed that in the letter dated 24th July, 2012, detailed conditions for compliance were stated which also included a condition that the Project Proponent was to furnish an undertaking that Environmental Clearance would be taken before the said authority could issue the planning permit. After submission of its plan, it appears that the Project Proponent started construction immediately after the issuance of the letter dated 24th July, 2012.

24. On 11th January, 2013, the Project Proponent submitted an application seeking Environmental Clearance. To this application, the authorities (Member Secretary, SEIAA) responded instantaneously and informed the Project Proponent about the necessity to comply with the requirements of the Notification of 2006 and directed the Project Proponent not to raise any construction without obtaining prior Environmental Clearance. The relevant extract of the letter written by SEIAA to the Project Proponent can be usefully reproduced here:

> "It shall be noticed that construction activity towards the project implementation without obtaining prior Environmental Clearance is a cognizable offence under Section 19 of Environment (Protection) Act, 1986 and is also liable to punishment for contravention of the provision of the said Act and the Rules or orders and directions, under Section 15, 16 or 17 of the said Act. In the above circumstances, it is hereby instructed that the Proponent shall not commence any activity, other than clearing the site, fencing the site and putting up temporary structure for accommodation of labour, along with basic facilities like toilets and water supply, made as a temporary arrangement."

25. On 15th May, 2013, SEIAA wrote to the Project Proponent requiring them to file additional documents and submit the requisite technical details for grant of

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Environmental Clearance. These details, required to be furnished by 3rd June, 2013, were not submitted, thereby resulting in issuance of reminder by SEIAA to Project Proponent on 8th July, 2013. This letter was responded to by the Project Proponent on 17th July, 2013, wherein they clearly stated that they shall initiate the activity on the site only after obtaining Environmental Clearance. In this letter, the built up area was stated to be 35,017 sq meters as against 22,139 sq. meters as stated in the letter of the Project Proponent itself dated 11th January, 2013.

26. The Project Proponent was again informed by SEIAA vide its letter on 22nd July, 2013 that he should not carry out any construction activity at the site other than clearing the site, fencing the site and raising temporary structure for accommodation of labour. On 27th August, 2013, the Project Proponent informed the SEIAA that they had submitted the documents and circulated the same to the members of SEAC. Conceptual Plan was submitted by the Project Proponent to SEIAA on 29th August, 2013, in which discrepancies were pointed out by the SEIAA and it asked the Project Proponent to provide reasons for change in the built up area vide its letter dated 4th September, 2013. It was also pointed out by SEIAA in this letter that the project is located at a distance of 50 mtrs. from Nanmangalam Reserve Forest and thus Project Proponent was asked to furnish No Objection Certificate (for short 'NOC') from the District Forest Officer (for short 'DFO'). The Project Proponent vide their letter dated 13th September, 2013 responded to the letter dated 4th September, 2013 furnishing the 'NOC from DFO while stating that this 'NOC from DFO was not necessary, it being a 'B' category project and in relation to the discrepancy in the built up area, it was stated that the difference in area is the consolidation of the Non-FSI and Free of FSI areas, which are otherwise not mentioned in CMDA approved plan. SEIAA again vide its letter dated 24th September, 2013, directed the Project Proponent to furnish the NOC from the DFO on account of the fact that the project was located at a distance of 50 meters from Nanmangalam Reserve Forest. In response, the Project Proponent vide its letter dated 25th September, 2013 stated that the development is categorised as General Building Construction Project and is not covered under the Notification of 2006.

27. The matter was placed in the 44th meeting of SEAC on 30th September, 2013 asking the Project Proponent to furnish additional documents including NOC from DFO and an undertaking as required and the above was communicated by the SEIAA to the Project Proponent vide its letter dated 7th October, 2013. The Project Proponent thereupon vide their letter dated 21st February, 2014 informed SEIAA that the required resolution from the Board of Directors has been passed during the meeting held on 24th January, 2014 that they would not commit violation of the Notification of 2006 and also that such violations shall not be repeated. Having noticed various violations and non-compliance by the Project Proponent, SEIAA vide its letter dated 11th March, 2014 wrote to the Additional Chief Secretary to the Government that action should be taken against this Respondent in terms of Section 19 of the Act of 1986. This letter was responded to by the Government on 22nd April, 2014, asking SEIAA to take necessary steps. The Tamil Nadu Pollution Control Board filed a complaint against this Respondent before the Court of Judicial Magistrate, Court II, Chengalpattu on 17th July, 2014. The Project Proponent filed an affidavit on 22nd July, 2014 stating that they have stopped the construction activity at site as per commitment in the Board Resolution dated 24th January, 2014 and shall carry on construction only upon securing the Environmental Clearance. On 3rd September, 2014, the Project Proponent requested SEIAA to dispose of its application notwithstanding the order passed by this Tribunal dated 21st May, 2014.

In the meanwhile, Tamil Nadu Pollution Control Board issued a show cause notice to the Project Proponent. The premises were also inspected on 2nd April, 2015 and it was noticed that the construction had been carried on in the past but was found to be

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stopped at the time of inspection. From the photographs on record which were filed by the Project Proponent before SEIAA on 6th March, 2014 and the photographs taken during the course of inspection on 15th April, 2015, it is clear that the Project Proponent has violated its own undertaking, orders and directions of SEIAA, as well as other laws in force. Therefore, the Applicant has submitted that the project of Respondent No. 4 has seriously affected the environment and ecology of area and the entire construction is unauthorised and illegal.

Stand of the Respondent (M/s Ruby Manoharan)

28. The stand of the Respondent Project Proponent is that he had obtained the Planning Permit on 4th January, 2013. The Project Proponent had also obtained Airport Authority clearance with regard to height of the building from Director General of Civil Aviation on 17th October, 2011. He also claims to have obtained clearance from the Fire Department. Before the issuance of planning permit by the CMDA, the proposal was approved by the Government Housing and Urban Development Department of the State of Tamil Nadu vide their letter dated 19th June, 2012. Vide their letter dated 24th July, 2012, the CMDA asked the Project Proponent to pay the development charges for land and building, security deposits as well as infrastructure and amenity charges. As per the terms and conditions of this letter, the Project Proponent was called upon to comply with various directions and it was stated that if the directions were not complied with, the sanction was required to be revoked. Even according to the Project Proponent in an affidavit, it has been admitted that they were required to furnish an undertaking to produce 'NOC for EIA Clearance before obtaining the completion certificate. The Project Proponent started the construction after receipt of the Planning Permit which was valid till 3rd January, 2016. After obtaining the Planning Permit, it applied for grant of Environmental Clearance to SEIAA on 11th January, 2013. After submission of the said application, the Project Proponent was called upon to submit certain documents and provide more particulars. The application of the Project Proponent was pending when interim order was passed by the Tribunal staying the operation of the impugned. Before the SEIAA, the Project Proponent had filed an apology letter on 21st February, 2014. The Project Proponent filed an application before the Southern Bench of National Green Tribunal seeking for direction to SEIAA for considering its application and disposing it expeditiously. Keeping in view the fact that the interim orders of stay have been passed by the Principal Bench at New Delhi, the Project Proponent also filed an application for impleadment, praying that the interim orders passed by the Tribunal on 15th December, 2014 in M.A. 809 of 2014 in Original Application No. 135 of 2014 be vacated.

29. SEIAA and Tamil Nadu Pollution Control Board have taken clear stand that the Project Proponent had carried the construction activity without obtaining Environmental Clearance. The apology filed by the Project Proponent had clearly stated that he will not carry out any construction without obtaining Environmental Clearance and such violation will not be repeated. SEIAA had requested the Government of Tamil Nadu to take action under Section 15 and 19 of the Act of 1986 as per the guidelines of the MoEF against the Project Proponent. According to SEIAA, in view of the interim order passed by the National Green Tribunal, the application for grant of Environmental Clearance was not processed. According to SEIAA, it had acted in furtherance to the issued by MoEF dated 12th December, 2012 and 27th June, 2013 to consider the application submitted by the Project Proponent. But this application has been de-listed from the pending list of projects, as they are awaiting orders of the National Green Tribunal. The Project Proponent had been informed by various letters including that of 19th November, 2014, not to proceed with the project construction. The site was inspected on 15th April, 2014 and it was noticed that the civil structural work for all the blocks were completed. In reliance thereto, SEIAA has submitted

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certain photographs.

30. According to the Tami Nadu Pollution Control Board, they had conducted the inspection on 2nd April, 2015 and they noticed that no construction work was going on at the time of inspection. They have also taken photographs in reliance thereto. They were also informed by the Project Proponent on 2nd April, 2015 that all the construction work had been stopped w.e.f 4th April, 2014.

31. According to the Applicant, the project of M/s Jones Foundation (P) Ltd (Respondent No. 5) was for construction of Group Development residential project constituting six blocks, stilt + 7 floors out of which 329 are dwelling units, a clubhouse and a ground floor plus one residential building in S. Nos. 170/1A1F2, 1B, 2B, 1C1, 1C2, 2C1, 2C2, 172, 173/1A1, 1A2, 1B1, 1B2, 1C, 1D, 1E&2; at Pallikaranai Village, Tambaram Taluk, Kancheepuram District, Tamil Nadu. The total project area is 20,895.02 sq meters with built up area of 35,848.88 sq meters with a project cost of Rs. 140 crores. The Project Proponent filed an application seeking planning permission from the CMDA on 19th May, 2010. This remained pending and various correspondences were exchanged between the parties. The planning permission according to the Project Proponent was issued on 3rd August, 2012. In terms of this letter of the CMDA, Project Proponent was required to deposit various charges like development and plot regularisation etc. The Project Proponent was to construct strictly in accordance with the sanctioned plan and no deviation was to be made. Further, it was stipulated that even the building would not be occupied without issuance of the completion certificate by the said authority. Rain water conservation measures as notified by the CMDA were expected to be adhered to strictly. Undertaking was required to be furnished for NOC from the IAF and EIA clearance before the issue of the Completion Certificate. In the event of non-compliance of the conditions, the sanction was liable to be revoked. The Project Proponent started the construction immediately thereafter and carried on with the same. The application for grant of Environmental Clearance was submitted on 3rd February, 2014 which was responded to by SEIAA vide its letter dated 5th February, 2014, directing the Project Proponent not to raise any construction, other than cleaning the site, fencing the site and putting up temporary structure for accommodation of labour. It will be useful to refer to the relevant part of the said letter:

> "Your attention is drawn to the EIA Notification dated 14th September, 2006 along with amendments thereon, notified by the Ministry of Environment and Forests, Government of India, wherein it has Imposed certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the Schedule to the notification, being undertaken in any part of India, unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy.
>
> The Government of India, Ministry of Environment and Forests in various circulars have repeatedly emphasized that any activity started or being executed before obtaining an Environmental Clearance from the Competent Regulatory Authority i.e. State Level Environment Impact Assessment Authority shall be construed as a violation, as per the provision of the Environment (Protection) Act, 1986. The Ministry has also delegated required powers and instructed the concerned State Government to take legal action against such proponent who has started project activity without a prior Environmental Clearance for violation, by invoking powers under Section 19 of Environment (Protection) Act, 1986.
>
> It shall be noticed that activity towards the project implementation without obtaining prior Environmental Clearance is a cognizable offence under section 19 of Environment (Protection) Act, 1986 and is also liable to punishment for

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contravention of the provision of the said Act and the Rules or Orders and directions, under section 15, 16 or 17 of the said Act. In the above circumstances, it is hereby instructed that the Proponent shall not commence any activity, other than cleaning the site, fencing the site and putting up temporary structure for accommodation of labour, along with basic facilities like toilets and water supply, made as a temporary arrangement.

The receipt of this communication should be acknowledged immediately."

32. Vide their letter dated 10th February, 2014, the SEIAA asked the Project Proponent to submit additional documents as well as the photographs of the construction and a resolution/undertaking of the Project Proponent. In compliance to these directions, on 27th February, 2014, the Project Proponent submitted an affidavit along with photographs showing status of the site and also other documents. SEIAA vide their letter dated 4th March, 2014, informed the Project Proponent that construction had commenced and this was in clear breach of the Notification of 2006 and they were asked to furnish a letter of commitment and expression of apology for the same and then alone the proposal would be considered any further. On 10th March, 2014, the Project Proponent submitted an apology and requested that issuance of Environmental Clearance may be considered. The letter of commitment and expression tendered by the Project Proponent read as under:

"LETTER OF COMMITMENT AND EXPRESSION OF APOLOGY

We understand the violations on the part of making substantial construction in our project at Survey No. s-170/1C2, 170/1A1F2, 170/2C2, 170/2B, 172, 170/1B, 170/2C2, 170/1C1, 173/1D, 173/1A1, 1A2, 173/1B1, 1B2, 173/1E, 2, 173/1C of Pallikarnai Village, Tambaram Taluk, Kanchipuram District, Tamil Nadu in West Anna Nagar, (Near Chettinadu Enclave), Door No: 190 Zone-14 Corporation of Chennai, which is a Multi-storeyed Residential Apartment, with (6-Blovcks-Stilt + 7 Floors and a Club House) for residential purpose with 329 dwelling units by M/s Jones Foundations Private Limited without obtaining prior Environmental Clearance under EIA notification

The subject was taken up in a meeting held by the Board of Directors of M/s. Jones Foundations Private Limited on 24/02/2014 for consideration of the environment related policy/of action and resolved to ensure that such violations will not be repeated in future.

We here by express our apology for the violations carried out by construction of the project without obtaining prior Environmental Clearance under EIA Notification 2006 and request SEIAA, Tamil Nadu to consider the issuance of the Environmental Clearance for the said project."

33. The Tamil Nadu Pollution Control Board conducted an inspection and issued a show cause notice on 16th July, 2014, clearly evidencing that the construction work was continuing even as on 15th July, 2014. In the show cause notice, the Project Proponent was required to answer as to why the prosecution should not be initiated against him by filing a complaint as per the powers conferred under Section 19(a) of the Act of 1986 and as to why recommendation should not be made to the MoEF, Government of India/Government of Tamil Nadu, for the issuance of directions under Section 5 of the Act of 1986 to suspend the construction activity till such time Environmental Clearance is obtained. Reply to this show cause notice was submitted by the Project Proponent on 26th July, 2014, in which it was said that they have already submitted the application in Form I and IA along with a conceptual plan to SEIAA, Tamil Nadu and that they were waiting for grant of Environmental Clearance to the Project. In this letter, it was stated that they have stopped all construction activities pertaining to the project after the show cause notice and that construction would be started only after grant of Environmental Clearance. The Tamil Nadu Pollution

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Control Board during inspection noticed that the main civil construction work for the residential complex was almost completed and found works such as interior finishing and site cleaning work were going on. The inspection report submitted on 2nd April, 2015 resulted in a stop work notice being issued to the Project Proponent by the Tamil Nadu Pollution Control Board. The photographs submitted by the Project Proponent to SEIAA on 5th January, 2014 and the photographs taken by SEIAA on 15th April, 2015 along with the report of SEIAA, clearly show that the construction work is in violation of the law and is continued illegally during all this time and this has caused irreparable loss and damage to environment and ecology. The SEIAA vide its letter dated 18th November, 2014 had informed the Project Proponent that his project stands de-listed for grant of Environmental Clearance and would be considered only after further orders of the Tribunal.

The Project Proponent had relied upon the office order dated 21st January, 2010 issued by the Member Secretary, Chennai Metropolitan Development Authority approving the norms and procedures evolved in terms of the guidance of the Monitoring Committee to contend that they had taken permissions from the concerned authorities to raise constructions with reference to this office order dated 21st January, 2010. The office order related to issuance of completion certificate on the basis of these revised guidelines. The office order provided that the insistence for compliance report from other agencies, including CMDA, Tamil Nadu Pollution Control Board, Revenue Department and ELCOT was proposed to be dispensed with. The Project Proponent also claimed that he had obtained other statutory clearances for the purposes of construction and construction had been carried out on the basis of the approved drawings. The Project Proponent conceded in his Application M.A. No. 110 of 2015 that he had commenced and had almost completed the construction activity by investing huge sums of money and has employed large number of labourers as on 3rd February, 2014 when he applied for obtaining the Environmental Clearance. The Project Proponent submits that he was under *bona fide* impression that Environmental Clearance would be given since all particulars have been complied with. Rest of the facts afore-referred are not disputed. The Respondent stated that the main application of the Applicant was not maintainable and the same should be dismissed.

34. According to the Applicant, M/s SSM Builders and Promoters (Respondent No. 6) is a registered partnership firm engaged in the business as civil engineering contractors, lay out promoters, flat promoters, real-estate and housing/commercial project developers. In November, 2012, the Project Proponent submitted a plan for approval to the CMDA for the project 'SSM Housing Complex at Perungalthur, Chennai'. The project was envisaged in an area of 49.28 acres. The proposed housing complex contemplated 59 blocks, out of which 6 blocks were for LIG housing with GF + 3 floors and balance 53 blocks with stilt plus 4 floors comprising of a total 2952 flats. There are six commercial blocks and one club house. The total built up area of the project comes to 37.84 lakhs sq ft. The estimated project cost involved was Rs. 792.56 crores. The application for planning permission was filed with the CMDA on 2nd November, 2012 and revision of this application was sought on 11th December, 2012, 27th December, 2012 and 7th February, 2013. On 11th March, 2013, necessary fee for process was demanded by CMDA from the Project Proponent. On 5th August, 2013, the Planning Permission was granted to the Project Proponent in relation to the project in question. Project Proponent had submitted the application for grant of Environmental Clearance on 24th July, 2013. According to the Applicant, the Project Proponent claims that he had collected samples for making available for baseline data from July to September, 2013 and that it had commenced construction by 13th August, 2013. However, the Applicant has submitted that the Project Proponent had erroneously classified the project as a category 'B2' project under clause 8(b) of the Schedule to the Notification of 2006, while in Column (2) of Form 1, the Project was categorised as

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8(a) under the Schedule of Notification of 2006. It is also averred by the Applicant that the samples have been collected much subsequent to the application for grant of Environmental Clearance and are even pre-dated to the TOR. Furthermore, as they were not collected by an accredited consultant they cannot be used for EIA report. On 1st August, 2013, SEIAA asked for additional documents and particulars so as to proceed with the case. These documents are stated to have been submitted on 20th August, 2013. SEIAA vide its letter dated 19th September, 2013 stated that the ToRs as well as the clarifications should also be furnished in the EIA report. On the basis of the said EIA Report, the Project Proponent was required to take further necessary actions for obtaining Environmental Clearance. The Project Proponent on 14th February, 2014 submitted a Rapid EIA report. On 24th February, 2014, the partners of the Project Proponent passed a Board Resolution expressly apologizing for violations of the Notification of 2006 by commencing construction work without grant of Environmental Clearance and undertook not to commit further violation. In fact, on 19th March, 2014, letter of commitment and expression of apology' was submitted to SEIAA. The Tamil Nadu Pollution Control Board on 11th July, 2014 conducted an inspection of the project. On the basis of this inspection, the Tamil Nadu Pollution Control Board issued a notice dated 15th July, 2014 referring to the whole background, the breaches and violation committed by this Project Proponent and the fact that during inspection on 11th July, 2014, it was found that the residential complex project was under progress without obtaining Environmental Clearance which was violative of Notification of 2006 and documents submitted by the Project Proponent. The Project Proponent thus, was required to show cause within 15 days as to why prosecution should not be launched by filing a complaint as contemplated under Section 19 of the Act of 1986 and also why recommendation should not be made to the MoEF for issuance of direction under section 5 of Act of 1986 stopping operation of the project till such Environmental Clearance is obtained. Reply to this show cause notice was submitted by Project Proponent on 22nd July, 2014. It was stated therein that in response to the issuance of the TOR, the Project Proponent had submitted rapid Environmental Impact Assessment report on 14th February, 2014 and were awaiting Environmental Clearance. It was further stated that they have stopped all construction activity pertaining to the said project and no construction would be carried out without obtaining the Environmental Clearance. On 25th November, 2014, SEIAA issued a letter to the Project Proponent stating that their application stands de-listed and would be processed only after further orders of the National Green Tribunal.

35. Under the orders of the Tribunal, the Tamil Nadu Pollution Control Board had also conducted an inspection of the premises of Respondent No. 6 on 2nd April, 2015. Photographs were also taken by SEIAA on 14th April, 2015. Photographs submitted by the Project Proponent on 26th March, 2014 and the photographs taken on 14th April, 2015 by SEIAA clearly show that there has been frequent violation of the laws in force, Notification of 2006 and even the undertaking of apology given by the Project Proponent itself.

36. On 2nd April, 2015, the inspecting team of Tamil Nadu Pollution Control Board found that the work had been stopped and the photographs taken had supported such observations made by the inspecting team.

Stand of M/s SSM Builders and Promoters (Respondent No. 6)

37. The Project Proponent has taken a stand that it was under a *bona fide* impression that he could commence construction on making an application for Environmental Clearance to SEIAA and once the Planning Permit had been granted by the CMDA. According to Respondent No. 6, he had paid the processing fee of Rs. 5 Lakhs on 27th July, 2013 and after receiving the letter from the CMDA on 5th August, 2013, it had started construction. Submission of documents including rapid Environmental Impact Assessment and issuance of TOR was a genuine basis for the

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Project Proponent to start construction. Relying upon the dated 12th December, 2012, it is stated that the letter of commitment and expression of apology' was submitted on 19th March, 2014. According to the Project Proponent, green space had been left between the buildings so that there is reduced heat gain. The buildings are designed to maximize the use of solar power, rain water harvesting system have been made and STP's installed to recycle water. According to the Project Proponent, out of 2952 flats and 135 shops, 1566 flats and 82 shops have already been sold and undivided share in the land has been conveyed to the buyers. Thus, third party interests have been created. According to the Project Proponent he would be gravely prejudiced by non-processing of the Environmental Clearance application and has submitted that dated 12th December, 2012 as amended on 27th June, 2013, is in consonance with the Notification of 2006 and the Project Proponent is entitled to the benefit of the process as envisaged under the impugned Office Memoranda. According to the Project Proponent, the main application should thus be dismissed.

38. S.A.S. Pvt. Ltd. (Respondent No. 9) had filed its application through its authorised signatory which was allowed. The application for intervention/impleadment was filed in furtherance of the interim order dated 21st May, 2014 passed by the Southern Zone Bench at Chennai. Thereafter, vide order dated 15th December, 2014, the operation of the impugned is dated 12th December, 2012 and 27th June, 2013 was stayed by the Principal Bench.

39. According to the Applicant, the project of this Respondent at Village Saligramam, Chennai was for development of residential complex consisting of construction of 2 block with combined lower and upper basements and Block 1 - ground plus 17 floors, block 2 - basement plus ground floor plus 2 floors - Service, Gym and swimming Pool providing 166 residential units. The total project area is 6,985 sq meters with built up area of the project is 28,330.95 sq meters. The estimated cost of the project was 90 crores. According to the Applicant, the planning permission from the CMDA was obtained by the Project Proponent on 30th March, 2012, in furtherance to which building license was obtained by the Project Proponent from Corporation of Chennai on 23rd May, 2012. Thereafter, the Project Proponent commenced the construction without even applying for Environmental Clearance. The Project Proponent applied to SEIAA for obtaining Environmental Clearance on 4th July, 2012. No acknowledgement thereof had been placed on record by the Project Proponent. From the letter of the SEIAA dated 13th March, 2013, it is clear that the application with documents was of 13th March, 2013 itself. In terms of this letter, a bank draft towards the processing fee that was given by the Project Proponent itself, was dated 13th February, 2013. In this very letter, SEIAA had informed the Project Proponent that it shall not commence any construction other than cleaning the site or fencing the site. It was specifically re-emphasized that any construction activity started or being executed before obtaining Environmental Clearance from the competent authority would be in violation of the Act and the Notification. Vide letter dated 19th March, 2013, the Project Proponent was asked to furnish additional documents and additional fee on or before 15th April, 2013 failing which the application would be recorded as closed. The Applicant has stated that till that date, no clarifications were filed nor the fee submitted. On 25th June, 2013, the Project Proponent passed a Board Resolution expressing apology and submitting an undertaking not to repeat any violation and not to raise any constructions. In this letter of commitment and expression of apology, the Project Proponent prayed for consideration of the issue relating to Environmental Clearance. However, on 18th November, 2014, SEIAA informed the Project Proponent that the project had been de-listed. During the inspection on 14th April, 2015, photographs had been taken which if compared with the photographs submitted by the Project Proponent on 6th May, 2013 reveal that there was clear violation of the law, Notification of 2006 as well as the

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undertaking given by the Project Proponent.

40. According to the authorities including Tamil Nadu Pollution Control Board and the SEIAA, they came to know of unauthorized construction by the Project Proponent on 13th May, 2013. On 21st May, 2013, Project Proponent had submitted certain photographs taken at the project site. SEIAA while following the guidelines issued by the MoEF had asked the Project Proponent to furnish certain documents. The Project Proponent submitted their Board Resolution dated 25th June, 2013 which was received by the SEIAA on 2nd August, 2013. Thereafter, Member Secretary, SEIAA vide letter dated 8th August, 2013 requested the State Government to take action for violation of the Notification of 2006. Vide letter dated 10th September, 2013, the State Government requested the Tamil Nadu Pollution Control Board to take legal action against the Project Proponent in terms of Section 19 of the Act of 1986 for having commenced the construction without obtaining prior Environmental Clearance. Thereafter, the Tamil Nadu Pollution Control Board vide its letter dated 3rd June, 2014 informed the Member Secretary, SEIAA, Tamil Nadu that District Environmental Engineer, Chennai has filed a Criminal Complaint in the Judicial Magistrate Court at Saidapet against Respondent No. 9 on 26th May, 2014. It is averred by the authorities that upon compliance with the requirements pointed out by the authorities, the application for Environmental Clearance of the Project Proponent was placed before SEIAA in its 45th Meeting held on 29th - 30th October, 2013. According to SEIAA, the project site was inspected on 14th April, 2015 in the presence of Project Proponent's representative (Site Engineer). It was noticed that civil structural works (core and shell) of all 2 blocks were completed, though at the time of inspection, no work had been carried on. Photographs were taken during the inspection and have been submitted before the Tribunal. The Project Proponent was informed vide letter dated 18th November, 2014 not to proceed with the project construction work, which had not been adhered to. The photographs furnished by the Project Proponent at time of submission of the expression of apology on 6th May, 2013, show that the construction work was structurally in progress but without any walls or without even completion of pillars of any floor. However, photographs taken on 14th April, 2015 show that the building was majorly finished from outside and inside, which was clearly in violation of the law and the undertaking furnished by the Project Proponent.

Stand of Respondent No. 9 (SAS Realtors Pvt. Ltd.)

41. The stand of the Project Proponent is that he had obtained various approvals from the local authorities since 2011 along with Planning Permission from the CMDA on 30th March, 2012 and Planning Permit from the Chennai Corporation on 23rd May, 2012. The Project Proponent commenced construction activity in compliance with these approvals to meet the timelines promised to its clients for timely delivery of the residential apartments. The authorities thereafter informed the Project Proponent that he is required to obtain Environmental Clearance. The Project Proponent had submitted the application for Environmental Clearance to the SEIAA on 4th July, 2012 but because of the change in the fees payable, the Project Proponent filed a fresh application on 18th February, 2013. In compliance to the Office Memorandum dated 12th December, 2012, it submitted a letter of commitment and an expression of apology' on 25th June, 2013, for having commenced construction activity before the receipt of the Environmental Clearance. Thereafter, it was informed to the Project Proponent by the authorities that its application was not processed in view of the stay orders of the Tribunal and that further action would be taken in accordance with further orders of the Tribunal.

42. Further, according to the Project Proponent, action of SEIAA in refusing the grant of Environmental Clearance is violative of legitimate expectation of the Project Proponent, after they have complied with all the requirements of the dated 12th

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December, 2012. Since SEIAA failed to comply with the timeline of maximum 105 days provided under Para 8 of the Notification of 2006, the deemed approval would operate in favour of the Project Proponent when there is no rejection of the application from the authorities. According to the Project Proponent the action of SEIAA in delisting its project is violative of Article 14 of the Constitution of India. It is also the submission of the Project Proponent that they have taken all steps in furtherance to dated 12th December, 2012 and therefore, they are entitled to grant of Environmental Clearance and SEIAA has erroneously linked it to the orders of stay passed by the Tribunal. A feeble attempt has been made on behalf of this Respondent to point out that the Notification of 2006 does not apply to residential building projects and it extends only to location of 'industries' or on carrying on of processes and operations. Furthermore, that the Notification of 2006 goes beyond the purview of Rule 5(3) of the Environment (Protection) Rules, 1986 and hence it is *ultra vires*. According to the Project Proponent their application for EC was considered by the SEIAA in its 45th meeting held on 29th - 30th October, 2013 and whatever requirements were to be complied with by the Project Proponent had been complied with. The interim orders of stay on the impugned Office Memoranda by the Tribunal were only in relation to category 'A' projects which require Environmental Impact Assessment, public consultations and Consent to Establish. The project in question is not covered under this category and therefore, the view taken by the Official Respondents was not correct. The Project Proponent had so claimed even before the authorities.

43. The Project Proponent in its application had submitted that they would challenge the validity and correctness of the Notification of 2006 but no such steps were taken by the Applicant till the conclusion of the arguments.

44. Upon analysis of the case advanced on behalf of the respective parties and as is evident from the pleadings and records before us, we may concisely note the arguments advanced. It is contended on behalf of the Applicant that the Office Memorandum dated 12th December, 2012 and as amended by Office Memorandum dated 27th June, 2013 which provides grant of ex-post facto Environmental Clearance in terms of the Notification of 2006 and the CRZ Notification of 2011 are contrary to these Notifications, themselves. These Office Memoranda at best are administrative orders and therefore, cannot amend or modify the Notifications. It is further the contention of the Applicant that these Office Memoranda are in derogation not only to the Notification of 2006 and the CRZ Notification of 2011 but even of India's International obligations. The Office Memoranda are neither problem solving nor are they compliant with law. These Office Memoranda are not executive orders issued under the authority of Article 73 of the Constitution of India, as these Orders have neither been authenticated by the required authority nor have they complied with the procedure for exercise of executive power under that Article. In fact, they amend the statutory Notification of 2006. The Office Memoranda, in fact, destroy the very object of the Act of 1986, Notification of 2006 and they have the effect of not only going beyond scope of the Notification of 2006 but even are clearly in derogation to the procedure prescribed under it. The language of the impugned Office Memoranda suggests that they have not been issued in exercise of the powers vested in the Ministry under Section 5 of the Act of 1986 and they are not issued as per the prescribed procedure. They also do not supply the gaps, if any, in the Notification of 2006.

45. According to the Applicants, impugned Office Memoranda are arbitrary and they do not provide for any guidelines. They have an inbuilt element of discrimination and they vest unguided and unfettered discretion with the concerned authority.

Contra to these contentions, the submission on behalf of the Respondents (private Respondents) is that the Office Memoranda have been issued by the MoEF in exercise of its executive powers under Article 73 of the Constitution of India. The source of

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power of the Union of India to issue such Memorandum is relatively under Article 73 of the Constitution of India, as the executive power of the Union extends to matters on which Parliament is competent to legislate under Article 246 of the Constitution. Furthermore, the impugned Office Memoranda do not have the effect of supplanting or even diluting the mandate of the Notification of 2006. On the contrary, they are in consonance with and in furtherance of the Notification of 2006 and supplement it. The requirement of prior Environmental Clearance is not diluted by these Office Memoranda since they do not permit commencement of project prior to grant of Environmental Clearance. It is further the contention of the Project Proponents that the situations which are not specifically contemplated under the Notification of 2006 are dealt with by the Office Memoranda. In other words, the Office Memoranda supply the gaps in the Notification of 2006 and further the cause of the Notification. The Office Memoranda do not pose any fetters on the powers conferred on the State or Central Government under the Act of 1986 or the Notification of 2006. They, in fact, direct enforcement of Section 15 and 19 of the Act of 1986 to prosecute the violators.

46. The Project Proponents - Respondents have also contended that they have acted in furtherance to the Office Memoranda, followed the requisite procedure and have invested huge amounts and as such the Tribunal should permit the grant of Environmental Clearance to these projects and dismiss the application of the Applicants.

47. Some of the Respondents have taken up the plea of deeming fiction as contained in Para 8(iii) of the Notification of 2006 to contend that the Environmental Clearance would be deemed to have been granted to them as their applications were not disposed off within the specified time. Some of the Respondents have also contended that the Notification of 2006 is not applicable to their projects which are for building residential complexes.

Still, some of the Respondents have further contended that the Notification of 2006 is invalid and is liable to be set aside on the ground of discrimination, vagueness etc. Respondent no. 9 having raised this plea in its application, had reserved its right to challenge the validity and correctness of Notification 2006, however, till the matter was reserved for judgment, neither any such effort was made by such Respondent nor actual application was filed challenging the Notification of 2006. Thus, we do not propose to go into the challenge to the Notification of 2006 in these petitions of the Respondents. Respondent no. 9 has even relied upon the said Notification of 2006 to contend that the Office Memoranda are valid, issued by the Competent Authority in exercise of its powers and are supplementing the Notification of 2006. In these circumstances it is neither necessary nor required by the Tribunal to examine the correctness or otherwise of Notification of 2006.

48. According to the MoEF, the Office Memoranda have been issued in exercise of the powers conferred upon the Ministry and are hence, executive instructions. According to the Ministry, they supplement the Notification of 2006.

49. The State of Tamil Nadu and Tamil Nadu Pollution Control Board have not taken any specific stand in their replies in relation to the validity of Office Memoranda but have stated that the other private Respondents being violators, they have taken action against them as per the directives of the MoEF in the impugned Office Memoranda. The private Respondents have violated the conditions of the Notification of 2006 and they have taken action against them under Section 19 and 25 of the Act of 1986. SEIAA has taken up the stand that because of violations of the Office Memoranda, they have taken action against the private Respondents (Project Proponents) and have de-listed their projects from the grant of Environmental Clearance. During the course of inspection these authorities have taken photographs and submitted inspection reports to the Tribunal. It is stated that tenure of SEIAA had ended on 3rd April, 2015 and is

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under process of being re-constituted.

50. As evidenced from the facts averred and the stand taken by respective parties, the entire controversy revolves around the validity, enforcement and consequences of the impugned Office Memoranda afore-referred. To put it precisely, the stand of the MoEF and the private Respondents 3 to 9 is that the Office Memoranda dated 12th December, 2012 and 27th June, 2013 have been issued by the Ministry in exercise of its Executive Power under Article 73 of the Constitution of India. These Office Memoranda are having the force of law and are merely explanatory or supplementary to the Notification of 2006. These Office Memoranda provide and facilitate grant of Environmental Clearance through the same process as contemplated under Notification of 2006 to the projects which have already commenced construction without obtaining prior Environmental Clearance. It is contended that Office Memoranda further the cause of the Notification of 2006 and the provisions of law. The Office Memoranda are neither violative nor are in contradiction to the Act of 1986, the Rules framed thereunder, or the Notification of 2006.

51. Some of the private Respondents have also contended that the Office Memoranda have been issued in conformity with Section 3 and 5 of the Act of 1986, that issuance of such Memoranda is aided by the 'doctrine of implied or necessary powers' and that they are also entitled to the grant of Environmental Clearance as a result of 'deeming fiction' under Para 8 of the Notification of 2006.

Further, the contention of the private Respondents in particular is that they had started the projects after taking clearance as well as different permissions from various authorities and in accordance with law. At some stage of the construction, they had also filed applications for obtaining Environmental Clearance from the concerned authorities. The Terms of Reference of the building permission from CMDA even prescribed that Environmental Clearance should be taken before grant of Completion Certificate. The constructions carried out by them, though without obtaining Environmental Clearance, were for *bona fide* reasons and keeping in view the fact that not only the Project Proponents but even third parties had heavily invested in these projects. For the above reasons, they claimed to be entitled to the benefit of the Office Memoranda and consequently for protection to their construction projects.

On the contrary, the submission of the Applicants is that the impugned Office Memoranda issued by the Ministry are merely administrative orders and are in violation of the provisions of the Act of 1986, the Rules framed thereunder and in particular, the Notification of 2006. The Office Memoranda not only dilute the provisions of the Notification of 2006 but completely upset the scheme of environmental protection as contemplated under the environmental laws. On their plain reading, they are *ultra vires* the Notification of 2006 and the Ministry had no jurisdiction to issue such Office Memoranda. These Office Memoranda are not supplementing but are supplanting the Notification of 2006. Such exercise of powers is impermissible in law. Further, the contention of the Applicants is that while some of the private Respondents did not even apply for Environmental Clearance and went on to raise the construction of their respective projects being fully aware and being put to notice that they were not entitled to carry on such construction work, the other Project Proponents completely ignored and/or violated their legal obligations and applied for grant of Environmental Clearance at a stage when their respective projects were reaching structural completion. In law, none of the private Respondents could have undertaken any activity, much less construction activity, of their projects, except the preparation of the site etc, prior to grant of Environmental Clearance. All these Respondents have violated the law and raised constructions illegally and in an unauthorised manner. It is the case of the Applicant that the plea of *bona fide* belief in raising construction is a sham. Not only the private Respondents started construction but even violated their own undertaking given to the SEIAA by continuing with the

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construction, in fact, with a greater vigour to complete their projects and render all environmental restrictions and laws otiose. The plea of investment by third parties is equally unfounded and *mala fide*. They have invested amounts and even mislead the public at large for making investments being fully aware of the fact that the entire construction is illegal and unauthorised. These constructions have resulted in serious adverse environmental impacts and are prejudicial to the ecology and biodiversity of the area in question.

52. Applicants have seriously contended that neither a deeming fiction nor the doctrine of necessity applies to the facts and circumstances of the case. There was no compliance to the provisions of Section 3 and 5 of the Act of 1986 and thus, these cannot be directions issued under the stated provisions. In fact, that is not even the case of MoEF, the issuing authority. Thus, the application should be allowed and the Respondents should be held liable for violation of law, raising unauthorised and illegal construction and degrading and damaging the environment and ecology, in addition to the principal prayer that the Office Memoranda be quashed.

53. In order to analytically examine the correctness and merit of the rival contentions raised, it would be appropriate for us to formulate the issues that fall for consideration of the Tribunal. Precisely, they can be stated as under:

1. Whether the Office Memoranda dated 12th December, 2012 and 27th June, 2013 have been issued by the MoEF in exercise of its statutory, executive or administrative power and the effect thereof?
2. Are the above Office Memoranda *ultra vires*, violative and in any manner in derogation of or destructive to the Notification of 2006, provisions of the Act of 1986 or Rules framed thereunder?

   Do the impugned Office Memoranda supplement or supplant the Notification of 2006? If so, the consequences thereof.
3. Whether this Tribunal has no jurisdiction to quash both the impugned Office Memoranda?
4. Are the private Respondents entitled to claim any benefit on the strength of deeming provisions as contained in Para 8(iii) of the Notification of 2006 and if so, to what effect?
5. Whether the provisions of Notification of 2006 requiring Environmental Clearance prior to commencement of construction are mandatory or directory and consequences thereof?
6. What is the status of structures raised by and the conduct of the private Respondents and its effect in law (statutory provisions relating to environment)?
7. What are the environmental impacts of the projects in question upon environment, ecology and biodiversity?
8. What relief, if any, any of the parties to the present proceedings are entitled to?
9. What directions, if any, need to be issued by the Tribunal in the peculiar facts and circumstances of the present case?

DISCUSSION ON ISSUES

Discussion on Issue Nos. 1 and 2.

1. Whether the Office Memoranda dated 12th December, 2012 and 27th June, 2013 have been issued by the MoEF in exercise of its statutory, executive or administrative power and the effect thereof?
2. Are the above Office Memoranda *ultra vires*, violative and in any manner in derogation of or destructive to the Notification of 2006, provisions of the Act of 1986 or Rules framed thereunder?

   Do the impugned Office Memoranda supplement or supplant the Notification of 2006? If so, the consequences thereof.

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54. The decision on these issues would in fact be a linchpin of the entire judgment. If the Office Memoranda dated 12th December, 2012 and 27th June, 2013 are held to be valid and issued in exercise of the Executive Powers of the MoEF, then different consequences in law and on facts would follow. While a completely different set of consequences would ensue if a contrary view is taken.

55. According to the MoEF, these Office Memoranda are issued in exercise of its Executive Power. Some private Respondents supported this stand while others contend that these are the directions issued by the Ministry in terms of Section 3 and 5 of the Act of 1986. However, the MoEF and private Respondents commonly contend that these Office Memoranda are supplemental to and are intended to further the cause of the Notification of 2006.

In opposition to this, the Applicants contend that these Office Memoranda have been issued in exercise of the Administrative Power of the MoEF. They are *ultra vires* and violative of the Notification of 2006. They supplant the Notification of 2006 and defeat the very purpose of obtaining prior Environmental Clearance for commencement of the projects of a like nature, as contemplated under the Notification of 2006.

56. Now, we may notice the historical background to the issuance of these impugned Office Memoranda. The Indian Parliament enacted the Act of 1986 to provide for the protection and improvement of the environment and for matters connected therewith. This law is enacted in furtherance to the decisions taken at the United Nations Conference on Human Environment held at Stockholm in June, 1972, to which India was a party. The object of the Act was to protect and improve environment and for prevention of hazards to human beings, other living creatures, plants and property. The term 'environment' in terms of Section 2(a) was defined to include water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. In exercise of the powers conferred by Sections 6 and 25 of the Act of 1986, the Central Government made the Environment (Protection) Rules, 1986 (for short 'Rules of 1986'). Further, in exercise of the powers vested in the Central Government under Sub Section 1 and Clause (v) of Sub-section (2) of Section 3 of the Act of 1986, read with clause (d) of sub-rule (3) of Rule 5 of the Rules of 1986, the Central Government issued the Environment Impact Assessment Notification dated 27th January, 1994. This Notification requires any person who desire to undertake any new projects in any part of India or the expansion or modernisation of any existing industry or project listed in Schedule I to make an application to the MoEF in the proforma specified in Schedule II of the said Notification. Schedule I provides the list of the projects that requires Environmental Clearance from the Central Government. Under entry 18, all tourism projects between 200 metres and 500 metres of High Water Line and at locations with an elevation of more than 1000 metres with investment of more than Rs. 5 crores required Environmental Clearance. Similarly, under entry No. 21, Highway Projects except projects relating to improvement work including widening and strengthening of roads with marginal land acquisition along the existing alignments, provided it does not pass through ecologically sensitive areas such as National Parks, Sanctuaries, Tiger Reserves, Reserve Forests also required Environmental Clearance. Except these two entries, the construction projects of any other nature were not included in any entry of this Schedule. The Notification of 1994 in contradistinction to the Notification of 2006 had not specifically used the word 'prior Environmental Clearance'. The Notification of 1994 was issued by the Ministry after inviting objection from the public within 60 days from the date of publication of the Notification. Taking notice of lacunas, shortfalls and other practical aspects and difficulties while keeping in mind the interest of environment, the MoEF again issued a draft Notification dated 15th September, 2005 inviting objection and suggestions from

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all the persons likely to be affected by this draft Notification within a period of 60 days. The significance of this Notification was that the Union Cabinet had approved the National Environmental Policy on 18th May, 2006 proposing restrictions and prohibitions to be imposed on new projects and activities and even on expansion or modernisation of existing projects or activities with reference to their potential environmental impacts which stated that the project and activity should not be undertaken unless prior Environmental Clearance has been granted in accordance with the objectives of the policy. After examining the objections and suggestions received, the Central Government on 14th September, 2006 issued a final Notification referred herein as the Notification of 2006 (supra). Clause 2 of this Notification required obtaining of prior Environmental Clearance from the concerned regulatory authority depending upon the nature of the project. Clause 2 of the said Notification reads as under:

> "Requirements of prior Environmental Clearance (EC):— The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:
>
> (i) All new projects or activities listed in the Schedule to this notification;
>
> (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
>
> (iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

57. Clause 4 of the Notification of 2006 contemplates that all projects and activities be broadly categorized into two categories - Category 'A' and Category 'B', based on the spatial extent of potential impacts on human health and natural and manmade resources. Clause 4(iii) prescribes that all the projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities would require prior Environmental Clearance from SEIAA and prior Environmental Clearance is required even if there is a change in product mix except in the expansion carved out therein. Upon submission of the application for Environmental Clearance by the Project Proponent, the Expert Appraisal Committee is to follow four steps procedure i.e. Screening, Scoping, Public Consultation and Appraisal of the application. Environmental Clearance is to be applied for in the prescribed Form 1 under Appendix 1 and Form 1A in accordance with Appendix II to the Notification of 2006. Such application is to be filed for grant of prior Environmental Clearance before commencing any construction activity or preparation of land at the site by the Project Proponent in terms of Clause 6 of the Notification of 2006. It has to be noticed here that Form 1 and 1A require a lot of information to be supplied in relation to the project, land area and activity that is proposed to be commenced by the Project Proponent. Such information *inter alia* includes details of alternative site examination and whether the project requires Clearance under different laws including Forest (Conservation) Act, 1980, Wild Life (Protection) Act, 1972, Coastal Regulation Zone Notification, 2011, if any forest land is involved.

58. It also *inter alia* requires the information with regard to permanent or temporary change in the land use, land cover or topography, including increase in intensity of land use, pre-construction investigations like bore house, soil testing.

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Underground works, including mining or tunnelling, reclamation works, impoundment, daming, culvating, realignment and other changes to the hydrology of the watercourses or the aquifers, loss of native species or genetic diversity, details of vulnerable groups of people which could be affected by the Project, municipal details of municipal waste, sewage sludge, densely populated or build up areas, environmental sensitivity, information with regard to a risk of accidents during construction or operation of the projects which could affect human health and risk of contamination of land and water from releases of pollutants into ground water or coastal areas are also required to be furnished. The Notification of 2006 further spells out how the Screening, Scoping, Public Consultation and Appraisal are to be carried out by the authorities concerned. Further, the Terms of Reference (for short ToR') that are to be prepared on the basis of the information furnished in Form 1 and 1-A would become the very basis for consideration of the project of the Project Proponent. The Notification of 2006 states that ToR are to be conveyed to the Project Proponent by the Expert Appraisal Committee or the SEAC as the case may be, upon which an EIA report is to be submitted after holding public consultation. The nominated agency has to submit its report to the regulatory authority stating whether owing to the local situation and dealing with the objections raised, in its opinion, the project should be recommended for Environmental Clearance or not. The agency has to further appraise whether the project site is proper or not. This entire process is required to be completed prior to grant of Environmental Clearance. Para 8 of the Notification of 2006 deals with the grant or rejection of 'prior Environmental Clearance'. Authorities are required to deal with the applications for grant of prior Environmental Clearance expeditiously and in any case within the time stipulated under the sub-clauses of Para 8. In terms of Para 8(iii), if the decision of the regulatory authority is not communicated to the Applicant within the period specified in subclauses (i) or (ii) of Para 8, the Applicant may proceed as if the Environment Clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee, as the case may be. Therefore, the Project Proponent under the Notification of 2006 can commence its construction or activity only after the grant of Environmental Clearance. This Clearance is to be for a specific period, i.e. the validity period. The projects are supposed to be monitored by the authorities even post Environmental Clearance. This is the scheme and requirements of the Notification of 2006 that superseded the Notification of 1994. 59. On 16th November, 2010, the MoEF for the first time issued an Office Memorandum. Since the impugned Office Memoranda, including this Office Memorandum, have a significant bearing on the matters in issue before us, it will be appropriate to reproduce this Memorandum at this stage:

No. J-11013/41/2006-IA.II(I)
Government of India
Ministry of Environment & Forests

Paryavaran Bhavan,
C.G.O. Complex, Lodi Road,
New Delhi-110003
Telefax: 24362434
Dated the 16th November, 2010

Office Memorandum

Sub: 1. Consideration of proposals involving violation of the Environment (Protection) Act, 1986 or Environment Impact Assessment (EIA) Notification, 2006/the CRZ Notification, 1991, there under-Regarding.
2. Corporate Environment Policy-Regarding.

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The Environment Impact Assessment (EIA) Notification, 2006 requires all new projects or activities and or expansion and modernization of those existing projects or activities listed in the schedule to the said Notification with capacity beyond the threshold limits prescribed there under, to obtain prior environmental clearance under the provisions thereof.

2. Instances have come to the notice of the Ministry of Environment & Forests where substantial physical progress relating to construction of the project has been made at site and significant investments have been made for setting up of new projects as also for the expansion components of various existing projects such as thermal power plants, integrated steel plants, mining projects etc. without obtaining a requisite prior environmental clearance as is mandated under the EIA Notification, 2006.

3. As per the existing practice being followed in the Ministry for considering such violation cases as and when these are submitted for environmental clearance, while environmental clearance is granted to deserving projects prospectively, based on their merit, in accordance with the recommendation of the Expert Appraisal Committees, simultaneously the concerned State Governments, under the powers delegate to them under the Environment (Protection) Act, 1986 are requested to initiate action against such units for the period these units have operated in violation of the said Act as per the procedure laid down.

4. The matter has been considered in the Ministry and it has been decided to follow the following procedure henceforth to deal with such cases of violations:

(i) All such cases of violation which are submitted to the Ministry of Environment & Forests/SEIAAs for environmental clearance would be referred to the respective Expert Appraisal Committee (EAC)/SEACs for their consideration based on merit of the proposal. After the EAC/SEAC have made its recommendations on the project, the proposal will be processed on file for obtaining the approval of the Competent Authority.

(ii) After the Competent Authority has approved the proposal for grant of environmental clearance, MoEF/SEIAA will send a communication to the Project Proponent informing that although the proposal has been approved by the Competent Authority, formal environmental clearance will be issued to the project only after the matter relating to the violations have been put up to the Board of Directors of the Company or to the Managing Committee/CEO of the Society, Trust, partnership/individually owned concern for consideration of its environment related policy/plan of action as also a written commitment in the form of a formal resolution to the submitted to MoEF/SEIAA to ensure that violations of the Environment (Protection) Act etc. will not be repeated. For the purpose, a time limit of 90 days will be given to the Project Proponent. In the mean time, the project will be delisted. In the eventuality of not having any response from the Project Proponent within the prescribed limit of 90 days, it will be presumed that it is no longer interested in pursuing the project further and the project fill will be closed, where after the procedure for obtaining environmental clearance will have to be initiated de-novo by such Project Proponents.

(iii) The respective State Government will be informed of the violation case for their initiating legal action against the Company as per the procedure prescribed.

(iv) The details of the Project Proponents and a copy of the commitment etc. mentioned at para 4(ii) above will be put on the website of MoEF/SEIAA for information of al/stakeholders.

This issues with the approval of the Competent Authority.

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60. In para 2 of the above Office Memorandum, it was noticed that instances have come up to the MoEF where substantial physical progress relating to construction of the project has been made at site and significant investments have been made for setting up of new projects and also for the expansion of the components of various existing projects without obtaining mandated prior Environmental Clearance. Though, this Office Memorandum specifically notices that the Notification of 2006 mandates prior Environmental Clearance, however, the decision was taken that henceforth, all such cases of violation which are submitted to the Ministry would be referred to the EAC/SEAC and depending upon their recommendations, the proposals would be finally dealt with; provided other requirements of the Office Memorandum were satisfied. This Office Memorandum came to be superseded by another Office Memorandum of 12th December, 2012. Again, it was noticed in this Office Memorandum that all projects and activities beyond the threshold limits prescribed thereunder are required to obtain prior Environmental Clearance under the provisions of the Notification of 2006 or Notification of 2011 relating to Coastal Zone Regulation. Again, it noticed that the projects have been started without compliance to these requirements and in some cases, the applications have been pending before the Ministry/the authorities concerned, in terms of the Office Memorandum of 16th November, 2010. The Office Memorandum dated 12th December, 2012 reads as under:

"No. J-11013/41/2006-IAII(I)

Government of India
Ministry of Environment & Forests

Paryavaran Bhavan,
C.G.O. Complex, Lodi Road,
New Delhi-110003
E-mail: pb. rastogi@nic.in
Telefax: 011-24362434
Dated 12th December, 2012

OFFICE MEMORANDUM

Subject: Consideration of proposals for TORs/Environment Clearance/CRZ Clearance involving violation of the Environment (Protection) Act, 19861 Environment Impact Assessment (EIA) Notification, 2006/Coastal Regulation Zone (CRZ) Notification, 2011 - reg.

1. The Environment Impact Assessment Notification (EIA), 2006 and its amendments thereafter require all new projects or activities and/or expansion and modernization of existing projects or activities listed in the schedule to the said Notification with capacity beyond threshold limits prescribed thereunder, to obtain prior Environment Clearance under the provisions thereof. Similarly, CRZ Notification, 2011 imposes certain restrictions on the setting up and expansion of industries, operations or processes and the like in the CRZ.
2. Instances have come to the notice of this Ministry where without obtaining the required clearance under the aforesaid Environment Impact Assessment Notification, 2006 and/or CRZ Notification, 2011, the construction/physical operation activities relating to the projects have been started at the sites. Such activities amount to violations under the Environment (Protection) Act, 1986/EIA Notification, 2006 CRZ Notification, 2011 (henceforth referred to as violations).
3. The cases for granting Environment Clearance/CRZ Clearance for such projects are at present being dealt with in terms of OM of even number dated 16.11.2010. Now, it has been decided in that in supersession of this OM, the

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procedure henceforth stated in this OM will be followed while dealing with such cases.

4. The violations could come to the notice of the Ministry at various stages of processing of the proposals, i.e.:
   i. Processing the case in the Ministry before referring the same to the Expert Appraisal Committee (EAC) for TOR/Environment Clearance/CRZ Clearance;
   ii. During the deliberations in the EAC meeting and recorded as such in the minutes of the meeting; and;
   iii. Processing the case in the Ministry after the receipt of recommendations of the EAC but before granting TOR/Environment Clearance CRZ Clearance.
5. As soon as any case of violation comes/is brought to the notice of the Ministry EAC, the Ministry EAC will proceed to verify the veracity of the complaint through the concerned Regional Office of MoEF/State Government/CZMA. Of course, such a verification will not be required in case the Project Proponent does not contest the allegation of violation. Once the Ministry EAC is satisfied that it is a violation case, before proceeding any further in the matter, the following will need to be ensured in the matter:
   i. The matter relating to the violation will need to be put up by the Project Proponent to the Board of Directors of its Company or to the Managing Committee/CEO of the Society, Trust, partnership/individually owned concern for consideration of its environment related policy/plan of action as also a written commitment in the form of a formal resolution to be submitted to MoEF to ensure that violations will not be repeated. For this purpose, a time limit of 60 days will be given to the Project Proponent. In the meantime, the project will be delisted. In the eventuality of not having any response from the Project Proponent within the prescribed limit of 60 days, it will be presumed that it is no longer interested in pursuing the project further and the project file will be closed, whereafter the procedure will have to be initiated de novo by such Project Proponents.
   ii. The State Government concerned will need to initiate credible action on the violation by invoking powers under Section 19 of the Environment (Protection) Act, 1986 for taking necessary legal action under Section 15 of the Act for the period for which the violation has taken place and evidence provided to MoEF of the credible action taken.
   iii. The details of the Project Proponent and a copy of the commitment, etc., mentioned at (i) above will be put on the website of MoEF for information of all stakeholders.
6. Once action as per para 5 above has been taken, the concerned case will be dealt with and processed as per the prescribed procedure for dealing with cases for grant of TORs/Environment Clearance CRZ Clearance and appropriate recommendation made by the EAC/decision taken by the Ministry as per the merit of the case.
7. It may be clarified that the consideration of proposals for giving TORs Environment clearance/CRZ clearance for violation cases will not be a matter of right for the Project Proponent. In cases of serious violations, the Ministry reserves the right to outrightly reject such proposals and not consider the same at all.
8. The aforesaid procedure, as stated in para 4 to 7 above will apply mutatis mutandis to the cases handled at the State level by the State Environment Impact Assessment Authorities (SEIAAs)/State Level Expert Appraisal Committees (SEACs).

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9. This issues with the approval of the competent authority."

This Office Memorandum deals with situations where violations have been committed by the Project Proponent and they have come to the notice of the MoEF at various stages of construction. It requires the Ministry to verify veracity of the complaint through the concerned regional office and once the Ministry is satisfied that it is a case of violation, then before proceeding any further, the steps contemplated under para 5 to 7 of this Office Memorandum would be taken. The two significant features of this Office Memorandum are that the Project Proponent is to file an undertaking to ensure that violations are not repeated and secondly it will not be a matter of right to the Project Proponent to claim Environmental Clearance and the MoEF can outrightly reject the proposal if it found the violations to be serious. Lastly, that the procedure under para 4 to 7, would apply *mutatis mutandis* to the cases handled by SEIAAs or SEACs. This was considered to be in conformity with the Notification of 2006.

61. Still another Office Memorandum was issued on 27th June, 2013 inserting sub-para 4 in para 5 of the Office Memorandum dated 12th December, 2012 which reads as under:

"3. In view of the above, it has been decided to insert the following as sub-para (iv) below sub-para (iii) of para 5 of the aforesaid OM dated 12.12.2012:

"(iv) Directions under Section 5 of the Environment (Protection) Act, 1986 will be issued by MoEF to the Project Proponent in respect of the violations and compliance of Project Proponent obtained to such directions especially with regard to:

(a) In case the project is at construction stage and the violation is on account of carrying out construction without valid EC/CRZ Clearance or in contravention of the conditions stated in the EC/CRZ Clearance, the construction activities will need to be suspended at the existing level till EC/CRZ Clearance is obtained or the required amendment to EC/CRZ Clearance is obtained.

(b) In case the project is in operation and the violation is on account of enhanced production beyond the capacity stated in the EC/CRZ Clearance, the production will need to be restricted to the capacity stated in the EC/CRZ Clearance till EC/CRZ Clearance is obtained for enhanced capacity. In case of operation without a valid EC/CRZ Clearance, the production will need to stop till the required EC/CRZ Clearance is obtained.

(c) In case the violation is on account of carrying out modernization of existing project and/or change in product-mix in an existing manufacturing unit, the status quo as existing prior to such modernization and/or change in product-mix will be maintained till the required EC/CRZ Clearance is obtained for the modernization and/or change in product-mix.

In case of any violation to aforesaid directions, legal action as per the provisions of the Environment (Protection) Act, 1986 will be taken against the Project Proponent and the case of TOR/EC/CRZ Clearance summarily rejected.

This issues with the approval of the competent authority."

62. Under the terms of Office Memorandum dated 12th December, 2012, the Ministry took upon itself the obligation for issuing directions under Section 5 of the Act of 1986 in each case, but subject to requirements of the impugned Office Memorandum. It may be noticed that such statutory power is specifically vested in the MoEF and the Office Memorandum could confer upon it no wider powers than the statutorily provided powers.

63. In this background thus, now we have to deal with the question as to in exercise of which power, executive, administrative and/or statutory, the impugned Office Memoranda have been issued by the MoEF?

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64. Since the Office Memorandum of 16th November, 2010 stood superseded by the Office Memorandum of 12th December, 2012 which was further amended by the Office Memorandum of 27th June, 2013, the challenge in the present application, is thus, confined to later two Office Memoranda only. A bare reading of the above Office Memoranda clearly shows that the provisions of law under which the said two Office Memoranda have been issued are conspicuous by its very absence in the Office Memoranda. Of course, according to the stand taken by the MoEF, they have been in the exercise of its executive powers. As already noticed, this stand is partially supported by the private Respondents (Project Proponents) who have further added that these Office Memoranda are within the ambit of directions as contemplated under Section 3 and 5 of the Act of 1986. Refuting such contentions, the Applicant has submitted that it is an exercise of administrative power *simplicitor*.

65. There are three organs of the Government: the Legislature, the Executive and the Judiciary. Legislature enacts the laws, judiciary interprets the law and declares what the law is and the executive administers the law. In the present case, we are really not concerned with the scope of legislative and judicial powers. We have to only deal with the ambit and scope of executive or administrative powers exercisable by the Executive, under which the Office Memoranda have been issued. The Executive performs validated functions viz. to investigate, to prosecute, to prepare and to adopt schemes, issues and cancel licences. The Executive can also perform some delegated, legislative functions in relation to making rules, regulations, bylaws and fixation of prices etc. It may still exercise quasi-judicial powers to resolve disputes or fix penalties etc. Such functions have become the chief weapons in its administrative armoury. Functions performed by the Executive authorities can be classified into two different heads but the distinction among these is a very fine one. To state it with precision is very difficult. This distinction gets even finer when it comes to executive and administrative functions *simplicitor*. Even in the same proceedings, it is difficult that one act may be executive while other act or series thereof may be purely administrative yet such classification is essential for varied reasons. When the executive authority exercises quasi-judicial functions, it must follow the principle of natural justice. While this requirement need not be satisfied in the case of executive functions, though, different requirements like publication, laying on the table of the house may have to be complied with. In case of a pure administrative action, even this would not be necessary. Administrative function can be delegated and administrative decision can be challenged as being unreasonable. Thus, it is proper to determine under what type of function an action is taken by the authorities and in furtherance to exercise of what power. There could be circumstances where even a single function may be partly legislative, partly executive, partly judicial and even partly administrative. This difficulty in construing what kind of function it is, can be overcome by analysing the function and determining its character in each case. For instance, the function of the Wage Board may be held to be legislative if future role of conduct is to be prescribed. It may be held to be judicial if the dispute is as to the relative rights of the parties as they rest on past or present circumstances. But, if there are neither present rights asserted, nor a future rule of conduct prescribed, but merely a fact ascertained, necessary for the practical effectuation of admitted rights, it can be said to be an administrative act (*Australian Boot Trade Employees' Federation* v. *Whybrow & Co.*, (1910) 10 CLR 266 (317), *Express Newspaper (P) Ltd.* v. *Union of India*, AIR 1958 SC 578 (610).

66. The legislature enacts the legislation and that which the administration applies is administrative. Another way to look at it is by putting emphasis on the extent and applicability of law. Whereas legislative power is power to make rule for the subjects in general and for their prospective application, administrative power is applicable to such law to specific cases and to particular situations. Administration again would

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normally indicate as to how the power should be exercised. Smith in 'Judicial Review of Administrative Action', (1980), states with elaboration the legal consequences that flow from the fundamental distinction between legislative and administrative actions:

1. "If an order is legislative in character, it has to be published in a certain manner, but it is not necessary if it is of an administrative nature.
2. If an order is legislative in character, the court will not issue a writ of certiorari to quash it, but if an order is an administrative order and the authority was required to act judicially, the court can quash it by issuing writ of certiorari.
3. Generally, subordinate legislation cannot be held invalid for unreasonableness, unless its unreasonableness is evidence of malafide or otherwise shows the abuse of power. But in case of unreasonable administrative order, the aggrieved party is entitled to a legal remedy.
4. Only in most exceptional circumstances can legislative power be sub delegated but administrative powers can be sub-delegated
5. Duty to give reasons applies to administrative orders but not to legislative orders."

67. The Supreme Court in the case of *Union of India (UOI)* v. *Cynamide India Ltd. etc.*, (1987) 2 SCC 720, summed up this fine distinction between legislative and administrative functions while observing that it was 'difficult in theory and impossible in practice', still, held that a legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases and an administrative act is the making and issuance of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy'; while questioning that it was a broad distinction, not necessarily always true. Sometimes administration and administrative adjudication may also be of general application and legislation of particular application only.

68. In the case of *Rai Sahib Ram Jawaya Kapur* v. *The State of Punjab*, AIR 1955 SC 549, the Court observed that it may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily, the executive power connotes the residue of governmental functions that remains after legislative and judicial functions are taken away. Referring to various judgments, Justice C.K. Thakkar in his book '*Administrative Law*', 2nd Edition, 2012, refers to the ingredients of administrative functions as follows:

1. "An administrative order is generally based on governmental policy or expediency.
2. In administrative decisions, there is no legal obligation to adopt a judicial approach to the questions to be decided, and decisions are usually subjective rather than objective.
3. An administrative authority is not bound by the rules of evidence and procedure unless the relevant statute specifically imposes such an obligation.
4. An administrative authority can take a decision in exercise of a statutory power or even in the absence of a statutory provision, provided such a decision or act does not contravene provision of law.
5. Administrative functions may be delegated and sub-delegated unless there is a specific bar or prohibition in the statute.
6. While taking a decision, an administrative authority may not only consider the evidence adduced by the parties to the dispute, but may also use its discretion.
7. An administrative authority is not always bound by the principles of natural justice unless the statute casts such duty on the authority, either expressly or by necessary implication or if it is required to act judicially.
8. An administrative order may be held to be invalid on ground of

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unreasonableness.

9. An administrative action will not become a quasi-judicial action merely because it has to be performed after forming an opinion as to the existence of an objective fact.

10. The prerogative writ of certiorari and prohibition are not always available against administrative actions."

69. In the case of *Automotive Tyre Manufacturers Association* v. *The Designated Authority*, (2011) 2 SCC 258, the Supreme Court elucidated the factors for determining whether the function was administrative, quasi-judicial or otherwise. These factors are: the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Besides this, it is a generally accepted principle of functioning of administrative authorities that guidelines should be provided for the rust exercise thereof and to prevent abuse of power and to ensure that it does not become a "new despotism". Various judgments of the Supreme Court, after enunciating the principles that control the application of these concepts, illustratively stated the cases of administrative function. For instances an order of preventive detention, an order setting up a Commission of enquiry, an order making or refusing to make a reference under the Industrial Dispute Act, 1947, an order granting or refusing sanction to prosecute public servant, an order of externment, power to issue licence or permit or even withdrawal from prosecution. Having examined the dimensions of the administrative actions of the State, now we will revert to the executive powers of the State. Subject to the provisions of the Constitution, the executive power of the Union extends to all matters in respect to which the Parliament has power to make laws, while the executive powers of the State extends to all matters in respect to which the State Legislature has power to make laws. This executive power of the Union or of the State, broadly speaking, is co-extensive and co-terminus with its respective legislative power (*G.V. Ramanaiah* v. *The Superintendent of Central Jail, Rajahmundry*, (1974) 3 SCC 531). Ordinarily, the executive power connotes the residue of Governmental functions that remain after legislative and judicial functions are taken away. The executive functions comprises both determination of policy as well as carrying it into execution (*Wharton's Law Lexicon*, 15th Edition, 2009). Since the governmental functions have increased, it is essential and inevitable for the Government to issue administrative instructions for the determination of policy and its uniform application. It is also a settled principle that these administrative instructions or regulations which have no statutory force, do not give rise to any legal right and can hardly be enforced in a Court of law against the administration. This is also not an absolute rule and is subject to certain exceptions. Administrative instructions in some cases confer a justifiable right in favour of an aggrieved party. The Executive power of the State is again of a very wide magnitude. In performance of the executive functions, public authorities issue orders which are not far from having a legislative colour and make decisions affecting the personal and proprietary rights of individuals which are quasi-judicial in character. In addition to these quasi-judicial and quasi-legislative functions, the executive has also been empowered by statute to exercise functions which are legislative and judicial in character, and in certain instances, powers are exercised which appear to partake at the same moment legislative, executive and judicial characteristics. The Supreme Court in the case of *Jayantilal Amritlal* v. *F.N. Rana*, AIR 1964 SC 648, held that even this generic executive power of the State emanates from the provisions under our Constitution. Chapter I of Part V of the Constitution refers itself to the Executive of the Union of India. Article 53(1) of the Constitution states that executive power of the Union shall be vested in the President and shall be exercised by him either directly or

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through officers subordinate to him in accordance with this Constitution. Article 73 mandates that subject to the provisions of the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. In terms of Article 77, all executive action of the Government of India shall be expressed to be taken in the name of the President. Further, Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in Rules. Once an order or instrument is authenticated in the prescribed manner, then it shall not be called in question on the ground that it is not an order or instrument made or executed by the President. The executive power of the State on the one hand is co-extensive with the respective legislative power, while, it can supplement the statute on the other hand. The executive power would take within its ambit the power of subordinate or delegated legislation. For instance, under an Act, the Central Government is empowered to frame regulations for effective implementation of an Act. This power can be exercised to supplement the provisions of the Act, i.e., the principle legislation or even for filling the gaps which appear in the main statute. However, the executive instructions or powers cannot be used beyond the power conferred by the main statute. The exercise of an executive power must have a source in law and should serve the ends of the principle Act. The executive power, where it is exercised generally with reference to Article 53 of the Constitution of India, must adhere to the constitutionally prescribed procedure.

70. Having dealt with the distinction between Legislative, Executive and Administrative Functions, generally, now, we would proceed to examine the specific contentions with reference to the impugned Office Memoranda.

71. First of all, we would deal with the contention whether the impugned Office Memoranda can be said to be issued under Section 5 of the Act of 1986? This question has to be answered in the negative for varied reasons. Firstly, it is not the case of the MoEF which has issued these Office Memoranda that they have been issued in exercise of the statutory powers vested in them under the provisions of Section 5 of the Act of 1986. Normally it is possible for a Court or a Tribunal to attach certain weightage to the author of the documentation in this regard. However, that cannot be the sole consideration in answering such a question. The Tribunal has to analyse the order or document on its own merit. It is true that Section 3 empowers the Central Government to take measures to protect and improve the quality of the environment and that such measures can be in respect of all or any of the matters stated under Clause (i) to (xiv) of Sub-section (2) of Section 3 of the Act of 1986. However, none of the matters stated therein cover the impugned Office Memoranda in question. Furthermore, these Office Memoranda cannot be said to form the measures taken for protecting or improving the quality of the environment. Similarly, Section 5 of the Act of 1986 empowers the Central Government to issue directions to any person, officer or any authority. Such directions could be issued in exercise of its powers, performance of its functions of the Central Government notwithstanding anything contained in any other law but subject to the provisions of this Act of 1986. These directions include the power to direct the closure, prohibition or regulation of any industry, operation or process. It can also direct stoppage or regulation of the supply of electricity or water or any other service. Under Rule 4 of the Rules of 1986, it is required that these directions shall be in writing, shall specify the nature of action to be taken and the time within which it shall be complied with etc. In terms of Sub-rule 3(a) of Rule 4, a notice of not less than 15 days is required to be served upon the person to whom the directions is proposed to be issued, clearly notifying such direction to him and giving him an opportunity to file objections, if any. In terms of Sub-Rule 3(b) and 4, it is required of the authority which proposes to issue direction for the stoppage or

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regulation of industrial operation or process or disconnect amenities like water and electricity etc. to issue notice to the occupier to file objections and upon receipt of such objections to decide the same within 45 days thereof. Thus, right of hearing and compliance to principle of natural justice is mandatory except in terms of proviso to Sub-Rule 3(b) and Rule 5 wherein compliance to the principle of natural justice and hearing can be dispensed with by the Central Government, where it is of the opinion that there is likelihood of grave injury to the environment and it is not expedient to provide an opportunity to file objections against the proposed direction. The directions passed under Section 5 have to be in strict compliance to the procedure laid down under the Rules of 1986 and by considering all relevant factors as stated therein. It is nobody's case, not even that of the private Respondents, that such compliance to the Rules has been made by the MoEF. The measures and the directions as contemplated under the Act of 1986 can only be taken after following the prescribed procedure and for the purposes as contemplated in law. From the record, it is clear that neither of these ingredients are satisfied in the cases in hand. Nobody intended to invoke these provisions and none complied with the requirements of law. A bare reading of the impugned Office Memoranda clearly shows that they are beyond the purview and scope of either Section 3 or Section 5 of the Act of 1986. Some of the Respondents have even taken the argument that if the Office Memoranda are treated to be directions or measures issued under Section 5 of the Act of 1986, then an appeal would lie before the Tribunal in terms of Section 16(g) of the NGT Act, 2010 and which would in any case be barred by time as of today. Since we are of the considered view that these Office Memoranda have not been issued by the Ministry in exercise of its powers under Section 3 or 5 of the Act of 1986, the question of limitation as contemplated under Section 16 of the NGT Act would not at all arise. These Office Memoranda apparently do not show or make reference to the power in exercise of which they have been issued. They specifically mention the statutory requirement in terms of the Notification of 2006 to obtain *prior Environmental Clearance* before the commencement of any project or activity (emphasis supplied). What seems to have provoked the authorities to issue these Office Memoranda from time to time are the instances which have been brought to the notice of the Ministry, where, without obtaining required Clearances under the Notification of 2006, construction and/or physical operation/activities of the project had been started at the sites which amount to violation of the Act of 1986 and the Notification of 2006. These violations have come to the notice of the Ministry at different stages. These Office Memoranda presumably are intended to provide solution to this problem and save the proposed projects if they comply with the procedure prescribed under the Law. Rules of 1986 have been framed by the Central Government in exercise of its powers vested under Sections 6 and 25 of the Act of 1986 with a primary intention of carrying out purpose of the Act of 1986. The Notification of 2006 has been issued under the provisions of the Act of 1986 and the Rules of 1986, again with the object of imposing certain restrictions and prohibitions on new projects or activities or expansion or modernisation of existing projects or activities for protecting the environment. Thus, it is evident that the Notification of 2006 is in the nature of a subordinate, delegated legislation and is a statutory document having the force of law and is enacted to serve the ends of the provisions of a Parliamentary enactment i.e. the Act of 1986. The Office Memoranda do not refer to the source of their power under the provisions of any Act, Rules, or Notification. They even do not satisfy the basic ingredients of an order or instrument having been issued in compliance to the prescribed procedure under Articles 53, 73 and/or 77 of the Constitution. They have neither been issued nor authenticated by a person authorized by the President of India and in any case, they have not even been issued in the name of the President of India. The contention raised on behalf of MoEF and some of the private Respondents that the issuance of impugned Office Memoranda

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is in exercise of the executive power, is therefore, not tenable. No documents have been placed on record to show that the ingredients of issuance of an executive order or exercise of executive power by the Union are satisfied in the present case.

72. It needs to be noticed at this stage that reference has also been made to Article 73 of the Constitution of India to contend that these Office Memoranda squarely fall within the executive power of the Union of India. This contention merits rejection. Even on the bare reading of Article 73 of the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive powers of the Union is co-extensive and co-terminus with legislative powers of the Parliament. In other words, exercise of executive power should have a direct reference to law under which it is being exercised. Certainly, it does not imply that the executive power of the State/Union cannot be exercised where the legislature has not enacted any law or that such power would be restricted only to that field, as held by the Supreme Court in the case of *Ram Jawaya Kapur* (supra). It is a settled principle of Constitutional jurisprudence that the entries in the Lists are merely fields of legislation. They identify the fields where the Union and the State Legislature or either of them would have the power to enact laws, individually or concurrently. Thus, every power exercisable by the Union or the State under the Constitution should be identifiable to the fields specified in the respective Lists or to any other law framed by the Competent Legislature.

73. We have already noticed that within the dimensions of the executive power, compliance to the constitutionally provided procedure would be a *sine qua non*, for it to have the force of law. In the case of *Gulf Goans Hotels Company Ltd.* v. *Union of India (UOI)*, (2014) 10 SCC 673, where the Supreme Court was dealing with the cases of demolition of properties in furtherance to the orders of demolition by the State authorities, it was held that a government policy to acquire the "force of law", need to confirm to a certain form possessed by other laws in force and encapsulate a mandate and disclose a specific purpose. In terms of Article 77, all executive action of the Government of India shall be expressed to be taken in the name of the President, as this Article provides the form in which the Executive must make and authenticate its orders and decision. The burden of showing compliance with this requirement would be on the Government and it is also essential that what is claimed to be a law must be notified or made public in order to bind the citizens. It may be noticed that this compliance in a given case could be substantial compliance as opposed to strict or absolute compliance. In fact, in the case of *State of Uttaranchal* v. *Sunil Kumar Vaish*, (2011) 8 SCC 670, the Supreme Court even held that unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the Rules, the same cannot be treated as an order on behalf of the Government. Similar approach was also adopted in the case of *Shanti Sports Club* v. *Union of India*, AIR 2010 SC 433. The Supreme Court had earlier also taken the similar view in the case of *Harla* v. *The State of Rajasthan*, AIR 1951 SC 467,

> "We hold that, in the absence of some specific law or custom to the contrary, a mere resolution of a Council of Ministers in the Jaipur State without further publication or promulgation would not be sufficient to make a law operative".

On the one hand, the impugned Office Memoranda do not specify the above essential ingredients for exercise of executive power. Thus, these Office Memoranda do not have any force of law to be treated as integral part of the Notification of 2006. While on the other hand, they lack purpose, are not supplementary to or even furthering the cause of the Notification of 2006. This aspect we shall discuss in detail shortly.

74. We have deliberated at some length above what is an administrative action and its illustrations. That which the legislature enacts is legislative' and that which the

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administration applies is 'administrative'. Thus, an Act of Parliament is legislative' but an order of deportation based on such Act is 'administrative'. An administrative power is applicable to specific cases and particular situations. The executive functions comprise both, determination of policy as well as carrying it into execution. The other relevant considerations being, nature of power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. If we apply these tests in context of the orders already held to be administrative orders (supra) then, it would appear that the impugned Office Memoranda in substance are administrative orders. The impugned Office Memoranda have been issued under the umbrella of framing policy or taking policy decisions by the State. It is contended that these Office Memoranda are intended to implement the Notification of 2006. In exercise of its power under the Office Memoranda, Ministry has to take decisions in regard to examining each case and refer the same to the regulatory authority keeping in mind the stage at which the applications for grant of Environmental Clearance are moved. These Office Memoranda provide benefit to the class of the project or activity owners who have started construction in violation of the law i.e., without obtaining prior Environmental Clearance. They do not deal with any subject in general but are applicable to specific case and particular situations. Decisions of the authorities in furtherance to these Office Memoranda are bound to be subjective in contradistinction to being objective decisions.

75. The impugned Office Memoranda by and large satisfy the tests and ingredients of an administrative order. They admittedly have not been issued in exercise of subordinate or delegated legislation. Indisputably, they have also not been issued under Sections 3 and 5 of the Act of the 1986. Apparently, they are not in compliance with the Constitutional requirements and other ingredients of exercise of executive power *simplicitor*. The obvious result thereto would be that these Office Memoranda have been issued by the Ministry in exercise of its administrative power and have to be construed as administrative orders alone.

76. Having held that the Office Memoranda are orders issued by the Ministry in exercise of its administrative powers *simplicitor*, we would now proceed to examine the legality and correctness of these administrative orders. We may clarify that for discussion on this issue, it would not be of much relevance whether these Office Memoranda have been issued by the authorities in exercise of their administrative or executive powers.

77. The Office Memorandum dated 12th December, 2012 and as amended by Office Memorandum dated 27th June, 2013 as already noticed have been issued as consequences of certain instances brought to the notice of the Ministry, that projects and activities have been started at site without obtaining prior Environmental Clearance. These Office Memoranda intend to provide the procedure which has to be followed while dealing with such cases. In these Memoranda it is specifically noticed that obtaining prior Environmental Clearance before commencement of a project or activities is mandatory and that the Applicants have violated the law and these violations have come to the notice of the Ministry at various stages of processing the proposals. They further contemplate that these applications have to be proceeded in accordance with the procedure prescribed under these Office Memoranda. The stages referred to in the impugned Office Memoranda are: processing the case in the Ministry before referring to the Expert Appraisal Committee for ToR/Environmental Clearance/CRZ Clearance; during deliberations in the EAC meeting and during processing the case in the Ministry after receipt of the recommendations of the EAC, but before granting ToR/Environmental Clearance/CRZ Clearance. The authorities are expected to verify the veracity of the complaint unless Project Proponent does not

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contest the allegations of violations. Before proceeding any further in the matter, the Project Proponent is required to submit a written commitment in the form of a resolution to ensure that violations will not be repeated. For this purpose, 60 days time limit has been given to the Project Proponent. The project would be de-listed in the meantime and in the event of default, it will be presumed that the Project Proponent is no longer interested in pursuing the project further and the project file will be closed. The State Government will then be required to initiate credible action under Section 19 of the Act of 1986 for taking legal action under Section 15 of the Act of 1986 in relation to the violations. Upon completion of such action, the concerned case will be dealt and proceeded with as per the prescribed procedure in dealing with the cases of ToR/Environmental Clearance/CRZ Clearance and appropriate recommendations to be made by EAC and decision to be taken by the Ministry on merits of the case. A kind of proviso is added to the Office Memorandum of 12th December, 2012 that in case of serious violations, the Ministry reserves the right to outrightly reject such proposal and not consider the same at all. The procedure prescribed under the Office Memorandum of 12th December, 2012 is to apply to cases pending before the SEIAAs and SEACs as well. Office Memorandum dated 27th June, 2013 terms the procedure under the Office Memorandum of 12th December, 2012 as 'guidelines' wherein it was provided that in cases of violation, the Project Proponent needs to be restrained, through appropriate directions under Section 5 of the Act of 1986 from carrying out any construction or operation activity without obtaining required Clearance. Vide the Office Memorandum of 27th June, 2013, sub para (iv) below sub para (iii) of para 5 of Office Memorandum dated 12th December, 2012, was inserted whereby the MoEF took on to itself the responsibility of issuing directions under Section 5 of the Act of 1986 for suspending the construction work if the project is operational, till grant of Clearance and if there is violation then, to take action as per the provisions of the Act of 1986. First and foremost, what these Office Memoranda seek to do is to condone the violations of law. These Office Memoranda deal only with the violators of law who have started the construction of their projects without obtaining prior Environmental Clearance, thus, in complete violation to the provisions of Act of 1986 and the Notification of 2006. The Office Memoranda which are stated to be guidelines as per their contents thus, have the effect of rendering an offence under law otiose, which is impermissible.

78. The Notification of 2006, under Para 2 mandates that certain project or activities which are listed in the Schedule shall require *prior Environmental Clearance* (emphasis supplied) from the concerned regulatory authorities, irrespective of whether they fall under Category 'A' or category 'B', as the case may be. Furthermore, Para 6 requires that *application seeking prior Environmental Clearance shall be made by the Project Proponent*, before commencing any construction activity or preparation of the land at the site by the Applicant (emphasis supplied). The Notification of 2006, a statutory document having the force of law has used the words '*prior Environmental Clearance*' 34 times and in addition thereto the expression 'prior' has been used six times to emphasise the need for obtaining Environmental Clearance prior to the commencement of any project activity. In other words, the Notification mandates the requirement of 'prior Environmental Clearance' without exception. However the entire mandate of prior Environmental Clearance has not only been diluted but completely rendered infructuous or ineffective by issuance of these impugned Office Memoranda. Therefore, the Office Memoranda stated to be 'guidelines', are potently destructive of the Notification of 2006. The Notification of 2006 requires application for prior Environmental Clearance to be submitted in Form 1 and supplementary Form 1A, if applicable, under Appendix I and II respectively. These forms require information, details and scientific analysis in relation to the project and site, prior to commencement of any activity of the project or even preparation of land. We have in

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some detail above, noticed the requirements which are impossible of compliance once the project has been completed or substantial construction activity has been undertaken at the site in question. The impugned Office Memoranda do not even take note of this aspect and suffer from the infirmity of non-application of mind. Furthermore, the impugned Office Memoranda also offend the doctrine of "*Expressio unius est exclusion alterius*". Since the law provides performance of acts in a particular manner, the impugned Office Memoranda under the garb of 'guidelines', cannot be permitted to alter the same completely; being prejudicial to the principal law.

79. The impugned Office Memoranda do not even advert themselves to how the interest of the environment would be protected in cases where the projects have substantially progressed. It does not even refer as to how detrimental effects on environment would be taken care of, if the Project Proponent is permitted to file an application and claim Environmental Clearance after the project is at a very advanced stage of completion.

80. The impugned orders have been titled as 'Office Memorandum' and content of the orders captioned as 'guidelines' but in fact, are Office Memoranda which directly vary the substantive law in force. This has been adopted by the Ministry as a via-media to bypass the statutory requirements of law or for truncating the prescribed process of environmental protection, in terms of Notification of 2006. These Office Memoranda not only substantially amend or alter its application but even frustrate the requirements of the existing law. The impugned Office Memoranda vest in the authorities an unguided and unfettered discretion, both in regard to processing of application and in condonation of violation already committed by the Project Proponent. It is a very pertinent defect in terms of administrative law jurisprudence. An unguided and unreasonable discretion is bound to result in arbitrary exercise of powers. The MoEF being the controlling Ministry, all the expert bodies under it would be duty bound to carry out its directives even if it is unreasonable and unjustifiable. The expression 'serious violations', which will entitle the Ministry to outrightly reject an application, has neither been defined nor explained in the Office Memoranda. It is left in the absolute discretion of the Ministry as to which cases would be permitted as cases of serious violations and exclude others. The foundation of these Office Memoranda being that projects which are already under way and even have substantially progressed, can file an application for grant of Environmental Clearance, which has to be considered in accordance with these Office Memoranda, is an approach which is completely prohibited in terms of the Notification of 2006. The reservation of such unguided and absolute right by the Ministry in itself would necessarily have an element of discrimination and arbitrariness. The Office Memoranda do not spell out any rational or proper differential criteria for condonation or otherwise of the violations stated to have been committed by the Project Proponent.

81. The MoEF has issued three Office Memoranda dated 16th November, 2010, 12th December, 2012 and 27th June, 2013. All these Office Memoranda have the same feature, that is, instances of project commencement and their construction without obtaining Environmental Clearance, have been brought to the notice of the Ministry. There is no reason, much less a plausible justification recorded in any of these Office Memoranda, as to why such violations have been continued year after year. If the intention was to make it a one-time settlement, to serve the economic and public interest, then MoEF ought not to have issued any further extension to the Office Memorandum of 2010. Repetitive condonation of violation of law would only aim at encouraging violators to flout the law repeatedly. At this stage, we may also deal with the submission made on behalf of the Respondents that issuance of these Office Memoranda was justifiable on the basis of the doctrine of necessity or implied power. This submission is entirely ill-founded. Firstly, we fail to understand as to why the Ministry should take a step for condoning violation of law which was not within its

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jurisdiction and secondly why should it prescribe a methodology contrary to law. Doctrine of necessity does not operate on the axis of illegality and violations. Even if the doctrine of necessity could have any application on the facts of the present case then, the necessity could be at best a onetime scheme rather than providing a regulatory and parallel mechanism in violation of the law in force, which would negate the substantive provisions of the law in fact. It is a settled canon of law that Government cannot issue directions which would encourage violation of law on the one hand and frustrate the object of law on the other. Mandatory principle of proper governance and even the law is that the authorities must enforce the law and ensure that the public respects the law. This is the fundamental essence of the Rule of Law. Even on this count, the Office Memoranda would amount to improper use of power, whether administrative or executive.

82. Upon proper analysis of the language of these Office Memoranda and the law (referred herein after), these Office Memoranda whether they be issued as administrative orders or issued in exercise of executive power, are not clarificatory or supplementary to the Notification of 2006. On the contrary, under no uncertain terms, they are supplanting the Notification of 2006 and are in complete derogation to the laws in force.

83. The Office Memoranda have been issued without proper application of mind, where casualty is the Notification of 2006 and the environment. The authorities have not even ventured to examine that these Office Memoranda which allegedly take recourse to the Notification of 2006 are incapable of complying with the procedure of Screening, Scoping, Public Consultation and Appraisal even substantially. For instance, site selection itself is a part of this process and if the construction has already been completed substantially or otherwise, this criteria and other relevant considerations would be rendered irrelevant. Similarly the purpose of public hearing is to hear objections of the public at large in relation to all facets of the proposed project including site selection, its impact on environment, on their way of life and what directions are required to be issued to protect the environment and adjacent inhabitation or agricultural activities if any before any activity of the project is undertaken. All these requirements would be rendered otiose and irrelevant. Thus, even if the two most important aspects of the Notification of 2006 would not be complied with still the Office Memoranda would contemplate issuance of Environmental Clearance to these projects. This brings to the surface that the Ministry has not exercised its jurisdiction, even if vested in it, in accordance with law. The above are the few patent and serious infirmities in the Office Memoranda. An attempt is made to save them and their legality under the shelter of exercise of executive power. Certainly, the executive power of the Government is very wide. We have already dealt with the executive power by the State at some length above. Even if these instructions or orders are deemed to have been issued in exercise of executive power, even then, they have to be supplemental to and not to supplant, the law.

84. In the case of *Union of India (UOI)* v. *K.P. Joseph*, AIR 1978 SC 303, dealing with the question whether Respondent No. 1 in that case was entitled to the benefit of ex-military personnel on re-employment, in view of the administrative instructions that had been issued in absence of rules framed under Article 309 of the Constitution, the Supreme Court while confirming the judgment of the High Court of Mysore held as under:

> "9. Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in *Sant Ram Sharma* v. *State of Rajasthan*, (1968) II LLJ 830 SC that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular

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point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service."

85. The Supreme Court had also taken a similar view in the case of *Sant Ram Sharma* v. *State of Rajasthan*, AIR 1967 SC 1910, where the Court clearly held that Government cannot amend or supersede statutory rules by administrative instructions, but, if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. Similarly, in the case of *M. Srinivasa Prasad* v. *The Comptroller and Auditor General of India*, (2007) 10 SCC 246, the Supreme Court held that if the statutory rules in force are absent or are silent on an particular aspect, then, executive orders can fill up such lacunas. The administrative instructions would normally have no force of law and would relate to matters procedural in nature, without affecting substantive rights or obligations.

86. The executive instructions too cannot go beyond the executive power, which can also not be beyond the statutory provisions under which they are exercised. Furthermore, such instructions should not be vague or uncertain and must provide proper guidelines. By executive instructions, the authority issuing them cannot open new heads. The executive instructions within these confines should be issued only when there are no statutory provisions on the subject. They would also be issued to supplement statutory provisions, to ensure their proper application. In the case of *Indra Sawhney etc.* v. *Union of India, etc.*, 1992 Supp (3) SCC 217, Supreme Court mandated that such propositions are unexceptionable and executive instructions which go contrary to statutory provisions or the rules under Article 309 or any other statutory rules, shall not be operative to the extent they are contrary to the statutory provisions or rules. In the case of *M.C. Mehta* v. *Union of India (UOI)*, (Supra), not only that the Court reiterated these principles but even questioned MoEF's intent to legalise the commencement or continuance of mining activity without compliance to the stipulations of the Notification of 2006. However, it was observed that in any case, a statutory notification cannot be notified by issuance of circular. Such actions demonstrate non-sensitivity of MoEF to the principles of sustainable development and the object behind the issuance of the notification.

These principles would be equally applicable to the exercise of administrative power either by issuance of guidelines or Office Memoranda. A Bench of this Tribunal while dealing somewhat similar situation in the case of *Himmat Singh Shekhawat* v. *State of Rajasthan*, 2015 All (I) NGT Reporter (1) (Delhi) 44 held as under:

"58. This power to issue guidelines is not a general power but is a specific power with inbuilt limitations. The limitations are that, such guidelines would alone be for the purposes of categorizing upon scrutiny of applications, projects that would fall under Category B1' and 'B2' respectively with specific exclusion of the projects specified under Item 8(b) of the Schedule. Restrictive power to issue guidelines, is further illustrated, by the fact that Clause 2 of the Notification of 2006 does not contemplate any such categorization except projects falling under Category 'A' and 'B' only. The purpose appears to be that the power of State Level Appraisal Committees to bifurcate projects into 'B1' and 'B2' categories respectively should not be unguided and unchecked. Prescription of such guidelines could be done by issuance of appropriate Office Memorandum or orders as the power to issue such guidelines has been vested in MoEF under the statutory provisions. But the greater part of such Office Order or Office Memorandum should be such that it would not vary the content or be contrary to the statutory provisions which are in place by virtue of enacting such provisions either by primarily legislative or delegated legislative power.

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59. It is a settled principle that legislature can only delegate to an outside body subordinate or ancillary legislative power for carrying out a policy of the act. The body to whom such power is delegated is required to act strictly within the framework of such delegated powers. Such power is incidental to the exercise of all powers in as much as it is necessary to delegate for the proper discharge of all the public duties. It is because the body constituted should act in the manner indicated in law and should exercise its discretion by following the procedure therein itself or by such delegation as is permissible. Unlike the situation the judges are not allowed to surrender their judgments to others. The legislature and executive can delegate powers within the framework of law. It is an axiom of Constitutional law that representative legislative bodies are given the legislative powers because the representative Government vested in the persons chosen to exercise the power of voting taxes and enacting laws which is the most important and sacred trust known to civil Government. The Delegation has its own restrictions. For instance, the legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. A memorandum which is nothing but administrative order or instruction cannot amend or supersede the Statutory Rules adding something therein which would specifically alter the content and character of the Notification itself. It has been consistently reiterated with approval by the Hon'ble Supreme Court that administrative practice/administrative order cannot supersede or override the statutory rule of Notification and it is stated to be a well settled proposition of law.

The delegated power is primarily for carrying out the purposes of the Act and this power could hardly be exercised to bring into existence a substantive right or obligation or disabilities not contemplated by the provisions of the Act or the primary Notification. A Constitution Bench of the Hon'ble Supreme Court in the case of *Sant Ram* v. *State of Rajasthan*, AIR 1965 SC 1910, while dealing with the scope of executive instructions held that instructions can be issued only to supplement the statutory rules and not to supplant it. Such instructions should be subservient to the statutory provisions. They would have a binding effect provided the same has been issued to fill up the gaps between the statutory provisions and are not inconsistent with the said provisions. (Reference in regard to the above can be made *In Re: The Delhi Laws Act, 1912*, AIR 1951 SC 332, *P.D. Aggarwal* v. *State of U.P.*, (1987) 3 SCC 622, *Ram Sharma* v. *State of Rajasthan*, (1968) I ILLJ 830 SC, *Mahender Lal Jaine* v. *State of Uttar Pradesh*, (1963) Supp. 1 SCR 912, *Naga People's Movement of Human Rights* v. *Union of India*, AIR 1998 SC 431).

60. In the case before the Tribunal, specific challenge has been raised to the Office Memorandum dated 24th December, 2013 on the ground that it violates the above stated principles, in as much as by an Office Memorandum, guidelines for 'B1', 'B2' categories cannot be provided and thus, it runs contra to the statutory provisions. We may also notice here that vide this memorandum, besides providing guidelines for categorization of B1', 'B2' projects under Clause (iii) of paragraph 2, MoEF has taken a decision that river sand mining project with mine lease area of less than 5 hectares may not be considered for grant of Environmental Clearance and river sand mining projects with mining lease areas of equal or more than 5 hectares but less than 25 hectares will be categorized 'B2', that too subject to the restrictions stated in that Office Memorandum. Though, the Applicants have primarily raised a challenge in regard to the former only, but bare reading of the Notification has brought before us the question in regard to the latter as well. Dealing with the former challenge afore-noticed, it is clear that Clause 7 of the Notification of 2006 provides for further categorization of projects falling under Category 'B' into 'B1' and 'B2'. Though Clause 2 of the said Notification does not contemplate any classification other than 'A' and 'B', but, there is no challenge raised before us to

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the Notification of 2006 and we see no reason to go into that aspect. The Notification of 2006 *ex facie* permits classification of Category 'B' projects and that discretion has been vested in State Level Expert Appraisal Committee, which, upon scrutiny of the applications has to take the decision. This discretion vested in the Committee is ought to be controlled by the issuance of guidelines by MoEF. MoEF had issued two guidelines, one on 24th June, 2013 and the other on 24th December, 2013 in relation to further classification and criteria which is to be adopted in that regard. Since the Office Memorandum dated 24th June, 2013, only relates to brick earth and ordinary earth and as per that Office Memorandum, such projects where the excavation area was less than 5 hectares were to be categorized as 'B2' projects, subject to the guidelines stated therein they were to be screened in accordance with the Notification of 2006. Under Paragraph 4(b) of this Memorandum, restrictions were laid down prohibiting any excavation of brick earth or ordinary earth within one km of national parks and wild life sanctuaries as well as it intended to elaborate the cluster situation. If the periphery of one borrow area is less than 500 m from the periphery of another borrow area and the total borrow area equals or exceeds 5 hectares, the activity shall become Category 'B1' project in terms of the Notification of 2006 and such activity will be permitted only if the Environmental Clearance has been obtained in respect of the cluster. If we examine these two Office Memoranda in the light of the well settled legal principles that we have referred above, partially both these Office Memoranda cannot stand scrutiny of law. As far as guidelines or instructions in relation to classification of projects falling under Category 'B' into B1' and 'B2' is concerned, the exercise of such power would be saved on the strength of Clause 7(1) of the Notification of 2006 because it is an Office Memorandum which provides guidelines for exercise of discretion by the State Level Expert Committee for such categorization. Thus, it is an exercise of executive power contemplated under the Notification of 2006. Hence the contention of the Applicant on that behalf cannot be accepted and deserves to be rejected. However, in so far as the Office Memorandum dated 24th June, 2013 placing a prohibition under paragraph 4(b)(i) is concerned, it apparently is beyond the scope of such guidelines. Prohibition of carrying on of mining activity or excavation activity which is otherwise permitted by the Notification of 2006 cannot be done by an Office Order, because it would apparently run contra to the provisions of Notification of 2006. In other words, such restriction is not only beyond the scope of the power vested in MoEF but in fact imposition of absolute restriction in exercise of delegated power is not permissible. Similarly, the Office Memorandum dated 24th December, 2013 in so far as it declares that river sand mining of a lease area of less than 5 hectares would not be considered for grant of Environmental Clearance is again violative of the above settled principles. No such restriction has been placed under the Notification of 2006 or under the provisions of the Act and the Rules of 1986. The executive therefore, cannot take away the right which is impermissible under the principle or subordinate legislation. Of course, part of the same Paragraph 2(iii), in so far as it categorizes 'B2' projects, covering the mine lease area equal to or more than 5 hectares but less than 25 hectares is concerned, the same cannot be faulted in view of the fact that it only provides a criteria or a guiding factor for determining the categorization of projects. It neither vests any substantive right, nor any obligation in relation to any matter that is not squarely or effectively covered under the Notification. This only furthers the cause of fair classification of projects, which is the primary purpose of the Notification. For these reasons, we quash paragraph 4(b)(i) of the Office Memorandum dated 24th June 2013 and part of paragraph 2(iii) in so far as it prohibits grant of Environmental Clearance to the mine area of less than 5 hectares as being violative of the Notification of 2006 and the Rules of 1986. The MoEF has no jurisdiction in exercise of its executive power to

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issue such prohibitions, impose restrictions and/or create substantive rights and obligations. It *ex facie* is not only in excess of powers conferred upon them, but, is also in violation of the Notification of 2006. As already noticed, this Notification has been issued by MoEF in exercise of powers conferred upon it under Clause 5 of sub section 2 of section 3 of the Act of 1986 read with sub rule 4 of rule 5 of the Rules of 1986. Vide this Notification, the Central Government substituted item no. 1(a) and entries relating thereto. A Clause stating that the projects relating to non-coal mine lease and where the mining area was less than 50 hectares equal or more than 5 hectares was to be treated as Category 'B' projects, in addition to that, the minor mineral lease projects, where the mine lease area was less than 50 hectares, were also to be treated as Category 'B' projects, also, the general conditions with provisos were also substituted. It is significant to note here that the Notification of 2006 had been amended by the Central Government by issuing a Notification dated 1st December, 2009 in exercise of its delegated legislative powers. While issuing this Notification, the Central Government had followed the procedure prescribed under Sub Rule 2 and 3 of Rule 5 of Rules of 1986. It had invited objections from the public and considered those objections as is evident from the very recital of the Notification where it recorded "and where as all objection and suggestions received in response to above mentioned draft Notification have been duly considered by the Central Government……." and then it published the final Notification. Vide the Notification dated 1st December, 2009, the Central Government had substituted item no. 1(a) and the entries relating thereto of the Schedule to the Notification of 2006 besides making other amendments as well in different entries. However, while making further amendments vide Notification dated 9th September, 2013, the Central Government did not follow the prescribed procedure under Rule 5. On the contrary it substantially altered, and in fact substituted, as well as made additions of a substantial nature in Clause 4 and Clause 5 of the Notification of 2006, where, for the first time, it added minor mineral mine leases of less than 50 hectares, and also added 'general conditions to apply except for the projects where the area was less than 5 hectares in relation to minor mineral lease' and provisos thereto. The period for applying for renewal of mine lease of one year was changed to two years under the Notification dated 9th September, 2013."

87. There could be a case of executive instructions being derogatory to the principal statute or a statutory notification, still there could be cases of executive instructions being *ultra vires* or violative of the statutory notification and still further there could be cases of conflict between the two. In either of them, the Court have not tilted in favour of sustaining such executive instructions. In the case of *D.D.A.* v. *Joginder S. Monga*, (2004) 2 SCC 297, the Supreme Court held that only in a case where a conflict arises between a statute and an executive instruction, indisputably, the former will prevail over the latter. Executive instructions can supplement a statute, but they cannot run contrary to statutory provisions or whittle down their effect. In other words, executive instruction which is in conflict of and which whittles down the effect of the main Act would be liable to be struck down. When an executive instruction is beyond the power of the authority issuing the same, it would be *ultra vires* and whenever the instruction is found to be beyond the inherent jurisdiction, it would be wholly void. The delegatee can act only within the scope of delegation. The limitations are all with regard to the substance, procedure and form.

88. Another contention raised on behalf of the Respondent while relying upon the judgment of Supreme Court in the case of *Vineet Narain* v. *Union of India (UOI)*, (1998) 1 SCC 226 and other cases, is that executive instructions are enforceable if they do not change the essentials of law. This contention cannot be accepted for reasons that are recorded in this part of the Judgment. By whatever nomenclature it is addressed, whether as executive instructions, policy decision or merely Office

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Memoranda issued in exercise of administrative power, their infirmities and lacunas of law would not alter. Favour of constitutionality is to be construed for such executive instructions. It is also the contention that these instructions do not dilute the effect of law but make it more rigorous. Furthermore, it being a policy decision of the MoEF, the Tribunal should not interfere in it. We are also unable to appreciate as to how these Office Memoranda fill up the gaps in the Notification of 2006. An instrument which provides for disobedience of law and indiscriminately condones the violations of the substantive law in force, it cannot be termed as an instrument made to fill up the gaps. It would be an administrative order contrary to the statutory provisions. In fact, issuance of such kind of orders received judicial causticism and was deprecated by the Supreme Court in the case of *M.C. Mehta* (supra).

89. The impugned Office Memoranda are not only in conflict with the Notification of 2006, but in fact run contra thereto. What is not only intended but in fact is prohibited to be done, is being permitted by the impugned Office Memoranda. They have been issued without reference to any power or source of law and are neither pronounced nor authenticated in the name of the prescribed executive authority. Besides this, we have already noticed in great detail the various infirmities and defects from which these Office Memoranda suffer in fact and in law. This being the position of law in relation to issuance of executive instructions in exercise of executive power or delegated legislation, these Office Memoranda having been issued in exercise of administrative power, in any case, cannot withstand the legal scrutiny and resultantly, would be liable to be quashed.

Discussion on Issue No. 3:

3. Whether this Tribunal has no jurisdiction to quash both the impugned Office Memoranda?

90. Except the intervener Applicants namely M/s SPR and RG Constructions and M/s Dugar, none of the Respondents have raised any objection to the jurisdiction of the Tribunal and competence of the Tribunal to deal with impugned Office Memoranda in accordance with law. According to these Project Proponents, this Tribunal has no power or jurisdiction to quash the Office Memoranda; they having been issued in exercise of the Executive Power of the Union and forming a part of a policy decision. In support of their contention, they relied upon the judgment of the Supreme Court in the case of *Madras Bar Association* v. *Union of India*, (2014) 10 SCC 1 and *Union of India (UOI)* v. *R. Gandhi, President, Madras Bar Association*, (2010) 11 SCC 1. On the other hand, the Applicants have primarily contended in the main application that the impugned Office Memoranda are administrative orders and would be subject to merit review by the Tribunal and such a situation would not alter even if it was in exercise of Executive Power of the Union/State. This Tribunal has been vested with Original, Appellate and Special jurisdiction in regard to directing payment of compensation for damage to and for restitution and restoration of the environment. The legislature in its wisdom worded the provisions relating to the jurisdiction of the Tribunal (Sections 14 to 17 of the Act of 2010) very widely, and with a clear intent to provide this Tribunal with jurisdiction of a very wide magnitude. Upon reading the various provisions of the Act of 2010 cumulatively and in light of the underlying scheme of the Act of 2010, including the definition of 'environment' in terms of Section 2(c) of the Act of 2010, it is quite clear that this Tribunal is having all the trappings of a Court and is conferred with the twin powers of judicial as well as merit review. There is no provision in the Act of 2010 which curtails the jurisdiction of the Tribunal to examine the validity and correctness of a delegated legislation and/or administrative or executive order passed by the Government including any of its instrumentalities or authorities. The fundamental principle for invoking the jurisdiction of this Tribunal is that, the question raised should be a substantial question relating to environment and should arise out of the implementation of the enactments specified in Schedule I of the Act of 2010. It

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could even relate to enforcement of any legal right relating to environment with regard to these enactments. Delegated or subordinate legislation, executive orders and/or administrative orders in so far as they relate to the implementation of the Scheduled Acts would be open to challenge before the Tribunal and hardly any argument can be raised that the documents like Office Memoranda would not be subject to judicial scrutiny before the Tribunal.

In fact, such an argument that this Tribunal would not have jurisdiction to examine legality and correctness of such Office Memorandum is without substance and in fact should not detain us any further, in view of the judgment of the five Member Bench of this Tribunal in the case of *Wilfred J.* v. *Ministry of Environment & Forests*, 2014 ALL (I) NGT REPORTER (2) (DELHI) 137, where this Tribunal was concerned with a question whether this Tribunal being a creation of a statute is not vested with the powers of judicial review, so as to examine the constitutional validity/vires of such instruments as it would be tantamount to enlarging the jurisdiction of this Tribunal. We may notice that the Tribunal deliberated on the issue at some length and also did a comparative study of the various Acts like Central Administrative Tribunal (CAT), TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL (TDSAT), Armed Forces Tribunal on the one hand and Act of 2010 on other hand. After referring to various judgments on the subject, Tribunal following the principles laid down by the Constitutional Bench of the Supreme Court in *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261 held as under:

> "85. The Courts and Tribunals that are engaged in judicial functions dispensing justice to the public at large are expected to have powers which are necessary to perform its basic functions. As already noticed, unless there is a specific exclusion, such normal powers stated to be inherent in its functioning. The Supreme Court in the case of *Grindlays Bank Ltd.* v. *Central Government Industrial Tribunal*, AIR 1981 SC 606 while dealing with the powers of the Tribunal in relation to setting aside *ex parte* award in absence of any such power and the award which has become enforceable as a result of its being published rejecting the contention that the Tribunal had become *functus officio*, Court held as under:
>
> > "We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."
>
> 86. From the above, it is clear that ancillary or incidentally powers which are necessary to discharge its functions effectively for the purpose of doing justice between the parties should be considered to be endowed. If the power of judicial review in its limited scope is not expected to be endowed upon the Tribunal then majority of the cases wherein Orders, Circulars, Notifications issued in exercise of subordinate legislation are challenged could not be fully and completely decided by the Tribunal, though they exclusively fall in the domain of the Tribunal.
>
> 87. Another very important aspect that cannot be overlooked by the Tribunal is that Article 226 of the Constitution of India is a discretionary jurisdiction to be exercised by the High Courts. It does not give an absolute right to a person. For variety of reasons, the High Court may decline to entertain a petition in exercise of its powers

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under Article 226 of the Constitution, while the NGT Act gives a statutory right to an Applicant, aggrieved person or any person to approach the Tribunal in all matters relating to Acts specified in Schedule I of the NGT Act. It is not a discretionary jurisdiction like under Article 226 of the Constitution of India.

88. On a comparative analysis of various provisions of the different Acts afore-stated, it is evident that power, jurisdiction, judicial independence, exclusion of jurisdiction and other determinative factors prescribed under the NGT Act are of wide connotation and are free of restrictions. Sections 14, 15 and 16 read co-jointly give three different jurisdictions to the Tribunal over all disputes and appeals relating to various fields of environment. The jurisdiction is exercisable in relation to the matters arising from any or all of the Scheduled Acts. Examined objectively, the provisions of the NGT Act are more akin to the provisions of the CAT Act, in contradistinction to the provisions of the TDSAT. The various features and aspects of the NGT Act that we have discussed above would bring the case before the Tribunal within the ambit of *L. Chandra Kumar case* (supra), as opposed to the case being covered by *BSNL case* (supra). We have already dealt above, in some elaboration, the aspect as to how the cases relied upon by the Respondents do not apply to the facts of the present case, keeping in view the provisions and the legislative scheme of the referred Acts and various judicial pronouncements. At the cost of repetition, we may record here that the language of the various provisions of the NGT Act by necessary implication gives power of judicial review to the Tribunal. There is no specific or even by necessary implication exclusion of such power indicated in any of the provisions. Furthermore, in the scheme of various environmental acts and if the object and purpose of such acts are to be achieved then the power of judicial review would have to be read into the provisions of the NGT Act. If the notifications issued under any of the Scheduled Acts, by virtue of the powers vested by subordinate or delegated legislation, are *ultra vires* the Act itself or are unconstitutional as they violate Articles 14 or 19 of the Constitution of India, then it has to be construed that the Tribunal is vested with the power of examining such notifications so as to completely and comprehensively decide the disputes, applications, appeals before it. Of course, the powers of the High Courts and the Supreme Court under Articles 226 and 32 of the Constitution of India have not been excluded under the provisions of the NGT Act, thus ensuring that the Tribunal performs supplemental functions and does not supplant the Higher Courts.

89. The Supreme Court in the case of *K.S. Venkatraman and Co.* v. *State of Madras*, (1966) 2 SCR 229, has stated the proposition that an authority or Tribunal constituted under an Act cannot, unless expressly so authorised, question the validity of the Act or any provisions thereof under which it is constituted. This is a sound principle and has been followed consistently. To put it in other words, a Tribunal or an authority constituted under an Act can even examine the validity of the provisions of the Act which created it, provided it is so expressly authorized by the Act itself. This Tribunal is not travelling into that realm of law, but is concerned with the validity of the notifications issued under the Acts other than the Act that created the National Green Tribunal. For this proposition, we have referred to various judgments above.

95. Reverting to the present case the CRZ Notification dated 19th February, 1991, which has been amended on 3rd of October, 2001, was issued in exercise of the powers conferred under Section 3(1) and Section (2)(v) of the Act of 1986 and Rule 5(3)(d) of the Rules of 1986, in declaring coastal stretches as coastal regulation zone and for regulating activities in the coastal regulation zone. The legislature has delegated legislative power to the Central Government to take all measures as it deems necessary or expedient for the purposes of protecting and improving quality of the environment and preventing controlling and abating environmental pollution.

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This is a very wide power, which has been vested in the Central Government by delegated legislation under these provisions. In the exercise of its powers and with the object of satisfying the stated purpose, the Notification of 2011 has been issued under the power of delegated/subordinate legislation. Thus, there cannot be any doubt that the Notification of 2011 in the case before us, is a piece of delegated legislation and its legality, correctness or otherwise can be questioned only on the limited grounds afore-stated.

96. To bring out this distinction illustratively and more clearly, we may refer to the power of the MoEF (Central Government) to issue Environmental Clearance in terms of the provisions of the Act of 1986 read with the Regulations of 2006. The order granting or refusing Environmental Clearance to a Project Proponent, is not an act of subordinate or delegated legislation but clearly is an executive act. The Central Government in exercise of its executive powers, passes an order whether or not a given project should be granted Environmental Clearance for commencing its operation. In passing such orders, the Central Government does not act in furtherance to the powers vested in it by virtue of delegated legislation. It is merely an executive act relatable to the statutory powers vested in the Central Government. The CRZ Notification issued by the Central Government is therefore an act of delegated legislation while passing of an order of Environmental Clearance is an executive order. This view finds support from the judgment of the Delhi High Court in the case of *Utkarsh Mandal* v. *Union of India*, Writ Petition (civil) no. 9340/2009 which held that "grant of environmental clearance is an executive order which involves application of mind by the executive."

91. It is to be noticed at this stage that a Civil Appeal had been preferred before the Supreme Court of India against this Judgment in Civil Appeal No. 7884-7885 of 2014 titled as *Vizhinjam International Seaport Ltd.* v. *Wilfred J.* Hon'ble Supreme Court vide its order dated 21st January, 2015, stayed all further proceedings before the Tribunal in that case but specifically allowed Tribunal to continue its exercise of such powers. Order of the Hon'ble Supreme Court is reproduced below:

"Counter affidavit, if any, be filed by the Respondents within four weeks' time. Rejoinder affidavit, if any, in two weeks' time thereafter.

In the meantime, both the sides are permitted to file additional affidavit(s).

All further proceedings, qua the appellant(s) are stayed in Appeal Nos. 17 of 2014, 88 of 2014, 14 of 2014 and Original Application No. 74 of 2014 till further orders.

We clarify that the National Green Tribunal shall continue to exercise its powers in terms of Sections 14, 16 and 18 of the National Green Tribunal Act, 2010 in other cases."

92. We may also refer to another larger Bench Judgment of the Tribunal in the case of *Himmat Singh Shekhawat* v. *State of Rajasthan* (supra), where the Tribunal was dealing with a case challenging the validity of the Office Memoranda dated 9th September, 2013 and 24th December, 2013 issued by MoEF and other similar Office Memoranda issued the State of Rajasthan as well as other states as being violative of the provisions of the Act of 1986 and being in teeth of the Judgment of the Supreme Court in the case of *Deepak Kumar* v. *State of Haryana*, (2012) 4 SCC 629.

As stated above, the Tribunal had quashed the Notifications which were in violation to the Notification of 2006 and in teeth of the Judgment of the Supreme Court. It was held that the Notification of 2006 being a statutory law cannot be diluted, varied and frustrated in the name of supplying of gaps and/or framing the policy in interest of a group of people.

The Notification or orders whether issued by the principle or delegated authority, the principle that delegated legislation cannot be beyond the principle legislation

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equally applies to both. As discussed above, the body to whom the power is delegated is required to act strictly within the framework of such delegated powers. It is incidental to the exercise of all powers in as much as it is necessary to delegate for the proper discharge of all the public duties. It is because the body constituted should act in the manner indicated in law and should exercise its discretion by following the procedure therein itself, it has to be ensured by the delegate authority that it exercises such power for carrying out the purpose and object of the Act and does not interferes with or offends the substantive provisions of the Act. The discipline and protocol prescribed in a statutory instrument ought not to be altered much less defeated.

93. In light of the above stated principles, now we would revert to the judgments of the Supreme Court relied upon by the Respondent nos. 7 and 8. Firstly, we are unable to comprehend as to how the said Respondents can derive any advantage from the two cited judgments. In the first case of *Union of India (UOI)* v. *R. Gandhi, President, Madras Bar Association* (supra) (2010 case), the Supreme Court was concerned with the constitutional validity of the provisions of the Company's Act, 1956. The Supreme Court stated that the legislature is presumed not to legislate contrary to the rule of law and therefore knows that where disputes are to be adjudicated by a judicial body other than Courts, its standard should approximately be the same as to what is expected of the main stream judiciary. Rule of law is possible only where there is an independent and impartial judiciary to render justice. Further, the Supreme Court while declining to declare the Act and constitution of the National Company Law Tribunal as unconstitutional in Para 120 directed the defects in parts 1B and 1C of the Act relating to appointment and functioning of the Tribunal to be corrected/amended and then be made operational. The Supreme Court affirmed the view of the High Court that the constitution of the two Tribunals and vesting in them the powers of judicial review was not unconstitutional. However, it was subject to the observations made by the Supreme Court in paragraph 120 of the judgment.

Coming to the second case of *Madras Bar Association* v. *Union of India (UOI)* (supra) (2014 case), where the Supreme Court was concerned with the question whether provisions of the National Tax Tribunal (NTT) Act, 2005 were *ultra vires* to provisions of Constitution including the ‘doctrine of separation of power’. The Supreme Court held that since Sections 5, 6, 7, 8 and 13 of the NTT Act have already been held as illegal and unconstitutional, therefore the remaining provisions of the Act are automatically rendered otiose to the extent indicated in paras 136 and 137 of the Judgment. The Hon'ble Apex Court made the following conclusions:

> “134. (i) Parliament has the power to enact legislation, and to vest adjudicatory functions, earlier vested in the High Court, with an alternative court/tribunal. Exercise of such power by the Parliament would not per se violate the “basic structure” of the Constitution.
>
> 135. (ii) Recognized constitutional conventions pertaining to the Westminster model, do not debar the legislating authority from enacting legislation to vest adjudicatory functions, earlier vested in a superior court, with an alternative court/tribunal. Exercise of such power by the Parliament would per se not violate any constitutional convention.
>
> 136. (iii) The “basic structure” of the Constitution will stand violated, if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure, that the newly created court/tribunal, conforms with the salient characteristics and standards, of the court sought to be substituted.
>
> 137. (iv) Constitutional conventions, pertaining to constitutions styled on the Westminster model, will also stand breached, if while enacting legislation, pertaining to transfer of judicial power, conventions and salient characteristics of the court sought to be replaced, are not incorporated in the court/tribunal sought to

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be created.

138. (v) The prayer made in Writ Petition (C) No. 621 of 2007 is declined. Company Secretaries are held ineligible, for representing a party to an appeal before the NTT.

139. (vi) Examined on the touchstone of conclusions (iii) and (iv) above, Sections 5, 6, 7, 8 and 13 of the NTT Act (to the extent indicated hereinabove), are held to be unconstitutional. Since the aforesaid provisions, constitute the edifice of the NTT Act, and without these provisions the remaining provisions are rendered ineffective and inconsequential, the entire enactment is declared unconstitutional."

From the above dictum of the Supreme Court, it is clear that the Parliament has power to enact legislations and to vest adjudicatory functions in the Tribunals which were earlier vested in the High Court. *Per se*, this would not be violative of the basic structure of the Constitution, once the framers of law take care and ensure that the statutorily created courts/tribunals conform to the salient characteristics and standards of the courts under the mainstream justice dispensation system, i.e. judiciary. If they are breached, it would generate the results of violation of doctrine of basic structure of the Constitution.

94. Before the Tribunal, no contention of this dimension has been raised. As already stated, the Tribunal has been created by a statute with all requisite safeguards and has been vested with complete adjudicatory powers as required under the mainstream justice delivery system in our country. The impugned Office Memoranda have been issued in exercise of administrative power which is presumably exercised in furtherance to the powers vested in the Ministry under the Act of 1986 and/or Notification of 2006. These Office Memoranda have been issued for the purposes of 'implementation of Acts mentioned in the Schedule' (emphasis supplied). Thus, we see no reason for accepting the contention that this Tribunal has no jurisdiction to examine the legality or correctness of these Office Memoranda. Furthermore, except these two Respondents, none of the other parties to the *lis* has even touched upon this objection.

Discussion on Issue No. 4

4. Are the private Respondents entitled to claim any benefit on the strength of deeming provisions as contained in Para 8(iii) of the Notification of 2006 and if so, to what effect?

95. The submission on behalf of Respondent no. 7, 8 and 9 that they would be deemed to have been granted Environmental Clearance in relation to their projects on the strength of Para 8, of the Notification of 2006, can be bifurcated into two distinct classes. The first being with reference to the projects of Respondent no. 7 and 8 where the contention is that they had applied for obtaining Environmental Clearance for their project and the same had been recommended by the SEAC in its meeting dated 17th June, 2014 and 30th September, 2013 respectively. Despite such recommendation being in their favour, the SEIAA did not grant or refuse Environmental Clearance within 45 days of such recommendation as per Para 8(i) of the Notification of 2006. Therefore, as per Respondent 7 and 8 since the period of 45 days has lapsed, therefore, they would be entitled to the 'deemed sanction' of Environmental Clearance in terms of Para 8 of the Notification of 2006, the regulatory authority having failed to take any final view on the Project Proponent's application. It is their case that the 'deemed sanction' would follow in terms of Para 8(iii) and the view expressed by the SEAC would be deemed to have been accepted by the regulatory authority and therefore, the Applicant is entitled to be conveyed the said order in terms thereof.

The second class of contention would be with reference to the contention of Respondent no. 9 that it had applied for obtaining Environmental Clearance for its project in the year 2012, which application was re-filed in the year 2013. The SEIAA had failed to act within the time limit provided in Clause 8(i) of the Notification of

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2006, i.e. 105 days. This failure on the part of the SEIAA would result in grant of Environmental Clearance in favour of the Project Proponent on the principle of 'deeming fiction'. It is the case of Respondent no. 9 that SEIAA had only responded after two years by communicating that the operation of the impugned Office Memoranda has been stayed by the National Green Tribunal and therefore their application for Environmental Clearance has been delisted till further order by the Tribunal.

96. Contrary to the above, the Applicant contends that there is nothing in Para 8 of the Notification of 2006, which is remotely suggestive of any deeming fiction. It is a provision that merely prescribes a period within which certain acts are required to be done without specifying any consequences thereof. Furthermore, none of the Respondents have filed applications with all the relevant documents as required under law. They have not even filed their applications for Environmental Clearance complete in all respects. They have played a fraud with law and in any case misrepresented facts before SEIAA. Even after filing the application for Environmental Clearance, they have violated their undertakings to SEIAA and carried on with the constructions of their projects. This firstly would disentitle them from claiming any relief on the premise of 'deeming fiction' contained under Para 8 of the Notification of 2006, and in any case their acts and deeds would vitiate their entire application for grant of Environmental Clearance. The effect of 'deeming fiction' would thus never accrue in their favour. Once the provisions of the Notification of 2006 are not strictly complied with, the question of invoking 'deeming fiction' in terms of Para 8 of the Notification of 2006 would not even arise as these Project Proponents have not complied with the basic ingredients of these provisions.

97. We must make a note of the fact that none of the other parties, including the MoEF or SEIAA had raised the plea of 'deeming fiction' either in their oral or written submissions. Before adverting to the discussion on merits of these contentions, it will be appropriate to refer to Para 8 of the Notification of 2006 which reads as under:

"8. Grant or Rejection of Prior Environmental Clearance (EC):

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the Applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the Applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final

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and conveyed to the Applicant by the regulatory authority concerned within the next thirty days.

(iii) In the event that the decision of the regulatory authority is not communicated to the Applicant within the period specified in sub-paragraphs (i) or (ii) above, as applicable, the Applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned."

98. First and foremost we have to examine what is a deeming fiction, when it operates and what are its ingredients? The expressions 'deemed' and 'deeming fiction' have been described in *P. Ramanatha Aiyar's Law Lexicon* 3rd edition, 2012 as follows:

"Deemed: The word 'deemed' is used to impose an artificial construction of a word or phrase in a statute that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is impossible. *St. Aubyn (L.M.)* v. *A.G.*, 1952 AC 15

Deeming fiction: A supposition of law that a thing is true without inquiring whether it be so or not, that it may have the effect of truth so far as it is consistent with justice.

The word "deemed" is used in various senses. Sometimes, it means "generally regarded". At other time, it signifies 'taken prima facie to be', while in other case, it means, 'taken conclusively'. Its various meanings are, - 'to deem' is 'to hold in belief, estimation or opinion'; to judge; adjudge; decide; considered to be; to have or to be of an opinion; to esteem; to suppose, to think, decide or believe on considerations."

99. Deeming fiction in a provision of a statute is indicative of the intention of the framers of law that they expect compliance to the requirements of the provision in a prescribed time frame. In some cases, it may prescribe proper consequences of default while in others it may be just require compliance *simplicitor*. When such words are used in a statute, they would provide the meaning for some matters or things and the way in which it is to be adopted. Furthermore, every provision of a statute is brought into by legislature with a particular object in mind; no word used by the legislature is therefore futile. Normally, such words should be interpreted with the aid of examining the whole scheme of an enactment, like the Notification of 2006 in the present case. Therefore, impact of the expression used under paragraph 8 should be examined and interpreted in light of the entire scheme of the Notification of 2006. The concept of 'deeming fiction' should be understood and interpreted by applying the principle of strict construction. Every requirement preceding the stage from which 'deeming fiction' operates must be specified in all respects and the principle of substantial compliance would have no application for determining the controversy in issue. A Bench of this Tribunal in the case of *Laxmi Suiting* v. *State of Rajasthan*, 2014 ALL (I) NGT REPORTER (2) DELHI 1, while dealing with the essentials and ingredients of 'deeming fiction' contained in Section 25(7) of the Water (Prevention and Control of Pollution) Act, 1974 (for short Water Act') held as under:

"33. A deeming provision creates a legal fiction. When a statute enacts that something shall be deemed to have been done, which in fact and in truth has not been done, the court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried out to its logical conclusion and to that end, it would be proper and even necessary to assume all those facts on which alone the fiction can operate. In other

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words, the facts and requirements of the fiction must be satisfied. It has, in fact, also been held by some courts that the word 'deemed' when used in a statute establishes a conclusive or rebuttal presumption, depending upon the context.

34. Another legal principle of construing the legal fiction is that the law cannot be extended beyond its purpose. The Supreme Court, in the case of *Bengal Immunity Co. Ltd.* v. *State of Bihar* (AIR 1955 SC 661) stated that the legal fictions are created only for some definite purpose. A legal fiction is to be limited to that purpose for which it was created and should not be extended beyond that legitimate field. This approach was reiterated by the Supreme Court of India in the case of *Union of India* v. *Sampat Raj Dugar* (AIR 1992 SC 1417), wherein while dealing with Clause 5(3)(ii) of the Import (Control) Order, held that fiction created was for the proper implementation of the Import and Export (Control) Act, 1947 and to hold the licensee responsible for anything and everything that happens from the time of import till the goods are cleared through Customs and it was also held that the fiction cannot be employed to attribute ownership of imported goods to the importer in a case where he abandons them i.e. in a situation where the importer does not pay or receive the documents of title. Reference can also be made to the case of *Rajkumar Khurana* v. *State of NCT of Delhi* [(2009) 6 SCC 72].

35. Section 25(7) is intended to provide for the deemed fiction only where the law is complied with. The obvious reason for providing the deeming fiction under Section 25 of the Water Act is to ensure that the Board does not unduly withhold the application of an industry or a unit which has acted in accordance with the law and has moved the application for establishment/operation complete in all respects to the Board. The intention of the framers of law is to balance the relationship between the industry and the Board. It is not intended to give any undue or unlawful advantage to either of the two. The Board must not be able to frustrate the establishment of a project merely by delaying its decision on the application. It is also not intended to give any right to the industry to start its operation without obtaining consent of the Board or even making an application for that purpose. On the principle aforestated, it will not be permissible to stretch the provisions of Section 25 of the Water Act to give protection to the class of persons who are polluters and are even covered under the specified category contemplated under Section 25(5) supra.

36. In view of the above discussion, we are of the considered view that the Applicants are not entitled to the benefit or advantage of the deeming fiction of law contemplated under Section 25(7) of the Water Act inter alia but specifically for the following reasons:

(i) The Applicants did not submit applications, as contemplated under Section 25 (2) of the Water Act, complete in all respects to the Board."

In the above backdrop, let us now examine as to what is the object and essential features contained in Para 8 of the Notification of 2006. The Notification of 2006 has been issued by the Ministry in exercise of the statutory powers vested in it under Section 3 of the Act of 1986 and Rule 5 of the Rules of 1986. The Notification has been issued for the purposes of effectively ensuring environmental protection and for implementing the provisions contained in the Principal Act. The purpose is to ensure that the project and the activities as stated in the Schedule to the Notification of 2006 only and only commence construction after the Project Proponent has obtained the Environmental Clearance and that is why Para 2 of the Notification of 2006 requires prior Environmental Clearance from the regulatory authority. The whole scheme of the Notification of 2006 does not postulate any relaxation of this mandatory requirement. Thus, there is unquestionable and undisputable legal obligation upon the Project Proponent to seek prior Environmental Clearance before the commencement of any

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activity in relation to the project in question. Such obligation is to be complied with as per Form 1 or supplementary Form 1A, as the case may be, to be submitted to the concerned regulatory authority. Form 1 has various columns which would be incapable of being filled and it will be impracticable, if not impossible, for an applicant to furnish the requisite data supported by appropriate analysis, as contemplated in the various columns of Form 1. Still further, the requirement on the part of the Project Proponent would be to have a complete EIA report on the basis of ToR which again is relatable to the application (Form 1) submitted by the Project Proponent. The authorities are neither required under any law nor under any memorandum of practice to conduct any inspection to verify the contents of the application or the physical situation existing on the site. The averments in the application are normally taken to be correct. It is evident from the record before us that Project Proponents have violated the law and because of their intentional violation and illegal acts of the private Respondents, compliance to the provisions of Notification of the 2006, has been rendered impracticable. The provisions of Para 8(i) to 8(iii) would come into play only when an Applicant complies with his statutory obligations and satisfies the essential requirements of this provision strictly. Indisputably these private Respondents have not done so. Until and unless a complete, comprehensive application in accordance with Form 1 and supplementary Form 1A as per Appendix I and II of the Notification of 2006 respectively, complete in all respects, is submitted, nothing contained in these provisions would come into play much less than it would enable the Project Proponents to claim any advantage or benefit on the plea of deemed fiction.

100. There is a definite process required to be followed, i.e., Screening, Scoping and Appraisal, in addition to Public Consultation, which would lead to passing of an order granting or refusing Environmental Clearance in terms of the Notification of 2006, in cases where SEAC has recommended grant or refusal of Environmental Clearance. The matter then has to be placed before the regulatory authority, i.e. SEIAA, which is empowered to alter such recommendation of SEAC, agree with the same or take completely contra view. However, where it proposes to disagree with the recommendations of SEAC, the SEAC would be required to give its views within 60 days from the date when the file was returned to it by SEIAA for reconsideration and intimation would also be given to the Project Proponent before it takes the final view. It is only when the requirements of Para 8(i) and (ii) have been complied with that any 'deeming fiction' in terms of Para 8(iii) can come into play. After the view of SEAC is considered by the regulatory authority, then it would convey its decision within next 30 days to the Project Proponent. It is only if the decision of the regulatory authority is not intimated that the Project Proponent may proceed as if the Environmental Clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the EAC or the SEAC as the case may be. The word 'deemed' has to be construed differently with reference to the provisions of the Act where it is so used. When a statute enacts that something shall be deemed to have been done, which in fact and in reality was not done, the court is entitled and in fact bound to ascertain for what purposes and between what persons such statutory fiction is to be resorted to and full effect must then be given to the statutory fiction and it should be carried to its logical conclusion. It has been time and again emphasized in various judgments of various courts, including that of the Supreme Court, that the Court has to ascertain the purpose of the legal fiction, as the term 'deemed' has been used for manifold purposes (Refer: *The State of Bombay* v. *Pandurang Vinayak Chaphalkar*, AIR 1953 SC 244 and *B.B. Chibber* v. *Anand Lok Cooperative GRP Housing Society Ltd.*, AIR 2001 Delhi 348). These Principles were also reiterated by the Supreme Court in the case of *Aneeta Hada* v. *Godfather Travels and Tours Pvt. Ltd.*, (2012) 5 SCC 661, where the Court held as under:

"29. In *The Bengal Immunity Company Ltd.* v. *State of Bihar*, AIR 1955 SC 661, the

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majority in the Constitution Bench have opined that legal fictions are created only for some definite purpose."

101. 'Deeming fiction' as an established concept of law, has to be construed strictly and completely according to the facts and circumstances of a case. The dimension of its application would depend upon the language of the provisions where 'deeming fiction' is contained, its purpose and the object sought to be achieved under those provisions and the attendant circumstances of a particular case. It is neither possible nor permissible to prescribe a strait-jacket formula for applicability of this fiction in law. Upon a bare reading of Para 8(i) of the Notification 2006, it is evident that it does not contain any 'deeming fiction'. On the contrary, it only prescribes a time period within which the application for grant of Environmental Clearance should be decided and order is to be communicated to the Project Proponent. This clause does not provide for any consequences if the said decision was not taken within the prescribed time.

102. Para 8(i) provides that the regulatory authority has to convey its decision to the Applicant within 45 days of the receipt of the recommendation of the EAC or SEAC, as the case may be, or convey its decision within 105 days of the receipt of the final Environment Impact Assessment report. In case where Environment Impact Assessment is not required, then, within 105 days of the receipt of the *complete application with requisite document* (emphasis supplied). Para 8(ii) further provides that the regulatory authority shall normally accept the recommendation of the EAC or SEAC but wherever it decides to disagree with such recommendations, regulatory authority shall request reconsideration by the EAC or SEAC as the case may be, within 45 days of the receipt of the recommendations made to it, along with reason for its disagreement. Such intimation of decision is also to be conveyed to the Applicant.

103. EAC or SEAC as the case may be, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of 60 days. Whereupon, the regulatory authority, after considering the view as furnished by the EAC or SEAC as the case may be, should take its decision, which shall be final and which would be conveyed to the Applicant within the next 30 days. In other words this entire exercise has to be completed within 135 days. Both these Paras i.e. 8(i) and 8 (ii) do not provide for any consequences of default. It is Para 8(iii) of the Notification of 2006, which provides for a kind of deeming fiction. In terms of this Para, if the decision of the regulatory authority is not communicated to the Applicant within the period specified in Para 8(i) & (ii), the Applicant may proceed as if the Environmental Clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the EAC or SEAC as the case may be. For the provision of Para 8(iii) to become effective the following conditions are required to be satisfied:—

(1) The application submitted by the Applicant to the SEIAA or the MoEF as the case may be, should be complete in all respects along with requisite documents.

(2) All the requisite proceedings contemplated under the Notification of 2006 must be completed, i.e. preparation of Terms of Reference (ToR) and submission of final EIA report.

(3) There should be unambiguous recommendation by the SEAC or EAC, for granting or refusing to grant the Environmental Clearance. After submission of the final EIA report (wherever required) and upon completing the procedure prescribed under Clause 8(ii), the matter should remain pending and the Applicant uninformed of the order, for the period of 105 days or 135 days, as the case may be.

104. It is only thereafter that the deeming fiction contained in Para 8(iii) can operate, but even then the clear mandate of the Legislature is that the Environmental

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Clearance to a Project should not be deemed to have been granted to the Project Proponent. It will only be the recommendation of the EAC or SEAC that would enable the Applicant to proceed with his project in terms of the said recommendations. The limited operation of the deeming fiction under Para 8, is only the final recommendation of the EAC or the SEAC, as the case may be, that would operate by fiction of law as the order of the regulatory authority. It is because of the default on the part of the regulatory authority to pass the final order that results in invoking the principle of 'deeming fiction' as contemplated under Para 8(iii) of the Notification of 2006.

105. The Project Proponent has to mandatorily comply with the requirements of Para 8(i) and 8(ii) strictly. The principle of substantial compliance and/or inability on the part of the Applicant to file an application, complete in all respects, would not be a relevant consideration for invoking deeming fiction under Para 8(iii) of the 2006 Notification. Like in economics, other things must remain the same for application of any principle of economics. Similarly, filling up details of Form-A completely and accurately is as essential before consideration of an application for grant of Environmental Clearance.

106. Now, let us examine whether any of the three Project Proponents, claiming advantage of the principle of 'deeming fiction' have satisfied the above stated requirements of law or not. It must be noticed here that any Applicant who seeks benefit under the law of deeming fiction has to satisfy the twin requirements of firstly doing the acts/activities which are lawful and secondly, he must comply with requirements of the provisions *stricto sensu*. In the present case all the three Project Proponents i.e. Respondent nos. 7, 8 & 9 have commenced construction activity of their Projects without even submitting the application for grant of Environmental Clearance. The Project Proponents have obviously not submitted an application complete in all respects and with requisite documents. We have already noticed that there are large numbers of columns in Form 1 and supplementary Form 1A under the Notification of 2006, which these Project Proponents have not and in fact could not have filled appropriately in the corresponding forms to be accompanied with the application for Environmental Clearance. These columns require them to submit data and analysis reports, which it was not possible for them to provide, having already raised huge constructions. Furthermore, all the three Project Proponents were sent different letters from SEIAA, asking them for additional documents and information in respect of their projects which their respective applications lacked. In this regard reference could be made to letters dated 22nd August, 2013, 28th April, 2014, 20th June, 2014, 19th May, 2014 and 17th June, 2014 to SPR & RG, letters dated 21st June, 2013, 08th August, 2013 and 10th September, 2013 to M/s Dugar Housing and letter dated 21st May, 2013 to SAS Realtors Ltd. In the letters addressed by SEIAA to these Project Proponents acknowledging receipt of their application for Environmental Clearance, it had clearly indicated that this does not vest any right in the Project Proponent and they should not start or carry on any construction activity until and unless Environmental Clearance was granted to them. The Project Proponents were permitted only to clear the site and raise temporary structures for accommodation of labour along with basic facilities, as temporary arrangements. The Project Proponents violated the requirements of law and the undertaking given by them to SEIAA at the time of submission of application for Environmental Clearance. The Notification of 2006 contemplates prior Environmental Clearance to any structure or project activity. The Project Proponents having violated the law cannot be permitted to take advantage of their own wrong under the shelter of 'deeming fiction'. The conduct of these Project Proponents and serious violation of law committed by them *inter alia* disables them from claiming the benefit of 'deeming fiction' under Para 8 of the Notification of 2006 in the facts and circumstances of the case. Furthermore, it is not the case of anybody before us that SEAC had recommended the grant of Environmental Clearance to

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Project Proponents unconditionally. The recommendation was conditional and it was not grant of Environmental Clearance in fact and in substance. The Project Proponent was to first satisfy the regulatory authority that it had fulfilled the conditions that had been imposed in the recommendation of the concerned authority. In other words, it was not a case of clear recommendation for grant of Environmental Clearance which could have become operative upon expiry of the prescribed period. In the case of *SPR & RG Construction Private Limited* (Respondent No. 7) the SEAC in its meeting on 30th September, 2013 decided to recommend proposal only for grant of standard ToR and to conduct EIA study in addition to compliance to the conditions which were to be incorporated in the ToR. One out of them related to NOC from Chief Controller of Explosives, adequacy feasibility and functionality of STP to be verified by the Tamil Nadu Pollution Control Board.

However, in its meeting on 17th June, 2014, the proposal of Respondent no. 7 was recommended for issue of Environmental Clearance, but only after considering the conditions imposed on the project. These conditions were as follows:—

1. "Project land area excluding landscape area not less than 15% shall be earmarked for green belt development.
2. The adequacy and feasibility of the STP proposed for the project shall be verified by Tamil Nadu Pollution Control Board as per the ToR condition.
3. Design of the rain water harvesting facility shall be done based on soil lithology study and the same shall be consulted with any Academic Institution.
4. Plan of solid waste management including disposal, in tie-up with local NGO shall be furnished.
5. Revised Budget Allocation (0.5% of the project outlay) & detailed work plan for the CSR Activities shall be furnished in an AFFIDAVIT Form."

107. There is nothing on record to show and is not even the case of the Project Proponent that the above conditions have been complied with and the Authorities referred herein further confirm noncompliance thereto. Thus, there was no unambiguous and unequivocal grant of Environmental Clearance recommendation to the Regulatory Authority by the SEAC.

From the above discussion it is clear that none of the Project Proponents satisfied the basic essentials or requirements of Para 8 of the Notification of 2006. Non-compliance to law, intentional violation of law and further, the illegal conduct of the Project Proponent would disentitle them from getting any relief under Para 8 of the Notification of 2006.

Discussion on Issue No. 5

5. Whether the provisions of Notification of 2006 are mandatory or directory and consequences thereof?

108. Years back, Lord Campbell in *Liverpool Borough Bank* v. *Turner*, (1861) 30 LJ Ch 379 said, "no universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be considered". These observations have stood the tests of time and even today the process of judicial interpretation has not favoured the enunciation of any universal rule or strait jacket formula. This question has to be decided with reference to the intent of the Legislature, and not the language in which the intention is clothed. In some cases, the courts have also taken the view that such intent can be derived from the nature and design of the statute and the consequences which would flow from construing it in the one way or the other. It will depend upon the findings of the court on these aspects that would finally determine whether the provision is mandatory or directory. The use of the words 'as nearly as may be' in contrast to the words 'at least' will *prima facie*

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indicate a directory requirement, negative words indicate a mandatory requirement, 'may' indicate a directory requirement and 'shall' a mandatory requirement. Illustratively it could be explained by taking an example of a set of service rules which provide that adverse remarks shall be communicated to the civil servant concerned, ordinarily within seven months. The object of communicating the adverse remarks is to give an opportunity to the civil servant to improve his performance to make up the deficiency noticed in his work and to give him an opportunity to represent against the remarks, in case he disputes them, to the reviewing authority. In light of this object and having regard to the part adverse remarks play in the service career, the rules on a proper construction will require: (i) communication of the remarks to the civil servant concerned; (ii) communication within a reasonable time; and (iii) communication ordinarily within seven months. The first two requirements will be construed as mandatory and non-compliance of either of them will make the remarks as also any adverse action on their basis, invalid. The third requirement will be treated as directory and its non-compliance alone will not make the remarks invalid if the first two requirements are satisfied [Refer: Principles of Statutory Interpretation by Justice G.P. Singh, 13th Edition (2012)].

In either of these requirements, discretion or discretionary power hardly has a role to play. Even if a provision is being construed as directory, it has to be remembered that it leaves the donee of the powers, free to use or not to use it, at his discretion. A mandatory provision eliminates the element of discretion. A mandatory provision requires complete compliance. Noncompliance or disobedience thereto may render action invalid or nullity. In contradistinction thereto failure to obey directory provision or its disobedience would not render the action a nullity. Another way to examine this distinction is that even noncompliance is capable of being waived and consequences thereof. The Hon'ble Supreme Court in the case of *State of U.P.* v. *Baburam Upadhyay*, AIR 1961 SC 751, culled out the criteria for deciding *inter alia* whether a statutory provision is to be taken as mandatory or directory. They are:—

(a) "the nature and the design of the statute, and

(b) the consequences which follow from construing it the one way or the other,

(c) the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions,

(d) the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and,

(e) above all, whether the object of the legislation will be defeated or furthered."

109. However, subsequently, the Hon'ble Supreme Court in the case of *May George* v. *Special Tahsildar*, (2010) 13 SCC 98, expanded these principles and added the following:

(a) While determining whether a provision is mandatory or directory, somewhat on similar lines as afore-noticed, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve;

(b) To find out the intent of the legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such provision;

(c) Whether the provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;

(d) As a factor to determine legislative intent, the court may also consider, inter alia, the nature and design of the statute and the consequences which would flow from construing it, one way or the other;

(e) It is also permissible to examine the impact of other provisions in the same

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statute and the consequences of non-compliance of such provisions;

(f) Physiology of the provisions is not by itself a determinative factor. The use of the words 'shall' or 'may', respectively would ordinarily indicate imperative or directory character, but not always.

(g) The test to be applied is whether non-compliance with the provision would render the entire proceedings invalid or not.

(h) The Court has to give due weight age to whether the interpretation intended to be given by the Court would further the purpose of law or if this purpose could be defeated by terming it mandatory or otherwise.

110. Sutherland *Statutory Construction*, Rev. Third Edn., 1943 (pg 640), mentions that "no statutory provisions are intended by the legislature to be disregarded". Therefore, each word in a statute has a referral meaning and it must be given its true interpretation and import.

111. In terms of interpretation of statutes, question whether a particular provision is mandatory or directory and the distinction between the two arises when a statute uses a language which imposes a duty and where a breach of that requirement renders an action void. In general parlance, in case of mandatory provisions, the act done in breach of the duty imposed is void, while in case of directory provision act done does not become void (although some other consequences may follow). *[Rani Drigraj Kuer* v. *Raja Amar Krishna Narain Singh*, AIR 1960 SC 444].

112. In an often quoted passage LORD CAMPBELL said, "no universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered [*Craies on Statute Law*, 5th edition, at p. 242 and quoted in *Liverpool Borough Bank* v. *Turner*, (1861) 30 LJ Ch 379]. This view came to be approved by the Supreme Court in the case of *State of UP* v. *Manbodhan Lal Shrivastava*, AIR 1957 SC 912, wherein the court quoted Crawford on 'Statutory Construction' -art. 261 at p. 516, "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other...." Maxwell on Interpretation of Statutes quotes Lord Penzance in the case of *Howard* v. *Bodington*, (1877) 2 P.D. 203 (211) - "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look into the subject matter; consider the importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

113. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory whereas if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of the enactment, the same will be construed as directory [*Delhi Airtech Services Pvt. Ltd.* v. *State of U.P.*, (2011) 9 SCC 354].

114. In Re: Presidential Poll case [AIR 1974 SC 1682], the Seven Judge Bench of the Hon'ble Supreme Court observed:

"13. In determining the question whether a provision is mandatory or directory, the subject matter, the importance of the provision, the relation of that provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory. It is the duty of the courts to get at the real intention of the legislature by carefully attending the whole scope of the provision to be

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construed. The key to the opening of every law is the reason and spirit of the law, it is the *animus impotentia*, the intention of the law maker expressed in the law itself, taken as a whole."

115. In the case of welfare statutes, the general rule of interpretation is that provisions should get that interpretation which would achieve the object of the enactment. Such statutes are to receive liberal construction but the same could not to be extended beyond the statutory scheme [*Ponni Sugars and Chemicals Ltd.* v. *Cauvery Sugar and Chemicals Ltd.*, 2001 (2) MLJ 832; *Maruti Udyog Ltd.* v. *Ram Lal*, (2005) 2 SCC 638; *National Insurance Company Ltd.* v. *Arumugham*, 2006 (2) MLJ 564]. It is also a settled law that interpretation of a statute depends upon the text and the context thereof and the object with which the statute was made [*Pratap Singh* v. *State of Jharkhand*, (2005) 3 SCC 551].

116. In light of the above stated principles, now, we may examine the provisions of the Act of 1986 and the Notification of 2006. The Act of 1986 has been enacted for the protection and improvement of environment and the prevention of hazard to human beings, other living creatures, plants and property. In light of the fact that the Article 21 of the Constitution of India includes the right to decent and clean environment, any of the provisions of the Act of 1986, in relation thereof, are a mandate of the Legislature. They do not provide discretion to a person to obey or not to obey the law and does not in any way permit dilution of the prescribed standards which are required to be adhered to by the person, who wishes to carry on any project or activity of any nature in the notified areas. The Notification of 2006 has been enacted to carry on the object and purpose of Act of 1986 effectively. The Notification as already noticed, applies not only to new projects but also to projects which propose to expand or even modernize the existing projects and are required to strictly comply with the environment standards prescribed under the Act of 1986 and the notification of 2006. We have also noticed above that the expression 'prior' appears as many as 40 times in the Notification of 2006. The expression 'shall' appears in all the relevant clauses where the Project Proponent is required to make the application and follow the prescribed procedure to obtain the Environmental Clearance prior to the commencement of any constructions work or preparation of land, except for securing the land.

117. The Notification of 2006 not only mandates an Applicant or Project Proponent to strictly comply with the provisions, but even requires the authorities to perform their prescribed functions and thus comply with the provisions within the time stipulated under those paragraphs of the Notification of 2006. It furthermore provides the consequences of non-compliance by the authorities within the period statutorily prescribed. In terms of Para 3, it is not only the consequences of failure to comply on the part of the authorities that are prescribed, but it even specifies the rights that accrue to the Project Proponent. These private rights are definite in character and are of serious consequences. The required compliance has been stated with exactitude in the Notification of 2006, which provides a schedule stating category-wise those projects which require an Environmental Clearance and even the Form which a Project Proponent is required to furnish with complete details at the time of applying for Environmental Clearance.

118. If the application is not in Form 1 and does not provide complete details and documentation in support thereof in terms of the Schedule to the Notification of 2006, the authorities have the right to decline to entertain such an application.

119. Sections 3 and 5 of the Act of 1986 empowers the Central Government to take measures to protect and improve the environment and to issue directions of very wide magnitude, including directions in relation to closure, prohibition or regulation of any industry, operation or process. It can in all event also direct disconnection of electricity

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or water supply of such industry or operation or process. In exercise of its powers under Sections 6 and 25 of the 1986 Act, the Central Government has framed the Rules of 1986. The Notification of 2006 has been issued in terms of Rule 3(2) of the Act of 1986 as well as Rule 5(3) of the Rules of 1986. In other words, these later enactments are integral part of the Act of 1986, their character being statutory and language of these provisions makes it obligatory upon every Project Proponent to obtain Environmental Clearance and comply with other environmental laws without default. Section 15 of the Act of 1986 provides penalty for contravention of the provisions of the Act of 1986, the Rules, orders and the directions passed thereunder. Interestingly, Section 15 of the Act of 1986 makes both noncompliance and contravention of the provisions of these enactments punishable. In other words, every default or violation and even noncompliance of the provisions has been made punishable. This necessarily implies the mandatory character of these provisions and statutory obligation on the part of the Project Proponent to comply with them.

120. We are unable to find any merit in the contention raised on behalf of the Project Proponent that the provisions of the Notification of 2006 are procedural. In our considered opinion, the provisions of this enactment are substantive and mandatory. These provisions do not admit of any substantial non-compliance or vest discretion with the authorities in relation to procedure prescribed under the Notification. They are couched in a language that is purely mandatory in character and is founded on the Precautionary Principle which is one of the statutory principles to be applied by the Tribunal in terms of Section 20 of the Act of 2010. If compliance is not made to the provisions of these enactments, it will totally frustrate the Precautionary Principle and thus the precautionary principle can adversely impact the environment, protection of which is the sole object of the Act of 1986.

Thus, in view of the above discussion, it is clear that the requirements of the Notification of 2006 are mandatory in character. Their default or non-compliance is liable to be punished. The intention of the Legislature is to protect the environment for which words of specific nature like ‘prior’ and ‘shall’ have been used. The impact of non-compliance of these provisions would be of serious consequence, not only on environment but upon the society at large. All these enactments are unambiguous and framed in no uncertain terms and this conveys that projects commenced without obtaining Environmental Clearance would invite the penalty postulated under the Act of 1986.

Thus, we have no hesitation in holding that the provisions of Notification 2006 are mandatory and not procedural *simplicitor*.

Discussion on Issue No. 6

6. What is the status of structures raised by and conduct of the private Respondents and its effect upon the statutory provisions relating to environment?

121. The Applicants have contended that all the Project Proponents, (private Respondents) have violated the law and their acts before the statutory authorities and even before the Tribunal are full of falsehood i.e. *falsus in uno, falsus in omnibus*. It is their case that the private Respondents under the garb of a *bona fide* belief that Environmental Clearance is to be obtained before obtaining the Completion Certificate, have in fact, camouflaged compliance to the entire requirements of environmental laws. They, in fact, have frustrated the very object and purpose of the Act of 1986, Rules of 1986 and the Notification of 2006. These Respondents, because of their illegal and unauthorised actions and activities undoubtedly and in fact undisputedly, have commenced construction activities and even completed substantial section of their projects, even prior to submitting their application seeking Environmental Clearance to SEIAA. What was required was that all these private Respondents must have first

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obtained Environmental Clearance prior to commencement of any construction activity at the site in question. As already noticed, the Notification of 2006 contemplates submission of various analysis data at a stage prior to commencement of any construction or activity of the project for which application is moved. When, these Respondents submitted applications for grant of Environmental Clearance, the competent authorities while acknowledging the receipt thereof had clearly commanded them not to continue with any construction activity unless the Environmental Clearance was granted. They had also called upon them to submit an undertaking to the respective authorities that they would not carry on any construction activity, which in fact they did. Despite, the above instructions, they continued the construction activity in an illegal and unauthorised way. The continuance of construction activity which was commenced thereto was itself illegal, constructed in totally unauthorised manner and was in complete violation of law. They failed to comply with the law at the threshold and violated the rules, the directions issued by the authorities at subsequent stages and their own undertakings. Consequently, they have not only rendered themselves liable for the penal action as contemplated under Section 15 of the Act of 1986 but even the constructions raised by them are in total violation of the laws in force. Now, we may look at the stages of construction and the apparent violation by different Project Proponents and their present status. In the case of Mr. Y. Pondurai (Respondent No. 3), the construction of the project started without even applying for grant of Environmental Clearance. The Project Proponent started the work of construction in full swing merely after getting the approval from the Government Housing and Urban Development Department of the State of Tamil Nadu in the year 2013. This Project Proponent submitted an application to SEIAA only on 21st February, 2014 and in the meanwhile continued with construction of the project despite a clear direction from the authorities as well as his own undertaking that he would not carry out any construction till the grant of Environmental Clearance. A Letter of Apology was also submitted by the Project Proponent on 21st March, 2014 and even then the Project Proponent continued with construction and raised substantial construction. A Show Cause Notice was issued to the Project Proponent by the TNPCB on 12th July, 2014 for carrying out construction work without obtaining Environmental Clearance. Again on 26th November, 2014, SEIAA informed Project Proponent not to continue the construction until Environment Clearance is obtained. Despite this, upon inspection of the site by TNPCB on 2nd April, 2015, it was noticed that construction work of 9 floors was over and interior works is under progress. For its repeated violation, TNPCB issued a Stop Work Notice to Project Proponent on 4th April, 2015 as construction activities were continuing without obtaining EC. The Project Proponent had again assured the authorities that he was not carrying on any construction activity. However, when on 14th April, 2015, SEIAA inspected the work site, it was noticed that civil works of all blocks was completed and no work was being carried out at the time of inspection. This project is a commercial complex consisting construction of a main block - 2 basement + Ground floor + 10 floors; Service Block - Basement - Ground Floor + 2 floors and MLCP Block - 2 basement + Ground Floor + 4 Floors. On careful analysis of above two inspection reports it becomes clear that one floor was constructed by Project Proponent even after 2nd April, 2015, i.e. even after furnishing the above undertaking and issuance of Stop Work Notice. The photographs that were filed by the Project Proponent at the time of submission of applications itself show that the construction work was not completed and it was only in progress, in fact, large construction work remained to be completed. However, when the site in question was inspected by officers of TNPCB and SEIAA on 2nd April, 2015, it came to notice that not only the entire construction work had been completed but even the finishing work of the building has also been completed. Furthermore, comparing the photographs taken on both these different occasions clearly demonstrate that the Project Proponent has

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raised the construction by violating the law, his own undertaking, apology letter and direction of the authorities concerned and have even completed the entire construction of the project. This construction is clearly illegal and unauthorised in the eyes of law. Cases of all the other Respondents are also on the similar lines. We have discussed them in detail in paragraphs 14 to 43 of the Judgment. As such, there is no need for repeating those facts.

122. What we need to notice here is that the compliance to the laws in force, submission of applications for grant of Environmental Clearance complete in all respects with necessary documents are the conditions precedent of consideration of such application by the competent authorities. It is imperative that the activity for which the Environmental Clearance is sought must be an activity started completely in consonance with law. Even the approval of the drawings and principal approval of the construction of the project from CMDA was subject to compliance with the laws in force. We do not agree to the argument propounded by the Project Proponents that the grant of principal approval *ipso facto* had the effect of granting other permissions to start construction without complying with other laws and permissions from the other authorities, particularly in face of the fact that a clause of this principal approval required the Project Proponent to obtain Environmental Clearance. All these Project Proponents are deemed to be in knowledge of the laws relating to construction of such projects i.e. Act of 1986, Rules of 1986 and Notification of 2006. The Project Proponents are persons in the business of building projects, having huge means and perspicacity. They cannot be even expected to take up the plea that they were not aware of the provisions of environmental laws. It is in fact unfortunate that these Project Proponents have not only violated the laws and their own undertaking but in that process even made other innocent people invest their money into the project, being fully aware that the construction raised is completely illegal and unauthorised. The Constructions have been raised in complete and flagrant violation of law. This renders them liable to be prosecuted against in terms of Section 15 of the Act of 1986. The authorities have taken action against some of them, but that does not in any way by necessary implication or otherwise have the effect of regularising the construction that has been raised illegally, in an unauthorised manner and in violation of the principles of law. We must notice that these constructions are bound to have adverse effect on environment, ecology and biodiversity in the areas where they are located. Some of the environmental degradation and deterioration would be irreversible while other would be correctable to some extent either by demolition or by taking curative measures which we will hereafter discuss. Their illegal acts and unacceptable conduct has even rendered compliance to the provisions of the Notification of 2006 impracticable if not impossible.

123. Another plea advanced on behalf of the Applicants before the Tribunal is that the Office Memoranda are clearly in derogation and not in support of the substantive law, the attempt to condone violation would lead to compounding of offences and permitting what provisions of Notification of 2006 and Act of 1986 restricts. The legislature in its wisdom has statutorily introduced the Precautionary Principle in terms of section 20 of the NGT Act, effect of which would stand wiped out in substance by these Office Memoranda. The contention of the Applicants is that the Office Memoranda are neither remedial nor solution to a problem. It is not one time settlement for the category of the persons who might have under some bonafide impression or mistake commenced the activity of the project without obtaining environmental clearance. Office Memoranda in their operation and effect are continuous and do not propose to cover a given situation. The Office Memoranda were issued right from the year 2010 and were amended from time to time, lastly in 2013. The Office Memorandum of 27th June, 2013 *ex facie* is a law in itself as it operates as the procedure for all future times giving substantive rights to parties and runs contra

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to the statutory provision and procedure established under substantive law. On the plain reading of the Notification of 2006, it is manifestly clear that it is the procedure prescribed therein besides being mandatory in character is also *sui-generis*. Once the law prescribes things to be done in a particular way then they must be done in that way alone or not at all. In *Barium Chemicals Ltd.* v. *Company Law Board*, AIR 1967 SC 295, the Hon'ble Supreme Court held "As a general rule, if the, statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited."

124. From such matters or procedure to be performed differently the law must specifically contemplate that it is impermissible to draw such inferences by implication. Nothing has been brought to our notice neither in the Act of 1986, Rules of 1986 and the Notification of 2006 which in express terms or even by necessary implications permits the mandated provisions to be waived and in any case in the manner that would not prejudicially effect the environment and ecology.

125. On behalf of some of the Project Proponents, another argument is advanced to contend that the various authorities understood or interpreted the law to suggest that obtaining of Environmental Clearance prior commencement of project activity was not a condition precedent. The planning permission granted to the Project Proponents also contemplated that Environmental Clearance should be obtained by these Respondents prior to issuance of completion certificate. These Office Memoranda are therefore by themselves and on interpretation of law with the aid of doctrine of *contemporanea expositio* would operate in favour of the Project Proponents for continuing default, if any, on their part. The Project Proponents have relied upon the judgment of the Hon'ble Supreme Court in *K.P. Vargheese* v. *Income Tax Officer, Ernakulam*, (1981) 4 SCC 173 in support of their contentions.

126. We are unable to find any merit in these submissions. The doctrine means that a construction which has been long adopted and publically acted upon will not be lightly disturbed by the courts.

127. The rationale behind the same is that judges who lived at/or about that time when the statutes were made, were best able to judge intentions of the makers at that time but where the wording of the statutes are plain, then its *contemporanea* interpretation cannot override the plain meaning of the words used in the statutes. The Courts do not apply this doctrine where the statute is comparatively modern. The Doctrine historically is founded on the principles that have been evolved by interpretation of ancient statutes or other documents that it has received from the *contemporanea* authority. The meaning publically given by the *contemporanea* or local usage is presumed to be true one even where the language has terminological or popularly a different meaning. It is obvious that the language of the statues must be understood in the sense in which it was understood when it was passed. (Ref: *Interpretation of Statutes* by P.M. Bakshi, 2013 Reprint edition and *Maxwell on Interpretation of Statues* 2013, 19th Impression)

128. *Contemporanea expositio as* a rule for interpretation, cannot aid where there is no question of interpretation or giving a meaning to the language of a provision is concerned. It cannot be called in aid where an Office Memorandum creates a new procedure or parallel law in conflict with the substantive law. This Doctrine applies only to the construction of ambiguous language in the other statutes where one thing to take recourse to the practice and meaning given to the provisions generally and/or very particularly by the temporary authorities. In the case of *K.P. Verghese* v. *Income Tax Officer, Ernakulam* (supra), the Hon'ble Supreme Court held that "it will settle that meaning prescribed by the authorities showing the notification is good guide to *Contemparian expositio* of the position of law." For application of this doctrine the

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meaning of statute has to be in doubt. If the language of the provisions admit of no ambiguity or doubt, the question of resorting to this doctrine would hardly arise. In our considered view, the Notification of 2006, does not admit of any ambiguity or doubt. We have already in some elaboration dealt with the provisions of the notification of 2006 that clearly contemplates obtaining of prior Environmental Clearance before commencement of any activity of the project. The Office Memoranda have the effect of wiping out the 40-times used expression, 'prior Environmental Clearance' in the Notification of 2006 and the very purpose of this Notification to protect the environment. The contention of the Project Proponents that impugned Orders are clarificatory in providing what the Notification of 2006 lacks or does not provide for and that the intention behind the issuance of Office Memoranda, is to remove the ambiguity or to provide resolution to the difficulties faced in implementing the Notification of 2006, does not have any merit, as even the stand of all the authorities i.e. MoEF, SEIAA and Pollution Control Board is that prior grant of Environmental Clearance before commencement of the project activity is mandated by the Notification. Particularly, author of the Office Memoranda in its affidavit has averred '*it is true that neither the act nor the EIA Notification, 2006 grant any relaxation on the requirements of the obtaining of prior Environmental Clearance before any construction work is commenced or any project scheduled therein*.....'. This is also completely substantiated by the opening language of the impugned Office Memoranda where it is said that it was obligatory upon the Project Proponents to obtain prior Environmental Clearance. SEIAA had categorically proscribed the Project Proponents from carrying on any construction activity till Environmental Clearance was granted and had asked them not to repeat the violation. This being the stand of the authorities, the impugned Office Memoranda do not clarify any linguistic or interpreted doubt in the notification 2006 and Act of 1986 but establish a new procedure contrary to the substantive law. It is abundantly clear that principle of *contemporanea expositio* cannot be said to have universal application, each case must be considered on its own facts and executive instruction is entitled to respect but it is not beyond the pale of judicial review. One of the examples cited more often than not is that rules made under the statutes are legitimate aid to the construction of statutes as *contemporanea expositio*. Such Office Memoranda which create a substantive right and obligation by themselves which patently are contrary to the substantive law cannot even be otherwise legitimized with the aid of this doctrine. The fundamental principle of construction is that rules made or directions issued under the statutes must be treated as exactly as if they were in the Act and are of the same effect as it contained in the Act, they cannot be contrary to the fundamental provisions of a statutory notification. Another settled norm is that maxim and precedents are not to be applied mechanically and they are of assistance only in so far as they furnish guidance by compendiously summing up principles based on the rules of common sense and logic (Ref: *Rohit Pulp and Paper Mills Ltd.* v. *Collector of Central Excise, Baroda*, AIR 1991 SC 754).

In our considered opinion the Project Proponents cannot derive any benefit or advance its case with reference to doctrine of *contemporanea expositio*.

129. Equally, without merit is the other limb of the contention raised on behalf of the Project Proponents. The authorities issuing the planning permission to the Project Proponents had required the Project Proponents to obtain environmental clearance prior to the grant of completion certificate by the said authority. With reference to this term, the contention is that the Project Proponents were under a *bonafide* belief that they could start the construction without obtaining the Environmental Clearance which they were expected to obtain prior to grant of completion certificate only. This submission is fallacious at the face of it. Every person is expected to know the law. Ignorance of law cannot be a plea. The Project Proponents are not persons who can be presumed to be in ignorant of law, they are into this business for years and the

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Notification of 2006 came into the existence in the year 2006. All the projects in question commenced in the year 2010 and subsequent thereto. The mandatory character of the notification of 2006 obliged the Project Proponents of any project or activity to obtain prior Environmental Clearance before starting construction. They not only failed to do so but even started huge construction and moved the applications for grant of Environmental Clearance at much subsequent stage. The terms and conditions of the planning permissions required the Project Proponents to comply with all the requirements of law including obtaining of Environmental Clearance for their respective projects. The terms and conditions of the planning permission clearly postulated that they would not even be granted completion certificate if they had not obtained the Environmental Clearance. Reading of the clause of the planning permission by the Project Proponents to take advantage of it is blatantly contrary to the very purpose of the said condition. The terms and conditions of the planning permissions are firstly to be read together, and secondly no document of this nature can be read to construe that it intends to cause waiver of any other requirement of law. All laws are to operate in their respective fields for obtaining the object of rule of law and not in favour of avoidance or dis-obedience to other laws in force. Therefore, we find no merit even in this submission of the Project Proponents.

Discussion on Issue No. 7:

7. The environmental impacts of the projects in question upon environment, ecology and biodiversity.

130. We have already held that comprehensive and definite compliance to the provisions of the Notification of 2006 have been made redundant by the unauthorised actions of the private Respondents as well as by the impugned Office Memoranda issued by the MoEF. Collection of certain data, scientific analysis, pre-construction environmental impacts of the project and other information which are pre-requisite for the submission of the application in Form 1 or supplementary Form I-A of the Appendix II under the Notification of 2006, can neither be collected nor be provided as the projects have already come up substantially or otherwise have completed construction work extensively. Not only the environmental impacts of the projects cannot be examined fairly but even the matters like site selection and public hearing cannot be deliberated upon, thus frustrating the very object of public hearing. The provisions of the Act of 1986, Rules of 1986 and the Notification of 2006 are statutory documents having the force of law. Providing a mechanism in exercise of administrative or executive power in complete deviation or disregard to the law in force, would be contrary to the basic rule of law. Besides it being in derogation to the environmental jurisprudence, it would also have adverse impacts upon environment and ecology of the area. There is greater need for compliance to the statutory provisions. Such compliance would be essential in the interest of the environment. Therefore, we have to examine the various aspects of such non-compliance law and if there can be any tolerance to the breach of the statutory provisions. If so, its extent and impacts on matters of technical and environmental significance that would flow from such breaches or defaults. Let us now examine the requirements of law with reference to environment.

131. In recent past, building construction activities in our country have been carried out without much attention to environmental issues and this has caused tremendous pressure on various finite natural resources. The green cover, water bodies and ground water resources have been forced to give way to the rapid construction activities. Modern buildings generally have high levels of energy consumption because of requirements of air-conditioning and lighting in addition to water consumption. In this scenario, it is necessary to critically assess the utilization of natural resources in these activities.

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132. An application seeking prior Environmental Clearance for building construction project is required to be made in the prescribed Form 1 and supplementary Form 1A, after the identification of prospective site for the project to which the application relates, before commencing any construction activity or preparation of land, at the site by the Applicant. The Applicant is required to submit along with the application, in addition to Form 1 and the supplementary Form 1A, a copy of the conceptual plan of the project.

133. Apart from profile of the Project Proponent, name and contact address, implementing organization, organizational chart, project consultants etc., are to be mentioned clearly. After providing details of land (plot/survey numbers, village, tehsil, district, state and area of the land), goal and objectives of the proposed project, significance of the project both at local and regional level, relevance of the project in light of the existing developmental plans of the region are required to be mentioned. Background information and overall scenario of the proposed activity in the Indian context, procedures adopted for selection, criteria for selection of the site for the proposed activity, such as environmental, socio-economic, minimization of impacts, ecological sensitivity, impact of existing activities on the proposed activity, etc. is required to be spelt out. Resources and manpower requirements have to be detailed apart from time frame for project initiation, implementation and completion in following manner:

- Total site area
- Total built up area (provide area details) and total activity area
- Source of water and consumption
- Source of power and requirement
- Connectivity to the city centre, utilities and transportation networks community facilities
- Parking requirements
- Type of building material to be used
- Environmental liability of the site
- Existing structure/type of material - demolition debris, etc. 134. A map of the study area showing 500 meters from the boundary of the project area, delineating the major topographical features such as land use, drainage, location of habitats, major constructions including roads, railways, pipelines, and industries, if any in the area is required to be enclosed. A map covering aerial distance of 15 km from the boundary of the proposed project area delineating environmentally sensitive areas as specified in Form I of the Notification of 2006 is also to be annexed. In the same map, the details of environmentally sensitive areas present within a radial distance of 1 km from the project boundary are to be specifically shown. Land use map of the study area is also required to be furnished.

135. Based on the examination of the relevant details, project specific Terms of Reference (TOR) are provided for the EIA studies. While awarding TOR for EIA studies, the points that are of concern include:

a. Likely alterations to the existing land use of the area;
b. Impact on the geomorphology vis-à-vis land disturbance resulting in soil erosion, subsidence & instability of the area;
c. Impact on the natural drainage systems, including wetlands;
d. Impact of the land use changes occurring due to the proposed project on the runoff characteristics vis-à-vis flooding or water logging of the area
e. Impacts of the proposed project on the ground water vis-à- vis pollution of land & aquifers;

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f. Likely threats to the biodiversity, especially vegetation pattern and displacement of terrestrial and aquatic fauna;

g. Impact on the atmospheric concentration of gases and generation of dust, smoke, odorous fumes or other hazardous gases;

h. Likely impact on the transport system in the area, including the parking space for vehicles;

i. Impact on the noise levels and vibrations in the area;

j. Likely impact on the social structure of local communities, and likely disturbance to sacred sites or other cultural values.

136. It may be kept in mind that, prior to the grant of EC, concept of sustainable development and precautionary principles were the leading factors governing the environmental jurisprudence. The application of these Principles assumes that the impacts of any development on the environment and human health are difficult to predict with certainty, therefore, prudence requires that before embarking on the development project, we explore the possible alternatives to the project. Needless to say that exploring alternatives also includes exploring all the harmful actions which the project may cause, including such damages which may be completely irreversible. Equally important component of these Principles is, to place the burden of proof on the Project Proponents to highlight that the impact of the activity on the environment and the health of the people would be minimal and/or all precautionary measures have been adopted. While exploring alternatives with regard to siting the project and the technology of the project, exploring alternatives also includes "not taking up of the project as one of the alternatives".

137. The very purpose of awarding project specific TOR for EIA studies is that it is expected that the report furnishes balanced and credible information for environmental safeguard apart from other essential environmental studies and most importantly contains the appropriate environmental management plan/s along with budgetary provisions that form integral part of the project cost.

138. This EIA report is subjected to appraisal by the Experts, prior to the grant of Environmental Clearance depending upon the nature and location specificity of the project. TOR assists the EIA consultant, prior to execution of project, to prepare an effective and user friendly report with relevant project specific data, which are easily implementable.

139. A typical EIA report, as per Environmental Impact Assessment Guidance Manual for Building, Construction, Townships and Area Development Project of MoEF, 2010, includes:

1. Description of the project site, geology, topography, climate, transport and connectivity, demographic aspects, socio, cultural and economic aspects, villages, settlements are also to be given. Historical data on climate conditions such as wind pattern, history of cyclones, storm surges, earth quake etc., is also looked into. Detailed layout plan of proposed project development, communication facilities, access/approach roads, landscape, sewage disposal facilities, and waste disposal etc. is also given. Layout plan for proposed development of built up areas with covered construction such as DG Set rooms, Administrative buildings, Utilities such as Main and Stand-by Power, Water supply installations etc. is furnished. Most importantly, requirement of natural resources and their sources are to be detailed out.
2. The environmental impacts of construction and operation are established during the early phases of site selection and planning. Planning, site selection and design form an important stage in the development of these projects and will determine their environmental impact(s). Environmental data to be considered in relation to such development pertaining to (a) land (b) ground water, surface

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water (c) air (d) biological environment (e) noise (f) socio economic environment. The first feature which influences the development of a new project is the existing land use pattern of the neighbourhood of the project, whether the proposed development conforms to the development for that area or not. Study of land use pattern, habitation, cropping pattern, forest cover, environmentally sensitive places etc., provides the first insight to the likely impacts of the project. Geographical latitude and microclimatic factors such as solar access and wind loads also have major impact.

3. Identification of Project activities, including construction phase, which may affect surface water or groundwater have a direct relation to the estimated water intake requirements and identification of the source of water to be used. Description of water availability and sourcing plays a critical role in impact assessment. Baseline water quality from all sources such as ground water or municipal supply or surface water helps in proper assessment.
4. Climatological data, air and noise level pollution similarly plays an important role in assessing the likely environmental impacts and requires anti-pollution measures to be adopted.
5. Baseline information on the flora and fauna of the study area along with a description of the existing terrestrial, wetland and aquatic vegetation determines the environmental sensitivity and the need for environmental protection measures.
6. Details of solid wastes from construction sector can be categorized into two phases i.e. during construction & during operation. Details of the construction or demolition waste, i.e., massive and inert waste; Municipal waste, i.e., biodegradable and recyclable waste and hazardous & e-waste provide steps that are required to be adopted for its management.
7. Main anticipated impacts from building construction, which need to be addressed, are
   - Impact on the natural drainage system and soil erosion.
   - Loss of productive soil and impact on natural drainage pattern.
   - Study of the problem of landslides and assessment of soil erosion potential
   - Impact on air and noise quality during the construction and operation phase - the existing surrounding features of the study area and impact on them from various sources such as machinery, transportation, etc.
   - Impact of construction and operational phases on the surface and ground water on account of the building construction
   - Waste water generation its treatment and utilization
   - Impact of project during construction and operational phases on the biological environment
   - Predicted impact on the communities
   - Impact of the project during construction and operational phases for generation of waste
   - Energy requirements and infrastructure requirements needed for the activity
   - Steps to be taken to integrate the needs of other stakeholders into the location and design of access infrastructure, to reduce and manage overall environmental impacts
8. Another important consideration pertains to requirements of building construction material and technologies to be used. Any project with proper TOR and EIA report would provide details of:
   - Types of materials used in each component part of the building and landscape (envelope, superstructure, openings, roads and surrounding landscape)

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- Plans and sections of buildings showing use of new technologies and nonconventional methods
- Plans and sections of building using new construction techniques

9. Similarly, it will also deal with energy conservation aspects in terms of:

- Use of alternate renewable resources such as solar/wind power etc.
- Options considered for supplying the power required for the Project and the environmental implications, including opportunities to increase the energy efficiency of the Project
- Details of U & R values
- Details of the renewable energy systems (sizing and design), building costs and integration

140. It is reported that approximately 50 percent of the energy use in buildings is devoted for producing an artificial indoor climate through heating, cooling, ventilation, and lighting. Water conservation and efficiency programs have begun to lead to substantial decrease in the use of water within buildings. Studies have shown that water-efficient appliances and fixtures can reduce consumption by up to 30 percent or more. As demand of water increases with urban growth, the economic impact of water conservation and efficiency will increase proportionately. Water efficiency not only can lead to substantial water savings, but it can also reduce the requirement for expansion of water treatment facilities. The building industry is slowly beginning to recycle its waste but there is a need to achieve significant waste reductions through more reuse of building material and adaptation, as opposed to demolition. Conventional buildings often fail to consider the interrelationship among building site, design elements, energy and resource constraints, building systems, and building function. Green buildings, through an integrated design approach, take into consideration the effect these factors have on one another. Climate and building orientation, design factors such as day lighting opportunities, and building envelope and system choices, as well as economic guidelines and occupant activities, are all factors that need to be considered in an integrated approach. Application of new building concepts can yield for savings during the construction process. Measures that are relatively easy to implement can result in savings to natural resources in the following areas:

- Lower energy costs, by monitoring usage, installing energy-efficient lamps and fixtures, and using occupancy sensors to control lighting fixtures;
- Lower water costs, by monitoring consumption and reusing storm water and/or construction waste-water where possible;
- Lower site-clearing costs, by minimizing site disruption and movement of earth and installation of artificial systems;
- Lower landfill dumping fees and associated hauling charges, through reuse and recycling of construction and demolition debris;
- Lower materials costs, with more careful purchase and reuse of resources and materials;
- Possible earnings from sale of reusable items removed during building demolition.

141. Therefore, any project with proper filling of Form I would be awarded TOR specific to the project and thereby would have EIA report that deals with environmental concerns specific to the project prior to its execution along with the necessary management plan/s and budgetary provisions.

142. In view of the above, if the project execution is carried out at any stage prior to grant of EC, it would be detrimental to the environment as at the very outset even primary baseline information for filling up Form 1 and Form 1A would not be available for providing project specific TOR for the EIA studies and thus the EIA study would become irrelevant thereby making the appraisal of EIA report only a formality. In the

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whole process, even imposition of general and specific conditions in EC pertaining to construction phase of the project would be irrelevant. It is extremely important to note here that the major impacts of any building construction project (alteration to topography, water drawl, air pollution, etc.) are during the construction stage or are directly relatable to the construction of the project itself (provision of parking space, fire safety, rain water harvesting and recycling, storm water, construction methodology, enhancing energy efficiency, etc.). Lastly and most importantly, if the project layout plan requires certain changes in the layout plan on account of likely environmental concerns (such as fire safety, day lighting, seismic hazards, water conservation measures, number of basements, etc.), it would be practically impossible to do so.

143. The above discussion clearly demonstrates the intent of the framers of the law that the compliances under the Notification of 2006 will hardly have an application post-construction or after completion of projects or activities. The prescribed parameters, the documentation and data to be provided along with Form 1, in no uncertain terms oblige the Applicant not to commence any activity unless it has obtained the Environmental Clearance. The post-grant of Environmental Clearance will neither be in the interest of the environment nor would it serve the purpose of the Act of 1986 and/or the Notification of 2006. The primary data required to be submitted relates to pre-project situation and circumstances. Of course, it will also depend upon the nature of the project activity or development activity that the Project Proponent proposes to establish. The impact of building construction and the resultant concretization, particularly basement construction on the groundwater levels and flow directions can be a matter of serious concern. The manner in which the basements are being constructed, its impact on the groundwater table, in what manner how much groundwater is proposed to be extracted, would also be a relevant consideration. EIA Report prepared *ex-post-facto*, i.e. on completion of the project, would suffer from lack of due diligence and would foreclose the options for exploring alternatives. This will go against the fundamentals of the Precautionary Principle and Sustainable Development. Similarly, it will be very tedious and very difficult, if not impossible, to appropriately consider various components of the biodiversity at the site and alternative steps that should be taken by the Project Proponent to protect any rare, endangered and threatened species at the site in question. In absence of such assessment, the opportunity of protecting the local ecology gets defeated and hence the goals of sustainable development. The cumulative effect of the above discussion would be that the illegal and indiscriminate development activity that has been carried out by the Project Proponents is bound to have serious impacts on environment, ecology and biodiversity and a very comprehensive and stringent study would be required to dilute or mitigate adverse environmental impacts of the projects in question.

Issue Nos. 8 and 9

8. What relief, if any, are any of the parties to the present proceedings entitled to?

9. What directions, if any, need to be issued by this Tribunal in the peculiar facts and circumstances of the present case?

144. In this main application, as well as in the applications filed on behalf of the Project Proponents/Respondents, we are concerned with the rival reliefs claimed by the respective parties. On the one hand, the Applicants pray for setting aside of the impugned Office Memoranda, issuance of directions to the Respondents to initiate prosecution and even to pass such other orders and directions as would be necessary for the facts and circumstances of the case. While on the other hand, the Project Proponents/Respondents pray for saving of the impugned Office Memoranda passed and constructions raised by them, as well as that delisting of their application by

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SEIAA was not called for and that SEIAA be directed to consider their application on merits. It is also the contention of the Project Proponents that the relief claimed by them that they being mostly residential complexes are category 'B' projects and hence they are not required to obtain the Environmental Clearance. In view of the above discussion, we have answered the issues in favour of the Applicant and against the Respondents and having held that the Office Memoranda dated 12th December, 2012 and 27th June, 2013 are liable to be quashed, the Project Proponents through their own conduct, raising illegal and unauthorized constructions, without obtaining prior Environmental Clearance and having specifically violated the provisions of the Notification of 2006 and the directions issued to them by the authorities, are not entitled to any relief claimed by them.

145. After discussing the above mentioned issues we feel that still there are two questions remaining to be dealt with by the Tribunal. First, whether the Notification of 2006 applies to the residential complexes in terms of Schedule-I to the Notification of 2006. Secondly, the construction of the projects having been completed, where 3rd party interest have already been created, what are the appropriate directions that should be issued by the Tribunal in the interest of environment and ecology and for restoration and restitution of the same within the ambit and scope of Section 15 of the NGT Act, 2010.

146. The contention of some of the Project Proponents is that their projects are residential projects and therefore the Notification of 2006 is not applicable to them, thus, it is not necessary for them to obtain Environmental Clearance. Some of them, particularly Respondent No. 9, has contended that these are category 'B' projects and therefore, no public consultation or EIA report is required. Therefore, their projects need to be cleared. The Applicants are developing multi-storey residential building. It is the case of this Project Proponent that the project does not fall within the ambit of Entry 8(a) and 8(b) of the Schedule of Notification of 2006. It only applies to industrial or commercial buildings. Furthermore, there is no valid basis for laying down the threshold limitation of 20,000 sq. mts in the Schedule. The reliance is placed upon the judgment of the Delhi High Court in the case of *Delhi Pollution Control Committee* v. *Splendor Landbase Ltd.*, LPA 895 of 2010 decided on 23rd January, 2012. While dealing with these contentions of private Respondents, we have already noticed that there is no specific challenge raised by these Respondents to the Notification of 2006. No such challenge was raised even during the course of the arguments. On the contrary, they have relied upon the impugned Memoranda issued in furtherance to the Notification of 2006.

147. The Notification of 2006 has a mandatory character and its requirements have to be satisfied in consonance with the provisions made therein. Prior Environmental Clearance from the regulatory authority is the condition precedent before any construction work or preparation of land by the Project Proponent is carried out except for securing the land. The project and activities as already stated above have been categorized into two categories; category 'A' and category 'B'. All the projects and activities which have been specified in the Schedule to the Notification of 2006 required Environmental Clearance. In these cases, we are concerned with Entry 8(a) and 8(b) of the Schedule to the Notification that reads as follows:

(1)	(2)	(3)	(4)	(5)
"8		Building or Construction projects or Area Development projects and Townships.		
8(a)	Building and Construction projects		>20000 sq.mtrs and < 1,50,000 sq. mtrs. o	The term "built up area" for the purpose of this notification the built up or covered area on all floors

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			built up area	put together, including its basement and other service areas, which are proposed in the building or construction projects. Note 1.- The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks. Note 2.- "General Conditions" shall not apply.
8(b)	Townships and Area Development Projects		Covering an area of > 50 ha and or built up area > 1,50,000 sq. mtrs.	A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category 'B1' Project. Note.- "General Conditions" shall not apply.

148. The entry has been intentionally termed very widely by the framers. Any Building and Construction Project which has the built up area or covered area of more than 20,000 sq meters or less than 1,50,000 sq. meters would fall under Item 8(a) and Township and Area Development projects covering an area of more than 50 hectares and/or built up areas of more than 1,50,000 sq. meters would fall under Item 8(b). Both of these would be Category 'B' projects. These projects would be dealt with for grant or refusal of Environmental Clearance as per the procedure prescribed under the Notification of 2006. If we examine the scheme of the Notification of 2006 and its relevant provisions, particularly, Paragraphs 2, 6, 7 and 8, it is clear that the expression 'project and activity' are of very wide magnitude and would cover all kind of projects and activities. The definition of environment under Section 2(a) of the Act of 1986 read with definition of the same term under Section 2(c) of the NGT Act would clearly show that the 'projects' or 'activities' are not synonymous terms. What may not be covered specifically under the term 'project' may squarely fall within the ambit of 'activity'. These expressions, having not been specifically made exclusive, would be treated to be more generic and would apply to all kinds of projects and activities. Entry 8(a) talks of building and construction project only with reference to area and extent of construction. They do not even remotely suggest that such building or construction projects should be carried out for an industrial or any allied activity. Whether the complex is being constructed exclusively for residential purpose and/or for mixed use, it will not alter the situation, if otherwise, it meets the threshold requirement of the area of construction. There is no occasion before the Tribunal to

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give undue narrow construction to these expressions which have been intentionally worded very widely by the framers of law. On the Rule of 'Plain Construction', these terms would include residential buildings or projects and the Notification of 2006 would be applicable to all the projects in question. The reliance placed by the private Respondents upon the judgment of the Delhi High Court in the case of *Delhi Pollution Control Committee* (supra), in our considered opinion, is misplaced. In that case, Delhi High Court was concerned with Section 25 of the Water Act. It is not necessary for us to discuss the judgment of High Court in any greater detail, primarily for two reasons, firstly, judgment relates to the provisions of the Water Act, in particular Section 25, the provisions of which are not *pari materia* to the provisions of the Act of 1986 and the Notification of 2006. These provisions are completely different from each other and have different parameters to satisfy. Second and most importantly, the High Court itself in paragraph 25 of the Judgment noticed that the reasoning given by the Learned Single Judge to expand the scope of Section 25(a) of the Water Act object of which was different, i.e., control of water pollution, in its wider magnitude, '*ignores*' (emphasis supplied) that the Act of 1986 deals with this larger issue in the context of 'environment' which has been defined therein to include water, air, land and interrelationship which exists among them and human beings and other living creatures, plants, micro-organism and property. The said Act of 1986 and Rules framed thereunder are wide enough to cover exploitation of water and the impact thereof on the environment. Then the Supreme Court proceeded to hold that the Water Act would not apply to building, housing and residential apartment units as they may not be discharging trade effluents covered under the provision of that Act.

149. It is also not necessary for us to deal with the applicability of the Water Act to such buildings, as that question does not arise before us, hence we leave the question open. However, we have no doubt in stating that the said judgment of the High Court is of no avail to the private Respondents in the present case.

150. A Bench of this Tribunal had the occasion to examine the scope of the Entries in the Schedule to the Notification of 2006 particularly, Entry 8(a), 8(b) and 7(f) in the case of *Vikrant Kumar Tongad* v. *Delhi Tourism and Transportation Corporation*, 2015 ALL (I) NGT Reporter (1) (Delhi) 244, the Tribunal held as under:

> "31. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment [*Vellore Citizens Welfare Forum* v. *Union of India*, (1996) 5 SCC 647].
>
> 32. The applicability of 'Principle of Liberal Construction' to socio-welfare legislation like the Act of 1986, thus, could be justified either with reference to the 'doctrine of reasonable construction' and/or even on 'constructive intuition'. In the case of *Haat Supreme Wastech Pvt. Ltd.* v. *State of Haryana*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal, while dealing with interpretation of the Regulations of 2006 along with the Schedule and while deciding whether the bio-medical waste disposal plants required Environmental Clearance or not, answered the question in affirmative, that, such plants are covered under Entry 7(d) and while answering so, applied the doctrine of 'reasonable construction' as well as 'constructive intuition'. Doctrine of 'reasonable construction' is intended to provide a balance between development and the environment. The Tribunal held that there was no occasion for the Tribunal to take the scope of Entry 7(d) as unduly restrictive or limited and it gave the entry a wide meaning. It was also held that the Environmental Clearance would help in ensuring a critical analysis of the suitability of the location of the bio-

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medical waste disposal plant and its surroundings and a more stringent observation of parameters and standards by the Project Proponent on the one hand and limiting its impact on public health on the other.

33. 'Development' with all its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes re-development. It could also be an activity, action, or alteration that changes underdeveloped property into developed property (*Ref: Wharton's Law Lexicon*, 15th Edn., 2012, *Black's Law Dictionary* 9th Edn., 2009). Reading of Clause 2 of the Regulations of 2006 and the Schedule attached thereto, particularly in light of the above principles, clearly demonstrates that an expression of very wide magnitude has been deliberately used by the framers. They are intended to cover all projects and activities, in so far as they squarely fall within the ambit and scope of the Clause. There does not appear to be any interest for the Tribunal to give it a narrower or a restricted meaning or interpretation. In the case of *Kehar Singh* v. *State of Haryana*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal had specifically held that there should exist a nexus between the act complained of and environment and that there could be departure from the rule of literal construction, so as to avoid the statute becoming meaningless or futile. In case of a social or beneficial legislation, the Tribunal should adopt a liberal or purposive construction as opposed to the rule of literal construction. The words used therein are required to be given a liberal and expanded meaning. The object and purpose of the Act of 1986 and the Schedule of Regulations of 2006 thereto was held to be of utmost relevance. In the case of present kind, if no checks and balances are provided and expert minds does not examine and assess the impacts of such projects or activities relating to development, consequences can be very devastating, particularly environmentally. Normally, the damage done to environment and ecology is very difficult to be redeemed or remedied. Thus, a safer approach has to be adopted to subject such projects to examination by Expert Bodies, by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulations of 2006, causing irretrievable ecological and environmental damage.

34. There can hardly be any escape from the fact that Entries 8(a) and 8(b) are worded somewhat ambiguously. They lack certainty and definiteness. This was also noticed by the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary* v. *Union of India (UOI)*, (2011) 1 SCC 744, where the Court felt the need that the Entries could be described with greater precision and clarity and the definition of 'built-up area' with facilities open to the sky needs to be freed from its present ambiguity and vagueness. Despite the above judgment of the Hon'ble Supreme Court, Entry 8(a) and 8(b) were neither amended nor altered to provide clarity or certainty. However, the expression 'built up area' under the head 'conditions if any' in column (5) of the Schedule to the Regulations of 2006, was amended vide Notification dated 4th April, 2011. *Dehors* the ambiguities in these Entries, an interpretation that would frustrate the object and implementation of the relevant laws, would not be permissible. Township and Area Development project' is an expression which would take within its ambit the projects which may be specific in relation to an activity or may be, they are general Area Development projects, which would include construction and allied activities. 'Area Development' project is distinct from 'Building and Construction' project, which by its very language, is specific and distinct. Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 have been a matter of adjudication and interpretation before the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary* v. *Union of India (UOI)*, (supra). In that case, Hon'ble Supreme Court was concerned with the construction of a park in

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Noida near the Okhla Bird Sanctuary. The Hon'ble Supreme Court provided a distinction between a Township project' and Building and Construction project' and held that a Township project' was different, both quantitatively and qualitatively from a mere 'Building and Construction project'. Further, that an Area Development project may be connected with the Township Development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other *civic infrastructure*, or an area development project may be completely independent of any township development project as in the case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park. The Hon'ble Supreme Court principally held that a zoological or botanical park or a recreational park etc. would fall within the category of Entry 8(b) but, if it does not specify the threshold marker of minimum area, then it may have to be excluded from operation of the mandatory condition of seeking prior Environmental Clearance. The Court held as under:

> "66. The illustration given by Mr. Bhushan may be correct to an extent. Constructions with built up area in excess of 1, 50,000 sq mtrs. would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. *To that limited extent* there may be a quantitative correlation between items 8(a) and 8(b). But it must be realized *that the converse of the illustration given by Mr. Bhushan may not be true*. For example, a project which is by its nature and character *an "Area Development project" would not become a "Building and Construction project*" simply because it falls short of the threshold mark under item 8(b) but comes within the area specified in item 8(a). The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated there under.
>
> 67. In light of the above discussion it is difficult to see the project in question as a "Building and Construction project". Applying the test of 'Dominant Purpose or Dominant Nature' of the project or the *"Common Parlance" test, i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorized under item 8(b) of the schedule as a Township and Area Development project*". But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 hectares) is less than 50 hectares and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 square metres, i.e., much below the threshold marker of 1,50,000 square metres."

35. Besides dealing with the scope and dimensions of Entries 8(a) and 8(b) of the Schedule afore-stated, the Hon'ble Supreme Court, while referring to the findings given by the CEC in its report, that the Project was located at a distance of 50 mtrs. from the Okhla Bird Sanctuary and that in all probability, the project site would have fallen in the Eco-Sensitive Zone had a timely decision in this regard being taken by the State Government/MoEF, permitted continuation of the project, and held as under:

> "74. The report of the CEC succinctly sums up the situation. Though everyone, excepting the Project Proponents, views the construction of the project practically adjoining the bird sanctuary as a potential hazard to the sensitive and fragile ecological balance of the Sanctuary there is no law to stop it. This unhappy and anomalous situation has arisen simply because despite directions by this Court the authorities in the Central and the State Governments have so far not been able to evolve a principle to notify the buffer zones around Sanctuaries and National Parks to protect the sensitive and delicate ecological balance required

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for the sanctuaries. But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhla Bird Sanctuary. For, in the jurisprudence developed by this Court Environment is not merely a statutory issue. Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution"

36. The above dictum of the Supreme Court clearly laid down a fine distinction between Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 on one hand, while on the other hand held that mere absence of law cannot be a ground for degrading the environment, as environment is one of the facets of 'Right to Life' as envisaged under Article 21 of the Constitution of India.

37. Thus, this Tribunal has to examine the ambit and scope of Entry 8(b) while keeping in mind the Scheme and Object of the Act of 1986, the Rules of 1986, the Regulations of 2006 along with its Schedule and most importantly right to clean environment as an integral concept of our Constitutional Scheme. The project in question is construction of a 'Signature Bridge' over River Yamuna, connecting eastern and western ends of the city of Delhi and to ensure fast and smooth flow of traffic in that part of the city. This certainly is an Area Development project falling within Entry 8(b) of Schedule to the Regulations of 2006. There is also no dispute that the total constructed area of the 'Signature Project' is 1,55,260 sq. mtrs., which is higher than the threshold marker of 1,50,000 sq. mtrs. This project cannot fall within Entry 7(f) of the Schedule to the Regulations of 2006, as it is neither a national nor a city highway and not even any part thereof.

38. Having held that the project in question is covered under Entry 8(b) of the Schedule to the Regulations of 2006, now we have to consider what relief can be granted to the Applicant in the facts and circumstances of the case. Admittedly, particularly according to the Project Proponent, various other departments have granted them clearances and/or have already issued No Objection Certificates for construction of the said project. MoEF vide its letter dated 14th March, 2007 had informed the Project Proponent that 'bridges' are not covered under the Regulations of 2006 and as such, no prior Environment Clearance was required for commencement of the project. It is in the backdrop of these circumstances that the construction of the project commenced in the year 2007. As of today, more than 80 per cent of the bridge has already been completed. Huge public funds have been spent on this project. It is intended to serve public purpose and is in public interest, namely free and fast flow of traffic between east and west Delhi. Apparently, we cannot attribute any fault or breach of legal duty to the Project Proponent (Respondent No. 1). We do not think it is a case where we should either direct stoppage of project work or direct demolition thereof."

151. These Entries thus need to be construed liberally and given a wider meaning. As already stated above, on their plain reading the projects of whatever nature they may be, but so far as they are covering an area of more than the threshold limit specified in these Entries, they would be covered under the Schedule for which it would be mandatory to obtain prior Environmental Clearance. The contention that the Notification of 2006 and the Schedule would not apply to such projects thus, cannot be accepted. The projects whether residential or multi-purpose would squarely fall within the ambit and scope of the Entries in the Schedule particularly when neither the language of the Notification of 2006 nor the Entries anywhere suggests that the framers intended to exclude such building projects.

152. To obtain Environmental Clearance prior to commencement of any activity or project is the mandate of law. This language has to be given its proper and purposive meaning. It is undoubtedly mandatory. When the law mandates prior approval, it

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ought not to be averred as post activity approval or *ex-post facto* permission. In such cases, courts have to consider whether any remedial measures can be imposed or certain harsher directions are called for. The Supreme Court in the case of *A.P. Pollution Control Board* v. *Prof. M.V. Nayudu (Retd.)*, (2001) 2 SCC 62 was concerned with the interpretation of Section 25 of the Water Act which requires that no person shall, without the previous consent of the State Board, establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land etc. The Supreme Court held that it was a condition precedent not only for operating the unit but even for establishment of an industry. While considering the aspect that on the basis of material before it, it would not be a fit case for directing no objection from the Pollution Control Board and that even it was not possible to hold that the safeguards suggested by the appellant Board will be adequate, in the light of the Reports. The Supreme Court held that plea of principle of 'promissory estoppel' would not be applicable and grant of permission by other authorities would not accrue to the benefit of the industry in relation to grant of NOC. It will be useful to refer to the relevant paragraphs of the judgment of the Supreme Court:

> "54. On point a(ii), it referred to the definition of 'pollution' in Section 2(c) of the Water Act, Section 2(f) which defines 'sewage effluent' and Section 2(k) which defines 'trade effluent' and observed that the 'pollution potential' of the industry was to be assessed. After referring to the effluents-Commercial Castor oil, Bleaching earth, Activated carbon. Nickel catalyst, Hyflo supercel, Sulphuric Acid, Caustic Soda, Methanol, Calcium Oxide, Alum - in all 1463 MTs per month and noticed that the monthly requirement of Hydrogen was 76 500 NM. As the industry is coal based, large quantity coal is required. It would produce huge quantities of BSS, HCO, HSA, Methyl, Fatty acids, Epoxidise, Glyceren etc. Hydroxy Stearic Acid, methyl Hydroxy Stearic Acid and methanol are serious health hazardous. Items in part II list of Schedule I to the 'Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989' are the raw materials and RW2 (Dr. G.S. Siddhu) in his evidence agreed that these are hazardous (toxic) chemicals. The solid effluents generated every day are (i) spent bleaching earth 1250 Kgs, (ii) spent bleaching carbon 250 kgs, (iii) spent nickel catalyst '15 kgs. and (iv) sodium sulphate 3820 Kgs. (12-HSA) and 170 kgs. (from CME). Monthly turn out of effluents will be 400 MT. Every day 55 kgs. of nickel is consumed. Every day, 27,830 litres of water are to be used and normally the effluent will carry all these hazardous substances, including nickel. 'As it is, said that the water used could be reused for cultivation of lands in the premises of the industry, the toxic chemicals which get lodged in the surface layers of the soil will flow down in storm run offs or percolate into the ground water, to ultimately reach the water body of the two reservoirs. The NEAA further stated that Dr. Santappa in his evidence as RW-1 made admissions regarding gaseous effluents-fly ash, S02 CO2 Oxides of Nitrogen, Oxides of Sulphur and suspended particulate matter. The solid and liquid effluents could reach the lakes through seepage. The factory cannot be located in the catchment area because run-offs due to rain will carry hazardous material along surface and through seepage. The NEAA adverted to the 'Drainage Basic Analysis' by the Central Ground Water Board, to the effect that the Basin "has moderate run-off and moderately high permeability of the terrain. As such the amount of infiltration is considerably high". The said Report shows that rainfall in 796 mm (heaviest being 1326 mm) and there is every likelihood of the solids being "transported down along the gradient". The said Report of Central Ground Water Board, referred to "dolerite dykes" in the vicinity and the possibility of flow even more. Having regard to the location of the dyke and the speed and angle, the polluted water could reach

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Himayat Sagar which is hardly 2 m bgl. since the dam height is 1763.50 feet. Satellite maps of NSRA were also examined and relied for this purpose. Among the substances stored are nickel, sulphuric acid, HCA, which are well-known 'hazardous' substances.

57. The NEAA, then took up issue (b) as to the likelihood of the industry affecting the sensitive catchment area. It referred to the Expert Committee Report of the HMWSSB and its recommendations which led to the issuance of the GO 192 dated 31.3.94 and GO 111 dated 8.3.96. The NEAA concluded that the "establishment of any chemical industry, carries with it, the imminent dangers of the chemicals or chemical effluents polluting the water of Himayat Sagar and Osman Sagar".

62. In the light of the above exhaust he scientific Reports of the National Environmental Appellate Authority, New Delhi the Department of Chemical Technology, Bombay University and the National Geophysical Research Institute, Hyderabad - it cannot be said that the two lakes will not be endangered. The package of the IICT - which did not deal with the elimination of effluent effects, the opinion of Dr. Santappa, the view of Director of Industries, and the view of the Government of Andhra Pradesh must be held to be base on insufficient data and not scientifically accurate.

63. It is no doubt stated by the 7th Respondent that it is prepared to adopt the safety measures suggested by the appellant Board on 1.7.97 and also those suggested by Dr. Bhowmick, by trying to see that during storage of raw materials and after release of the hazardous liquids, they are put in containers and removed.

64. In respect of these drinking water reservoirs which cater to the needs of about 70 or 80 lakhs population, we cannot rely upon a bare assurance that care will be taken in the storage of serious hazardous materials. Nor can we rely on an assurance that these hazardous substances would be effectively removed without spillage. It is, in our view, not humanly possible for any department to keep track whether the pollutants are not spilled over. This is exactly where the 'precautionary principle' comes into play. The chance of an accident, within such close proximity of the reservoirs cannot be ruled out, as pointed out in the Reports. Thus, we are led to the inference that there is a very great risk that these highly hazardous material could seep into the earth and reach the tanks, after passing through the dolerite dykes, as pointed by the National Geophysical Research Institute, Our inference from facts and the reports is that of a reasonable person, as pointed out in the main judgment in *A.P. Pollution Board* v. *Prof. M.V. Nayudu*.

65. On the basis of the scientific material now obtained by this Court from three highly reputed sources, this is certainly not a fit case for directing grant of NOC by the Pollution Control Board. It is not also possible to hold that the safeguards suggested by the appellant Board-pursuant to the direction of the Government dated 3.7.97, will be adequate, in the light of the Reports. We therefore hold that in the facts of this case, the Board could not be directed to suggest safeguards and there is every likelihood that safeguards could fail either due to accident, as stated in the report, or due to human error. We, therefore, hold on point 3 against the 7th Respondent-industry.

66. This point deals with the principle of promissory estoppel applied by the appellate authority, on the ground that once building permission and permission for change of land use were granted, the appellant Board could not refuse NOC, The learned Additional Solicitor General, Sri R.N. Trivedi referred to the amendment to Section 25(1) in this connection.

67. Under Section 25(1) of the Water (Prevention and Control of Pollution) Act, 1974 as it original stood, Subsection (1) thereof read as follows:

Section 25(1): Subject to the provisions of this section, no person shall, without

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> the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well or begin to make any new discharge of sewage or trade effluent into a stream or well".
>
> By Central Act 53/1988, the sub-section was amended and reads as follows:
>
> Section 25(1): Subject to the provisions of this section, no person shall, without the previous consent of the State Board - (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage) or (b) bring into use any new or altered outlet for the discharge of sewage, or (c) bring to make any new discharge or sewage"
>
> After the amendment, the prohibition now extends even to 'establishment' of the industry of taking of steps for that process and therefore before consent of the Pollution Board is obtained, neither can the industry be established nor any steps can be taken to establish it.
>
> 68. The learned Additional Solicitor General of India, Sri Trivedi is right in contending that the 7th Respondent industry ought not to have taken steps to obtain approval of plans by the Gram Panchayat, nor for conversion of land use by the Collector, nor should it have proceeded with civil work in a installation of machinery. The action of the industry being contrary to the provisions of the Act, no equities can be claimed.
>
> 69. The learned Appellate Authority erred in thinking that because of the approval of plan by the Panchayat, or conversion of land use by the Collector or grant of letter of intent by the Central Government, a case for applying principle of "promissory estoppel" applied to the facts of this case. There could be no estoppel against the statute. The industry could not therefore seek an NOC after violating the policy decision of the Government. Point 4 is decided against the 7th Respondent accordingly."

153. Wherever anyone violates the law and flouts the directions issued by the regulatory authority and other concerned authorities, commences construction without even applying for Environmental Clearance and completes the project or activity extensively, two fold consequences would follow. First, that it would render itself liable for imposition of penalties for contravention of the Act, Rules, Orders and directions in terms of Section 15 of the Act of 1986. The other, for issuance of directions in regard to the demolition or grant of consent subject to such conditions as may be considered appropriate by the authorities or the Tribunal. Tribunal exercising its appellate power and Original jurisdiction in terms of Section 14 and 16 of the Act of 2010, has the powers of merit and judicial review and is competent to issue such directions as it may deem necessary in terms of the said provisions including Section 18 of the NGT Act, 2010. The Court and Tribunals, particularly, in such cases of *fait accompli* have adopted a more practical approach which would permit the remaining work of the project to be completed while providing stringent safeguards in the interest of the environment as well as issuing orders which would vest the Project Proponent with civil consequences. In the case of *Sterlite Industries (India) Ltd.* v. *Union of India (UOI)*, (2013) 4 SCC 575, Supreme Court held that the appellant company was liable to pay compensation of Rs. 100 crores for polluting the environment and operating its industry without renewal of consent by the Board. In this case, industry had obtained consent to operate from the Board prior and subsequent to the period when it operated without consent of the Board. After passing of the judgment of the Supreme Court in this very case, the Tribunal directed the industry to take precautionary measures as well as directed the Pollution Control Board to impose more stringent

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conditions while permitting the industry to operate (*Sterlite Industries (India) Ltd.* v. *Tamil Nadu Pollution Control Board*, 2013 ALL (I) NGT REPORTER (DELHI) 368).

154. Further, in the case of *Sarang Yadvadkar* v. *The Commissioner, Pune Municipal Corporation*, 2013 ALL (I) NGT REPORTER (DELHI) 299, the Tribunal had passed remedial and prohibitory directions in the project underway. The Corporation was constructing elevated road in the floodplain. Major part of the project had already been constructed. The Tribunal directed partial demolition of the raised structure and further directed the Corporation to construct the bridge on pillar so that there was no obstruction to the free flow of water and the course of the river was not adversely affected. This order of the Tribunal was challenged before the Supreme Court in Civil Appeal No. 3445 of 2015 and was dismissed by the Supreme Court vide its orders dated 12th February, 2015.

155. In somewhat similar situations like the one in hand, the Tribunal in the case of *Forward Foundation* v. *State of Karnataka*, Original Application No. 222 of 2014 decided on 7th May, 2015, where the Project Proponents had raised the construction on the wet lands and the Rajakaluves (storm water drains), affecting the same, without obtaining prior Environmental Clearance. The Tribunal while appointing a special Committee referred to it various questions relating to environment and ecology and prohibited the Project Proponents from creating any third-party interests. The Tribunal further imposed 5 per cent of the project cost as environmental compensation on Project Proponent for degrading and damaging the environment and ecology of the area in question and had required the Committee to submit a report to the Tribunal. The Project Proponent in this case, had preferred a statutory appeal before the Supreme Court and *inter alia* took up the plea that they were not heard on merits and imposition of penalties was not proper. The Supreme Court vide its order dated 20th May, 2015 passed in the case of *Core Mind Software and Services Pvt Ltd.* v. *Forward Foundation*, Civil Appeal No. 4829/2015, granted liberty to them without setting aside the judgment and various directions issued by the Tribunal and also to approach the Tribunal for recalling of Order and in the meanwhile stayed the direction pertaining to payment of compensation. The order of the Supreme Court reads as under:

"ORDER

> One of the main contentions raised by the appellants in these appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs. 117.35 crores against original Respondent No. 9 (the appellant in C.A. No. 4832 of 2015) and Rs. 22.5 crores against Original Respondent No. 10 (the appellant in C.A. No. 4829/2015) is imposed.
>
> On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.
>
> With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment can also be raised.
>
> The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty.

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Mr. Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties."

156. The Applicants filed an application before the Tribunal upon which notice was issued, whereby the Tribunal while continuing the stay on the condition of payment of compensation, directed the Committee to file its report before the next date of hearing in terms of the judgment.

157. From the above judgments of the Supreme Court and the Tribunal, it is clear that in cases of the present kind, it would not be advisable to direct complete demolition of such properties. The Project Proponents claim to have invested huge amounts in raising these projects where it had obtained permission from other authorities and most importantly interest of 3rd party have been created in these properties. The Tribunal has to take a balanced approach while applying the principle of sustainable development and precautionary principle. Even in the case of *A.P. Pollution Control Board* (supra), the Supreme Court, laid great emphasis on the precautionary principle on the premise that it is always not possible to judge the environmental damage.

158. The Precautionary Principle may lose its material relevancy where the projects have been completed and even irreversible damage to the environment and ecology has been caused. The situation may be different when invoking this principle in cases of partially completed projects, it would become necessary to take remedial steps for protection of environment without any further delay. At this stage, it may still be possible to take steps while any further delay would render it absolutely impracticable. Precautionary Principle is a proactive method of dealing with the likely environmental damage. The purpose always should be to avert major environmental problem before the most serious consequences and side effects would become obvious. To put it simply, Precautionary Principle is a tool for making better health and environmental decisions. It aims to prevent at the outset rather than manage it after the fact. In some cases, this principle may have to be applied with greater rigor particularly when the faults or acts of omission, commission are attributable to the Project Proponent.

The ambit and scope of the directions that can be issued under the Act of 1986 can be of very wide magnitude including power to direct closure, prohibition or regulation of any industry, operation or process and stoppage or regulation of supply of electricity or water or any other services of such projects. The principle of sustainable development by necessary implication requires due compliance to the doctrine of balancing and precautionary principle.

159. In appropriate cases, the Courts and Tribunals have to issue directions in light of the facts and circumstances of the case. The powers of the higher judiciary under Article 226 and 32 of the Constitution are very wide and distinct. The Tribunal has limited powers but there is no legislative or other impediment in exercise of power for issuance of appropriate directions by the Tribunal in the interest of justice. Most of the environmental legislations couched the authorities with power to formulate program and planning as well as to issue directions for protecting the environment and preventing its degradation. These directions would be case centric and not general in nature. Reference can be made to judgment of the Supreme Court in the case of *M.C. Mehta* v. *Union of India*, JT 1987 (1) SC 1, *Vineet Narain* v. *Union of India (UOI)*, JT 1997 (10) SC 247 and *University of Kerala* v. *Council, Principals', Colleges, Kerala*, JT 2009 (14) SC 283.

160. In light of the above, even if the structures of the Project Proponents are to be protected and no harsh directions are passed in that behalf, still the Tribunal would be required to pass appropriate directions to prevent further damage to the environment

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on the one hand and control the already caused degradation and destruction of the environment and ecology by these projects on the other hand. Furthermore, they cannot escape the liability of having flouted the law by raising substantial construction without obtaining prior Environmental Clearance as well as by flouting the directions issued by the authorities from time to time. The penalties can be imposed for such disobedience or noncompliance. The authorities have already initiated action against three of the Project Proponents and have taken proceedings in the Court of competent jurisdiction under Act of 1986. However, no action has been taken against other four Project Proponents as of now. Penalties can be imposed for violation in due course upon full trial. What requires immediate attention is the direction that Tribunal should pass for mitigating as well as preventing further harm. As far as further remedial measures, alterations, demolition or variation in the existing structure in the interest of environment and ecology which is required to be taken to preserve the environment are to be suggested by the Committee that we propose to constitute. However, as far as damage that has already been caused to the environment and ecology by the illegal and unauthorized action of the Project Proponents, they are required to pay compensation for its restoration and restitution in terms of Section 15 of Act of 2010. Needless to notice here that in this case, the Project Proponents were heard at great length on facts and merits of the case.

161. We may specifically notice here that all the Project Proponents had filed contentions and documents in support of their respective case. They addressed the Tribunal at length on factual matrix of the case as well as on law. Various contentions and claims raised by the Project Proponents before the Tribunal have been deliberated in detail.

162. In all cases, SEIAA has passed an order directing delisting of applications for Environmental Clearance which is sought to be questioned by the Project Proponents. We do not find any fault on the part of SEIAA and other official Respondents in delisting the applications for obtaining Environmental Clearance. Just one reason is enough to de-list and to reject these applications which is, that they started construction of their respective projects without obtaining Environmental Clearance and in some cases without even applying for grant of Environmental Clearance. All of them violated the direction of SEIAA as well as their own undertaking and apology to SEIAA that they would not raise any construction till grant of Environmental Clearance. There is more than ample evidence on record that such violations have been committed. Projects are squarely covered under the Notification of 2006 and, therefore, we find no infirmity in the order of SEIAA in delisting applications of Project Proponents for grant of Environmental Clearance.

163. In view of the above detailed discussion, we pass the following order and directions:

1) We hold and declare the Office Memoranda dated 12th December, 2012 and 27th June, 2013 as *ultra vires* the provisions of the Act of 1986 and the Notification of 2006. They suffer from the infirmity of lack of inherent jurisdiction and authority. Resultantly, we quash both these Office Memoranda.

2) Consequently, the above Office Memoranda are held to be ineffective and we prohibit the MoEF and the SEIAA in the entire country from giving effect to these Office Memoranda in any manner, whatsoever.

3) We hold and declare that the resolution/orders passed by the SEIAA, de-listing the applications of the Project Proponents, do not suffer from any legal infirmity. These orders are in conformity with the provisions of the Act of 1986 and the Notification of 2006 and do not call for interference.

4) We hereby constitute a Committee of the following Members:

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a) Member Secretary of SEIAA, Tamil Nadu.
b) Member Secretary, Tamil Nadu Pollution Control Board.
c) Professor from Department of Civil Engineering, Environmental Branch, IIT Bombay.
d) Representative not below the rank of Director from the Ministry of Environment and Forest (to be nominated in three days from the date of pronouncement of this judgment).
e) Representative of the Chennai Metropolitan Development Authority.

5) Member Secretary of the Tamil Nadu Pollution Control Board shall be the Nodal Officer of the Committee for compliance of the directions contained in this judgment.

6) The above Committee shall inspect all the projects in question and submit a comprehensive report to the Tribunal. This comprehensive report shall relate to the illegal and unauthorized acts and activities carried out by the Respondents. It shall deal with the ecological and environmental damage done by these projects. It would further deal with the installation of STP's and other antipollution devices by the Project Proponents, including the proposed point of discharge of sewage and any other untreated waste. The Expert Committee would also state in regard to the source of water during operation phase and otherwise, use of energy efficient devices, ecologically and environmentally sensitive areas and details of alteration of and its effect on the natural topography, the natural drainage system etc. The Committee shall also examine the adequacy of rainwater harvesting system and parking area and if at all they have been provided. The report shall also deal with the mechanism provided for collection and disposal of municipal solid waste at the project site.

7) The Committee shall further report if the conditions stated in the planning permission and other permissions granted by various authorities have been strictly complied with or not.

8) The Committee shall also report to the Tribunal if the suggestions made by the SEIAA in its meetings adequately takes care of environment and ecology in relation to these projects.

9) What measures and steps, including demolition, if any, or raising of additional structures are required to be taken in the interest of environment and ecology?

10) All the Project Proponents shall pay environmental compensation of 5 per cent of their project value for restoration and restitution of the environment and ecology as well as towards their liability arising from impacts of the illegal and unauthorized constructions carried out by them. They shall deposit this amount at the first instance, which shall be subject to further adjustment. Liability of each of the Respondents is as follows:

Mr. Y. Pondurai.: Rs. 7.4125 crores.
M/s Ruby Manoharan Property Developers Pvt. Ltd.: Rs. 1.8495 crores.
M/s Jones Foundations Pvt. Ltd.: Rs. 7 crores.
M/s SSM Builders and Promoters: Rs. 36 crores.
M/s SPR and RG Construction Pvt. Ltd.: Rs. 12.5505 crores.
M/s Dugar Housing Ltd.: Rs. 6.8795 crores.
M/s SAS Realtors Pvt. Ltd.: Rs. 4.5 crores.

11) The compensation shall be payable to the Tamil Nadu Pollution Control Board within three weeks from the date of the pronouncement of this judgment. The amounts shall be kept in a separate account and shall be utilised by the Boards for the above stated purpose and subject to further orders of the Tribunal.

12) The above environmental compensation is being imposed on account of the

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intentional defaults and the conduct attributable only to the Project Proponents. We direct that the Project Proponents shall not pass on this compensation to the purchasers/prospective purchasers, as an element of sale.

13) After submission of the report by the Expert Committee, the Tribunal would pass further directions for consideration of the matter by SEIAA in accordance with law.

14) All the project proponents are hereby prohibited from raising any further constructions, creating third party interest and/or giving possession to the purchasers/prospective purchasers without specific orders of the Tribunal, after submission of the report by the Expert Committee.

The report shall be submitted to the Registry of the Tribunal within a period of 45 days from the date of pronouncement of this judgment. Thereupon, the Registry would place the matter before this Tribunal for further appropriate orders and directions.

Liberty to the parties to move the Tribunal for any further directions and/or clarifications, if they so desire.

164. The above Appeal and Applications are accordingly disposed of. However, in the facts and circumstances of the case, we leave the parties to bear their own cost.

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2015 SCC OnLine NGT 194

Before the National Green Tribunal Principal Bench New Delhi

(BEFORE SWATANTER KUMAR, CHAIRPERSON, M.S. NAMBIAR, JUDICIAL MEMBER, DR. D.K. AGRAWAL, EXPERT MEMBER AND PROF. A.R. YOUSUF, EXPERT MEMBER)

In the Matter of:

Krishan Lal Gera S/o Late Shri Bhawani Dass, R/o 572, Sector 15-A, Faridabad, Haryana ... Appellant;

Versus

1. State of Haryana Through The Director General, Town and Country Planning.
2. Haryana Urban Development Authority Through Chief Administrator, Panchkula Haryana.
3. Haryana Urban Development Authority Through Administrator, Faridabad Haryana.
4. Municipal Corporation of Faridabad Haryana.
5. Haryana State Pollution Control Board Through Member-Secretary C-11, Sector-6 Panchkula.
6. Haryana State Pollution Control Board Through Regional Officer, Faridabad.
7. State Environment Impact Assessment Authority Through Chairperson Panchkula, Haryana.
8. Dental Council of India Aiwan-E-Galib Marg, Kotla Road, Temple Lane New Delhi-110002.
9. M/s. Vivekanand Ashram Society Through its Managing Director Plot No. 1, Sector 16 Faridabd, Haryana.
10. M/s. QRG Medicare Limited Through its Managing Director Plot No. 1, Sector 16 Faridabad, Haryana.
11. Ministry of Environment, Forest & Climate Change Indira Paryavaran Bhawan, Jor Bagh Road New Delhi-110003 ... Respondents.

Appeal No. 22 of 2015

Decided on August 25, 2015, [Hearing on: 23rd July, 2015]

Counsel for Appellant:

Mr. Narender Hooda, Sr. Advocate and Ms. Bano Deswal, Advocate

Counsel for Respondents:

Mr. Anil Grover, AAG, Mr. Rahul Khurana and Mr. Satish Kumar, Advocate for Respondent No. 1

Ms. Panchajanya Batra Singh, Advocate for Respondent No. 3

Mr. T. Singh, Advocate for Respondent No. 8

Mr. Pinaki Misra, Sr. Advocate, Ms. Vanita Bhargava, Mr. Jeevan Ballav Panda and Ms. Abhisaar Bairagi, Advocates for Respondent no. 9 & 10

JUDGMENT

Swatanter Kumar, J.

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

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State Environmental Impact Assessment Authority, State of Haryana (for short 'SEIAA'), vide its order dated 26th November, 2014 granted Environmental Clearance for construction of Super-Speciality Hospital and a Harijan Residential School at Plot No. 1, Sector-16, Faridabad, Haryana. The appellant in the present appeal impugned the said Environmental Clearance and the minutes of 77th meeting of SEIAA dated 14th November, 2014, on the basis of which, the said Environmental Clearance was granted. The challenge, *inter-alia*, but primarily is based on the ground that the prescribed land use by Haryana Urban Development Authority (for short 'HUDA') does not permit construction of a Super-Speciality Hospital at the site in question. It is averred by the appellant that the construction of Super-Speciality Hospital had commenced prior to applying for grant of Environmental Clearance and the project was practically completed even before granting of Environmental Clearance. The concerned authorities had found serious violations on part of the Project Proponent and decided to initiate credible action against him by invoking powers under Section 19 of the Environment (Protection) Act, 1986 (for short 'Act of 1986'). It is averred by the appellant that grant of Environmental Clearance is contrary to the laws in force. Also, that SEIAA had even emphasised on the fact that it was a case of clear violation as Environmental Clearance is required prior to commencement of any construction activity. The land in question, having been allotted for construction of a Harijan Residential School and Social Development Centre, construction for any other purpose was impermissible. Thus, the grant of Environmental Clearance to the Project Proponent is entirely arbitrary, unsustainable and contrary to the laws in force.

2. Before noticing the stand of the respective respondents to the grounds of challenge raised by the appellant, we may notice the facts of the case as averred by the appellant.

3. M/s. Vivekananda Ashrama, respondent no. 9, was allotted Plot No. 1, Sector-16, Faridabad, Haryana on lease hold basis for a period of 99 years vide letter dated 30th September, 1978 for establishment of Harijan Residential School and Social Development Centre. The possession thereof was delivered to respondent no. 9 by the State of Haryana. The terms and conditions of allotment were stated in the lease deed that was executed between the parties on 13th March, 1980. It is submitted by the appellant respondent no. 9 did not adhere to the terms and conditions of the lease deed and letter of allotment. Thus, HUDA vide its letter dated 13th July, 1993 cancelled the allotment and directed resumption of the plot in question on the grounds that the land was sub-leased by the respondent and Rama Krishna Public School had been set up instead of Harijan Residential School and Social Development Centre. Also, the ground rent was not paid.

4. Respondent no. 9 approached the High Court of Punjab and Haryana by filing a writ petition against the resumption order, which came to be dismissed with liberty to the said respondent to approach the Appellate Authority. The Appellate Authority under the HUDA Act, 1977 disposed the appeal with an undertaking from respondent no. 9 that it will comply with the terms and conditions of the lease deed vide its order dated 4th March, 1994. According to the appellant, respondent no. 9 still failed to comply with the order of the Appellate Authority and committed breaches thereof, resulting in passing of a second order of resumption dated 5th September, 1994. This order of HUDA was again challenged by respondent no. 9 before the Punjab & Haryana High Court. The High Court vide its order dated 16th October, 1995 upset the resumption order dated 5th September, 1994 and granted three months time to respondent no. 9 to comply with the conditions stated in the order of the Appellate Authority dated 4th March, 1994.

5. Respondent no. 9 approached HUDA for granting permission for establishing a Dental College-cum-Hospital on the same premises in the year 2003. This matter was

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placed before the Authority in its 89th meeting held on 11th July, 2003. The Authority granted permission to respondent no. 9 for establishing the Dental College-cum-Hospital at the said site, subject to certain terms and conditions. On the basis of this meeting, the Chief Administrator, HUDA, vide its letter dated 24th July, 2003 informed the Administrator, HUDA regarding grant of the permission to respondent no. 9. Reference can be made to the said letter conveying permission to respondent no. 9, which reads as follows:—

"This is in continuation of HUDA H.Q.s memo no. 3869 dated 16.06.2003.

The matter was placed before the Authority in its 89th meeting held on 11.7.2003. The Authority has accorded the permission for establishing of a Dental College-Cum -Hospital in favour of Vivekanand Society in Sector-16, Faridabad. Subject to the following terms and conditions:—

1. That the residential school for which the land was earlier allotted to the Society shall remain on the said premises.
2. The Society shall have to produce the permission letter of Dental Council of India to run the Dental College at Faridabad.
3. The Society shall get the building plan approved from HUDA Authorities, besides arranging funds for the construction of building.
4. In case the land is not used for the purposes for which the permission is granted the same shall revert back to HUDA in accordance with HUDA Act-1977 & Rules & Regulations framed thereunder.
5. No change of land use shall be allowed.
6. The transfer of plot/change of constitution shall not be allowed in any circumstances.
7. The facilities provided shall be open to all irrespective case, creed & religions.
8. Shops shall not be constructed on any portion of land.
9. The Society will have to get clearance/affiliation from the Dental Council of India at their own level.
10. The society shall provide fee concession to the deserving candidates, ……., Economically Weaker Section of the Society who are given admissions …….. ….. open merit upon the extent of 5% seats available in the college in each ……

You are requested to take further necessary action accordingly…….. action taken in the mater may also be communicated to this office ……. positively. A copy of the agenda item and an extract of proceedings is ……. reference ……."

However, it is pertinent to note that vide letter dated 15th July, 2003, the Estate Officer, HUDA, Faridabad, had informed the authorities of the violations committed by respondent no. 9.

6. The building plans from the Municipal Corporation, Faridabad, for construction of Dental College-cum-Hospital and Harijan Residential School were approved. A Writ Petition was filed in the High Court of Punjab & Haryana, being CWP No. 630 of 2007, praying, that the Harijan Residential School should remain on the site, the purpose for which the site had been allotted to respondent no. 9. Respondent no. 9 had made a statement before the said High Court that the Harijan Residential School would remain along with the Dental College-cum-Hospital on the site in question, in accordance with the terms and conditions of the permission letter. Thereafter, it came to the notice of the Authorities that a hospital was being run in the name of M/s. QRG Central Hospital at Unit-II at the premises and the building plans for the same were not approved by the HUDA but were approved by the Municipal Corporation, Faridabad. On the basis of this information and report, Estate Officer, HUDA, issued a Show Cause Notice to respondent no. 9 on 25th October, 2010. On 22nd November, 2010, respondent no. 9, submitted its reply to the Show Cause Notice denying the allegations. The premises

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were inspected by the survey staff of HUDA on 2nd December, 2010 who reported to the effect that the Harijan Residential School and Social Development Centre were not running on the premises. Again, on the basis of this inspection of 2nd December, 2010, a Show Cause Notice was issued by the Estate Officer, HUDA to respondent no. 9 on 28th November, 2011. Respondent no. 9 submitted its reply to the said Notice stating that they had been granted permission to establish a Dental College-cum-Hospital at the premises. The Authorities had also required respondent no. 9 to appear in person for hearing, vide their letter dated 14th December, 2012. It is averred by the appellant that the respondent no. 9 did not appear before the Authorities. Another Writ Petition was filed before the Punjab & Haryana High Court by Dr. Ambedkar Society praying that the land in question was earmarked for Harijan Residential School and had been illegally allotted for establishment of a Dental College-cum-Hospital. The survey staff of HUDA inspected the site and submitted a report that instead of Harijan Residential School, a 450 bedded hospital, in the name and title of M/s. QRG Central Unit-II had been constructed and was running. The writ petition before the Punjab & Haryana High Court was disposed of vide order dated 23rd July, 2013 directing the Authorities to look into the question as to whether or not the residential school meant for Harijans was being run at the site as per the terms and conditions of the allotment.

7. In the meanwhile, in furtherance to the Show Cause Notices issued, the Estate Officer, Faridabad, directed resumption of the site along with the building vide order dated 4th July, 2013. In that order, it was specifically noticed that there was transfer of property as the hospital under the name and title of M/s. QRG Central Unit-II was running and Harijan Residential School and Social Development Centre were not running in the premises. This was in violation of the Letter of Allotment and even of the permission granted by the Authorities on 24th July, 2003.

Respondent no. 9 filed an appeal against the said order of Estate Officer, HUDA, which was allowed by the Appellate Authority vide its order dated 14th January, 2014. The Appellate Authority noticed the grounds recorded by the Estate Officer in the order under appeal before it. It was noticed by the Appellate Authority that respondent no. 9 had submitted a representation to the Chief Administrator, HUDA, requesting him to increase their FAR from 100% to 150%. The Project Proponent, i.e., respondent no. 9 has also filed an affidavit that in case the increase of FAR from 100% to 150% was not permitted, they would remove extra construction at their own cost and by their own resources.

It was also noticed that, as the building was vacant therefore, it cannot be said that the hospital had been established. Appellate Authority in this order further stated that the respondent no. 9 also made a representation to the authorities for running of Super-Specialty Hospital and hence, there was no transfer of the land. Also, there was an undertaking of the respondent no. 9, that it will not use the land for any other purpose other than the one for which it was allotted. Upon noticing these facts and subject to the compliance of conditions, the order of the Estate Officer dated 4th July, 2013, was set aside. Relevant extract from the order dated 14th January, 2014 is reproduced herein under:—

> "In the present case since the allottee has resumed the activity of running the school as is clear from the report of the three member committee hence the appeal is allowed and the resumption order of the Estate Officer, HUDA Faridabad dated 4.7.2013 is hereby directed, subject to the following conditions:
>
> (i) The society will run the school as stipulated in the allotment letter. If it ever comes to the notice of HUDA Authorities that the society has closed down or stopped running the school, the resumption order will automatically come into force and without any prior notice.
>
> (ii) The allottee will remove all zoning violations except violations related to

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ramps mentioned at serial no. 2&3 within a period of 45 days from the issuance of this order. Regarding construction of ramps, SDE(S) will re-inspect the building and submit a fresh report for re-consideration since it is a building which will be used by a large number of people and hence must be complaint for people with disabilities as is mandatory.

(iii) The applicant will get the case of increase in FAR approved from the office of the Chief Administrator, HUDA, Panchkula within a period of xxxxxxx issuance of this order, otherwise allottee will have to demolish the excess coverage area within 15 days of the expiry of the above period."

8. On 20th September, 2013, the SDO (Survey) HUDA, submitted to the Administrator, HUDA a report stating that respondent no. 9, has violated the zoning provisions and HUDA byelaws and the violations were non compoundable. Respondent no. 10, in the meanwhile, on 12th June, 2013 submitted a proposal for grant of Environmental Clearance for proposed QRG Hospital at the site in question. This was received by Authorities on 17th June, 2013. This application was filed in the name of QRG Medicare Ltd. but later, a revised application was filed on 23rd June, 2014 in the name of respondent no. 9. On 27th March, 2014, in its 101st meeting, the State Environmental Assessment Committee (for short 'SEAC') discussed the application for grant of Environmental Clearance to QRG Medicare Ltd., wherein it was asked to furnish additional documents including a copy of the Allotment letter, approved lay out plan, building plans, details of the works executed and resolution of the Board of Directors. In the 101st and 102nd meeting of SEAC, an unanimous decision was taken that the respondent no. 10 was a proved violator and it recommended SEIAA to initiate appropriate legal action in terms of the Office Memorandum issued by Minsitry of Environment, Forests&Climate Change (for short 'MoEF&CC') dated 12th December, 2012.

9. The Board of Directors of M/s. QRG Medicare Ltd. submitted an affidavit admitting completion of the hospital project with a built up area of 39261.82 square meters. The case was again taken up by SEAC in its 103rd meeting held on 28th April, 2014. In this meeting, it was recorded that Vivekananda Ashrama was the original allottee and it continued to be liable for compliance of all legal requirements and consequences of default thereto. They then recommended that prosecution proceedings should be initiated against both Vivekananda Ashrama as well as M/s. QRG Medicare Ltd.

10. SEAC in its 106th meeting dated 16th June, 2014 appointed a sub-committee to visit the site and report on environmental aspects. The sub-committee inspected the site on 20th July, 2014 and submitted its report to SEAC, which was accepted in its 109th meeting held on 14th August, 2014. SEAC also deliberated upon the application of the Project Proponents in its 112th meeting held on 18th-19th September, 2014. In this meeting, it was specifically noticed that in the 106th meeting, it had been admitted that construction of the hospital project with a built up area of 39261.82 sq meters was in violation of the Environment Clearance Regulations, 2006 (for short 'Notification of 2006') and that the case was recommended for prosecution to SEIAA. SEAC in this meeting also referred to the cost of the project and other ingredients which were pointed out by the sub-committee. However, the case was not finally heard as the Project Proponent undertook to submit compliance of the ten points as noticed in the said meeting, dated 18th-19th September, 2014. The case was again taken up in the 113th meeting of SEAC held on 10th October, 2014. In this meeting, while noticing certain deficiencies, violations and changes in land use and also finding that some of the violations were non-compoundable, SEAC took into consideration the affidavit of the Project Proponent dated 4th October, 2014 and rated the project with 'Gold Rating'. SEAC contemplated certain specific conditions, with regard to construction and operational phase and recommended the case to SEIAA for grant of

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Environmental Clearance in terms of Notification of 2006. A direction was also issued to the sub-committee to visit the site again after Project Proponent confirmed due compliance and report the matter by December, 2014. The SEIAA in its 77th meeting held on 14th November, 2014 considered these recommendations of SEAC and granted Environmental Clearance for construction of Super Speciality Hospital and Harijan Residential School at the site in question. The SEIAA took a note of the NOC granted by other authorities, including NOC from DFO regarding non-involvement of forest land as stated by the representative of the Project Proponent as well as the assurance of the Municipal Corporation of Faridabad for supply of water and stated that the Environmental Clearance granted is limited to the issue concerning environment and all other issues like ownership of land, lease of land, purpose of lease for allotment of land by HUDA, FAR cover and any other connected issue will be decided by the Competent Authorities only. SEIAA agreed with the recommendations of SEAC to accord Environmental Clearance to the proposed project relating to the construction of Super-Specialty Hospital and Harijan Residential School at Plot No. 1, Sector-16, Faridabad, Haryana. They imposed certain conditions to the usual conditions in practice, which were as follows:

"[1] The Project Proponent shall provide sound reduction techniques during day time."

[2] The Project Proponent shall dispose of Bio-Medical waste as per Bio-Medical (Management & Handling) Rules, 1998.

[3] The Project Proponent is responsible for compliance of all conditions in Environmental Clearance letter and Project Proponent can not absolve himself/herself of the responsibility by shifted it to any contractor engaged by project proponent.

[4] The green space (21%) of plot area shall be developed before the project site is revisited after removal of all deficiencies by end of November, 2014.

[5] The environment clearance granted to the Vivekanand Ashram Society under the EPA 1986/Environment Impact Assessment Notification dated 14.09.2006 shall not create or confer any right to Land use of project site for establishment of proposed Super/Multi Speciality Hospital which is exclusively within the purview of Chief Administrator HUDA, Panchkula and binding upon the Society.

[6] All zoning violations outside the building line shall be removed and PP shall not create any grade separation between the building line & outer boundary wall. This shall conform to approve drawing No. DTP (F 2209/03 dated 20.06.2003. Unauthorised entry/exit facing north side (Sector-18) shall be removed & boundary wall reconstructed as per approved design.

[7] The Environmental Clearance granted shall be limited to the issue concerning the environment and all other issues like ownership of land, lease of land, purpose of the lease for allotment of land by HUDA, FAR covered and allowed of any other connected issue and any other legal issue/court case etc. will be decided and considered by the concerned competent authority only.

[8] The Project Proponent shall provide free medical-aid to 2% of the poor patient as per the assurance given to the Authority.

[9] The Project Proponent shall implement parking plan marked 'A/19' 77th (earmarking space for future parking).

[10] Corporate Environment and Social Responsibility (CSER) shall be laid down by the Project Proponent (2% shall be earmarked) as per guidelines of MoEF, GoI Office Memorandum No. J-1 1013/41/2006-IA.II(I) dated 18.05.2012 and Ministry of Corporate Affairs, GoI Notification Dated 27.12.2014. A separate audit statement shall be submitted in the compliance. Environment related work proposed to be executed under this responsibility shall be undertaken

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simultaneously. The Project Proponent shall select and prepare the list of the work for implementation of CSER of its own choice and shall submit the same before the start of construction.

[11] Vertical fenestration shall not exceed 40% of total wall area.

[12] The Project Proponent shall provide green area on terrace and roof top.

[13] The Project Proponent shall not use fresh water for HVAC and DG cooling. Air based HVAC system should be adopted and only treated water shall be used by Project Proponent for cooling, if it is at all needed.

[14] The Project Proponent shall install solar panel for energy conservation.

The Member Secretary, SEIAA then issued a detailed order according Environmental Clearance to this project on 26th November, 2014. The appellant, as already noticed, in this appeal, has challenged both the Minutes of SEIAA dated 14th November, 2014 and the order dated 26th November, 2014 granting Environmental Clearance.

11. Respondent no. 1 to 3, 7, 8 and 11 have not filed any independent reply. Respondent no. 5 and 6 have filed a common reply affidavit in which it was stated that the Haryana State Pollution Control Board (for short 'HSPCB') has given a sanction for prosecution against respondent no. 10 for violating the provisions of the Notification of 2006. The Project Proponent had completed nearly 90 per cent of the construction work at site without taking the Environmental Clearance. The State of Haryana had also issued a letter to the Chairman of the HSPCB on 11th August, 2014 on the basis of the letter of Member Secretary, SEIAA in which it was requested to initiate action against respondent no. 10. It is averred that a complaint has been filed by the Regional Officer of the HSPCB and trial in the complaint is pending before the Special Environmental Court, Faridabad, Haryana.

12. Respondent No. 4 in its reply has stated that Joint Commissioners, NIT, Faridabad Zone, Old Faridabad Zone and Ballabhgarh Zone were delegated with the powers of Estate Officer as defined in Section 2(1) of the HUDA Act, 1977 for sanctioning of Building Plans and issuance of Completion Certificates in respect of HUDA Sectors which had already been transferred to the Municipal Corporation of Faridabad. Within its competence, the Municipal Corporation of Faridabad sanctioned the Building Plan in question vide its letter dated 18th July, 2006 subject to the provisions of the Haryana Urban Development Authority (Erection of Buildings Regulation) 1978, as amended from time to time. Both these respondents have filed short affidavits and have not dealt with the detailed facts on record.

13. Respondent No. 9 and 10 have filed separate replies but their averment and content is similar. Both these respondents have raised a plea that the appeal preferred by the appellant is barred by time. The appeal is not maintainable as the appellant has failed to show the adverse impacts of the Environmental Clearance on environment.

It is also averred that the grounds stated by the appellant do not fall within the parameters of Section 14 and/or Section 16 of the National Green Tribunal Act, 2010 (for short 'Act of 2010'). The grounds like change in land use and sanctioning of plan etc. would not be the grounds to question the correctness of Environmental Clearance. Furthermore, the matter in relation to change in land use is sub-judice before the competent authority i.e., the Revisional Authority and the appellant cannot urge a sub-judice ground before other authorities as a ground of attack in the present appeal. In the reply, reference has also been made to the order of the Punjab & Haryana High Court dated 18th December, 2013 passed in Writ Petition No. 27853 of 2013 preferred by the appellant wherein the same was not entertained as a PIL, while holding the matter sub-judice before HUDA which was expected to examine the matter. These respondents have already filed a revision against the order of the 1st Appellate Authority dated 14th January, 2014 passed by the Chief Administrator, HUDA before the Commissioner, Town and Country Planning Department, Government of Haryana,

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Chandigarh which is pending and the grounds raised in the present appeal have been raised for consideration before that authority also. It is also averred that the appellant has no *locus standi* as the appellant is not a 'person aggrieved' within the meaning of Section 18 of the Act of 2010.

14. On facts, the stand taken by these respondents is that the appellant has deliberately and intentionally concealed material facts. The appellant has approached the High Court of Punjab and Haryana on related issues, time and again, without any success. The appellant had even filed a Special Leave Petition before the Supreme Court of India without much consequence. In the reply, the facts as afore-noticed are really not disputed except the grounds which have been taken up by the appellant. It is the case of these respondents in their replies that MoEF had taken a decision on 19th June, 2013 that in order to meet the stipulated time lines, avert duplication of work and to speed up the process of scrutiny with respect to grant of Environmental Clearance with respect to building and real estate projects, SEIAA/SEAC may only focus on the points stated in that Office Memorandum. The Chief Administrator, HUDA in his order dated 14th June, 2014 while disturbing the findings of the Estate Officers, had observed that since, 'hospital' is mentioned as one of the usages in the zonal plan, there is no change of land use. However, this order is pending adjudication before the Revisional Authority, as already noticed.

15. Reference had been made to the order of the Punjab and Haryana High Court dated 18th December, 2013 passed in Writ Petition No. 27853 of 2013 where the writ filed by the appellant was not entertained as a PIL, holding that the matter was sub-judice before HUDA and it was expected to look into that matter. Also, a Civil Writ Petition No. 7679 of 2015 was filed before Punjab and Haryana High Court, where challenge was made to the order dated 14th January, 2014 passed by the Appellate Authority of HUDA. The Court held vide its order dated 24th April, 2015, that the appellant has no *locus standi* to file the Writ Petition and the challenge to the change of land use could be brought to the notice of the Supreme Court of India where the matter is already pending. Earlier, the Supreme Court had permitted the applicant to withdraw the Special Leave Petition with liberty to approach the Punjab & Haryana High Court in terms of the order of the Supreme Court of India dated 23rd September, 2013. It is stated by the respondents that, in view of the matter being pending before the Revisional Authority, the Tribunal should not interfere in the order granting the Environmental Clearance. The Respondents also submit that the construction carried out prior to grant of Environmental Clearance does not bar grant of subsequent Environmental Clearance. Reliance in this regard is placed upon the Office Memorandum dated 12th December, 2012 issued by MoEF&CC. It is contended that the Office Memorandum applies to the cases where construction of the project has been started without obtaining prior Environmental Clearance. It is further stated that the violations pointed out by the authorities have already been complied with and an undertaking has also been given by them stating that the same will not be repeated in future. SEIAA, after considering all the environmental impacts in terms of the Office Memoranda dated 12th December, 2012 and 19th June, 2013 has thought it fit to grant Environmental Clearance. The prosecution against Project Proponent is pending before the Special Environmental Court at Faridabad, Haryana. The last order of resumption dated 4th July, 2013 for violation of the terms and conditions of the lease was challenged in an appeal which had been allowed vide order dated 14th January, 2014. This order is pending before the Revisional Authority and has a bearing on the appeal before the Tribunal. The Office Memorandum issued by MoEF&CC dated 12th December, 2012, in terms of its 'Corporate Environmental Policy' has laid down a procedure for dealing with the application for grant of Environmental Clearance, where construction is made out without obtaining 'prior Environmental Clearance'. It contemplates issuance of Environmental Clearance which would be issued to such projects upon

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prior furnishing of an undertaking and affidavit by them. It is denied by the Project Proponent that the Harijan Residential School for which the permission was granted has not been running. It has been found, as a matter of fact, that the Harijan Residential School has not been running for the academic session 2010–13 since construction was going on at the site. However, specifically for 2014–15, academic session of the school again began and allotment conditions are thus satisfied.

16. The Respondents have further averred that they have been directed under the Environmental Clearance to develop a green belt of 21.57 per cent of project area for which the respondents have already started activity. Finally, it is averred that these respondents have complied with all the conditions, while the appellant had been taking contradictory stands before different Courts and the Tribunal. Thus, they pray that the appeal be dismissed.

17. In order to analytically examine the correctness and merit of the rival contentions raised, it would be appropriate for us to formulate the issues that fall for consideration of the Tribunal. Precisely, they can be stated as under:

1) Whether the present appeal is barred by time?
2) Whether the appellant has *locus standi* to file the present appeal?
3) Whether the appeal discloses the 'cause of action' that clearly falls within the ambit and scope of the jurisdiction of the Tribunal under the Act of 2010?
4) Whether the minutes of the 77th meeting of SEIAA dated 14th November, 2014 and the Environmental Clearance dated 26th November, 2014 granted in favour of the Project Proponent are liable to be set aside and quashed?
5) What directions, if any, are required to be issued by the Tribunal in the facts and circumstances of the case?
6) Relief.

DISCUSSION ON ISSUES

DISCUSSION ON ISSUE NO. 1.

1) Whether the present application is barred by time?

18. The respondents no. 9 and 10 had taken a preliminary objection that the present appeal is barred by time. Thus the onus to show that the appeal is barred by time lies upon them.

Except making an averment that the Environmental Clearance dated 26th November, 2014 passed in their favour had been published in 2 local newspapers, no further details about compliance of the various provisions of the Notification of 2006 have been stated by these Respondents in their reply. Furthermore, MoEF&CC has not filed a reply. No reply has been filed on behalf of SEIAA. However, respondents no. 5 and 6 have only stated that criminal prosecution has been launched against respondents no. 9 and 10. Besides this, no document has been placed on record to show that the legal provisions relating to communication of grant of Environmental Clearance have been complied with, the onus of which, would primarily be on the Project Proponent or at best upon the authority issuing such Environmental Clearance.

19. According to the appellant, the present appeal has been filed within the prescribed period of limitation since the official respondents as well as the Project Proponent have not complied with the requirement of communicating the grant of Environmental Clearance as contemplated under Regulation, 10 of the Notification of 2006. Once there is no complete compliance to the requirement of the said Regulation, then it will not trigger the period of limitations so as to render an appeal barred by time. Further, according to the appellant, none of the respondents have uploaded the Environmental Clearance on their respective websites. The Project Proponent has also not published the contents of the Environmental Clearance and has not informed the requisite authorities in this behalf. Thus, the period of limitation has not triggered at

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all and the appellant came to know about the said Environmental Clearance dated 26th November, 2014 on 8th April, 2015 and the present appeal was instituted on 13th April, 2015 which is well within the period of limitation.

20. We have already noticed that no documents have been placed on record to show that the concerned authority had placed the order granting Environmental Clearance on its website even as on 12th April, 2015. On the contrary, the snapshot of website dated 12th April, 2015 (Annexure A-20), which is placed on record to substantiate this point, clearly shows that the order of Environmental Clearance has not been uploaded even as on 12th April, 2015. The Project Proponent has also not placed any documents on record to show that they have complied with the specific obligations imposed upon it under Regulation, 10 of the Notification of 2006. The law requires the Project Proponent not only to publish intimation of the Environmental Clearance in the two local newspapers, but also to publish the conditions and safeguards stipulated in the Environmental Clearance. This apparently has not been done by the Project Proponent. Furthermore, in contemplation of Clauses (ii) (a and d) and Clauses (ii and iii) of Regulation, 10 of the Notification of 2006 it is no where shown before us that Environmental Clearance had been submitted to the head of the Local Authorities, Panchayat, Municipal bodies, in addition to the relevant offices of the Government, who in turn has to display the same at their notice board for a period of 30 days from the date of such receipt. The Project Proponent has not placed the Environmental Clearance even on its website. The Project Proponent has miserably failed to show either by placing documents or by making averments in the reply that the requirements of Regulation, 10 have been complied with.

In this regard, we may make a reference to the Judgment of a Larger Bench of the Tribunal in the case of the *Save Mon Region Federation* v. *Union of India*, (2013) 1 All (I) NGT REPORTER 1 and *Medha Patkar* v. *MoEF*, (2013) All (I) NGT REPORTER (2) Delhi, 174, wherein it was held that the liability to file an appeal within 30 days is to be counted from the date on which the order is communicated to the aggrieved person. The period of limitation prescribed under Section 16 of the Act of 2010 is to be determined in accordance with the compliance of Regulation, 10 of the Notification of 2006. Thus, in the present case, the limitation period would not trigger for want of compliance on the part of SEIAA as well as the Project Proponent. Even if we take that the present appeal should have been filed within the prescribed period of limitation, this Tribunal would have the jurisdiction to condone the delay up to 60 days after the expiry of the prescribed period of limitation of 30 days. Another aspect in relation to limitation that can be noticed by the Tribunal is that the appellant has also challenged the minutes of 77th meeting of SEIAA dated 14th November, 2014 and the proceedings of SEAC as well. This, according to the appellant, would fall within the ambit of Section 14 of the Act of 2010 and the appeal, as filed, would not be barred by time in any case. But, that situation would not arise in the present case for the reasons aforesaid. Consequently, we reject the contentions of the private respondents that the present appeal is barred by time.

DISCUSSION ON ISSUE NO. 2

2) Whether the appellant has the *locus standi* to file the present appeal?

21. Section 16 of the Act of 2010 gives the statutory right to any 'Aggrieved Person' to prefer an appeal before the Tribunal. The expression 'Person Aggrieved' has neither been defined under the Act of 2010 nor in any of the Acts specified in Schedule I of the Act of 2010. Keeping in mind the object of the Act of 2010, its legislative scheme and the purpose enumerated in the Scheduled Acts, it can be concluded that the expression 'Aggrieved Person' has to be interpreted liberally.

The concept of *locus standi* as applicable to the Civil or Constitutional jurisprudence cannot be *stricto sensu* applied to the interpretation of this expression under the Act of

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2010. The term 'Person Aggrieved' does not have to show any personal interest or damage or injury as the concept of personal injury would be applicable to applicant invoking the jurisdiction of the Tribunal under Sections 15 and/or 17 of the Act of 2010, but it would not be true for a person invoking the jurisdiction of the Tribunal under Section 14 and/or Section 16 of the Act of 2010. In fact, this preposition need not detain us any further as a larger bench of the Tribunal has settled this principle in its various judgments. At best, the person has to show that he is directly or indirectly concerned with adverse environmental impacts which are likely to be caused due to grant of the Environmental Clearance by the competent authority.

22. It may be noticed that by coming into force of the Act of 2010, National Environmental Appellate Authority Act, 1997 was repealed. Under the provisions of that Act, any person aggrieved had a right to prefer an appeal against the orders to the Appellate Authority in terms of Section 11 which defines an 'Aggrieved Person' and provides that any person who is likely to be affected by the grant of the Environmental Clearance could prefer an appeal. However, every such definition is conspicuous by its absence in the provisions of Section 16 of the Act of 2010. Thus, it cannot be said that a person actually and really aggrieved should alone be permitted to prefer an appeal under the Act of 2010. It will be sufficient that a person states that the environment of the area would be adversely effected, the protection of which, is of his interest. Expression 'Aggrieved Person' must be given a wide connotation and the persons directly or indirectly affected or even interested should be permitted to ventilate their grievances in an appeal. (Refer:— *Sri Ranganathan* v. *Union of India*, (2014) ALL (I) NGT REPORTER (2) (SZ) 1 and *Mr. Vithal Gopichand Bhugersay* v. *Ganga K. Head Sugar and Energy Ltd.*, (2014) ALL (I) NGT REPORTER (1) (SZ) 49.

23. 'Aggrieved Person' is one, who has a legal right to enforce a remedy. Such person must satisfy the ingredients as stated in the laws in force. Although the legal right must fall within the framework of the statute, but, that does not mean that the Tribunal would unduly restrict the meaning of this expression. It must receive a liberal construction in consonance with the object of the Act of 2010. We may also refer to the Judgment of a larger bench of the Tribunal in the case of *Goa Foundation* v. *Union of India*, (2013) ALL (I) NGT REPORTER (Delhi) 234, where the Tribunal examined the ambit and scope of this expression while referring to various judgments of the Supreme Court of India. The relevant extract of the judgment reads as under:

> 25. The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the applicant's interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar's *The Law Lexicon* supra describes this expression as 'when a person is given a right to raise a contest in a certain manner and his contention is negative, he is a person aggrieved' *[Ebrahim Aboodbakar* v. *Custodian General of Evacue Property*, AIR 1952 SC 319]. It also explains this expression as 'a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which he is legally entitled to and not merely a person who has suffered some sort of disappointment'.
>
> 26. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something. This expression is very generic in its meaning and has to be construed with reference to the provisions of a statute and facts of a given case. It is not possible to give a meaning or define this expression with exactitude and precision. The Supreme Court, in the

case of *Bar Council of Maharashtra* v. *M.V. Dabholkar*, AIR 1976 SC 242 held as under:—

> "27. Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably con fined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved." Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which pre judicially affects his interests." It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.
>
> 28. The pre-eminent question is: what are the interests of the Bar Council? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.
>
> 40. The point of view stated above rests upon the distinction between the two different capacities of the State Bar Council: an executive capacity, in which it acts as the prosecutor through its Executive Committee, and a quasi-judicial function, which it performs through its Disciplinary Committee. If we can make this distinction, as I think we can, there is no merger between the prosecutor and the Judge here. If one may illustrate from another sphere, when the State itself acts through its executive agencies to prosecute and then through its judicial wing to decide a case, there is no breach of a rule of natural justice. The prosecutor and the Judge could not be said to have the same personality or approach just because both of them represent different aspects or functions of the same State.
>
> 44. The short question is as to whether the State Bar Council is a 'person aggrieved' within the meaning of Section 38 so that it has locus standi to appeal to this Court against a decision of the Disciplinary Tribunal of the Bar Council of India which, it claims, is embarrassingly erroneous and if left unchallenged, may frustrate the high obligation of maintaining standards of probity and purity and canons of correct professional conduct among the members of the Bar on its rolls.

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> 47. Even in England, so well-known a Parliamentary draftsman as Francis Bennion has recently pleaded in the Manchester Guardian against incomprehensible law forgetting 'that it is fundamentally important in a free society that the law should be readily ascertainable and reasonably clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights'. It is also needlessly expensive and wasteful. Reed Dickerson, the famous American Draftsman, said: It cost the Government and the public many millions of dollars annually'. The Renton Committee in England, has reported on drafting reform but it is unfortunate that India is unaware of this problem and in a post-Independence statute like the Advocates Act legislators should still get entangled in these drafting mystiques and judges forced to play a linguistic game when the country has an illiterate laity as consumers of law and the rule of law is basic to our Constitutional order."

27. In the case of *Maharaj Singh* v. *State of Uttar Pradesh*, (1977) 1 SCC 155, the Supreme Court observed that a legal injury creates a remedial right in the injured person. But the right to a remedy apart, a larger circle of persons can move the court for the protection or defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the lis and the plaintiff need not necessarily be personal, although it has to be more than a wayfarer's allergy to an unpalatable episode. Further in the case of *Dr. Duryodhan Sahu* v. *Jitendra Kumar Mishra*, (1998) 7 SCC 270, the Supreme Court, held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. In *Jasbhai Motibhai Desai* v. *Roshan Kumar*, AIR 1976 SC 578 the Court held that the expression 'aggrieved person' denotes an elastic, and to an extent, an elusive concept. It stated as follows:

> "It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him."

28. Section 16 of the NGT Act gives a right to any person to prefer an appeal. These expressions have to be considered widely and liberally. The person aggrieved, thus, can be a person who has no direct or personal interest in invoking the provisions of the Act or who can show before Tribunal that it affects the environment, and therefore, prays for issuance of directions within the contemplation of the provisions of Section 16 of the NGT Act.

24. The objection of the respondents with reference to the judgments of the Tribunal which we have already referred, is, that a person (appellant) has to be an 'Aggrieved Person' who has suffered a legal injury, i.e., to say that he has been wrongly deprived of something. Further, it is averred by the respondent that no specific averments have been made in the appeal in this regard and this contention is without any merit. Firstly, there are averments in the appeal in this regard and secondly, the appellant has taken a specific plea that being resident of the area, he is concerned with the protection of environment and ecology of the area which is affected by the unauthorized construction activities of the respondent.

25. In light of the above dictums of the Tribunal, we may refer to the memorandum

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of appeal preferred by the appellant. The appellant has specifically stated that the Environmental Clearance for the project would have adverse impacts on the environment and ecology of the area. According to him, it would cause traffic jams and air pollution since the Super-Speciality Hospital has been established contrary to the laws in force. The maintenance of prescribed percentage of green area has not been complied with by the Project Proponent and other conditions of the Environmental Clearance have also been violated by him. According to the appellant, the Environmental Clearance has been granted arbitrarily and in violation to the Notification of 2006. The appellant claims to be a resident of that area and has a direct interest in the environment of the area. Furthermore, the appellant has been pursuing the cause of environment protection before various forums for a considerable time. Thus, we are of the considered opinion that the appellant is covered within the ambit of the term 'Aggrieved Person' and once he is an 'Aggrieved Person' he would have the *locus standi* to file this appeal.

DISCUSSION ON ISSUES 3 AND 4:

3) Whether the appeal discloses the 'cause of action' that clearly falls within the ambit and scope of the jurisdiction of the Tribunal under the Act of 2010?

4) Whether the minutes of the 77th meeting of SEIAA dated 14th November, 2014 and the Environmental Clearance dated 26th November, 2014 granted in favour of the Project Proponent are liable to be set aside and quashed?

26. Since, Issues No. 3 and 4 are interconnected; we may deal with them collectively. 'Cause of Action', as understood in legal parlance, is a bundle of essential facts, which is necessary for the plaintiff to prove before he can succeed. It is the foundation of a suit or an action. 'Cause of Action' is stated to be an entire set of facts that give rise to an enforceable claim. The phase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. It is the substance and not merely the form that has to be looked into. The pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the concerned party is to be gathered from the pleading taken as a whole. 'Cause of Action' under the provisions of the Act of 2010 should essentially have nexus to the matter relating to environment. It should raise substantial questions of environment relating to implementation of the provisions of the Statutes specified in Schedule I of the Act of 2010. The Cause of Action would give right to sue or a right to take action. (Reference can be made to the Judgment of the Tribunal in the case of *Forward Foundation* O.A. 222 of 2014 decided on 7th May, 2015). In the present case, the appellant has satisfied the basic ingredients and has shown that besides invoking the appellate jurisdiction of the Tribunal, for the violation and breaches committed by the respondent he has also been able to raise a substantial question relating to environment. He, being the resident of that area, can be an 'aggrieved person' if it is shown that there would be an adverse environmental impact from the construction of the project, such as, generation of various types of wastes by the hospital, the traffic congestion and other allied activities, which will be injurious to the environment of the area in question.

The challenge of the appellant is to the recommendations of SEAC, minutes of 77th meeting of SEIAA dated 14th November, 2014 and the order dated 26th November, 2014 granting Environmental Clearance. From the records before the Tribunal, it is undisputable that Plot No. 1, Sector-16, Faridabad was allotted to respondent no. 9 for construction of Harijan Residential School and Social Development Centre. As per the terms and conditions of the allotment letter and provisions of the HUDA Act, 1977, this plot was treated as preferential plot. Two major restrictions of the letter of allotment were that, the allottee has no right to transfer the property or any interest therein,

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except with the prior permission of the competent authority, and secondly, in the event of breach of any of the conditions, they would be liable to be proceeded against, in accordance with the laws in force. A clear restriction was placed that the plot/building shall not be used for any purpose other than for which it had been sanctioned/allotted in the plan approved by the concerned authorities.

27. From the above narrated facts, it is clear that there were serious breaches and violations committed by respondent no. 9 and on different occasions plot allotted to the Society was resumed by Estate Officer, including that on 13th July, 1993, 5th September, 1994 and 4th July, 2013. The Show Cause Notices for violation were also issued to respondent no. 9 on 25th October, 2010, 28th November, 2011 and 14th December, 2012 in addition to the last order of resumption dated 4th July, 2013 which required resumption of land and building in question. An appeal was filed before the Appellate Authority, HUDA which was allowed on 14th January, 2014. The Appellate Authority, vide its order dated 14th January, 2014, had set aside the order of the Estate Officer, subject to the conditions that we have afore reproduced. The society was required to run a Harijan Residential School as stipulated in the letter of allotment. As per the said order, if the school was not found running, the order of resumption was to automatically revive. The order further required the respondents to remove all zoning violations within 45 days and respondents were also required to get the case of increased FAR approved from the concerned authority within 15 days. HUDA being aggrieved from the said order, had preferred a revision before the Commissioner, Town & Country Planning Department, Government of Haryana. In the revision it has been averred that building of the hospital on the project site was not permissible as the permission was granted for Harijan Residential School and not for super specialty hospital in addition to the Harijan Residential School. Furthermore, running of Hospital can only be an incidental purpose and not the main purpose which is, running of Harijan Residential School. Besides this, excess FAR and zoning violations were stated to be serious. The said revision is pending even as of now.

Various disputes are pending adjudication between the parties before authorities and Courts. *Inter-alia*, following are the main issues that are pending consideration before the authorities:

a) Change in land use.

b) Establishing and running of Super-Specialty Hospital as opposed to Dental College-cum-Hospital and Harijan Residential School for which the permission had been granted originally and letter by the authorities permitting the dental college along-with Harijan Residential School. The running of dental hospital was an incidental purpose to the primary purpose of running Harijan Residential School. Thus, there was complete violation of the terms and conditions of the letter of allotment.

c) Unauthorized and illegal construction, much in excess of that approved by sanction plans. The request of respondent no. 9 and 10 is pending consideration for increase of FAR.

d). There is no compliance to the order of the Appellate Authority as such and the plot automatically stands resumed. Hence, the project cannot subsist any further.

Of course, the Project Proponent claims that they have applied for permission in relation to establishment of Super-Specialty Hospital and increase in FAR. Furthermore, the revision application against resumption order is sub-judice and according to them, the conditions of the order dated 14th January, 2014 have been complied with. Reliance has been placed upon the letter issued by the Estate Officer, HUDA dated 4th October, 2014 addressed to the Project Proponent which states that as per the revised zoning plan dated 26th June, 2003, the use of the site includes

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'hospital' and the level of services to be provided by the hospital is the prerogative of the user. This letter further states that the Project Proponent must also run the Harijan Residential School at site.

28. At this stage, we may also notice that vide letter dated 24th July, 2003, the Chief Administrator, HUDA, permitted respondent no. 9 to establish a Dental College-cum-Hospital at the site in question with the specific condition that the Harijan Residential School shall remain at the premises and the dental college would be permitted only when permission from the Dental Council of India is provided and building plans are approved. It was specifically stated therein that if the land was used for any other purpose, the same shall revert back to HUDA in accordance with the provisions of the HUDA Act, 1977. The letter also prohibits transfer of the plot or even change of land use under any circumstances. Respondent no. 9 shall provide concession to the deserving persons from economically weaker sections in the dental college to the extent of five per cent of the seats. The Dental Council of India, vide its letter dated 15th June, 2007, had informed the Secretary to the Government of India, Ministry of Health & F.W. that application of respondent no. 9 for establishment of a new dental college with 100 admissions for academic session 2007–2008 had been disapproved.

DISCUSSION ON ENVIRONMENTAL CLEARANCE

29. The Project Proponent, respondent no. 10 had started the construction without even applying for Environmental Clearance. As already noticed, M/s. QRG Medicare Ltd. had not only started construction before grant of Environmental Clearance, but also partially completed the construction of Super-Specialty Hospital. It was on 12th June, 2013, for the first time that QRG Medicare Ltd., respondent no. 10, submitted a proposal for grant of Environmental Clearance and not respondent no. 9. After inspection dated 28th June, 2013, conducted by the Survey Staff, a report was submitted stating that instead of Harijan Residential School, a 450 bedded hospital was constructed at the site. The proposal for Environmental Clearance was referred to SEAC which dealt with the application in its various meetings commencing from 101st meeting on 27th March, 2014. In this meeting, SEAC required respondent no. 10 to submit further documents. In its 102nd meeting dated 17th April, 2014, an unanimous decision was taken that the case of respondent no. 10 was that of proved violation and same was recommended for prosecution in furtherance to the Office Memorandum of MoEF&CC dated 12th December, 2012. In pursuance to such Office Memorandum, respondent no. 10 passed a resolution of the Board of Directors stating that there was completion of construction of the project with a total built up area of 39, 261.82 square meters without obtaining Environmental Clearance. Respondent No. 10 also submitted an affidavit along with resolution dated 20th May, 2014, stating that there was violation and the same will not be repeated in future.

30. In the 103rd meeting of SEAC dated 28th April, 2014, it was recommended that both respondents no. 9 and 10 should be prosecuted and the case was recommended for that purpose to the Competent Authority. These recommendations were forwarded to SEIAA in furtherance to 106th meeting of SEAC for passing of order in relation to taking legal action against the Project Proponent. However, in 106th meeting of SEAC dated 17th June, 2014, it was noticed that Principal Secretary, Government of Haryana had provided evidence of credible action taken against the Project Proponent. A sub-committee was later appointed to visit the site and the committee was required to submit the report, which was accepted by SEAC on 14th August, 2014 in its 109th meeting. In its 112th meeting held on 18th-19th September, 2014, it was noticed that construction of the project is almost complete. The cost of the project was estimated to be Rs. 137.71 crores. The sub-committee had made certain recommendations which were noticed and the case was not finalized in that meeting. It was again taken up in 113th meeting of SEAC held on 9th-10th October, 2014, where the SEAC while rating

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the project as "Gold", recommended it for grant of Environmental Clearance to SEIAA as per the terms and conditions which we have already referred above. SEAC in this meeting directed the sub-committee to visit the site again after the Project Proponent confirms due compliance and to submit a compliance report before December, 2014. However, without waiting for the report, SEIAA in its 77th meeting dated 14th November, 2014 accepted the recommendations of SEAC.

31. In furtherance to this, on 26th November, 2014, a detailed order granting Environmental Clearance was issued with certain terms and conditions. There is nothing on record filed by any of the official respondents to say that conditions stated in the order dated 26th November, 2014 have been complied with.

32. The challenge to the Minutes of 77th Meeting of SEIAA dated 14th November, 2014 and the order dated 26th November, 2014 is defended by respondent no. 9 & 10 on the strength of the Office Memorandum issued by the MoEF&CC dated 12th December, 2012 which permits filing of an application at different stages of the project and its consideration. The contention of the respondents in this regard is that, there is no bar in law for grant of Environmental Clearance to a project which has already completed construction prior to grant of Environmental Clearance.

33. The Office Memorandum dated 12th December, 2012, superseded the earlier Office Memorandum issued by the MoEF&CC on 16th November, 2010. This Office Memorandum in para 4 to 7, provided the procedure for handling an application by SEIAA and SEAC in relation to the projects which have applied for the Environmental Clearance after the project work has been undertaken and there are violations in this regard. Para 5(i) of this Office Memorandum mandated Board of Directors of the Project Proponent's company to file a resolution that they would not repeat the violations in future. The Office Memorandum dated 27th June, 2013, which inserted sub -para (iii) & (iv) to para 5 in the Office Memorandum dated 12th December, 2012 had specifically provided that directions will be issued by MoEF&CC in respect of violation and compliance by Project Proponent to such directions was mandatory. Till then, construction activities at the site shall be suspended till Environmental Clearance is obtained. All these conditions of the Office Memorandum were even to apply to the projects which were for extension.

34. The question that primarily arises for the consideration of the Tribunal is whether the order granting Environmental Clearance is sustainable and can stand the scrutiny of law?

The application for grant of Environmental Clearance was firstly, submitted by respondent no. 10 on 12th June, 2013, who, as per the records, had no *locus standi* to file the application. The QRG Medicare Ltd., respondent no. 10, was neither allotted the land in question nor was the same ever transferred to him by any Competent Authority. The conditions of allotment letter dated 30th May, 1978 and letter of Chief Administrator, HUDA dated 24th July, 2003 completely prohibited transfer of the property as well as change of land use. This was considered by SEAC in its 102nd meeting wherein it was pointed out that the applicant should be Vivekanada Ashrama, respondent no. 9, whereupon, M/s. QRG Medicare Ltd. amended their application seeking Environmental Clearance on 23rd June, 2014. By the time an application was filed jointly by the respondent no. 9 and 10, even if in any law such a application could be filed, the Office Memorandum of the MoEF&CC dated 12th December, 2012 had already been amended vide Office Memorandum dated 27th June, 2013. In other words, the application had to be considered in terms of the Office Memorandum dated 12th December, 2012 read with Office Memorandum dated 27th June, 2013. There is no record filed by the official respondents that the conditions of these Office Memorandums had been completely satisfied. On the contrary, no affidavit was filed by these respondents, stating that the construction work has been stopped and would

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not be carried till grant/refusal of the Environmental Clearance. Though an affidavit was filed by respondents, it only stated that the violation would not be committed in future, which confirms that in the past, violation have been committed. It is also clear from the records that construction work of the project was carried on right from the year 2006 and the construction is not only complete now, but is much in excess than the permissible covered area. The documents placed on record show that 1974.99 sq meter area has been constructed without getting sanctioned plan and 10714.684 sq meter area has been constructed without obtaining NOC from DPC. According to the affidavit filed by the Director of the respondent no. 10, construction of the project began in the year 2006 and an area of 32080 sq meters was constructed up to 2009. From 2009–13, the area of 7181 sq meter was constructed and renovation and changes of existing structures was carried after March, 2013 till April 2014.

Seen in light of the document on record, it is more than clear that besides unauthorized and illegal construction, the construction was also carried out after filing the application for grant of Environmental Clearance. This clearly demonstrates that respondent no. 9 and 10 violated the mandate of both the Office Memoranda issued by MoEF&CC on 12th December, 2012 and 27th June, 2013 in all respects.

In this background, having failed to comply with the requirements of the Office Memoranda and adhere to the conditions stipulated therein, respondent no. 9 and 10 cannot claim benefit of these Office Memoranda. The authorities concerned have also failed to take notice of this admitted position on record and have issued the order granting Environmental Clearance dated 26th November, 2014.

35. SEAC as well as SEIAA had recorded gross violation of the provisions of the Notification of 2006 by the Project Proponents and had directed prosecution of both the respondents. Having recorded such serious objections in its 101st, 102nd, 103rd, 106th, 109th and 112th meeting there appears no justification whatsoever for these authorities to turn around their findings and recommend the project for grant of Environmental Clearance. We are unable to appreciate, and, in any case find reasonable grounds for SEAC to completely alter its course of action against the Project Proponent. It is worth noting that in its 106th meeting, SEAC had recorded that the Principal Secretary, Government of Haryana, Environmental Department vide letter dated 6th June, 2014 has provided the evidence for credible action taken against the Project Proponent, still, it opted to appoint a sub-committee, obtained a report from that sub-committee on 14th August, 2014 and considered the same in its next meeting. In that very meeting, it also directed that respondent no. 9 should be the first applicant. Strangely, there is nothing on record before the Tribunal to show as to how and on the strength of which documents, respondent No. 9 has claimed right in the property, filed application for Environmental Clearance and its consideration thereof by SEIAA and SEAC. This aspect attains some definite significance in light of the restrictions imposed in the letter of allotment as well as in the subsequent letters of Chief Administrator, HUDA granting permission to establish a Dental College-cum-Hospital. In any event, the Harijan Residential School was to be constructed and run as per conditions of the letter of allotment. A plea has also been taken as to whether the Harijan Residential School was constructed and actually running at the site in question. Respondent no. 9 & 10, themselves have admitted in their reply to the grounds that the school was not running from the year 2010–13 due to construction work of the Hospital. The school resumed only in the year 2014–15. The applicant has taken up the stand that the Harijan Residential School was never running effectively. One fact that is evident from the record is that a plot which was given to respondent no. 9 for construction of Harijan Residential School and for Social Development Centre was never exclusively used for the said purpose. Furthermore, immediately after allotment, an attempt was made to establish a Dental College-cum-Hospital and ultimately a Super-Speciality Hospital with 325 beds has come up. However,

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application for licence to the Joint Commissioner, Municipal Corporation Faridabad was made for setting up of a 400 beds hospital. Obviously, the very purpose for which the plot had been allotted was lost, if not entirely extinguished, by the construction of the Super-Specialty Hospital, which is a purely commercial project.

36. Now, we may examine the content and correctness of the order dated 26th November, 2014 granting Environmental Clearance to respondent no. 9. The Environmental Clearance has been accorded to respondent no. 9, while the application for construction of the Super-Specialty Hospital of 325 beds was submitted by respondent no. 10. Respondent no. 9 was added as an applicant subsequent to the observations of the SEAC in its 101st meeting. Respondent no. 10 is a Limited Company while respondent no. 9 is a registered society. Thus, both of them are separate legal entities. On perusal of the documents placed before the Tribunal, it can be deduced that respondent No. 10 has no interest in the land. As already noticed, the project had practically been completed at the time of filing of the application seeking Environmental Clearance. This order granting Environmental Clearance notices that the proposal had been appraised as per prescribed procedure under the provisions of Notification of 2006. This is factually incorrect as the entire process for grant of Environmental Clearance was started post completion of project which is not at all contemplated under the notification of 2006. Furthermore, the Environmental Clearance says:

> "Your application No. QRML/FBD/MS/EIAA/VP/2013/10329 dated 12.6.2013 addressed to M.S., SEIAA, Haryana received on 17.6.2013 and subsequent letters dated 3.2.2014, 15.4.2014, 30.9.2014 (revised application in the name of Vivekananda Ashrama) Seeking prior Environmental Clearance for the above project under the EIA Natification, 2006"

The application by no stretch of imagination could be treated and dealt as an application seeking 'prior Environmental Clearance'.

37. The order granting Environmental Clearance imposed specific conditions in relation to construction and operational phase and also imposed certain general conditions for the project. The bare reading of the conditions imposed smacks of non-application of mind. This is clear from the very first condition which mentioned about obtaining consent form the HSPCB under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 for establishing the project, while the project had already been completed and has started its operations. Conditions in relation to utilization of top soil excavated during construction activity and direction incidental thereto were inconsequential as the building had already been completed.

38. Large number of conditions have been imposed on the supposition that project was still to start its operation and was under construction. Conditions like the use of fly ash as building material, maintenance of ambient air quality and noise quality during construction were entirely irrelevant and have been incorporated without any plausible reasoning. Conditions No. 19 to 29 totally relates to and are enforceable only prior to commencement and continuation of the construction work. If conditions stipulated in the Environmental Clearance are scrutinized, they can safely be termed as irrelevant and/or illogical. For instance, the electric supply should be ensured before construction and construction cannot be done solely on generators; the Project Proponent shall not raise any construction in natural land depression, nalas and water course; the Project Proponent shall keep the level of building block above the level of approach road; construction shall not be carried out so that density of population does not exceed norms approved by the Director General, Town and Country Department, Haryana; ground water will not be used for construction; Project Proponent shall not cut any existing trees; Project Proponent will provide 3 meter high barraged around

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the project; there shall be dust screening for every floor above the ground; the Project Proponent shall construct a sedimentation basin in the lower level of the project site; he shall provide proper paths and passages before starting construction; size of the glass to be used etc.

39. All these conditions stand infructuous as on the date of consideration of the application by the authorities and their observance of default would be rendered inconsequential. Besides all this, there is nothing on record to show that these conditions stood compiled with or not. The authorities have not even bothered to suggest any remedial steps required to be taken by the Project Proponent in this regard. Further, condition no. 33 of the Environmental Clearance states that the site for Solid Waste Management Plant had to be earmarked on a layout plan and the detailed project for setting up of Solid Waste Management Plant shall be prepared.

40. A Super-Specialty Hospital of this magnitude, in normal course of its business, is expected to generate different kinds of waste. The Hospital would generate Bio-Medical Waste, Hazardous Waste, Municipal Solid Waste and will also cause water and air pollution. The impugned Environmental Clearance is completely silent on the measures that have been taken in regard to all these aspects, what the Project Proponent was required to do and what would be the final impact of an existing project on environment and ecology. The conditions like providing sprinkle system, providing adequate air pollution measures to mitigate air pollution, providing space for parking, providing greenbelt, stack heights of the D.G. Sets and standards for discharge of environmental pollutants in accordance with the Act of 1986, energy conservation measures like installation of LED only for lightening and ensuring that the ground water is not contaminated due to leach of spoiled organic material are to be considered not only in terms of compliance, but even in terms of impact, by the concerned authorities upon physical inspection of the site prior to grant of Environmental Clearance. The entire order granting Environmental Clearance *ex facie* is a mere formality. It has no substance, much less ensuring protection of environment and prevention and control of pollution, which are the very essence of granting such permissions. Most importantly, in condition no. 36 of the impugned order it has been stated that Environmental Clearance granted to respondent no. 9 shall not create or confer any right to land use of the project site for establishment of the Super-Specialty Hospital. The very purpose of such a condition shows self-contradiction. On one hand, SEIAA has granted Environmental Clearance to the property owned by respondent no. 9 in relation to project exclusively propounded and executed by respondent no. 10, while on the other hand, there was nothing before the said authority to confirm whether such a land use, as proposed by respondent no. 9 was permissible on the site in question or not. Land use certainly is a relevant consideration for grant of Environmental Clearance. It is a land use of the area which would ultimately determine the ambient air quality and cumulative impact assessments and consequently, imposition of relevant conditions in the order granting Environmental Clearance.

41. In 101st meeting of SEAC information on actual ground coverage, paved surface area and vacant green area was sought to work out actually possible green belt development. As per site inspection report of the sub-committee of SEAC, details of landscape area as follows:

1. “On the Eastern side of the project there is a main gate for Hospital and School. On the periphery of the project on this side only there is a grassy area of land with two rows of newly planted Ashoka Trees in an area of about 10′ × 50′ near the underground water tank provided with grassy cover.
2. On the North & West sides of the project, roads are provided with complete concrete flooring. There is no land for afforestation/Plantation, few gamlas with

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plants have been placed on the periphery of the project on this side which cannot be counted as afforestation/plantation.

3. On the Southern side a small grassy lawn is provided but no plantation has been done at all. Note: The identified landscape area for plantation (21%) is not correct as the management claims. The plantation/afforestation parameter for EC is almost totally missing and has been neglected completely. The plantation at eastern side does not form even 0.1% of the requisite percentage of plantation i.e. 21%"

Being fully aware of the ground realty that practically no open space is available of development of green belt, imposition of specific condition 4 regarding 21 per cent green area has no basis.

42. Another critical aspect that has been totally overlooked in all stages of planning and grant of Environmental Clearance pertains to the fact that the buildings for a Super-Specialty Hospital like the one under reference require specific considerations in terms of medical services to be offered which in turn govern the requirements of Entrance area, Ambulatory care area, Diagnostic services, Intermediate care area, Intensive care area, Critical care area, Therapeutic services, Hospital services, Engineering services, and Administrative/Ancillary services. These in turn govern the requirements in terms of water supply, sewage, Solid Waste management, Bio-Medical Waste management, power back up, manpower, parking space, etc. It is worth noting that for most of the above BIS standards are available for planning purpose and in the absence of any reference to such planning exercise, it is difficult to comprehend as to how the project under reference at the first place complies with the functional requirements and thus with the likely pollution control measures that are proposed.

To highlight, provision of 95 ECS in the parking for a 325 bedded hospital with the restriction for allowing parking outside the premises as a specific condition 9, appears to be a mere formality and non-application of mind. It is a common knowledge that the hospital of such nature would itself have around 500 employees, thus put together with the patients (indoor and outdoor both), one can just guess the huge requirement for parking apart from the large space requirement for ambulance services.

Another glaring example of non-application of mind can be seen in specific condition 2 pertaining to Bio-Medical Waste management. Apart from mentioning the specific condition, it occurred to no one that how the infectious liquid waste that would be disposed in the sewer would be treated. Obviously in such an establishment, apart from domestic sewage from laundry, kitchen and toilets, a huge quantity of infectious liquid waste would also be generated from various sections of the hospitals. First question that arises for consideration is the fact that whether separate sewer lines have been laid for that purpose and the second question pertains to installing proper ETP for the treatment of such infectious liquid waste.

43. Hospitals are significant consumers of water and they generate considerable amount of wastewater which consists of pathogens and harmful bacteria, virus, pharmaceuticals and its metabolites, radioactive elements, toxic chemicals, and heavy metals. The pathogens can spread disease, adversely affect the biodiversity whereas microbial resistant strains to antibiotics can spread resistance vertically and horizontally. Similarly persistent, non-biodegradable, hydrophilic chemicals can pass a normal STP and pollute water bodies.

Average water consumption pattern in Indian Hospitals indicate that water use in hospital for various purposes is around 750 l/p/d/b. Quantitative analysis of hospital wastewater shows that r pH ranges from 7.7-8.1, BOD is 300-400 mg/l, COD is 800-1000 mg/l, SS is 400-600 mg/l, TKN is 5-80 mg/l, Total - P is 0.2-13 mg/l, Fat, oil and Grease is 5-60 mg/l, Total Surfactant is 3-7.2, E. Coli is 10^3-10^6 MPN/100 ml, Faecal coliform is 10^3-10^7 whereas Total Coliform is 10^5-10^8. In addition hospital waste

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water also has Analgesic (Aug/l) 100, Antibiotic 11, Cytostatic 24, I-blockers 5.9, Hormones 0.16, ICM 1008, AOX 1371, Gadolinium 32, Platinum 13, Mercury 1.65 as micro pollutants.

Similarly, once the entire construction has taken place, in what manner the project proponent would install or create facilities for safe disposal of Solid Bio-Medical Waste which is of various categories and require different treatments.

S. No.	Type of Waste	Waste Description	Generation Area
1	Human Anatomical	Human tissues, Amputated Body Parts	Cardiac OTs, Day care OTs, Emergency OT. Cath Lab
2	Infectious Solid Waste	Items contaminated with blood & body fluids including cotton, dressings. soiled plaster casts, beddings. pathological waste, infected blood. patient samples & specimens	Cardiac OTs. Day care OTs. Emergency OT, Cath Lab, ICUs. Procedure rooms, IPD, OPD, Pathology lab, Phlebotomy room, Blood Bank
3	Microbiology waste	Cultures, stocks of micro-organisms. dishes & devices used for culture	Microbiology lab
4	Disposables	Disposables other than sharps e.g. Gloves, tubings, catheters, IV-sets, clips, valves and any other infected plastics.	OTs, Cath labs, IPD, OPD, ER, ICUs
5	Sharps	Needles. Synnges, scalpels, blades, glass etc. winch may cause puncture & cuts	OTs. Cath labs, IPD, OPD, ER, ICUs, Phlebotomy room
6	Liquid Waste	Waste generated in the laboratones cleaning. Housekeeping and disinfecting activities	Laboratories. Laundry. Housekeeping
7	Chemical Waste	Chemicals used in the production of biologicals. chemicals used in disinfection	Labs
8	Discarded Medicines	Waste comprising outdated. contaminated & discarded medicines	All patient areas, Pharmacy
9	Incineration Ash	Ash from incineration of any biomedical waste	Incinerator site
10	Noninfectious waste	Office waste like paper, cartons, cardboard boxes, metal cans, packaging material, garden waste and kitchen waste	All areas of the Hospital
11	Kitchen Waste	Waste food (cooked or raw)	F&B
12	Radioactive Waste	Radio-isotopes	Nuclear Medicine Lab

Following are the potential adverse impact due to improper handling of Bio-Medical Waste on the human environment:

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- Physical injuries may occur to the hospital personnel as well as waste handlers outside the hospital due to improper handling of various Bio-Medical Wastes. Out of the different categories of wastes, sharps are most likely to cause physical injury especially when they are mixed with other Bio-Medical Waste that increases the risk of Hepatitis and HIV infections.
- Chemical injuries can occur due to hazardous-toxic, corrosive, flammable, and reactive and genotoxic wastes which are likely to cause chemical burns on accidental exposure, or toxicity to cells cytotoxic materials.
- Nosocomial infections to the patients from poor infection control policies and poor waste management practices.
- Increasing uses of disposables in hospitals generate large quantum of infectious waste that can be reused if not managed effectively.
- Mushrooming business of disposables being repacked and sold without even being washed can be life threatening.
- Also when such waste is disposed in open likely to contaminate land and water environment either through percolation or surface runoff.

Other potential Impacts during the operation phase of any Hospital are as follows:

1. Mixing of Municipal Solid Waste & Bio-Medical Waste can cause severe contamination problem if it is not handled carefully.
2. Due to development of Health care facility in the area, Road side vendors and small shopkeepers will encroach upon road/pavement apart from likelihood of establishment of medical stores, diagnostic laboratories and eateries would lead to adverse Impact on traffic movement and would also increase the noise and air pollution.
3. Additional demand for electricity will be required for hospital facilities and diagnostic machinery.
4. Surrounding area will be required to be declared as silence zone for controlling the Noise pollution; however, with the Harijan Residential School in the same building, it would be totally contradictory.

44. In the whole exercise, the issues pertaining to School have not received due attention. The records clearly indicate that initially for 3-4 years it was operational and it is also on record that due to construction/alteration/modification activities, the school is not operational and in the process, what happened to the students. Apparently, this is the biggest fraud played by Respondent 9 and 10 to which all the public authorities have remained a mute spectator. In the whole process, they have ruined the career of the students for which strict action needs to be taken.

45. In light of the above, we have to now examine whether the order dated 26th November, 2014 granting Environmental Clearance to the project of private respondent no. 9 & 10 can stand the scrutiny of law? The answer to this has to be in the negative, *inter-alia*, for the following reasons and circumstances:

i) The impugned order granting Environmental Clearance dated 26th November, 2014 does not envisage appropriate conditions that would protect the environment and prevent and control air and water pollution. The impugned order suffers from the element of non-application of mind. It does not deal with the presence of complete and satisfactory mechanism for dealing with the Hazardous Waste as per the Hazardous Waste Management and Handling Rules, 2008, Bio-Medical Waste as per the Bio-Medical Waste Management and Handling Rules, 2011, and the Municipal Solid Waste as per Municipal Solid Waste Management and Handling Rules, 2000, The impugned order is founded on a factually erroneous assumption that the project is still to commence and the conditions stated in the impugned order should be adhered to during the

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commencement and course of the construction.

ii) Form I and I-A to the Notification of 2006 contemplates providing data and analysis report which must be at a stage prior to commencement of any project activity and Project Proponent may comply to these conditions. This aspect does not even find mention in the impugned order. The environmental aspects in regard to creating a green zone, landscaping, providing a mandatory 21.57 per cent green area, requisite parking area and infrastructure restrictions were not examined and even their possible compliance does not find a mention in the impugned order.

iii) The impugned order and entire exercise by SEIAA & SEAC is without jurisdiction and is contrary to law. Prior approval for commencement of the project activity is mandatory, as even noticed in the Environmental Clearance. The entire concept of prior approval has been brought to a halt by this post-construction exercise by the official respondents.

iv) Change in land use for building of a Super-Specialty Hospital, unauthorised construction, pendency of proceedings before the Revisional Authority, and respondent no. 10 having no interest or right in the land were the relevant considerations for grant of Environmental Clearance. Non-consideration of these factors would not only adversely affect the decision making process, but will also affect the decision taken by the authorities. The impugned order suffers from the infirmity till its 112th meeting. SEAC, till its 112th meeting, was of the view that there are serious violations and punitive actions should be initiated against respondent no. 9 & 10. The Principal Secretary, Haryana had provided material evidence for taking credible action against the Project Proponent. However, ignoring all these factors and upon seeking a report of a sub-committee of its own, decision of recommending the project for grant of Environmental Clearance in its 113th meeting dated 9th & 10th October, 2014 is bereft of any reason, much less supported by environmentally sound considerations. It is evident from the record before the Tribunal that SEAC had constituted a sub-committee which, according to them, had submitted a report. While agreeing to this report and presuming that Project Proponent had taken care of environmental interests, SEAC, in its 113th meeting asked the subcommittee to visit the site again and submit a compliance report by December, 2014. But even without submission of such a report and prior to the period specified, the impugned order was passed on 26th November, 2014. This undue haste for ignoring its own directions by SEAC is a glaring example of arbitrariness as well as non-compliance to the provisions of Notification of 2006. It appears from the record that the minutes of the 113th SEAC meeting had pointed certain shortcomings and required the Project Proponent to correct the same. There is nothing on record to show that before passing of the impugned order such compliances had been completely and satisfactorily carried out.

v) It has been incorrectly recorded in the impugned order that appraisal and other steps in accordance with the Notification of 2006 had been taken prior to issuance of the order dated 26th November, 2014. Appraisal of the project in accordance with the Notification of 2006 would be incapable of being executed in terms of Notification of 2006 since the project had already been constructed.

vi) The impugned order granting Environmental Clearance does not take into consideration the primary object for which the land was allotted, i.e., the Harijan Residential School. No efforts are made to enquire whether the school was established and actually running, which was the paramount object for allotment of the land to respondent no. 9 and if the school was running, then what is the impact of running the Super-Specialty Hospital on running of such a school.

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There is no comparative study, much less a study based upon physical inspection of the site was that was carried out prior to grant of Environmental clearance.

46. We have afore-noticed violations and non-compliance to other laws, including, the change in land use as relevant considerations for granting Environmental Clearance by SEIAA. But these are not the aspects on which the Tribunal will pronounce its verdict in relation to the project in question, though Environmental Clearance to such project ought to have been granted prior to its establishment and operationalization, that too in consonance with the laws in force. A project, the foundation of which is illegal and in violation of the laws in force, cannot be permitted to contend that the Environmental Clearance should be granted to the project *de hors* of such consideration and irrespective of the flagrant violations committed by them. It is not only expected, but is a legal obligation upon every Project Proponent to obtain requisite permission, including Environmental Clearance prior to the commencement of any project activity, unless the laws specifically provides to the contrary. We are conscious of the fact that in the present case, the challenge to change of land use is pending adjudication before the Revisional Authority. The matter in regard to excess coverage has also not yet been resolved. Of course, the Project Proponent has obtained certain other clearances but that will not alter the position of law which requires the Project Proponent to take 'prior Environmental Clearance'. Thus, the discussion regarding other issues in this judgment should be recorded as a discussion on relevant factors only and not determination of those issues except to the extent of grant and/or refusal of Environmental Clearance to the Project Proponent. In this regard, reference can be made to the judgment of the larger bench of this Tribunal in the case of *S.P. Muthraman* v. *Union of India*, O.A. 37 of 2015 decided on 7th July, 2015.

"122. What we need to notice here is that the compliance to the laws in force, submission of applications for grant of Environmental Clearance complete in all respects with necessary documents are the conditions precedent of consideration of such application by the competent authorities. It is imperative that the activity for which the Environmental Clearance is sought must be an activity started completely in consonance with law. Even the approval of the drawings and principal approval of the construction of the project from CMDA was subject to compliance with the laws in force. We do not agree to the argument propounded by the Project Proponents that the grant of principal approval ipso facto had the effect of granting other permissions to start construction without complying with other laws and permissions from the other authorities, particularly in face of the fact that a clause of this principal approval required the Project Proponent to obtain Environmental Clearance. All these Project Proponents are deemed to be in knowledge of the laws relating to construction of such projects i.e. Act of 1986, Rules of 1986 and Notification of 2006. The Project Proponents are persons in the business of building projects, having huge means and perspicacity. They cannot be even expected to take environmental laws. It is in fact unfortunate that these Project Proponents have not only violated the laws and their own undertaking but in that process even made other innocent people invest their money into the project, being fully aware that the construction raised is completely illegal and unauthorized. The Constructions have been raised in complete and flagrant violation of law. This renders them liable to be prosecuted against in terms of Section 15 of the Act of 1986. The authorities have taken action against some of them, but that does not in any way by necessary implication or otherwise have the effect of regularizing the construction that has been raised illegally, in an unauthorized manner and in violation of the principles of law. We must notice that these constructions are bound to have adverse effect on environment, ecology and biodiversity in the areas where they are located. Some of the environmental degradation and deterioration would be irreversible while other would be correctable to some extent either by demolition

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or by taking curative measures which we will hereafter discuss. Their illegal acts and unacceptable conduct has even rendered compliance to the provisions of the Notification of 2006 impracticable if not impossible.

123. Another plea advanced on behalf of the Applicants before the Tribunal is that the Office Memoranda are clearly in derogation and not in support of the substantive law, the attempt to condone violation would lead to compounding of offences and permitting what provisions of Notification of 2006 and Act of 1986 restricts. The legislature in its wisdom has statutorily introduced the Precautionary Principle in terms of section 20 of the NGT Act, effect of which would stand wiped out in substance by these Office Memoranda. The contention of the Applicants is that the Office Memoranda are neither remedial nor solution to a problem. It is not one time settlement for the category of the persons who might have under some bonafide impression or mistake commenced the activity of the project without obtaining environmental clearance. Office Memoranda in their operation and effect are continuous and do not propose to cover a given situation. The Office Memoranda were issued right from the year 2010 and were amended from time to time, lastly in 2013. The Office Memorandum of 27th June, 2013 ex facie is a law in itself as it operates as the procedure for all future times giving substantive rights to parties and runs contra to the statutory provision and procedure established under substantive law. On the plain reading of the Notification of 2006, it is manifestly clear that it is the procedure prescribed therein besides being mandatory in character is also sui-generis. Once the law prescribes things to be done in a particular way then they must be done in that way alone or not at all. In *Barium Chemicals Ltd.* v. *Company Law Board*, AIR 1967 SC 295, the Hon'ble Supreme Court held "As a general rule, if the, statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited.

124. From such matters or procedure to be performed differently the law must specifically contemplate that it is impermissible to draw such inferences by implication. Nothing has been brought to our notice neither in the Act of 1986, Rules of 1986 and the Notification of 2006 which in express terms or even by necessary implications permits the mandated provisions to be waived and in any case in the manner that would not prejudicially effect the environment and ecology."

43. We may, at this stage, deal with the aspects of the Notification of 2006 that have been rendered incapable of compliance or performance. Under the scheme of the Notification of 2006, the stages of screening, scoping, public consultation and appraisal leading to the issuance of ToR can hardly be complied with at the stage when application seeking Environmental Clearance was filed post construction. The SEAC would hardly be in a position and in fact, has completely failed to perform its duties in consonance with the above stages which are mandatory for issuance of Environmental Clearance. In the case of *Gau Raxa Hitraxak Manch and Gauchar Paryavaran Bachav Trust, Rajula Through its President, Chetan N. Vyas* v. *Union of India through the Secretary, Ministry of Environment and Forests, Gujarat Pollution Control Board Through its Member Secretary and M/s. Gujarat Pipavav Port Ltd.*, 2013 All (I) NGT REPORTER (DELHI), 506 a Bench of this Tribunal clearly held that there cannot be a duality of the opinion about the provisions of the Notification of 2006, thus, making it clear that appraisal is not a mere formality. It requires detailed scrutiny of the application as well as the other document by SEAC or SEIAA which would report outcome of the consultation to arrive at any final conclusion and the Tribunal held as under:

"25. There cannot be duality of opinion that rejection of the proposal could also be

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at the stage of scooping. It is also contemplated as a result of Appraisal which is captioned as "Stage (4)-Appraisal". The wording as used in EIA Notification pertaining to stage(4) i.e. Appraisal, is reproduced to the extent it is necessary:—

Stage (4)-Appraisal:

(i) Appraisal means the detail scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior Environmental Clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.

(ii) xxx

(iii) xxx

(Emphasis supplied)

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

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

28. Moreover, sub-clause (iii) of Regulation, 7 pertaining to Stage(4) indicates that the process of appraisal is required to be completed by the EAC or SLEAC within sixty (60) days of the receipt of the final EIA Report and other documents."

47. A larger bench of the Tribunal in a recent judgment in the case of *S.P. Muthuraman* (supra) while dealing with somewhat similar situation and particularly, in relation to the compliance of the Notification of 2006 held as under:

"117. The Notification of 2006 not only mandates an Applicant or Project Proponent to strictly comply with the provisions, but even requires the authorities to perform their prescribed functions and thus, comply with the provisions within the time stipulated under those paragraphs of the Notification of 2006. It furthermore provides the consequences of noncompliance by the authorities within the period statutorily prescribed. In terms of Para 3, it is not only the consequences of failure to comply on the part of the authorities that are prescribed but it even specify the rights that accrue to the Project Proponent. These private rights are definite in character and are of serious consequences. The required compliance has been stated with exactitude in the Notification of 2006, which provides a schedule stating category-wise those projects which require an Environmental Clearance and even the Form which a Project Proponent is required to furnish with complete details at the time of applying for Environmental Clearance.

118. If the application is not in Form, 1 and does not provide complete details and

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documentation in support thereof in terms of the Schedule to the Notification of 2006, the authorities have the right to decline to entertain such an application.

119. Sections 3 and 5 of the Act of 1986 empowers the Central Government to take measures to protect and improve the environment and to issue directions of very wide magnitude, including directions in relation to closure, prohibition or regulation of any industry, operation or process. It can in all event also direct disconnection of electricity or water supply of such industry or operation or process. In exercise of its powers under Sections 6 and 25 of the 1986 Act, the Central Government has framed the Rules of 1986. The Notification of 2006 has been issued in terms of Rule 3(2) of the Act of 1986 as well as Rule 5(3) of the Rules of 1986. In other words, these later enactments are integral part of the Act of 1986, their character being statutory and language of these provisions makes it obligatory upon every Project Proponent to obtain Environmental Clearance and comply with other environmental laws without default. Section 15 of the Act of 1986 provides penalty for contravention of the provisions of the Act of 1986, the Rules, orders and the directions passed thereunder. Interestingly, Section 15 of the Act of 1986 makes both non-compliance and contravention of the provisions of these enactments punishable. In other words, every default or violation and even non-compliance of the provisions have been made punishable. This necessarily implies the mandatory character of these provisions and statutory obligation on the part of the Project Proponent to comply with them.

120. We are unable to find any merit in the contention raised on behalf of the Project Proponent that the provisions of the Notification of 2006 are procedural. In our considered opinion, the provisions of this enactment are substantive and mandatory. These provisions do not admit of any substantial noncompliance or best discretion with the authorities in relation to procedure prescribed under the Notification. They are couched in a language that is purely mandatory in character and is founded on the Precautionary Principle which is one of the statutory principles to be applied by the Tribunal in terms of Section 20 of the Act of 2010. If compliance is not made to the provisions of these enactments, it will totally frustrate the Precautionary Principle and thus the precautionary principle can adversely impact the environment, protection of which is the sole object of the Act of 1986.

Thus, in view of the above discretion, it is clear that the requirements of the Notification of 2006 are mandatory in character. Their default or noncompliance is liable to be punished. The intention of the Legislature is to protect the environment for which words of specific nature like 'prior' and 'shall' have been used. The impact of non-compliance of these provisions would be of serious consequence, not only on environment but upon the society at large. All these enactments are unambiguous and framed in no uncertain terms and this conveys that projects commenced without obtaining Environmental Clearance would invite the penalty postulated under the Act of 1986.

Thus, we have no hesitation in holding that the provisions of Notification 2006 are mandatory and not procedural *simplicitor.*"

"142. In view of the above, if the project execution is carried out at any stage prior to grant of EC, it would be detrimental to the environment as at the very outset even primary baseline information for filling up Form, 1 and Form, 1A would not be available for providing project specific TOR for the EIA studies and thus the EIA study would become irrelevant thereby making the appraisal of EIA report only a formality. In the whole process, even imposition of general and specific conditions in EC pertaining to construction phase of the project would be irrelevant. It is extremely important to note here that the major impacts of any building

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construction project (alteration to topography, water drawl, air pollution, etc.) are during the construction stage or are directly relatable to the construction of the project itself (provision of parking space, fire safety, rain water harvesting and recycling, storm water, construction methodology, enhancing energy efficiency, etc.). Lastly and most importantly, if the project layout plan requires certain changes in the layout plan on account of likely environmental concerns (such as fire safety, day lighting, seismic hazards, water conservation measures, number of basements, etc.), it would be practically impossible to do so.

143. The above discussion clearly demonstrates the intent of the framers of the law that the compliances under the Notification of 2006 will hardly have an application post-construction or after completion of projects or activities. The prescribed parameters, the documentation and data to be provided along with Form, 1, in no uncertain terms oblige the Applicant not to commence any activity unless it has obtained the Environmental Clearance. The post-grant of Environmental Clearance will neither be in the interest of the environment nor would it serve the purpose of the Act of 1986 and/or the Notification of 2006. The primary data required to be submitted relates to pre-project situation and circumstances. Of course, it will also depend upon the nature of the project activity or development activity that the Project Proponent proposes to establish. The impact of building construction and the resultant concretization, particularly basement construction on the groundwater levels and flow directions can be a matter of serious concern. The manner in which the basements are being constructed, its impact on the groundwater table, in what manner how much groundwater is proposed to be extracted, would also be a relevant consideration. EIA Report prepared ex-post-facto, i.e. on completion of the project, would suffer from lack of due diligence and would foreclose the options for exploring alternatives. This will go against the fundamentals of the Precautionary Principle and Sustainable Development. Similarly, it will be very tedious and very difficult, if not impossible, to appropriately consider various components of the biodiversity at the site and alternative steps that 173 should be taken by the Project Proponent to protect any rare, endangered and threatened species at the site in question. In absence of such assessment, the opportunity of protecting the local ecology gets defeated and hence the goals of sustainable development. The cumulative effect of the above discussion would be that the illegal and indiscriminate development activity that has been carried out by the Project Proponents is bound to have serious impacts on environment, ecology and biodiversity and a very comprehensive and stringent study would be required to dilute or mitigate adverse environmental impacts of the projects in question."

The undisputable situation which emerges from the discussion is that, the Project Proponent has not only attempted but has substantially succeeded in frustrating the laws in force; be it change of land use, extent and purpose of construction, obtaining statutory permission in time and above all this, compliance of the provisions relating to environmental laws.

48. Now, we will take up the principal contention vehemently argued on behalf of the Project Proponent that they are entitled to get Environmental Clearance from the concerned authority on the strength of the Office Memorandum dated 12th December, 2012 issued by MoEF&CC. According to the Project Proponent, obtaining the Environmental Clearance post construction of the project is permissible and the concept of 'prior Environmental Clearance' contained in the Notification of 2006 does not, in any way, hamper the right that accrues to them on the strength of the said Office Memorandum. The Environmental Clearance has been granted to them. As such, their project should be permitted to operate and the appeal deserves to be dismissed.

49. We have already held that the order granting Environmental Clearance suffers from patent legal infirmities, non application of mind, arbitrariness and in fact is liable

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to be set aside, being contrary to law. Still, the question that calls for determination is the effect of the Office Memoranda issued by MoEF&CC upon the case of the Project Proponent. The legality, validity, correctness and its consequences in relation to such cases in somewhat similar circumstances were subject matter of judicial determination before the Tribunal in the case of *S.P. Muthuraman* (Supra). It is a larger bench judgment of the Tribunal and the question being no longer *res integra*, we will follow the principles laid down in that case and apply it to the case in hand.

50. In the case of *S.P. Muthuraman* (Supra) the Tribunal examined the validity and legality of these Office Memoranda and held that these Office Memorandums are not only in conflict with the Notification of 2006, but in fact, run contra thereto. The Office Memoranda have no power or source of law, they suffer from infirmities and defects of fact and law and have not even been authenticated in accordance with law. The Tribunal also held that it has the jurisdiction to quash both these Office Memoranda. The Tribunal, after discussing the various judgments of the Supreme Court of India and the history of law in force, held that the provisions of the Notification of 2006 were mandatory. Compliance to these provisions was essential and the scheme of the Act of 1986, Environment (Protection) Rules of 1986 and the Notification of 2006 did not admit of any ambiguity. The Tribunal also held that the concept of 'post grant of Environmental Clearance' would not only offend the statutory provision, but, would result in frustrating the same for all intent and purposes. At this stage, we may refer to the relevant paragraphs of the judgment of the Tribunal in the Case of *S.P. Muthuraman* (Supra).

> "82. Upon proper analysis of the language of these Office Memoranda and the law (referred herein after), these Office Memoranda whether they be issued as administrative orders or issued in exercise of executive power, are not clarificatory or supplementary to the Notification of 2006. On the contrary, under no uncertain terms, they are supplanting the Notification of 2006 and are in complete derogation to the laws in force.
>
> 83. The Office Memoranda have been issued without proper application of mind, where casualty is the Notification of 2006 and the environment. The authorities have not even ventured to examine that these Office Memoranda which allegedly take recourse to the Notification of 2006 are incapable of complying with the procedure of Screening, Scoping, Public Consultation and Appraisal even substantially. For instance, site selection itself is a part of this process and if the construction has already been completed substantially or otherwise, this criteria and other relevant considerations would be rendered irrelevant. Similarly the purpose of public hearing is to hear objections of the public at large in relation to all facets of the proposed project including site selection, its impact on environment, on their way of life and what directions are required to be issued to protect the environment and adjacent inhabitation or agricultural activities if any before any activity of the project is undertaken. All these requirements would be rendered otiose and irrelevant. Thus, even if the two most important aspects of the Notification of 2006 would not be complied with still the Office Memoranda would contemplate issuance of Environmental Clearance to these projects. This brings to the surface that the Ministry has not exercised its jurisdiction, even if vested in it, in accordance with law. The above are the few patent and serious infirmities in the Office Memoranda. An attempt is made to save them and their legality under the shelter of exercise of executive power. Certainly, the executive power of the Government is very wide. We have already dealt with the executive power by the State at some length above. Even if these instructions or orders are deemed to have been issued in exercise of executive power, even then, they have to be supplemental to and not to supplant, the law.

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84. In the case of *Union of India (UOI)* v. *K.P. Joseph*, AIR 1978 SC 303, dealing with the question whether Respondent No. 1 in that case was entitled to the benefit of ex-military personnel on reemployment, in view of the administrative instructions that had been issued in absence of rules framed under Article 309 of the Constitution, the Supreme Court while confirming the judgment of the High Court of Mysore held as under:

> "9. Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in *Sant Ram Sharma* v. *State of Rajasthan*, (1968) II LLJ 830 SC that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service."

85. The Supreme Court had also taken a similar view in the case of *Sant Ram Sharma* v. *State of Rajasthan*, AIR 1967 SC 1910, where the Court clearly held that Government cannot amend or supersede statutory rules by administrative instructions, but, if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. Similarly, in the case of *M. Srinivasa Prasad* v. *The Comptroller and Auditor General of India*, (2007) 10 SCC 246, the Supreme Court held that if the statutory rules in force are absent or are silent on an particular aspect, then, executive orders can fill up such lacunas. The administrative instructions would normally have no force of law and would relate to matters procedural in nature, without affecting substantive rights or obligations.

86. The executive instructions too cannot go beyond the executive power, which can also not be beyond the statutory provisions under which they are exercised. Furthermore, such instructions should not be vague or uncertain and must provide proper guidelines. By executive instructions, the authority issuing them cannot open new heads. The executive instructions within these confines should be issued only when there are no statutory provisions on the subject. They would also be issued to supplement statutory provisions, to ensure their proper application. In the case of *Indra Sawhney etc.* v. *Union of India etc.*, 1992 Supp (3) SCC 217, Supreme Court mandated that such propositions are unexceptionable and executive instructions which go contrary to statutory provisions or the rules under Article 309 or any other statutory rules, shall not be operative to the extent they are contrary to the statutory provisions or rules. In the case of *M.C. Mehta* v. *Union of India (UOI)*, (Supra), not only that the Court reiterated these principles but even questioned MoEF's intent to legalise the commencement or continuance of mining activity without compliance to the stipulations of the Notification of 2006. However, it was observed that in any case, a statutory notification cannot be notified by issuance of circular. Such actions demonstrate non-sensitivity of MoEF to the principles of sustainable development and the object behind the issuance of the notification.

These principles would be equally applicable to the exercise of administrative power either by issuance of guidelines or Office Memoranda. A Bench of this Tribunal while dealing somewhat similar situation in the case of *Himmat Singh Shekhawat* v. *State of Rajasthan*, 2015 All (I) NGT Reporter (1) (Delhi) 44 held as under:

> "58. This power to issue guidelines is not a general power but is a specific power with inbuilt limitations. The limitations are that, such guidelines would alone be for the purposes of categorizing upon scrutiny of applications, projects that would fall under Category 'B1' and 'B2' respectively with specific exclusion of the projects specified under Item 8(b) of the Schedule. Restrictive power to issue guidelines, is

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further illustrated, by the fact that Clause 2 of the Notification of 2006 does not contemplate any such categorization except projects falling under Category 'A' and 'B' only. The purpose appears to be that the power of State Level Appraisal Committees to bifurcate projects into 'B1' and 'B2' categories respectively should not be unguided and unchecked. Prescription of such guidelines could be done by issuance of appropriate Office Memorandum or orders as the power to issue such guidelines has been vested in MoEF under the statutory provisions. But the greater part of such Office Order or Office Memorandum should be such that it would not vary the content or be contrary to the statutory provisions which are in place by virtue of enacting such provisions either by primarily legislative or delegated legislative power.

59. It is a settled principle that legislature can only delegate to an outside body subordinate or ancillary legislative power for carrying out a policy of the act. The body to whom such power is delegated is required to act strictly within the framework of such delegated powers. Such power is incidental to the exercise of all powers in as much as it is necessary to delegate for the proper discharge of all the public duties. It is because the body constituted should act in the manner indicated in law and should exercise its discretion by following the procedure therein itself or by such delegation as is permissible. Unlike the situation the judges are not allowed to surrender their judgments to others. The legislature and executive can delegate powers within the framework of law. It is an axiom of Constitutional law that representative legislative bodies are given the legislative powers because the representative Government vested in the persons chosen to exercise the power of voting taxes and enacting laws which is the most important and sacred trust known to civil Government. The Delegation has its own restrictions. For instance, the legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. A memorandum which is nothing but administrative order or instruction cannot amend or supersede the Statutory Rules adding something therein which would specifically alter the content and character of the Notification itself. It has been consistently reiterated with approval by the Hon'ble Supreme Court that administrative practice/administrative order cannot supersede or override the statutory rule of Notification and it is stated to be a well settled proposition of law.

The delegated power is primarily for carrying out the purposes of the Act and this power could hardly be exercised to bring into existence a substantive right or obligation or disabilities not contemplated by the provisions of the Act or the primary Notification. A Constitution Bench of the Hon'ble Supreme Court in the case of *Sant Ram* v. *State of Rajasthan*, AIR 1965 SC 1910, while dealing with the scope of executive instructions held that instructions can be issued only to supplement the statutory rules and not to supplant it. Such instructions should be subservient to the statutory provisions. They would have a binding effect provided the same has been issued to fill up the gaps between the statutory provisions and are not inconsistent with the said provisions. (Reference in regard to the above can be made In Re: The Delhi Laws Act, 1912 AIR 1951 SC 332, *P.D. Aggarwal* v. *State of U.P.*, (1987) 3 SCC 622, *Ram Sharma* v. *State of Rajasthan*, (1968) II LLJ 830 SC, *Mahender Lal Jaine* v. *State of Uttar Pradesh*, (1963) Supp. 1 SCR 912, *Naga People's Movement of Human Rights* v. *Union of India*, AIR 1998 SC 431).

60. In the case before the Tribunal, specific challenge has been raised to the, Office Memorandum dated 24th December, 2013 on the ground that it violates the above stated principles, in as much as by an Office Memorandum, guidelines for 'B1', 'B2' categories cannot be provided and thus, it runs contra to the statutory provisions. We may also notice here that vide this memorandum, besides providing guidelines for categorization of 'B1', 'B2' projects under Clause (iii) of paragraph 2, MoEF has

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taken a decision that river sand mining project with mine lease area of less than 5 hectares may not be considered for grant of Environmental Clearance and river sand mining projects with mining lease areas of equal or more than 5 hectares but less than 25 hectares will be categorized 'B2', that too subject to the restrictions stated in that Office Memorandum. Though, the Applicants have primarily raised a challenge in regard to the former only, but bare reading of the Notification has brought before us the question in regard to the latter as well. Dealing with the former challenge afore-noticed, it is clear that Clause 7 of the Notification of 2006 provides for further categorization of projects falling under Category 'B' into 'B1' and 'B2'. Though Clause 2 of the said Notification does not contemplate any classification other than 'A' and 'B', but, there is no challenge raised before us to the Notification of 2006 and we see no reason to go into that aspect. The Notification of 2006 ex facie permits classification of Category 'B' projects and that discretion has been vested in State Level Expert Appraisal Committee, which, upon scrutiny of the applications has to take the decision. This discretion vested in the Committee is ought to be controlled by the issuance of guidelines by MoEF. MoEF had issued two guidelines, one on 24th June, 2013 and the other on 24th December, 2013 in relation to further classification and criteria which is to be adopted in that regard. Since the Office Memorandum dated 24th June, 2013, only relates to brick earth and ordinary earth and as per that Office Memorandum, such projects where the excavation area was less than 5 hectares were to be categorized as 'B2' projects, subject to the guidelines stated therein they were to be screened in accordance with the Notification of 2006. Under Paragraph 4(b) of this Memorandum, restrictions were laid down prohibiting any excavation of brick earth or ordinary earth within one km of national parks and wild life sanctuaries as well as it intended to elaborate the cluster situation. If the periphery of one borrow area is less than 500 m from the periphery of another borrow area and the total borrow area equals or exceeds 5 hectares, the activity shall become Category 'B1' project in terms of the Notification of 2006 and such activity will be permitted only if the Environmental Clearance has been obtained in respect of the cluster. If we examine these two Office Memoranda in the light of the well settled legal principles that we have referred above, partially both these Office Memoranda cannot stand scrutiny of law. As far as guidelines or instructions in relation to classification of projects falling under Category 'B' into 'B1' and 'B2' is concerned, the exercise of such power would be saved on the strength of Clause 7(1) of the Notification of 2006 because it is an Office Memorandum which provides guidelines for exercise of discretion by the State Level Expert Committee for such categorization. Thus, it is an exercise of executive power contemplated under the Notification of 2006. Hence the contention of the Applicant on that behalf cannot be accepted and deserves to be rejected. However, in so far as the Office Memorandum dated 24th June, 2013 placing a prohibition under paragraph 4(b)(i) is concerned, it apparently is beyond the scope of such guidelines. Prohibition of carrying on of mining activity or excavation activity which is otherwise permitted by the Notification of 2006 cannot be done by an Office Order, because it would apparently run contra to the provisions of Notification of 2006. In other words, such restriction is not only beyond the scope of the power vested in MoEF but in fact imposition of absolute restriction in exercise of delegated power is not permissible. Similarly, the Office Memorandum dated 24th December, 2013 in so far as it declares that river sand mining of a lease area of less than 5 hectares would not be considered for grant of Environmental Clearance is again violative of the above settled principles. No such restriction has been placed under the Notification of 2006 or under the provisions of the Act and the Rules of 1986. The executive therefore, cannot take away the right which is impermissible under the principle or subordinate legislation. Of course, part of the same Paragraph

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2(iii), in so far as it categorizes 'B2' projects, covering the mine lease area equal to or more than 5 hectares but less than 25 hectares is concerned, the same cannot be faulted in view of the fact that it only provides a criteria or a guiding factor for determining the categorization of projects. It neither vests any substantive right, nor any obligation in relation to any matter that is not squarely or, effectively covered under the Notification. This only furthers the cause of fair classification of projects, which is the primary purpose of the Notification. For these reasons, we quash paragraph 4(b)(i) of the Office Memorandum dated 24th June 2013 and part of paragraph 2(iii) in so far as it prohibits grant of Environmental Clearance to the mine area of less than 5 hectares as being violative of the Notification of 2006 and the Rules of 1986. The MoEF has no jurisdiction in exercise of its executive power to issue such prohibitions, impose restrictions and/or create substantive rights and obligations. It ex facie is not only in excess of powers conferred upon them, but, is also in violation of the Notification of 2006. As already noticed, this Notification has been issued by MoEF in exercise of powers conferred upon it under Clause 5 of sub section 2 of section 3 of the Act of 1986 read with sub rule 4 of rule 5 of the Rules of 1986. Vide this Notification, the Central Government substituted item no. 1(a) and entries relating thereto. A Clause stating that the projects relating to non-coal mine lease and where the mining area was less than 50 hectares equal or more than 5 hectares was to be treated as Category 'B' projects, in addition to that, the minor mineral lease projects, where the mine lease area was less than 50 hectares, were also to be treated as Category 'B' projects, also, the general conditions with provisos were also substituted. It is significant to note here that the Notification of 2006 had been amended by the Central Government by issuing a Notification dated 1st December, 2009 in exercise of its delegated legislative powers. While issuing this Notification, the Central Government had followed the procedure prescribed under Sub Rule 2 and 3 of Rule 5 of Rules of 1986. It had invited objections from the public and considered those objections as is evident from the very recital of the Notification where it recorded "and where as all objection and suggestions received in response to above mentioned draft Notification have been duly considered by the Central Government……." and then it published the final Notification. Vide the Notification dated 1st December, 2009, the Central Government had substituted item no. 1(a) and the entries relating thereto of the Schedule to the Notification of 2006 besides making other amendments as well in different entries. However, while making further amendments vide Notification dated 9th September, 2013, the Central Government did not follow the prescribed procedure under Rule 5. On the contrary it substantially altered, and in fact substituted, as well as made additions of a substantial nature in Clause 4 and Clause 5 of the Notification of 2006, where, for the first time, it added minor mineral mine leases of less than 50 hectares, and also added 'general conditions to apply except for the projects where the area was less than 5 hectares in relation to minor mineral lease' and provisos thereto. The period for applying for renewal of mine lease of one year was changed to two years under the Notification dated 9th September, 2013."

87. There could be a case of executive instructions being derogatory to the principal statute or a statutory notification, still there could be cases of executive instructions being ultra vires or violative of the statutory notification and still further there could be cases of conflict between the tow. In either of the, the Court have not titled in favour of sustaining such executive instructions. In the case of *D.D.A.* v. *Joginder S. Monga*, (2004) 2 SCC 297, the Supreme Court held that only in a case where a conflict arises between a statute and an executive instruction, indisputably, the former will prevail over the latter. Executive instructions can supplement a statute, but they cannot run contrary to statutory provisions or whittle down their effect. In other words, executive instruction which is in conflict of and which whittles down

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the effect of the main Act would be liable to be struck down. When an executive instruction is beyond the power of the authority issuing the same, it would be ultra vires and whenever the instruction is found to be beyond the inherent jurisdiction, it would be wholly void. The delegatee can act only within the scope of delegation. The limitations are all with regard to the substance, procedure and form.

88. Another contention raised on behalf of the Respondent while relying upon the judgment of Supreme Court in the case of *Vineet Narain* v. *Union of India (UOI)*, (1998) 1 SCC 226 and other cases, is that executive instructions are enforceable if they do not change the essentials of law. This contention cannot be accepted for reasons that are recorded in this part of the Judgment. By whatever nomenclature it is addressed, whether as executive instructions do not dilute the effect of law but make it more rigorous. Furthermore, it being a policy decision of the MoEF, the Tribunal should not interfere in it. We are also unable to appreciate as to how these Office Memoranda fill up the gaps in the Notification of 2006. An instrument which provides for disobedience of law and indiscriminately condones the violations of the substantive law in force, it cannot be termed as an instrument made to fill up the gaps. It would be an administrative order contrary to the statutory provisions. In fact, issuance of such kind of orders received judicial causticism and was deprecated by the Supreme Court in the case of *M.C. Mehta* (supra).

89. The impugned Office Memoranda are not only in conflict with the Notification of 2006, but in fact run contra thereto. What is not only intended but in fact is prohibited to be done, is being permitted by the impugned Office Memoranda. They have been issued without reference to any power or source of law and are neither pronounced nor authenticated in the name of the prescribed executive authority. Besides this, we have already noticed in great detail the various infirmities and defects from which these Office Memoranda suffer in fact and in law. This being the position of law in relation to issuance of executive instructions in exercise of executive power or delegated legislation, these Office Memoranda having been issued in exercise of administrative power, in any case, cannot withstand the legal scrutiny and resultantly, would be liable to be quashed."

In light of the above, now we would have to examine whether the Project Proponents are entitled to any benefits on the strength of the said Office Memorandum or not. On merits, we have held that the Project Proponents have violated the law. Their conduct is not in consonance with the expected norms and they have failed to produce any documents of compliance.

52. The status of respondent no. 10 in applying for Environmental Clearance for the project of the Super-Specialty Hospital as opposed to Dental College-cum-Hospital and running of the Harijan Residential School while having no recognizable title or interest in the property is beyond any reasonable comprehension. The Office Memorandum issued by MoEF&CC being invalid and contrary to law cannot provide any legal or other right to the Project Proponent to claim any benefit when it has particularly violated the laws in force. We have also held that even the application filed by the respondent was not complying with the provisions of the Notification of 2006 and the forms annexed thereto. In fact, in view of the fact that the project had practically been completed, compliance to the statutory requirements of the Notification of 2006 had become impossible. The Project Proponent, even after submission of the application for Environmental Clearance continued with finishing the project and carried on interior construction work as per their showing, which is completely prohibited even under the Office Memoranda.

53. There is no dispute to the fact that the project of the Project Proponent is covered in any of its forms by the Notification of 2006. On the one hand, the Project Proponent has violated the law, by not obtaining requisite permissions in time, while

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on the other hand continued to raise construction indiscriminately and in an unauthorized manner.

54. There is nothing on record to show that the plans for a Super-Specialty Hospital on the site in question have been sanctioned by any competent authority. The only document on record is for construction of a Dental College-cum-Hospital which was expected to have an area of nearly 20,28.659 sq. meters, while, according to their own showings it is 39,258 sq. meters. Strangely, none of the sanctioned plans or the application for grant of Environmental Clearance shows existence of Harijan Residential School and the fact that the Harijan Residential School is running at the site, forming an integral part of the project. The plot area remains to be the same, i.e., 20,28.659 sq. meters on which the plans were sanctioned for building up of the Dental College-cum-Hospital, where came up a Super-Specialty Hospital, for which no plans were sanctioned and it covered an area of 39,261.82 sq. meters as opposed to 30,106 sq meters as sanctioned for the Dental College cum Hospital. Still, another question that would be for determination by the appropriate authorities, is, if at all, the word 'hospital' would cover a Super-Specialty Hospital of this dimension, particularly when the allotment was for Harijan Residential School and construction of a Dental College-cum-Hospital. Another important aspect of the case is that even as of today the hospital does not have requisite authorization, permission and consent from the concerned Pollution Control Board and other Competent Authorities to run a Super-Specialty Hospital, consent to operate, permission dealing with disposal of Municipal Solid Waste and Hazardous Waste. This would be again for the concerned authorities to examine. There appears to be a complete miss of this aspect in the entire process of sanctioning of plans, recommendation of SEAC and grant of Environmental Clearance by the SEIAA. The construction as shown by the Project Proponent in 2013 is 30,106.011 sq. meters in contrast to 20,028.659 Sq Mt as shown in the sanction plan. In other words even the authorities could not have applied their mind while sanctioning the plans, whether they were for Super-Specialty Hospital or a Dental College since their requirements, effluent, pollution caused and the structure that is required for such activity could not be comprehended. On the one hand, the authorities, particularly, SEIAA and SEAC have abrogated their statutory functions. On the other hand, from the stage of noticing complete violation, recommending strict action and prosecution against the Project Proponents to recommending grant of Environmental Clearance in the very next meeting predominantly shows absence of proper application of mind. This is also true that the authorities granted Environmental Clearance on incorrect assumptions. The authorities also erred in not providing specific conditions in regard to taking of adequate environmental protective measures, existence and proper functioning of the antipollution devices etc. with certainty. Authorities have acted arbitrarily in condoning such serious violations in such a casual manner.

55. There is nothing on record to show that the requirements of the Notification of 2006, data as contemplated by Form I and IA had been satisfied and it was a case of complete compliance and the project was a non-polluting project. SEAC in its 113th meeting had recommended conditional grant of Environmental Clearance, however, compliance of the conditions, were not even cared to be noticed, much less confirmed by SEIAA before issuing the order granting Environmental Clearance. The law casts upon these authorities statutory duties which are required to be performed comprehensively and with exactitude. These are the highest authorities in the State Administration and the development of the State depends upon their decision making process and the final decision for grant or refusal of Environmental Clearance. Higher the authority, greater is the need for acting with care, responsibility and in adherence to the laws in force. Undue hurry in granting the Environmental Clearance, even without the compliance report, does not speak well of the authorities in relation to

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discharge of their statutory functions. All concerned being at fault and the Project Proponent having violated all norms and laws in force, the Project Proponent cannot derive any benefit from these Office-Memoranda on merits of the case, when in any case, these Office-Memoranda are no more in force.

DISCUSSION ON ISSUE NO. 5 AND 6

5. What directions, if any are required to be issued by the Tribunal in the facts and circumstances of the case?

6. Relief.

56. In the case of *S.P. Muthuraman* (Supra), one amongst the various reasons stated by the Tribunal for quashing the Office Memoranda was that, it encourages violators of law on one hand and on the other, it adversely effects the environment. The present case is a glaring example of substantiating the said reasoning. With the passage of time, large numbers of cases are coming up before the Tribunal which falls in this unique category of *fait accompli*. These are not the innocent people unaware of law residing in some remote parts of the country, all these are builders constructing huge residential, commercial, mixed purpose blocks, like hospital, as in the present case. The Project Proponents are persons having large means and perspicacity. These projects have started after the Notification of 2006 has come into force, but Project Proponents did not even bother to apply for the grant of Environmental Clearance prior to starting construction of the project. Instead, he moved an application only when the project was completed or major part of the construction activity was over. In this manner and without exception, such Project Proponents are able to violate the laws in force and frustrate the very object of the Act of 1986, Environment (Protection) Rules and Notification of 2006 leading to serious adverse environmental impact on concerned areas. These cases relate to major cities like Bangalore, Chennai and NCR Delhi. Reliance is placed on the recent judgment of Tribunal in the case of *S.P. Muthuraman* (supra), wherein it was held that:

> "130. We have already held that comprehensive and definite compliance to the provisions of the Notification of 2006 have been made redundant by the unauthorised actions of the private Respondents as well as by the impugned Office Memoranda issued by the MoEF. Collection of certain data, scientific analysis, preconstruction environmental impacts of the project and other information which are pre-requisite for the submission of the application in Form, 1 or supplementary Form I-A of the Appendix II under the Notification of 2006, can neither be collected nor be provided as the projects have already come up substantially or otherwise have completed construction work extensively. Not only the environmental impacts of the projects cannot be examined fairly but even the matters like site selection and public hearing cannot be deliberated upon, thus frustrating the very object of public hearing. The provisions of the Act of 1986, Rules of 1986 and the Notification of 2006 are statutory documents having the force of law. Providing a mechanism in exercise of administrative or executive power in complete deviation or disregard to the law in force, would be contrary to the basic rule of law. Besides it being in derogation to the environmental jurisprudence, it would also have adverse impacts upon environment and ecology of the area. There is greater need for compliance to the statutory provisions. Such compliance would be essential in the interest of the environment. Therefore, we have to examine the various aspects of such noncompliance law and if there can be any tolerance to the breach of the statutory provisions. If so, its extent and impacts on matters of technical and environmental significance that would flow from such breaches or defaults. Let us now examine the requirements of law with reference to environment.
>
> 131. In recent past, building construction activities in our country have been carried out without much attention to environmental issues and this has caused

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tremendous pressure on various finite natural resources. The green cover, water bodies and ground water resources have been forced to give way to the rapid construction activities. Modern buildings generally have high levels of energy consumption because of requirements of air-conditioning and lighting in addition to water consumption. In this scenario, it is necessary to critically assess the utilization of natural resources in these activities.

132. An application seeking prior Environmental Clearance for building construction project is required to be made in the prescribed Form, 1 and supplementary Form, 1A, after the identification of prospective site for the project to which the application relates, before commencing any construction activity or preparation of land, at the site by the Applicant. The Applicant is required to submit along with the application, in addition to Form, 1 and the supplementary Form, 1A, a copy of the conceptual plan of the project.

133. Apart from profile of the Project Proponent, name and contact address, implementing organization, organizational chart, project consultants etc., are to be mentioned clearly. After providing details of land (plot/survey numbers, village, tehsil, district, state and area of the land), goal and objectives of the proposed project, significance of the project both at local and regional level, relevance of the project in light of the existing developmental plans of the region are required to be mentioned. Background information and overall scenario of the proposed activity in the Indian context, procedures adopted for selection, criteria for selection of the site for the proposed activity, such as environmental, socio-economic, minimization of impacts, ecological sensitivity, impact of existing activities on the proposed activity, etc. is required to be spelt out. Resources and manpower requirements have to be detailed apart from time frame for project initiation, implementation and completion in following manner:

- Total site area
- Total built up area (provide area details) and total activity area
- Source of water and consumption
- Source of power and requirement
- Connectivity to the city centre, utilities and transportation networks community facilities
- Parking requirements
- Type of building material to be used
- Environmental liability of the site
- Existing structure/type of material-demolition debris, etc.

134. A map of the study area showing 500 meters from the boundary of the project area, delineating the major topographical features such as land use, drainage, location of habitats, major constructions including roads, railways, pipelines, and industries, if any in the area is required to be enclosed. A map covering aerial distance of 15 km from the boundary of the proposed project area delineating environmentally sensitive areas as specified in Form I of the Notification of 2006 is also to be annexed. In the same map, the details of environmentally sensitive areas present within a radial distance of 1 km from the project boundary are to be specifically shown. Land use map of the study area is also required to be furnished.

135. Based on the examination of the relevant details, project specific Terms of Reference (TOR) are provided for the EIA studies. While awarding TOR for EIA studies, the points that are of concern include:

a. Likely alterations to the existing land use of the area;

b. Impact on the geomorphology vis-à-vis land disturbance resulting in soil erosion, subsidence & instability of the area;

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c. Impact on the natural drainage systems, including wetlands;
d. Impact of the land use changes occurring due to the proposed project on the runoff characteristics vis-à-vis flooding or water logging of the area
e. Impacts of the proposed project on the ground water vis-à-vis pollution of land & aquifers;
f. Likely threats to the biodiversity, especially vegetation pattern and displacement of terrestrial and aquatic fauna;
g. Impact on the atmospheric concentration of gases and generation of dust, smoke, odorous fumes or other hazardous gases;
h. Likely impact on the transport system in the area, including the parking space for vehicles;
i. Impact on the noise levels and vibrations in the area;
j. Likely impact on the social structure of local communities, and likely disturbance to sacred sites or other cultural values.

136. It may be kept in mind that, prior to the grant of EC, concept of sustainable development and precautionary principles were the leading factors governing the environmental jurisprudence. The application of these Principles assumes that the impacts of any development on the environment and human health are difficult to predict with certainty, therefore, prudence requires that before embarking on the development project, we explore the possible alternatives to the project. Needless to say that exploring alternatives also includes exploring all the harmful actions which the project may cause, including such damages which may be completely irreversible. Equally important component of these Principles is, to place the burden of proof on the Project Proponents to highlight that the impact of the activity on the environment and the health of the people would be minimal and/or all precautionary measures have been adopted. While exploring alternatives with regard to siting the project and the technology of the project, exploring alternatives also includes “not taking up of the project as one of the alternatives”.

137. The very purpose of awarding project specific TOR for EIA studies is that it is expected that the report furnishes balanced and credible information for environmental safeguard apart from other essential environmental studies and most importantly contains the appropriate environmental management plan/s along with budgetary provisions that form integral part of the project cost.

138. This EIA report is subjected to appraisal by the Experts, prior to the grant of Environmental Clearance depending upon the nature and location specificity of the project. TOR assists the EIA consultant, prior to execution of project, to prepare an effective and user friendly report with relevant project specific data, which are easily implementable.

139. A typical EIA report, as per Environmental Impact Assessment Guidance Manual for Building, Construction, Townships and Area Development Project of MoEF, 2010, includes:

1. Description of the project site, geology, topography, climate, transport and connectivity, demographic aspects, socio, cultural and economic aspects, villages, settlements are also to be given. Historical data on climate conditions such as wind pattern, history of cyclones, storm surges, earth quake etc., is also looked into. Detailed layout plan of proposed project development, communication facilities, access/approach roads, landscape, sewage disposal facilities, and waste disposal etc. is also given. Layout plan for proposed development of built up areas with covered construction such as DG Set rooms, Administrative buildings, Utilities such as Main and Stand-by Power, Water supply installations etc. is furnished. Most importantly, requirement of

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natural resources and their sources are to be detailed out.

2. The environmental impacts of construction and operation are established during the early phases of site selection and planning. Planning, site selection and design form an important stage in the development of these projects and will determine their environmental impact(s). Environmental data to be considered in relation to such development pertaining to (a) land (b) ground water, surface water (c) air (d) biological environment (e) noise (f) socio economic environment. The first feature which influences the development of a new project is the existing land use pattern of the neighbourhood of the project, whether the proposed development conforms to the development for that area or not. Study of land use pattern, habitation, cropping pattern, forest cover, environmentally sensitive places etc., provides the first insight to the likely impacts of the project. Geographical latitude and microclimatic factors such as solar access and wind loads also have major impact.
3. Identification of Project activities, including construction phase, which may affect surface water or groundwater have a direct relation to the estimated water intake requirements and identification of the source of water to be used. Description of water availability and sourcing plays a critical role in impact assessment. Baseline water quality from all sources such as ground water or municipal supply or surface water helps in proper assessment.
4. Climatological data, air and noise level pollution similarly plays an important role in assessing the likely environmental impacts and requires antipollution measures to be adopted.
5. Baseline information on the flora and fauna of the study area along with a description of the existing terrestrial, wetland and aquatic vegetation determines the environmental sensitivity and the need for environmental protection measures.
6. Details of solid wastes from construction sector can be categorized into two phases i.e. during construction & during operation. Details of the construction or demolition waste, i.e., massive and inert waste; Municipal waste, i.e., biodegradable and recyclable waste and hazardous & e-waste provide steps that are required to be adopted for its management.
7. Main anticipated impacts from building construction, which need to be addressed, are
   - Impact on the natural drainage system and soil erosion.
   - Loss of productive soil and impact on natural drainage pattern.
   - Study of the problem of landslides and assessment of soil erosion potential
   - Impact on air and noise quality during the construction and operation phase - the existing surrounding features of the study area and impact on them from various sources such as machinery, transportation, etc.
   - Impact of construction and operational phases on the surface and ground water on account of the building construction
   - Waste water generation its treatment and utilization
   - Impact of project during construction and operational phases on the biological environment
   - Predicted impact on the communities
   - Impact of the project during construction and operational phases for generation of waste
   - Energy requirements and infrastructure requirements needed for the activity
   - Steps to be taken to integrate the needs of other stakeholders into the location and design of access infrastructure, to reduce and manage overall

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environmental impacts

8. Another important consideration pertains to requirements of building construction material and technologies to be used. Any project with proper TOR and EIA report would provide details of:

- Types of materials used in each component part of the building and landscape (envelope, superstructure, openings, roads and surrounding landscape)
- Plans and sections of buildings showing use of new technologies and nonconventional methods
- Plans and sections of building using new construction techniques

9. Similarly, it will also deal with energy conservation aspects in terms of:

- Use of alternate renewable resources such as solar/wind power etc.
- Options considered for supplying the power required for the Project and the environmental implications, including opportunities to increase the energy efficiency of the Project
- Details of U & R values
- Details of the renewable energy systems (sizing and design), building costs and integration."

57. The present appeal has to be allowed in our considered view, but what require determination by the Tribunal in light of the provisions of the Section 20 of the Act of 2010 are the ultimate directions that the Tribunal should issue. Of course, the Project Proponents are not entitled to any relief, either in equity or in law. However, directing demolition of such a huge project at this stage may not serve ends, either of justice or of environment protection. In fact, demolition itself would result in serious environmental hazard.

58. The principles of Sustainable Development and Precautionary Principle have to be applied to such cases conjointly. The project cannot be permitted to operate till all the environmental safeguards are taken care of and are made operational. The Project Proponent should also pay environmental compensation in terms of Section 15 of the Act of 2010, having violated the environmental norms and having caused adverse impacts to the environment and ecology of the area and more so, violating the provisions of Notification of 2006. Some effective and major steps can be taken to rectify the wrongs and deficiencies. In some cases compensation may be the adequate relief, while in others, even demolition may be necessary. We would follow the principle stated by the Tribunal in the case of *S.P. Muthuraman* (supra) even in the aspect of this case. In that case the Tribunal held as under:

"157. From the above judgments of the Supreme Court and the Tribunal, it is clear that in cases of the present kind, it would not be advisable to direct complete demolition of such properties. The Project Proponents claim to have invested huge amounts in raising these projects where it had obtained permission from other authorities and most importantly interest of 3rd party have been created in these properties. The Tribunal has to take a balanced approach while applying the principle of sustainable development and precautionary principle. Even in the case of *A.P. Pollution Control Board* (supra), the Supreme Court, laid great emphasis on the precautionary principle on the premise that it is always not possible to judge the environmental damage.

158. The Precautionary Principle may lose its material relevancy where the projects have been completed and even irreversible damage to the environment and ecology has been caused. The situation may be different when invoking this principle in cases of partially completed projects, it would become necessary to take remedial steps for protection of environment without any further delay. At this stage, it may still be possible to take steps while any further delay would render it absolutely

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impracticable. Precautionary Principle is a proactive method of dealing with the likely environmental damage. The purpose always should be to avert major environmental problem before the most serious consequences and side effects would become obvious. To put it simply, Precautionary Principle is a tool for making better health and environmental decisions. It aims to prevent at the outset rather than manage it after the fact. In some cases, this principle may have to be applied with greater rigor particularly when the faults or acts of omission, commission are attributable to the Project Proponent.

The ambit and scope of the directions that can be issued under the Act of 1986 can be of very wide magnitude including power to direct closure, prohibition or regulation of any industry, operation or process and stoppage or regulation of supply of electricity or water or any other services of such projects. The principle of sustainable development by necessary implication requires due compliance to the doctrine of balancing and precautionary principle.

159. In appropriate cases, the Courts and Tribunals have to issue directions in light of the facts and circumstances of the case. The powers of the higher judiciary under Article 226 and 32 of the Constitution are very wide and distinct. The Tribunal has limited powers but there is no legislative or other impediment in exercise of power for issuance of appropriate directions by the Tribunal in the interest of justice. Most of the environmental legislations couched the authorities with power to formulate program and planning as well as to issue directions for protecting the environment and preventing its degradation. These directions would be case centric and not general in nature. Reference can be made to judgment of the Supreme Court in the case of *M.C. Mehta* v. *Union of India*, JT 1987 (1) SC 1, *Vineet Narain* v. *Union of India (UOI)*, JT 1997 (10) SC 247 and *University of Kerala* v. *Council, Principals', Colleges, Kerala*, JT 2009 (14) SC 283.

160. In light of the above, even if the structures of the Project Proponents are to be protected and no harsh directions are passed in that behalf, still the Tribunal would be required to pass appropriate directions to prevent further damage to the environment on the one hand and control the already caused degradation and destruction of the environment and ecology by these projects on the other hand. Furthermore, they cannot escape the liability of having flouted the law by raising substantial construction without obtaining prior Environmental Clearance as well as by flouting the directions issued by the authorities from time to time. The penalties can be imposed for such disobedience or noncompliance. The authorities have already initiated action against three of the Project Proponents and have take unauthorized action of the Project Proponents, they are required to pay compensation for its restoration and restitution in terms of Section 15 of Act of 2010. Needless to notice here that in this case, the Project Proponents were heard at great length on facts and merits of the case.

161. We may specifically notice here that all the Project Proponents had filed contentions and documents in support of their respective case. They addressed the Tribunal at length on factual matrix of the case as well as on law. Various contentions and claims raised by the Project Proponents before the Tribunal have been deliberated in detail."

In view of the above position of law, the applicant would be entitled to partial acceptance of the appeal, since the Project Proponent may not be directed to demolish the structure at this stage, but, shall strictly comply with the directions that we propose to pass in the present case. The scope and ambit of such directions has to be in terms of the Act of 1986 circumscribed by the statutory jurisdiction of this Tribunal. Upon detailed discussion of the laws in force, the Tribunal in the case of *S.P. Muthuraman* (supra) has clearly held that such directions can be issued by

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the Tribunal. Admittedly, the hospital has not started functioning as of now. Thus, compliance to the directions would be a condition precedent before it is permitted to function under these proceedings or by any other authority.

59. Normally, where an impugned order is set aside, the Tribunal would send the case for re-examination or passing of an order afresh in accordance with law to the same authority. However, since we have recorded definite findings that the orders of the authorities are arbitrary, without application of mind, contrary to law and the authorities have not only acted with undue haste, but, in fact, their entire approach was casual and they having abrogated their entire functions, it would neither be appropriate nor in the interest of justice that the matter be remanded back to the said authorities. Thus, we hereby, prefer to constitute an independent committee to ensure that the Project Proponent shall adhere to the laws in force, Act of 1986, the Environment (Protection) Rules, 1986 and the Notification of 2006, as the personal and commercial interest of the Project Proponent cannot be permitted to over-ride the public interest and environment and ecology of the area.

For the reasons afore-recorded, we pass the following directions:

1. We hold and declare that the minutes of the 77th meeting of SEIAA dated 14th November, 2014 and the impugned order granting Environmental Clearance dated 26th November, 2014 are liable to be set aside and quashed, which we do hereby quash.
2. Super-Specialty Hospital started by respondent no. 9 and 10 or any of them, would not carry on any activity in the entire premises till otherwise ordered by the Tribunal. If any activity or any act whatsoever is carried out in the entire premises, SEIAA and the HSPCB are directed to seal the premises without any further delay.
3. In the peculiar circumstances of the case, we would prefer the independent committee to examine the entire matter *de novo* and require the committee to inspect the site and make recommendations to ensure that the Project Proponent complies with all the relevant laws in force, particularly in relation to the protection of Environment and Ecology and also prevention and control of water and air pollution.

We hereby constitute the committee of the following:

1. Secretary, Environment, Government, State of Haryana.
2. Member Secretary, Central Pollution Control Board.
3. Senior Scientist from MoEF.
4. Senior Scientist from C.P.C.B.
5. Prof. from Delhi Technological University (Department of Environmental Engineering)
6. Chairman, SEAC, State of Haryana that made the recommendations.
7. Chief Engineer of the Municipal Corporation of Faridabad.
8. Chief Engineer of HUDA.

The Member Secretary, Central Pollution Control Board shall be the nodal officer.

a. The above committee shall inspect the hospital and the Harijan Residential School and submit a comprehensive report to the Tribunal.
b. The comprehensive report shall relate to illegal and unauthorized construction activities carried out by the Project Proponent.
c. The report shall state whether the Project Proponent has all anti-pollution devices in place or not.
d. The report shall state whether the Project Proponent has requisite permission and is capable of dealing with Hazardous Waste, Municipal Solid Waste, Bio-Medical Waste and all restrictions in relation to water and air pollution in their premises.

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e. The committee shall further report if the conditions stated in various permissions granted to the Project Proponent have been strictly complied with or not.

f. The committee shall in their report specifically notice whether the conditions which were imposed by SEAC/SEIAA for grant of Environment Clearance have been followed and completely complied with or not.

g. The report shall state the source of water for the project and whether the Project Proponent has permission from the Central Ground Water Authority for the same or not.

h. The report shall state the status with regard to regulating and reutilizing the effluents that are released from the premises.

i. The report shall state the extent of compensation which the Project Proponent should be called upon to pay finally for restoration and rectification of the environmental damages resulting from various breaches committed by the Project Proponent. It would also recommend, if any part of the property is required to be demolished in the interest of environment. In the event, the Project Proponent has adversely affected any water bodies, drainage, low lying areas and any other part of the plot or adjacent area covered by the Project Proponent, the measures that should be taken in that regard to restore the same shall also be stated.

j. The committee will also report as to what are the hygiene standards, measures undertaken for environmental protection, discharge of sewage, domestic waste and other effluents from the Harijan Residential School and how it is treated and discharged, with its complete functioning. The Committee shall also examine the environmental and other adverse impacts or otherwise, of running of a Super Specialty Hospital, on the Harijan Residential School.

k. The committee shall report what measures and recommendations the committee would make in relation to any or all of the above directions.

l. The report shall be submitted to the Tribunal within 45 days of the pronouncement of this Judgment. m. The registry shall place the said report before the Tribunal.

4. The Tribunal, after submission of the report would pass any further directions if necessary, in this case. We make it clear that the Project Proponent would not carry any activity without specific orders of the Tribunal.

5. The Project Proponent shall initially pay environmental compensation of Rs. 6.8855 crores, being 5% of the total cost of the project, i.e., Rs. 137.71 crores, as admitted by the Project Proponent itself, for restoration and restitution of the environment damaged and degraded by the Project Proponent and in addition to this, he shall also pay a sum of Rupees Five Crores (Rs. 5,00,00,000/-) for violating the law by starting and completing the project without obtaining Environmental Clearance, establishing a unit without consent and authorization from the Board and for all the above violations and defaults committed by the Project Proponent. This will be in consonance with the dictum of Hon'ble Supreme Court of India in the case of *Sterlite Industries (India) Ltd.* v. *Tamil Nadu PCB*, JT 2013 (4) SC 388 and judgment of the Tribunal in the case of *S.P. Muthuraman*(supra.).

6. We direct the Chief Secretary, State of Haryana to conduct an enquiry and fix the responsibility of the Officers and officials concerned with the entire process in light of this Judgment of the Tribunal.

60. The amount shall be payable to Haryana State Pollution Control Board subject to further adjustment and orders by the Tribunal. The payment should be made within three weeks from the date of the pronouncement of this Judgment.

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61. The appeal of the appellant in this matter is disposed of without any order as to cost.

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

ORIGINAL APPLICATION NO. 61 OF 2012
(M.A. NO. 6 OF 2013)
AND
ORIGINAL APPLICATION NO. 78 OF 2014
(M. A. NO. 193 OF 2014 & M. A. NO. 279 OF 2015)
AND
ORIGINAL APPLICATION NO. 129 OF 2015
(M.A. NO. 367 OF 2015) AND
ORIGINAL APPLICATION NO. 147 OF 2015
(M.A. NO. 522 OF 2015) AND
ORIGINAL APPLICATION NO. 247 OF 2015
(M.A. NO. 617/2015) AND
ORIGINAL APPLICATION NO. 379 OF 2015
(M.A. NO. 1095 OF 2015)
AND
ORIGINAL APPLICATION NO. 383 OF 2015
(M.A. NO. 913 OF 2015)

IN THE MATTER OF:

Dr. Arvind Gupta
K-60, Sector-25
Jal Vayu Vihar,
NOIDA-201301

....Applicant

Versus

1. Union of India, represented through its
Secretary, Ministry of Communications & IT,
Department of Telecommunications,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi, Pin-110001

2. Union of India, represented through its
Secretary, Ministry of Environment and Forests,
CGO Complex, Lodhi Road,
New Delhi, Pin-110510

3. Union of India, represented thorugh its
Secretary, Ministry of Health and Family Welfare,
Niraman Bhawan, C-Wing,
New Delhi, Pin-110011

4. Security and Exchange Board of India
Represented through its Chairman
Plot No. C4-A, 'G' Block,
Bandra Kurla Complex Bandra(East)
Mumbai, Pin-400051

5. Bharti Infratel Limited represented through it's
Company Secretary, Bharti Crescent,
1, Nelson Mandela Road,
Vasant Kunj, Phase-II, New Delhi, Piun-110070

6. Bharti Airtel Ltd. represented through it's
Company Secretary, Bharti Crescent,
1, Nelson Mandela Road,
Vasant Kunj, Phase-II, New Delhi, Piun-110070

7. Idea Cellular Ltd. Represented through it's
Company Secretary, 5th Floor,
Endsor CST Road, Kalina,
Santa Cruz (E), Mumbai, Pin-400098

8. Vodafone India Limited represented through it's
Company Secretary, 2nd Floor,
Skyline Icon, 86/92, Andheri Kurla Road,
Marol Naka, Near Mittal Industrial Estate,
Andheri East, Mumbai, Pin-400059

9. Reliance Communication Lts. Represented through it's
Company Secretary,
Dhirubhai Ambani Knowlege City,
Kopar Khairane, Navi Mumbai, Pin- 400710.

10. Tata Teleservices Limited Represented through it's
Company Secretary, Jeevan Bharti Tower I,
10th Floor, 124, Connaught Circus,
New Delhi, Pin- 110001.

11. Bharat Sanchar Nigam Limited represented through it's
Chairman, Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath, New Delhi, Pin- 110001

.....Respondents

AND

Senior Citizen Welfare Association (Regd.)
Regd. Office:-
RZF-765/11, Street No. 6,
Raj Nagar, Part-II,
Palam Colony,
New Delhi-110077

Through its Secretary
Sh. Shankar Bharti

....Applicant

Versus

1. Govt. of India,
   Ministry of Environment & Forests,
   New Delhi
   Through Secretary,

2. The Commissioner
   South Delhi Municipal Corporation,
   SPM Civic Center,
   Minto Road,
   New Delhi.

3. The Dy. Commissioner,
   South Delhi Municipal Corporation,
   Najafgarh,
   New Delhi – 1100043.

4. The Environment Engineer,
   Delhi Pollution Control Committee,
   Department of Environment,
   Govt. of NCT Delhi,
   4th Floor, ISBT Building,
   Kashmere Gate,
   Delhi- 110006.

5. The Sub Divisional Magistrate
   HQ Dwarka,
   Old Terminal Tax Building,
   New Delhi – 110037.

6. The SHO,
   P.S. Palam Village,
   New Delhi – 110045.

7. Department of Telecommunications
   105, Ist Floor, Sanchar Bhawan,
   New Delhi – 110011.

....Respondents

AND

Rohan Yadav
R/o B-1/1180, Vasant Kunj,
Delhi-110070

Also at:

A-4, Defence Colony,
New Delhi-110024

....Applicant

Versus

1. Delhi Development Authority
   Vikas Sadan, INA
   New Delhi-110023
   Through its Vice Chairman

2. Ministry of Environment & Forests
   Through its Secretary
   Govt. of India
   India Paryavaran Bhavan
   Jor Bagh Road
   New Delhi-110003

....Respondents

AND

Vivekanand Apartments Residents Welfare Association
Through its President
B-5/164, Sector-08,
Rohini,
Delhi- 110085.

....Applicant

Versus

1. Delhi Development Authority,
   Through its Vice Chairman
   Vikas Sadan
   New Delhi – 110023.

2. M/s Indus Tower Limited,
   Building – 10,
   Tower – B, 9th Floor, Delhi Cyber City,
   Gurgaon.

3. Ministry of Environment & Forests
   Through its Secretary
   Govt. of India
   India Paryavaran Bhavan
   Jor Bagh Road
   New Delhi-110003

....Respondents

AND

The Management Committee of the Aggarwal Co-operative
Group Housing Society Ltd.
Through its President
Plot No. 16, Sector-12, Dwarka,
New Delhi.

....Applicant

Versus

1. Delhi Development Authority,
Through its Vice Chairman
Vikas Sadan
New Delhi – 110023

2. Chief Engineer
Delhi Development Authority
Dwarka Circle,
New Delhi.

3. Deputy Director
Horticulture Department
Dwarka,
New Delhi.

4. South Delhi Municipal Corporation
Through Commissioner,
Civic Centre, New Delhi.

5. Deputy Director (Horticulture),
South Delhi Municipal Corporation
Najafgarh Zone, New Delhi.

6. Indus Tower Ltd.
Having its registered office at
Aravali Crescent 1, Nelson Mandela Road,
Vasant Kunj, Phase-II,
New Delhi- 110070.

....Respondents

AND

1. Bhupesh Sehgal
C-6/6591, Vasant Kunj,
New Delhi-110023.

2. RWA, C2 Vasant Kunj,
Through Mr. P.D. Vashisht,
President, RWA C2/2047,
Vasant Kunj,
New Delhi-110023

3. RWA, C1 Vasant Kunj
Through Mr. Anil Agarwal
President, RWA C1/1561,
Vasant Kunj,
New Delhi-110023.

4. RWA C8 Vasant Kunj
Through Mrs. Savita Soni,
President, RWA C8/8603,
Vasant Kunj,
New Delhi-110070.

....Applicant

Versus

1. Delhi Development Authority (DDA)
Through its Vice Chairman,
Vikas Sadan, INA
New Delhi-110023.

2. M/s Reliance JLO Infocomm Ltd.
3rd Floor RK Square Building No. 4,
Cyber City, Next to Cyber Hub,
DLF-II, Gurgaon.

3. M/s Indus Tower Ltd.,
Building No. 10, Tower B,
9th Floor, DLF Cyber city,
Gurgaon-122003, Harayana

4. Delhi Police
Through the SHO
Vasant Kunj Police Station
Vasant Kunj,
New Delhi-110070

5. South Delhi Municipal Corporation
Through its Deputy Commissioner
MCD Civic Centre,
Minto Road, New Delhi-110002

6. Ministry of Environment and Forests
Through its Secretary
Govt. of India
India Paryavaran Bhavan
Jor Bagh Road
New Delhi-110003

7. Department of Telecommunications
Through its Chairman,
Ministry of Communication and IT,
Sanchar Bhawan,
20, Ashok Road, New Delhi-110001.

8. Central Pollution Control Board,
Through its Chairman,
Parivesh Bhawan,
CBD-cum-Office Complex,
East Arjun Nagar,
Delhi-110032

....Respondents

AND

Sh. Bhagwan Dass Girdhar
Son of Late Sh. Ram Dayal
R/o H.No. 60, II Floor,
Priya Darshini Vihar Part- I
Model Town, Delhi- 110009.

....Applicant

Versus

1. Krishan Lal Sachdeva, and his daughter
Km. Pooja, R/O H.No. 698, Sector-5 Urban Estate
Kurukshetra, Haryana.

2. The Deputy Commissioner
North Delhi Municipal Corporation
16, Rajpura Road, Civil Lines Zone,
Delhi-110054.

3. The Director
Delhi State Pollution Department
Vikas Bhawan, I.P. Estate, New Delhi.

4. Idea Mobile Company
New Delhi.

5. Vodafone Mobile Telephone Company
New Delhi.

6. The Airtel Mobile Telephone Company
All these three companies provided mobilr tower
Through Indus Tower
Aravali Crescent, Nelson Mandela Road,
Vasant Kunj, Phase- II, New Delhi- 110070.
Customer care No. 1800-1021-666
Circle Head-ch.delhi@industowers.com

7. Smt. Rashmi Anand W/O Sh Ashok Anand
R/o H. No. 272, Kalyan Vihar, Rana Pratap Bagh
Delhi-110009.

....Respondents

COUNSEL FOR APPELLANT (OA 61/2012):
Mr. Raj Panjwani, Sr. Advocate, & Ms. Maneka Kuar, Advocates.

COUNSEL FOR RESPONDENTS:
Mr. Ardhendumauli Kumar Prasad, Ms. Priyanka Swami and Mr. Jigdal G. Chankapa, Advocates, for Respondent No. 1.
Mr. Divyangana Singh, Advocate for Respondent No. 3
Mr. Sandeep Gupta and Mr. Tushar Gupta, Advocates for Respondent No. 4.
Mr. Ramjit Srinivasan, Sr. Advocate and Mr. Navin Chawla, Advocate for Respondent No. 6 to 8.
Mr. Paras Anand and Mr. Raghav Pandey, Advocates for respondent no. 9&10
Mr. Piyush Sharma and Mr. Aditya N. Prasad, Advocates, Mr. Vikas Malhotra and Mr. M.P. Sahay, Advocates for respondent no. 12

JUDGMENT

PRESENT:
Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 28th October, 2015
Pronounced on: 10th December, 2015

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By this common judgment we will dispose of all the above seven applications as a common question of law comes up for consideration of this Tribunal though on somewhat different facts in these cases.

2. The applicant in the Main Application has preferred this application under Section 18 (1) read with Section 14 (1) of the National Green Tribunal Act, 2010 (for short 'NGT Act'). Challenging on the one hand inaction on the part of the respondents in not devising proper Rules/guidelines and on the other, in not implementing the existing regulations pertaining to installation of mobile towers in accordance with the Office Memorandum dated 9th August, 2012 issued by the Ministry of Environment, Forest and Climate Change (for short MoEF & CC), reproduce hereby as under:-

"Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi-110003
Date: 9th August2012

F.No. 15-11/2010/WL-I

OFFICE MEMORANDUM

Sub: Advisory on the use of Mobile Towers to minimize their impact on Wildlife including Birds and Bees-conveyed.

In pursuance to the report submitted by the Expert Committee constituted by the Ministry of Environment and Forests to study the possible impacts of communication towers on wildlife including birds and bees and subsequent consultations held with the stakeholders, an advisory containing the actions to be undertaken by various agencies involved in providing, regulating and dealing in any other manner with the EMR based services has been prepared by the Ministry with the objective to avoid and mitigate the impacts of EMR on such species.

A copy of the aforesaid advisory is enclosed for information, record and requisite action on the part of concerned stakeholders.

(Vivek Saxena)
Deputy Inspector General (WL)"

The basic grievance of the applicant is that the exposure to Electromagnetic Radiation (EMR) or electromagnetic field needs to be

minimised since the radiations are creating adverse impact on both Flora and Fauna of urban and rural environmental setup. The applicant challenges the illegal and questionable action of the respondent companies, more particularly respondent no. 5 for not complying with the legal requirements.

The applicant, a conscious public spirted person has also raised issue in relation to respondent no. 5 issuing and mobilising public money for private profits in the field of construction of telecom towers. According to the Telecom Policy, 2012 the number of telephone connections, at the end of February, 2012, was 943 million as compared to 41 million at the end of December, 2001. This phenomenal growth has been fuelled by the cellular segment which alone accounted for 911 million connections at the end of February, 2012. The telecom industry is growing continuously with the active support of the Government. The installed base of telecommunication towers is expected to increase from 3,76,000 at the end of March 2012 to 4,20,000 at the end of March, 2017. The radio frequency sources in India are the transmitting towers such as AM, FM radio towers, TV Towers, Cell Phone towers, etc. and are emitting radio frequency/ microwave radiations continuously. The level of EMF from sources has risen exponentially. The radio frequency radiation creates irreversible health hazards due to harmful exposures to electromagnetic radiation. The telecommunication tower radiation in India is governed by guidelines drawn from the recommendations of the International Commission on Non-Ionizing Radiation Protection. All service providers were asked to get their BTSs self-certified. The self-

certification details were to be submitted to respective TERM cells of Department of Telecommunication (for short 'DoT') by November, 2010. Further, the private sector has flouted these norms. According to the applicant WHO International Agency for Research on Cancer has classified the Electromagnetic radiation from mobile phones and other sources possibly carcinogenic to human and advised the public to adopt safety measures to reduce exposure. The Government of India adopted the guidelines developed by the International commission on Non-Ionizing Radiation Protection for Electromagnetic Radiation from mobile towers, which are reproduced as hereunder:-

Frequency Range	Power Density (Watt/sq. Meter)
400MHz to 2000MHz	f/200

Since, the cellular GSM services are being operated at 900 MHz and 1800 MHz frequency band in India, wherein the permissible Power Density is 4.5 W/Sqm for 900 MHz and 9 W/Sqm. for 1800 MHz.

3. Based on public grievance, the Inter Ministerial Committee consisting of officers from DoT, Indian Council of Medical Research, Department of Biotechnology and MoEF&CC was constituted on 24th August, 2010 to examine the effect of EMF radiation from base stations and mobile phones. The Committee after studying 90 international and national studies and papers recommended for lowering the mobile towers EMF exposure limits to 1/10th of the existing prescribed limit as a matter of abundant precautions. It recommended the frequency range of 400-2000 MHz and power density of f/2000. According to the DoT guidelines safeguarding public health and steps to be taken for

regulating radiation from base tower were also recommended. The Expert Group studied the Possible Impacts of Communication Towers on Wildlife Birds and Bees which was constituted by Ministry of Environment and Forest on 30th August, 2010 and report was submitted, which amongst others suggested possible mitigating measures to be taken and to formulate guidelines for regulating the large scale installation of Mobile Towers in the country. The applicant also refers to various other reports in support of his contention that these mobile towers leads to adverse effects of electromagnetic radiation on environment and human health.

4. The applicant also relied upon the PILs filed in various High Courts like High Court Rajasthan, Delhi, Panjab and Haryana, Tamil Nadu, which was in relation to health hazardous from mobile towers. PIL was filed in Rajasthan High Court in which the Court passed the final Judgment giving certain directions. The promotors of the private sector just for commercial benefits are indiscriminately installing towers anywhere and everywhere, irrespective of whether it is a ground area, densely populated area or open area. For having the site of a mobile tower tested, a person has to pay a fee of Rs. 4,000 which is not affordable and is not reasonable. The growing public concern of adverse health effects due to EMF radiation has noticed various health hazards in India and abroad. The applicant has referred to a report, Spanish (2004), Israel (2004), Germany (2004), Austria (2005) which indicates the ill-effects of radiation from mobile towers that can be fatigue, sleeping disorder, cardiovascular problems, breathlessness and

respiratory problems and even cancer. In some countries according to him the distance has been specified and these cases were higher in the patients who lived closer or even 400 meter to the towers. Further, according to the applicant, keeping in view the Article 19 (1)(g), Article 21 of the Constitution there should be a Regulatory Regime in place and if a telecom and cell phone tower are not banned, atleast there has to be complete guidelines in consonance with the scientific data to protect environment, human health and Ecology On the above facts the applicant has made the following prayers before the Tribunal:-

> 1. Implementing the guidelines and regulations pertaining to installation of Telecom Towers (Base Section) in accordance to Office Memorandum No. F. No. 15-11/2010/WL-I dtd. 09/08/2012 of the Ministry of Environment and Forest.
> 2. Directing the SEBI not to Clear any DRHP/IPO offering Prospectus filled by the Respondent Companies to the gullible investors for raising public money for private gains causing irreversible environmental and health hazard due to adverse radiation effect on human lives, birds, bees and environment until the final disposal of this appeal;
> 3. Direction may be issued to the respondents for implementing the Inter-Ministerial Committee recommendation to relating to the EMF exposure limits;
> 4. Direction may be issued for widely publicizing the complaint handling system of TERM for Electro Magnetic Field Radiation from Mobile Tower;
> 5. Putting place the complaint handling system of TERM throughout India within stipulated time period;
> 6. Issue an appropriate direction to all the High Courts for the transfer of all matters related to the radiation from mobile tower to Hon'ble National Green Tribunal for speedier and expeditious disposal of cases;
> 7. Direct the respondent no. 1,2,3 and 4 to constitute a High Power Committee of Experts to lay guidelines for limiting cell phone radiation norms before for installing any new Cell Phone Towers in urban and rural India;

> 8. Any other reliefs/ order/ directions as this Hon'ble Tribunal may deem fit and proper in the interest of larger public for meaningful environmental justice.

5. MoEF&CC, Respondent no. 2 filed a reply wherein it has stated that the present application is misconceived, mis-narrated and an abuse of the process of law and it raises no substantial question of law within the provisions of NGT Act and therefore is not maintainable. Further, it is stated that the Office Memorandum dated 9th August, 2012 issued by the Ministry is an advisory issue to the concerned authorities / department involved in providing regulations and delay in any manner of DMR based services, including the installation of mobile towers. The Ministry had prepared the order as an advisory document with the objective of sensitising the various agencies on impact of EMR on life forms so that the concerned agencies, while adopting the norms for regulation and fixing standards for safe limits of EMR's, will take into consideration the impacts on the living beings. The DoT has recently lowered the permissible limit of mobile tower to 1/10th of the impacts from 12th September, 2012. This is based upon international commission on Non-Ionising Radiation Protection Guidelines.

Other private respondent nos. 5 to 9 have filed their respective replies. Objection in regard to maintainability of the application being beyond the jurisdiction of the Tribunal has been taken by all of them. It is contended that the present application is beyond the scope and purview of Section 14 and Schedule I of the NGT Act. In fact the application is even barred by time.

Objections has also been taken in regard to the applicant not claiming any relief against SEBI and the matters connected thereto. Such money disputes cannot lie before the Tribunal. The allegations that these private players are not complying with the norms setup by the Central Government with respect to Electromagnetic field radiation from mobile towers are specifically denied. The establishment of Telecommunication towers is a case for ruling out a licensed environment for providing Cellular mobile telephone services. Telecom towers are required to be erected which ultimately allow usage from one subscriber to another. Under the United Access License granted to the service provider, an obligation is imposed on the licensee to ensure the quality of service while providing telecom services. If the construction of tower has started, the service provider would have or they are called upon to take all requisite permissions and sanctions. Then the service provider would have various hindrances whenever a new tower is erected. If the service provider does not erect a cell phone tower then the same would have effect on their obligation under UASL for which they are liable. They even pray that the interim order granted by the Tribunal should be related where they had been directed that no construction of cell phone towers shall be made without following the mandatory provisions of law and without obtaining necessary permissions from the concerned authorities. It is of course stated by each one of them that there is no Regulatory Regime directly dealing with the towers as of now. However, one of the private respondents have taken up the plea that the subject matter of the present

application is clearly governed under the provisions of Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority of India Act, 1997. Under Section 7 of the Telegraph Act 1885, the Central Government have the authority to make rules consistent with the Act. For the conduct of the Telegraph Act, 1885, the Central Government has also issued guidelines in respect of electromagnetic radiation. The provisions of Environment Protection Act, 1986 (for short 'Act of 1986), which in any case do not have any concern with electromagnetic emissions, loud ways and hertz ways galvic electric and magnetic means do not get covered under the Act of 1986. The applicant has substantially prayed for issuance of Writ of Mandamus, the power of which is vested in the Constitutional Courts. An obligation has also been taken in relation to the Locus Standi of the applicant to file the application.

6. Delhi Development Authority (DDA), respondent no. 1 has also filed its separate reply. In some of the above cases, from amongst the afore-noticed cases, the allegations beside the ones made in O.A. No. 61 of 2013 are that the towers are being erected in the green belt, public parks, district parks and number of such towers are being erected within a very close vicinity of each other. This, besides being contrary to the master and zonal plan of the area and in complete violation of the guidelines, they are also very seriously hazardous to the human health and environment. It is also contended in the case that on some of the erected towers there are many antennas which is again not permissible. The DDA has responded thereto that the current evidence does not

conform the existence of any health hazards from exposure of EMF radiation. As an abundant precautionary measure and to lower the harmful effects of EMF radiation exposure in February, 2004 the limit was reduced by the committee and norms were reduced to one tenth of the existing limits prescribed by ICNRIP. No restriction has been imposed in the advisory guidelines on installation of towers on specific building such as schools, hospital and play grounds. Whenever antenna are mounted on the wall of the building on pole on the road, their height should be 5 meters above the ground level. The master and the zonal plan of Delhi does not prescribe construction of tower in any area, particularly green belt. We may also notice that parties have referred to various judgments of the High Courts in some of which the High Courts have interfered and even issued certain directions while in other, the High Courts have chosen not to issue specific directions.

7. The parties appearing in the case were primarily heard by the Tribunal on the question of maintainability of the present application and other preliminary objections as raised by the respondents. We had made it clear to the parties appearing in the case that the Tribunal would not proceed with the detailed hearing on merits except touching thereupon issues limited to the extent it is necessary for determining the preliminary issues raised by the respondents. The following preliminary issues arise for consideration of the Tribunal.

a. Whether the applicant has *locus standi* to file the present application.
b. Whether the present application is barred by limitation.

c. Whether the application as framed is maintainable and is covered under any of the Scheduled Acts, to the NGT Act, 2010.

8. For the purpose of discussion, we will take up the first 2 issues together. It is not the submission of all respondents that the applicant does not have a locus standi to file the present application. Section 14 of the NGT Act gives jurisdiction to the Tribunal over all civil cases, where a substantial question relating to the environment, more importantly, including enforcement of any legal right relating to environment is involved. Such question should arise out of the implementation of the enactments specified under Schedule I. Section 14 does not define or states as to who can be an applicant. It is only sub section 3 and proviso thereto that uses the word applicant. This is not in contra distinction to the functioning of Section 16 of the NGT Act, where any person aggrieved has to file appeal as contemplated. Section 18 then provides for the application under Section 14 and 16 has to contain the particulars as accompanied by such facts as prescribed. As prescribed in terms of Section 18 (2) without approach to the provisions contained under Section 16, an application for grant of relevant compensation or settlement of dispute to be made to the Tribunal by the person who is aggrieved, who has sustained injury, whose property has been damaged, legal representative of a deceased and the Government as stated. Under Rule 2(c) of the NGT (Practice and Procedure) Rules, 2011 provides that any person who files the application before the Tribunal would be an applicant. Section 14 has intentionally been worded by the legislature to cover all cases which

falls under any of the specific category i.e. where substantial question relating to environment arises or where enforcement of any legal right relating to environment arises. In these circumstances, if the case falls under either of these categories then the locus of the applicant can hardly be questioned. Furthermore, the object of the NGT Act is to make environmental justice easily accessible and for expeditious disposal of environmental cases. According to the applicant, he has a legal right arising under Article 21 of the Constitution of India, so as to ensure that he receives a decent and clean environment and any activity which is affecting them or is a threat to environment and public health would be actionable under the NGT Act. Whether the applicant would succeed on merit or fail, even on some issues preliminary or otherwise, would be a different matter. But the applicant cannot be denied the consideration of the application at the threshold on the ground of locus standi. The applicant may not have suffered a personal injury thus he may not personally aggrieved. Still he will have a right to approach the tribunal for a precautionary relief. If the matters are covered under any of the Scheduled Acts, the applicant has a right to invoke the jurisdiction of the Tribunal and make appropriate prayers.

9. The main consideration before the Tribunal would be a substantial question relating to environment or any issue arising from implementation of the Scheduled Acts. A person can approach the Tribunal even when he claims enforcement of a legal right in relation to environment.

We may refer to the judgment of the Tribunal in the case of *Goa Foundation v. Union of India,* 2013, All India (NGT) Reporter (New Delhi) 234 where on the question of locus standi, the Tribunal held as under:

> 25.The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the applicant's interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar's The Law Lexicon supra describes this expression as 'when a person is given a right to raise a contest in a certain manner and his contention is negative, he is a person aggrieved' [Ebrahim Aboodbakar v. Custodian General of Evacue Property [AIR 1952 SC 319]. It also explains this expression as 'a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which he is legally entitled to and not merely a person who has suffered some sort of disappointment'.
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> 41.The implication of jurisdiction is, of course, not at the discretion of the judge but is relatable to the legislative intent and may be expanded within the framework of the statute. Once the legislature has intended to include 'all civil cases' in contradistinction to criminal cases, then it is not desirable for the Tribunal to carve out another class of cases which are to be excluded from the jurisdiction of the Tribunal. This will amount to adding words to a statute which are not provided otherwise. In a civil case which raises a question relating to environment, the Tribunal shall have jurisdiction to decide disputes arising out of such a question. Therefore, there is no need to carve out any exception for exclusion which is not spelt out by the legislature itself.
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> 42.Under the scheme of the Act, an anticipated action will also fall within the ambit of the

jurisdiction of the Tribunal. Section 20 of the NGT Act provides that, while deciding cases before it, the Tribunal shall take into consideration the three principles -- principle of sustainable development, precautionary principle and the polluter pays principle. The precautionary principle would operate where actual injury has not occurred as on the date of institution of an application. In other words, an anticipated or likely injury to environment can be a sufficient cause of action, partially or wholly, for invoking the jurisdiction of the Tribunal in terms of Sub-sections (1) and (2) of Section 14 of the NGT Act. The language of Section 20 is referable to the jurisdiction of the Tribunal in terms of Sections 14 and 15 of the Act. The precautionary principle is permissible and is opposed to actual injury or damage. On the cogent reading of Section 14 with Section 2(m) and Section 20 of the NGT Act, likely damage to environment would be covered under the precautionary principle, and therefore, provide jurisdiction to the Tribunal to entertain such a question. The applicability of precautionary principle is a statutory command to the Tribunal while deciding or settling disputes arising out of substantial questions relating to environment. Thus, any violation or even an apprehended violation of this principle would be actionable by any person before the Tribunal. Inaction in the facts and circumstances of a given case could itself be a violation of the precautionary principle, and therefore, bring it within the ambit of jurisdiction of the Tribunal, as defined under the NGT Act. By inaction, naturally, there will be violation of the precautionary principle and therefore, the Tribunal will have jurisdiction to entertain all civil cases raising such questions of environment. Such approach is further substantiated by the fact that Section 2(c), while defining environment, covers everything. Section 2(m) brings into play a direct violation of a specific statutory environmental obligation as contemplated under Section 5 of the Environment Act as being substantial question relating to environment These provisions, read with Section 3(1) and Section 5 of the Environment Act, which place statutory obligation and require the Government to issue appropriate directions to prevent and control pollution, clearly show that the legislature intended to provide wide jurisdiction to the Tribunal to deal with and cover all civil cases relating to environment, as stated by the Supreme Court in the case of S.A.L. Narayan Row & Anr. v.

> Ishwarlal Bhagwandas & Anr. [AIR 1965 SC 1818). The character of the proceedings is normally not with reference to the relief that the Tribunal can grant but upon the nature of the right violated and the appropriate relief which can be claimed.

10. In view of the above stated principle, facts and circumstance of the present case, we are of the view that the applicant has a locus standi to file the present application.

11. Coming to the second limb of the contention that the application is barred by time. We are again of the stated view that the application is not barred by limitation in terms of the Section 14 of the NGT Act. In the connected matters the applicants are personally aggrieved by conversion of the Green Belt, Public Park and district parks for erection and construction of mobile towers etc. which according to them is a violation of Master Plan, which itself would be part and parcel of environment and ecology which these authorities have a right to protect. It is true that the application has to be filed within a period of 6 months from the date when the Cause of Action first arose. The Tribunal is vested with the power to condone the delay in terms of proviso to Section 14 if the application is filed beyond 6 months. This power can be exercised for condoning the delay but under and not in excess of 60 days. The term 'cause of action' has been used in contra distinction to continuing cause of action. In case of a continuing cause of action, 'cause of action first arose' has completely a distinct and different role while computing the period of limitation. However, it is not equally applicable and does not have the same consequences in a case where the cause of action is recurring complete cause of action.

In other words, whenever subsequent act or subsequent breach is a complete cause in itself and its consequences are different, then such cause of action would enable an applicant to bring action before the Tribunal on the strength of the subsequent act. The limitation would be computed from the date of the subsequent breach or act. In this regard, we may refer to the judgment of the Tribunal in the case of The *Forward Foundation V. State of Karnataka,* 2015 ALL (I) NGT Reporter (2) (DELHI) 81 where the similar question of adherence arose. After hearing the law in detail the Tribunal held as under:

> 23.'Cause of Action' as understood in legal parlance is a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed. It is the foundation of a suit or an action. 'Cause of Action' is stated to be entire set of facts that give rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In other words, it is a bundle of facts which when taken with the law applicable to them gives the plaintiff, the right to relief against defendants. It must contain facts or acts done by the defendants to prove 'cause of action'. While construing or understanding the cause of action, it must be kept in mind that the pleadings must be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or passage and to read it out of the context, in isolation. Although, it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, from the pleading taken as a whole. [Ref. Shri Udhav Singh v. Madhav Rao Scindia, (1977) 1 SCC 511, A.B.C Laminart Pvt. Ltd. v. A.P. Agencies, [AIR 1989 SC 1239].
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> 27.Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of 'continuing wrong or offence'. For instance, using the factory without registration and licence was an offence committed every time the

> premises were used as a factory. The Hon'ble Supreme Court in the case of Maya Rani Punj v. Commissioner of Income Tax, Delhi, (1986) 1 SCC 445, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not, the Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assessee does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. Hon'ble High Court of Delhi in the case of Mahavir Spinning Mills Ltd. v. Hb Leasing And Finances Co. Ltd., 199 (2013) DLT 227, while explaining Section 22 of the Limitation Act took the view that in the case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury which renders the doer of the act responsible and liable for consequence in law.

12. The applicant has only prayed for the implementation of the Office Memorandum dated 9th August, 2012. The application was filed on 12th November, 2012 before the Tribunal well within the period of 6 months. Consequently the violation claimed by the applicant in this application relates to lack of regulatory regime, statutory or otherwise and violation of the prescribed guidelines while constructing/erecting towers every day. Construction of every new tower in a different colony in a different place public park, district centre or Green area would be an independent cause of action. In other connected matters, the cause of

action is very recent, for instance where the towers are under construction and application have been brought before the Tribunal. These are the cases which will consequently fall within the prescribed period of limitation but as each illegal construction would be an independent cause of action in itself and the period of limitation would have to be counted therefrom. Thus these applications are not barred by time. We may refer to the Judgment of the Tribunal in the case of Forward Foundation (Supra)

ISSUE NO. 3: Whether the application as framed is maintainable and is covered under any of the Scheduled Acts, to the NGT Act.

13. All the emphasis have been laid down by the learned Counsel appearing for the respondents on the question of maintainability of the present applications. The submission is that the Radiations of Electromagnetic Waves from Mobile Towers or other Towers does not fall directly or indirectly under any of the scheduled acts to the NGT Act. Radiation from towers does not cause any pollution. It does not fall under the expression 'environmental pollution' under Section 2(b) of the Act of 1986 or for that matter under the provisions of any of the scheduled acts. Radio electromagnetic waves are not the 'hazardous substance' in terms of Section 2(e) of the Act of 1986. On the true construction of Section 14 read with Section 2 (c) and 2(f) of the NGT Act, to which the Rule of strict construction has to be applied, the radiation would neither be covered under the definition of environment nor under the definition of hazardous substance and, therefore, would not fall within the ambit and scope of Section 14 of the NGT Act. It is

not a pollutant as it is not a solid, liquid or gaseous substance which is present in such concentration which may or tend to be injurious to the environment. Even if the definitions afore-referred are given liberal construction, then also radiation would not be covered under any of the scheduled acts. Under the Act of 1986, the legislature wherever intended to add or expand the scope of any term or expression particularly pollution, it has so stated under the provisions of the said Act. It is contended that for instance, Section 3 empowers the Central Government to take measures to protect and improve environment. These measures could relate to the matters or any one of them specified under sub Section 2(iii) inter-alia it could also related to laying down standards in relation to quality of environment in its various aspects. Similarly, Section 5 empowers the Central Government to issue directions subject to the provisions of the Act of 1986 but notwithstanding anything contained in any other law in force. These directions could relate to the closure, prohibition or regulation of any industry, operation or process amongst others. Section 6 vests the Central Government with the power of issuing notification in the official gazette and to make rules in respect of all or any of the matters referred to in Section 3 of the Act. Amongst others, the rules could relate to the standards of quality of Air, Water and Soil for various areas and purposes. Section 6(2)(b) empowers the government to frame rules and issue notification as to the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas. Section 6(2)(b), thus, shows that the legislature wherever intended have incorporated the words specifically. Inclusion of the word 'noise' shows

that the legislature unambiguously wanted the rule making authority to prescribe noise standards. Unlike this, in any of the provisions of the Act of 1986, reference have not been made to radiation by cellular towers or other towers directly or even impliedly, which shows that the framers of law did not desired to extend the jurisdiction of the Tribunal over such matters.

14. It is also contended on behalf of the respondents that the subject matter of the present applications is specifically covered under the Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority of India Act, 1997, and under these acts, license is required by the private stakeholders and such licenses are incorporated with all conditions and standards which the service providers are expected to perform or meet because there is a specific legislation covering this field. There is no occasion for the Tribunal to exercise jurisdiction by expanding the definition of words and expression under these laws as well as the provision relating to jurisdiction of the Tribunal in terms of Section 14 of the NGT Act.

15. It is also a contention on behalf of the respondents that after recommendations of the Committee constituted by the Government, the terms and conditions of the license were amended and consequently amended licenses with more details and specific conditions were issued by the DOT to which all the service providers particularly, the respondents should comply with. Firstly, this subject is beyond the jurisdiction of the Tribunal. Secondly, no legal right of the applicants has been violated. The field is squarely covered by the guidelines issued

by the DOT and the Tribunal would not issue directions for providing statutory or other regulatory regime which does not fall within its jurisdiction. Therefore, submission is that the application should be dismissed as not maintainable.

16. Sharply responded to the above contentions on behalf of the respondents, the applicants have argued that on the co-joint reading of object of the Act, definition under Section 2(a) of the Act of 1986 in light of the provisions of NGT Act, it is evident that the present application is maintainable. Radiation might not have been specifically provided under the Act of 1986 but it is a hazardous substance, an environment pollutant and has adverse impacts on human health. It is contended while relying upon the judgment of the Rajasthan High Court in the case of '*Justice I.S. Israni (Retd.) & Anr. v. Union of India & Ors.*, D.B. Writ Petition No. 2774/2012 that it is a hazardous substance and injurious to human health and it requires that a proper regulatory regime should be in place in the interest of environment and human health. It is also contended on behalf of the applicants that Section 3 of the Act of 1986 empowers the Central Government to take measures to protect and improve the environment. Under Section 3(2)(iii) and (xiv) the Central Government has to lay down standards for quality of environment in its various aspects and even in relation to such other matters as the government deem necessary or expedient for the purpose of securing effective implementation of the provisions of the Act. This would clearly imply that there is an obligation on the part of the Central Government to protect the environment and human health from the ill

effects of radiation and thus to specify a regulatory regime and standards in that regard. Act of 1986 is an Umbrella Act of environment and the legal right of the applicants read with Article 21 of the Constitution is being violated.

17. The other acts like Air (Prevention and Control of Pollution) Act, 1981, were enacted much prior to coming into operation of these activities of mobile towers, therefore, mere fact that they have not specifically been provided therein should not act as an impediment in the way of the Tribunal to give proper meaning and compliance to the provisions of 1986 Act. Thus, the Tribunal should exercise jurisdiction and the present case is maintainable.

18. It is also the contention of the applicants that Section 5 of the Act of 1986 opens with a non-obstante clause. Even if the contention of the respondents that the subject matter is covered under other Act is accepted, still because of the non-obstante clause the provision of the Act of 1986, has to prevail. However, it is contended that Tribunal has wide jurisdiction to deal with all environmental aspects in terms of the provisions of the NGT Act. In any case, if there is no proper policy in place for installation of towers and there are no guidelines then the matter would be squarely covered under the provisions of the Act of 1986, particularly, when the entire concept of construction and installation of towers is being dealt with arbitrarily. The arbitrariness is evident from the fact that in some places one tower is being constructed while in near to that site in another place, 15 towers are being constructed or have been constructed. In the Master Plan of Delhi, only

limited activity is permissible in the green areas and installation of towers being hazardous cannot be permitted in that area. Operationalization of such towers in those areas is violation of the advisory caution issued by MoEF&CC vide its letter dated 9th August, 2012 as well as Master Plan. Thus applicants can enforce their legal right before the Tribunal to prevent such construction.

19. At the cost of repetition, we make it clear that we are only deliberating upon the preliminary objections raised as to the maintainability of the application and the jurisdiction of the Tribunal to entertain this application. We are neither noticing the factual controversies raised in this application nor other legal issues indicated therewith. Suffice it to say that if we take the view that the present application is not maintainable or the Tribunal has no jurisdiction to entertain this application, it will be futile to discuss or deliberate upon other factual or legal aspects of this case. Different studies/reports have also been placed on record by the respective parties in support of their contentions as to whether electromagnetic radiation waves emitting from the towers are hazardous substance and have adverse impacts for human health and environment. We may also notice that no study has been placed on record which concludes in definite terms either way based on research.

20. It is also true that the various High Courts in the country have taken different views in relation to the regulatory regime, statutory or otherwise, need or requirement of such regime and issuance of directions but including prohibitory directions in relation to erection of

towers and their impact on human health. The Madhya Pradesh High Court in writ petition no. 866 of 2015 had declined to interfere and rejected the prayers vide judgment dated 9th September, 2015. The Gujarat High Court in the case of *Mukti Park Cooperative Society vs. Ahmedabad Municipal Corporation & Ors.* Special Civil Application No. 5548 of 2014 and other matters, while disposing of the writ petition, the court had even made observations that there is no reason for people to fear the erection of Base Transceiver Station, known as Wi-Fi mobile towers. There was an impression in mind of common man that the Wi-Fi Mobile Towers erected all over the state has the potential to cause health hazard due to the emission of radioactive waves from the said towers.

21. The Rajasthan High Court in the case of *Justice I.S. Israni (Retd.)* (Supra) by a detailed judgment had dealt with a direct question of radiation waves causing health hazards and being a hazardous substance. It also noticed that the Inter Ministerial Committee afore referred had made certain recommendations which were not disagreed by the DoT and had taken precautionary approach. There was a recommendation that multiple antennas should not be there on towers. The Bench of Rajasthan High Court had then proceeded to hold that the Expert Report of Inter-Ministerial Committee was being considered by the Court which was based on overwhelming material and various reports have been referred there. The Court further said 'even if the report of Professor Girish Kumar is discarded, there was ample material available on record in case of EMF radiation is processed then

prescribed, it would cause health hazardous and various disease. The reports are not conclusive as to the ill effects of EMF radiations. If it is kept at the prescribed level, it may still be dangerous for human beings. With these observations, the High Court hold the policy decision of the State Government, passed various directions and disposed of the petition. Based upon the judgment of the Rajasthan High Court, the Bhopal Bench of the Tribunal in Original Application No. 320/2014 vide its judgment dated 13th August, 2015 had even directed removal of towers from certain places including the schools. The judgment of the Bhopal Bench of the Tribunal was challenged in the statutory appeal preferred by the *Cellular Operators Association of India vs. Parveen Patkar* Civil Appeal No. 85 of 2015 upon which the Hon'ble Supreme Court of India vide its order dated 16th October, 2015 issued notice and granted stay of the judgment of the Tribunal. Special leave petition against judgment of the High Court of Rajasthan has also been filed before the Supreme Court which is stated to be pending. An interim order has been passed by the Hon'ble Supreme Court of India even in that case.

22. Delhi High Court in the case of *Resident Welfare Association vs. Union of India & Ors.*, Writ Petition No. 866/2015 had dismissed the writ petition wherein the resident association had raised a grievance of construction of towers in Sector-C, Pocket-4, Vasant Kunj Colony Delhi and had also stated that there should be proper advisory guidelines prepared by the authorities and challenge was also raised to the

standing committee accepting some other recommendations contended in the report of the Inter-Ministerial Committee.

23. We have noticed these various judgments of the High Courts and the Tribunal and orders of the Hon'ble Supreme Court, just as preface to deal with the main issue of jurisdiction before the Tribunal. These judgements clearly show that the controversy in the present case has been a subject matter of adjudication before higher judiciary in different cases and now is pending for final determination before the Hon'ble Supreme Court of India. Now, we must refer to the various provisions of the Environment (Protection) Act, 1986, Atomic Energy Act, 1962 and the National Green Tribunal Act, 2010 which are the statutes primarily related upon by the learned counsel appearing for the respective parties for advancing their submissions on the question of maintainability of the application and the jurisdiction of this Tribunal. First and foremost, we must refer to the provisions of the NGT Act, which have been referred to by the respective parties. The NGT Act while defines environment there, for definition of hazardous substance, it refers to the definition of the expression in the Act of 1986. The Act also deals with what is substantial question relating to environment as Section 14 gives jurisdiction to the Tribunal only in relation to civil cases which raise a substantial question relating to environment including enforcement of legal right relating to environment and in relation to implementation of the enactments specified in the schedule. Thus, the jurisdiction under Section 14 is controlled upon by these provisions of the Act. We may now refer to these provisions:

> "2.(c). "environment" includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;
> (f). "hazardous substance" means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986 (29 of 1986, and exceeding such quantity as specified or may be specified or may be specified by the Central Government under the Public Liability Insurance Act, 1991 (6 of 1991);
> (m). "substantial question relating to environment" shall include an instance where, -
> (i). there is a direct violation of a specific statutory environmental obligation by a person by which, -
> (A). the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
> (B). the gravity of damage to the environment or property is substantial; or
> (C). the damage to public health is broadly measurable;
> (ii). the environmental consequences relate to a specific activity or a point source of pollution;"

24. We may also notice that in terms of sub-section (ii) of Section 2 the word/expression used in the Act but not defined are to have meaning and reference as given to them under the other scheduled acts or the acts specified in the section.

While referring to the provisions of the Atomic Energy Act, 1962, the applicants have particularly contended that the radiation finds a specific exclusion under the provisions of this Act and therefore it would be automatically covered under the Act of 1986. Of course, according to other respondents the subject matter is not specifically dealt with under this Act of 1962 but is controlled by the other three Acts namely Indian Telegraphy Act, 1885, Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority of India Act, 1997 and the jurisdiction of

the Tribunal is ousted. Thus, we must refer to the following Acts i.e. Atomic Energy Act, 1962:

> 2.(1) (a). "atomic energy" means energy released from atomic nuclei as a result of any process, including the fission and fusion processes:
> (g). "prescribed substance" means any substance including any mineral which the Central Government may, by notification, being a substance which in its opinion is or may be used for the production or use of atomic energy or research into matters connected therewith and includes uranium, plutonium, thorium, beryllium, deuterium or any of their respective derivatives or compounds or any other materials containing any of the aforesaid substances;
> (h). "radiation" means Gamma rays, X-rays, and rays consisting of alpha particles, beta particles, neutrons, protons and other nuclear and sub-atomic particles, but not sound or radio waves, or visible, infrared or ultraviolet light;
> (i). "radioactive substance" or "radioactive material" means any substance or material which spontaneously emits radiation in excess of the levels prescribed by notification by the Central Government."

25. Now, we may come to the relevant provisions of the Environment (Protection) Act, 1986 which according to the applicant is an Umbrella Act in relation to environmental laws and would thus cover all matters which are not otherwise specifically provided in other scheduled acts or even under the said act by necessary implications. According to the respondents, Act of 1986 cannot be given a sweeping operation so as to include everything in the atmosphere or in the environment which has been specifically stipulated therein or not and which is otherwise covered by other statutes or not. According to them, Act of 1986 has to

be given a proper and limited operation. The relevant provisions of this Act which we would prefer to refer at this stage are as follows:

> 2.(a) "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants micro-organism and property;
> (b) "environmental pollution" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;
> (e) "hazardous substance" means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants micro-organism, or the environment.
> (g) "prescribed" means prescribed by rules made under this Act.
>
> **3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT**
> (1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.
> (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--
> (i) co-ordination of actions by the State Governments, officers and other authorities--
> (a) under this Act, or the rules made thereunder, or
> (b) under any other law for the time being in force which is relatable to the objects of this Act;
> (ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;
> (iii) laying down standards for the quality of environment in its various aspects;
> (iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:
> Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or

composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the

provisions of such order, such authority or authorities may exercise and powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

5. POWER TO GIVE DIRECTIONS

Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.[3]

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

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

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

24. EFFECT OF OTHER LAWS

(1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

25. POWER TO MAKE RULES

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely--

(a) the standards in excess of which environmental pollutants shall not be discharged or emitted under section 7;[21]

(b) the procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or caused to be handled under section 8;[22]

(c) the authorities or agencies to which intimation of the fact of occurrence or apprehension of occurrence of the discharge of any environmental pollutant in

excess of the prescribed standards shall be given and to whom all assistance shall be bound to be rendered under sub-section (1) of section 9;[23]
(d) the manner in which samples of air, water, soil or other substance for the purpose of analysis shall be taken under sub-section (1) of section 11;[24]
(e) the form in which notice of intention to have a sample analysed shall be served under clause (a) of sub section (3) of section 11;[25]
(f) the functions of the environmental laboratories,[26] the procedure for the submission to such laboratories of samples of air, water, soil and other substances for analysis or test;[27] the form of laboratory report; the fees payable for such report and other matters to enable such laboratories to carry out their functions under sub-section (2) of section 12;
(g) the qualifications of Government Analyst appointed or recognised for the purpose of analysis of samples of air, water, soil or other substances under section 13;[28]
(h) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause (b) of section 19;[29]
(i) the authority of officer to whom any reports, returns, statistics, accounts and other information shall be furnished under section 20;
(j) any other matter which is required to be, or may be, prescribed."

26. It is a settled principle of law that while dealing with the interpretation of statutory provisions, the Tribunal would apply the rule of plain construction. The interpretation to be given to the provisions particularly relating to jurisdiction has necessarily not to be unduly liberal and unduly strict. The Tribunal is a creation of a statute and therefore it would exercise jurisdiction within the four-corners of the statute. There would be no occasion for the Tribunal, particularly in the fact and circumstances of this case, to extend its jurisdiction if it otherwise falls beyond the statutory jurisdiction vested in the Tribunal. It is also a settled principle of law that where jurisdiction of civil court is

excluded and the jurisdiction is conferred upon the authorities or the Tribunals then such provisions are to be construed strictly. The Tribunal will exercise its jurisdiction which is vested in it by the legislature. More often than not, difficulties had arisen in applying these principles because there is no clear cut demarcation between the jurisdictional and non-jurisdictional question of fact and law. The Tribunal would also have jurisdiction to decide finally, even apparently jurisdictional fact and such a determination is not liable to be questioned on the ground that it has wrongly decided the jurisdiction fact, as was stated in case of *Rai Brij Raj Krishna and Another vs S.K. Shaw And Brothers* 1951 SCR 145. The principle of nullity could be brought into aid where the Tribunal has decided a matter without jurisdiction. In other words decision is completely beyond the provisions of the Act. In this regard, we may refer to some judgments on the issue of jurisdiction as passed by the larger benches of the Tribunal in the recent past in the case of *Kalpavriksh Vagholkar v. Union of India,* (2014) ALL (I) NGT Reporter(2) (Delhi) 282:

> 23.1. The ambit and scope of Section 14 and its features came to be discussed by the Tribunal in its judgment in the case of Goa Foundation v. Union of India, (2013) 1 All India NGT Reporter 234, wherein the Tribunal held as under:
>
> > "19.The Preamble may not strictly be an instrument for controlling or restricting the provisions of a statute but it certainly acts as a precept to gather the legislative intention and how the object of the Act can be achieved. It is an instrument that helps in giving a prudent legislative interpretation to a provision.
> >
> > In light of this language of the Preamble of the NGT Act, now let us refer to some of the relevant provisions. Section 14 of the NGT Act outlines the jurisdiction that is vested in the Tribunal. In terms of this Section, the Tribunal

will have jurisdiction over all civil cases where a substantial question relating to environment arises. The Tribunal will also have jurisdiction where a person approaches the Tribunal for enforcement of any legal right relating to environment. Of course, in either of these events, a substantial question arises out of the implementation of the enactments specified in Schedule I to the NGT Act. Section 15 of the NGT Act provides for awarding of relief and compensation to the victims of pollution and other environmental damage, restitution of property damaged and restitution of the environment for such area(s) as the Tribunal may think fit, in addition to the provisions of Section 14(2) supra. Section 16 provides for the orders, decisions or directions that are appealable before the Tribunal. Any person aggrieved has the right to appeal against such order, decision or direction, as the case may be. This Tribunal, thus, has original as well as appellate jurisdiction. This wide jurisdiction is expected to be exercised by the Tribunal in relation to substantial question relating to environment or where enforcement of a legal right relating to environment is the foundation of an application. In terms of Section 14(2) of the NGT Act, the Tribunal shall hear disputes relating to the above matters and settle such disputes and pass orders thereupon.

20. The expression 'civil cases' used under Section 14(1) of the NGT Act has to be understood in contradistinction to 'criminal cases'. This expression has to be construed liberally as a variety of cases of civil nature could arise which would be raising a substantial question of environment and thus would be triable by the Tribunal. P. Ramanatha Aiyar's The Law Lexicon, 3rd ed. 2012, explains 'civil cases' as below: "In the short sense, the term 'civil case' means cases governed by the Civil Procedure Code (5 of 1908). It is 27 used in a large sense so as to include proceedings in income-tax matters...".

21. The word 'case' in ordinary usage means, 'event', 'happening', 'situation', and 'circumstance'. The expression 'case' in legal sense means a 'case', ' suit', or 'proceedings' in the Court or Tribunal. Civil case, therefore, would be an expression that would take in its ambit all legal proceedings except criminal

cases which are governed by the provisions of the Criminal Procedure Code. The legislature has specifically used the expression 'all civil cases'. Reference to Section 15 of the NGT Act at this juncture would be appropriate. The legislature has specifically vested the Tribunal with the powers of granting reliefs like compensation to the victims of pollution and other environmental damage, for restitution of property damaged and for restitution of the environment for such area or areas. Once Section 14 is read with the provisions of Section 15, it can, without doubt, be concluded that the expression 'all civil cases' is an expression of wide magnitude and would take within its ambit cases where a substantial question or prayer relating to environment is raised before the Tribunal.

22. The contents of the application and the prayer thus should firstly satisfy the ingredients of it being in the nature of a civil case and secondly, it must relate to a substantial question of environment. It could even be an anticipated action substantially relating to environment. Such cases would squarely fall within the ambit of Section 14(1). Next, in the light of the language of Section 14(1), now we have to examine what is a substantial question relating to 'environment'. Section 2(1)(c) of the NGT Act explains the word 'environment' as follows:

"'environment' includes water, air and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property."

23.2. Section 2(m) defines the term 'substantial question relating to environment' as follows:

"It shall include an instance where, -

(i) there is a direct violation of a specific statutory environmental obligation by a person by which, -

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable; 28 (ii) the environmental

> consequences relate to a specific activity or a point source of pollution"."

24. The jurisdiction vested in the Tribunal under Section 14, which is a very wide jurisdiction, is in addition to the appellate jurisdiction under Section 16 and the special jurisdiction under Section 15 of the NGT Act. Under Section 14, it is not only that Tribunal can try all civil cases where a substantial question relates to environment and arises out of the implementation of the enactments specified in Schedule I of the Act but also where enforcement of any legal right relating to environment arises. Section 14 specifically refers to a substantial question relating to environment which itself has been defined and accepted in Section 2(m) of the NGT Act. The definition under Section 2(m) is an inclusive definition and thus, it has to be construed in a liberal manner in order to give it a wider connotation. In the case of Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Ors.1987 1 SCC 424, the Supreme Court while dealing with the expression 'includes' stated that:

"All that is necessary for us to say is this: Legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, (2) to include meanings about which there might be some dispute, or, (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context in the process of enlarging, the definition may even become exhaustive."

24.1. Touching upon the liberal construction of Sections 14 and 2(m) of the NGT Act, the Tribunal in the case of Kehar Singh v 29 State of Haryana, (2013) ALL (I) NGT REPORTER (Delhi) 556, stated:

> "13. The NGT Act has been enacted with the object of providing for establishment of this Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and for giving other contemplated reliefs and even dealing with matters incidental thereto. The Tribunal thus, has original jurisdiction in terms of Section 14 of the NGT Act. This wide jurisdiction is expected to be exercised by the Tribunal in relation to substantial questions

relating to environment or enforcement of legal rights relating to environment, when it arises from the implementation of one or more of the Acts specified in Schedule I to the NGT Act. The pre-requisite for the applicant to invoke original jurisdiction of the Tribunal, subject to other limitations stated in Section 14 of the NGT Act, is that the application must raise substantial question relating to environment. This Tribunal, in the case of Goa Foundation & Anr. v. Union of India & Ors., pronounced on 18th July, 2013, on the scope of the expressions 'substantial question relating to environment' as well as 'dispute', as referred to in Section 14 of the NGT Act, held as follows:

"24. Section 2(m) of the NGT Act classifies 'substantial question relating to environment' under different heads and states it to include the cases where there is a direct violation of a specific statutory environmental obligation as a result of which the community at large, other than an individual or group of individuals, is affected or is likely to be affected by the environmental consequences; or the gravity of damage to the environment or property is substantial; or the damage to public health is broadly measurable. The other kind of cases are where the environmental consequences relate to a specific activity or a point source of pollution. In other words, where there is a direct violation of a statutory duty or obligation which is likely to affect the community, it will be a substantial question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal. When we talk about the jurisdiction being inclusive, that would mean that a question which is substantial, debatable and relates to environment, would itself be a class of cases that 30 would squarely fall under Section 14(1) of the NGT Act. Thus, disputes must relate to implementation of the enactments specified in Schedule I to the NGT Act. At this stage, reference to one of the scheduled Acts i.e. Environment Protection Act, 1986 may be appropriate. The object and reason for enacting that law was primarily to address the concern over the state of environment that had grown the world over. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological

diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. These were the considerations that weighed with the legislature to ensure implementation of the UN Conference on the Human Environment held at Stockholm in June, 1972 to take appropriate steps for protection and improvement of human environment. The essence of the legislation, like the NGT Act, is to attain the object of prevention and protection of environmental pollution and to provide administration of environmental justice and make it easily accessible within the framework of the statute. The objects and reasons of the scheduled Acts would have to be read as an integral part of the object, reason and purposes of enacting the NGT Act. It is imperative for the Tribunal to provide an interpretation to Sections 14 to 16 read with Section 2(m) of the NGT Act which would further the cause of the Act and not give an interpretation which would disentitle an aggrieved person from raising a substantial question of environment from the jurisdiction of the Tribunal.

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35. The expression 'disputes' arising from the questions referred to in sub-section (1) of Section 14 of the NGT Act, is required to be examined by us to finally deal with and answer the contentions raised by the parties before us. The expression used in sub-section (1) supra is the expression of wide magnitude. The expression 'question' used in subsection (1) in comparison to the expression 'dispute' used in sub-section (2) of section 14 is of much wider ambit and connotation. The disputes must arise from a question that is substantial and relates to environment. This question will obviously include the disputes referred to in Section 14(2). It is those disputes which would then be settled and decided by the Tribunal. These expressions are inter- 31 connected and dependent upon each other. They cannot be given meaning in isolation or de hors to each other. The meaning of the word 'dispute', as stated by the Supreme Court in Canara Bank v. National Thermal Power Corporation (2001)1 SCC 43 is "a controversy having both positive and negative aspects. It postulates the

assertion of a claim by one party and its denial by the other". The term dispute, again, is a generic term. It necessarily need not always be a result of a legal injury but could cover the entire range between genuine differences of opinion to fierce controversy. Conflicts between parties arising out of any transaction entered between them is covered by the term 'dispute'.

36. The counsel appearing for the respondents, while referring to this expression, relied upon the judgment of the Supreme Court in the case of Inder Singh Rekhi v. DDA , (1988) 2 SCC 338 to support the contention that the dispute, as referred under the Arbitration Act, 1940 arises where there is a claim and there is a denial and repudiation of such claim.

37. The judgment relied upon by the respondents is not of much help to them inasmuch as the Arbitration Act, 1940 operates in a different field and the meaning to the expression dispute appearing in that Act has to be understood with reference to the provisions of that Act specifically. The said Act is only intended to resolve the disputes between two individuals arising out of a transaction under the Arbitration law. However, the present case, the NGT which relates to environment as such. It is not individual or a person centric but is socio-centric, as any person can raise a question relating to environment, which will have to be decided by the Tribunal with reference to the dispute arising from such a question. It is not necessary that such a question must essentially be controverted by other person or even the authority. The essence of environmental law is not essentially adversarial litigation. To give an example, could any authority or person deny the question relating to cleanliness of river Yamuna? Any person could approach the Tribunal to claim that the pollution of Yamuna should be controlled, checked and even prevented. None of the parties or authorities may be able to dispute such a fact may even contend that steps are required to be taken to control, prevent and ensure restoration of clean water of Yamuna. 32 Thus, dispute as understood to be raising a claim and being controverted by the other party is not apparently the sine qua non to invocation of Tribunal's jurisdiction under the scheme of Sections 14 to 16 of the

> NGT Act. This approach is further substantiated from the use of the expressions 'cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto' used in the preamble of the Act 14. In the present case, the applicant has invoked the jurisdiction of the Tribunal under Section 14 of the NGT Act with regard to establishment of STP on a location which, according to the applicant, is bound to create environmental problems and would adversely affect the public health. It will result in pollution of underground water besides causing emission of obnoxious gases and creating public nuisance, owing to being adjacent to residential colony and religious places. Thus, it would certainly involve a question relating to environment arising from the implementation of Acts specified in Schedule I to the NGT Act. Thus, the present case indisputably falls within the jurisdiction of the Tribunal, of course, subject to the plea of limitation."

25. We have to examine the jurisdiction of the Tribunal with reference to prevalent law of the land that right to clean and decent environment is a fundamental right. Dimensions of environmental jurisprudence and jurisdiction of this Tribunal, thus, should essentially be examined in the backdrop that the protection of environment and ecology has been raised to the pedestal of the Fundamental Rights. Right to clean and decent environment is a Fundamental Right under Article 21 of the Constitution of India. The Supreme Court in the cases of Virender Gaur and Ors v State of Haryana and Ors, (1995) 2 SCC 577 and N.D. Jayal and Anr. v. Union of 33 India (UOI) and Ors, (2004) 9 SCC 362, has held that enjoyment of life and its attainment, including, their right to live with human dignity encompasses within its ambit the protection and preservation of environment and ecological balance free from pollution of air and water. Clean and healthy environment itself is a fundamental right.

27. The jurisdiction of the Tribunal thus, would extend to all civil cases which raise the substantial question of environment and arise from the implementation of the Acts stated in Schedule I of

the NGT Act. There has to be thus, a direct nexus between the cases brought before the Tribunal and a substantial question relating to environment. The 'cause of action' as contemplated under the provisions of the NGT Act would be complete only when the stated three ingredients, i.e. firstly, civil cases, secondly, concerns or raises a substantial question of environment or an enforcement of a legal right relating to environment and lastly that 38 such question arises in regard to implementation of the Schedule Acts, are fulfilled. In the case of Kehar Singh (supra), the Tribunal unambiguously stated the principle that there has to be a direct nexus or link between the case advanced by the applicant and the substantial question relating to environment. It has to be a civil dispute raising an environmental issue and arising from any/or all of the Scheduled Acts.

28. However, the Tribunal may not have jurisdiction to entertain and decide such proceedings even when above nexus is established, as there is still another sine qua non for exercise of the jurisdiction by the Tribunal, that is, it must arise or be relatable to the implementation of the Acts specified in Schedule I of the NGT Act. Thus the most significant expression in this entire gamut of law is the expression 'implementation'. The legislature in its wisdom has specified different class of civil cases that would fall within the jurisdiction of the Tribunal. The first class of cases may per se raise a substantial question relating to environment while others may relate to enforcement of legal right relating to environment. These classes of cases must arise out of implementation of enactment specified in Schedule I. Thus, now we should examine the meaning of the word 'implementation'. The expression 'implementation' appears under different Acts even under environmental laws. The Preamble as well as Section 22A of the Air (Prevention and Control of Pollution) Act, 1981 uses the word 'implement'. In the Preamble, it is stated that, 'whereas it is 39 considered necessary to implement the decisions' while Section 22A states, 'where the Board is competent to direct the person to implement the direction in such a manner as may be specified by the Court'. The Environmental (Protection) Act, 1986, in its Preamble as well as Section 3 (2) (xiv) uses the word 'implement' and 'implementation' respectively. The expression 'implement' has been used in the Preamble while 'implementation' in Section 3 (2) (xiv) relates to

> whether the Central Government vested with the power to take such measures in relation to matters as the Central Government deems necessary or expedient for the purpose of securing effective implementation of the provisions of the Act under Article 243G(b) of the Constitution of India which vests powers in the Panchayats and Authorities in relation to various matters. The State can vest the Panchayat with the power to exercise the Authority to implement the schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.
>
> 31. 'Implementation', therefore, within the provisions of Section 14 of the NGT Act would relate to implementation of the various provisions, rules, regulations and the notifications issued in exercise of subordinate or delegated legislation with regard to any or all of the Acts stated in Schedule I of the NGT Act. It is not only implementation of the enactments, but even the questions which arise out of such implementation that would clearly fall within the ambit of Section 14 of the NGT Act. 'Implementation', would therefore cover all questions relating to application, enforcement and regulations under these enactments. There should be a nexus between the pleaded cause of action and the environment, making it a substantial question of environment. This may be in relation to environment or even enforcement of any legal right relating to environment. The word 'implementation' thus, has to be understood in its wider perspective and connotation. The interpretation should be one which would further the cause of effective implementation of the provisions of the Scheduled Acts. Any matter in relation thereto would 43 squarely fall within the jurisdiction of the Tribunal. The nexus with environment could be direct or even indirect. The present case is one, which would fall in the latter category. It will be obligatory to constitute appropriate expert committees in consonance with the provisions of the scheduled Acts and the Notifications issued thereunder otherwise this is bound to have adverse effects on effective prevention and control of pollution."

27. In light of the above principle, it can be safely stated that a case raising a substantial question of environment which is civil in nature must essentially fall within the scope and implementation of the

scheduled acts to the NGT Act, 2010. Implementation should have a direct nexus and must directly arise from such acts and a mere remote connection thereto would not be sufficient for invoking the jurisdiction of the Tribunal particularly when they are actually or are required to be covered under other laws in force.

28. From the provisions of the various acts that we have reproduced above, it is clear beyond doubt that the radiation from electromagnetic waves resulting from such towers is not explicitly covered in any of the scheduled acts to the NGT Act. In fact, even under the NGT Act, relevant definition under provisions do not refer to the radiation specifically. The only act which refers to radiation per se is the Atomic Energy Act, 1962. Section 2(a) defines atomic energy while section 2(g) defines prescribed substance which means any substance including any mineral which the Central Government may prescribe. Further substance may be used for the production or use of atomic energy or research into the matters connected therewith. Various metals and substance have been referred in this very section. It does not specify radiation as a substance or for that matter the process covered under the definition of atomic energy. Section 2(h) is the relevant provision which defines radiation as Gamma rays, X-rays, and rays consisting of alpha particles, beta particles, neutrons, protons and other nuclear and sub-atomic particles. But this definition specifically excludes sound or radiation waves or feasible infra or ultraviolet lines. Once the provision itself by a specific language excludes radiation or radio waves, then it is not permissible to read such expression. Thus it is impermissible to read the same in any

settled norms of interpretation. Radioactive substance or radioactive material has specifically been defined under Section 2(i) of the Atomic Energy Act. This clearly shows the intent of law framers that they did not wish to include radio waves as part of this act. Possibly there can be no difficulty in our way to come on to conclusion that radioactive waves are not covered under the Atomic Energy Act, 1962.

29. In light of the principle that we have afore-noticed, now we will refer to the Act of 1986 and the NGT Act collectively. It is clear that that Section 14 of the NGT Act would vest jurisdiction in the Tribunal in relation to the following: (i) all civil cases (ii) where a substantial question in relation to environment is raised (iii) enforcement of a legal right relating to environment (iv) it should arise out of the implementation of the enactments specified in schedule-I to the NGT Act, 2010.

30. All these conditions have to be cumulatively satisfied in cases falling under either of the categories under head (ii) and (iii). We have already noticed that it is not covered under any of the provisions of the 7 scheduled acts. The Act of 1986 is certainly paramount legislation of the present day's environmental jurisprudence in India. The definition of environment under Section 2(a) has very wide meaning and would practically cover everything in relation to environment. Section 2(b) defines environmental pollutant as solid, liquid or gaseous substances present in such concentration as may be or did not injurious to environment. The radioactive waves would not fall under any of these categories as it is neither a solid nor a liquid or a gaseous substance.

Section 2(e) defines hazardous substance. Section 2 (f) of the NGT Act, for defining hazardous substance only relies upon the definition provided under 1986 Act. It defines hazardous substance means any substance or preparation which by reason of its chemical or physio-chemical properties or handling, is likely to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment. To cover it under Section 2(e) of Act of 1986, it has to be any substance or preparation which by reason of its chemical or physio-chemical properties is liable to cause harm to human beings, other living creatures or plants etc. The radioactive waves are neither a substance nor a preparation. It is not even a radiation as defined under the Atomic Energy Act, 1962 and the ingredients stated therein do not fit in with the framework of hazardous substance or an environmental pollutant.

31. Section 3 of the Act of 1986, empowers the Central Government to take measures to protect and improve the environment. In terms of section 3(1) it can take measures in relation to all or any of the categories specified under Section 3(2). Section 3(2) (iii) and (xiv) have been read together by the learned Counsel appearing for the Applicant to contend that it is obligatory upon the Central Government to laydown standards in relation to all aspects including radiation. This is more so because of the residual clause contained under section 3(2)(xiv). Radiation results in adverse impacts on the environment. It is true that there is an obligation on the part of the Central Government to take measures as well as prescribe requisite standards. The residual clause

contained under Section 3(2)(xiv) cannot go beyond what is specifically provided. If the subject is not otherwise covered under the substantive provisions of the Act of 1986, by implication it cannot fall under general clause. Furthermore, the general clause has to operate only for the purpose of securing effective implementation of the provisions of this Act. The non-obstante clause appearing in section 5 has been made subject to the provisions of the act by legislature itself. The power to issue directions under the act cannot travel beyond the provisions of the act. If a subject is not specifically covered under the field and provisions of the scheduled acts, then the Central Government would obviously have no powers to issue directions in exercise of powers vested in it under section 5 of the act. The purpose of Section 5 of the Act is to give overriding effect to the directions issued by the Central Government in relation to closure, prohibition or regulation of a non-operation or process to overcome a given situation and to achieve the object of the Act of 1986. Similarly Sections 24 and 25 of the Act of 1986 have been construed and understood on the same principles. None of the statutory provisions of the act can have application de-hors or beyond the purview of the act of which it is a part. While interpreting any provision of the act, the language of section in eventuality, scheme of the act, purpose and object of the act are to be taken into consideration. The Tribunal would give an interpretation which would be more tilted in the interest of environment and ecology, keeping in view the object and reasons and preamble of the Act of 1986. But still the Tribunal would not be able to provide of such wide dimensions to these statutory provisions so as to practically travel beyond the scope of the jurisdiction

vested in the Tribunal. The wide jurisdiction vested in the Tribunal has to be within the four corners of the law that constitutes the Tribunal. The other aspect that we must notice here is that all the service providers are subject to and can only operate, provided they are granted license for that purpose by DoT. As it appears from the record that after the reports submitted by the Inter Ministerial Committee, licenses were issued containing more specific and rigorous conditions in relation to conduct of service providers. The provisions of the Indian Telegraph Act, 1885 and Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority of India Act, 1997, do cover these fields to some extent, but may be their object and purpose is different and is only to regulate the actual activity of transmission by service providers. They ex-facie do not appear to be dealing with the environmental and human health aspects. We do not consider it necessary to deliberate this issue any further.

32. The contention of the respondents that the applicant has no legal right do not appear to be correct. There is violation of legal right which would arise in failing of the applicant from mandate of Article 48(a), 51(a)(g) and 21 of the Constitution of India. If carrying on all these activities is injurious to human health and environment, it would be an apparent violation of constitution, of the legal right of the applicant and they would have a right to invoke the remedy available to them in accordance with law. What we are concerned with is that the remedy available to such applicants does not fall within the ambit and scope of the Act of 1986 and Section 14 of the NGT Act, 2010.

33. In view of the above discussion, we are of the considered view that radiation i.e. emission of electromagnetic waves from the towers constructed by the respective respondents does not fall within the ambit, scope and jurisdiction vested in this Tribunal under the provisions of the NGT Act with reference Environment (Protection) Act, 1986.

34. While holding the above, we make it clear that we have not recorded any finding in regard to whether radiation is a pollutant generally or under any other specific law. We have also not dealt with the question whether it is an environmental pollutant, generally or under other laws in force. We have also not dealt with the question whether the Central Government or other State Governments are liable to be directed to frame statutory or other regulatory regime covering the construction, its specification, sites and operation of mobile towers and other towers. We have also not rejected any finding as to whether radiation is above prescribed limits and the guidelines and/or beyond them is actually injurious to human health and environment. The present judgment relates only to the issue whether this Tribunal has jurisdiction to entertain this application under the laws afore-stated.

35. We leave all the contentions open and the present judgment is without prejudice to the rights and contentions of the respective parties. We may also notice here that the various High Courts have taken divergent views on this subject and now the matter is pending before

the Hon'ble Supreme Court of India and that is another aspect which has persuaded us to take the view that we are taking in this case.

36. Thus, we dismiss all these applications while holding that the Tribunal has no jurisdiction to entertain these applications. We dismiss all the applications, however, without any order as to costs.

Justice Swatanter Kumar
Chairperson

Justice M.S. Nambiar
Judicial Member

D.K. Agrawal
Expert Member

Bikram Singh Sajwan
Expert Member

New Delhi
10th December, 2015

BEFORE THE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE) BENCH, PUNE

M.A. No.108/2014
In
Appeal No.9/2014

AND

M.A. No.125/2014
In
APPEAL NO.14/2014

CORAM:

HON'BLE DR. JUSTICE JAWAD RAHIM

(JUDICIAL MEMBER)

HON'BLE DR. DEVENDRA KUMAR AGARWAL

(EXPERT MEMBER)

In the Matter of (M.A. No.108/2014 in Appeal No.9/2014):

Between:

ANIL V.THARTHARE,
B/78/776/MIG Colony,
Bandra East,
Mumbai-400051. ....**APPELLANT**

AND

1. **SECRETARY,**
   Environment department,
   Government of Maharashtra,
   Mantralaya, Mumbai-400 032.

2. **MEMBER-SECRETARY,**
   State Level Impact Assessment Authority,
   Environment department,
   Mantralaya, Mumbai-400 032.

3. MEMBER-SECRETARY,

State Level Expert Appraisal Committee,

Environment department,

Mantralaya, Mumbai-400 032.

4. VICE PRESIDENT AND CHIEF EXECUTIVE OFFICER

Maharashtra Housing and Area Development Authority,

Bandra East, Mumbai-400051.

5. DEPUTY CHIEF ENGINEER,

Building Proposal Department (Western Subburbs)

Municipal Corporation of Greater Mumbai,

Near Bhabha Hospital,

Bandra West, Mumbai-400 050.

6. RESILIENCE REALTY PVT. LTD.

702, Natraj, M.V.Road

Western Express Highway,

Andheri (East), Mumbai-400069.

7. THE SECRETARY,

Model Co-operative Housing Society Ltd.,

Gandhi Nagar, Bandra East,

Mumbai-400 051.

.....**RESPONDENTS**

AND

In the Matter of (M.A. No.125/2014 in Appeal No.14/2014):

Between :

Santosh Daundkar
10/37 BIT Chawal, KK Marg,
Mumbai Central, Mumbai 400 008.

....**APPELLANT**

AND

1. **Secretary,** Ministry of Environment and Forests,
   Paryavaran Bhavan, CGO Complex,
   Lodhi Road, New Delhi – 110 003.

2. **Secretary,**
   Environment Department,
   Government of Maharashtra, Mantralaya,
   Mumbai – 400 032.

3. **Member Secretary**
   State Level Expert Appraisal Committee
   Environment Department, Mantralya,
   Mumbai – 400 032.

4. **Member Secretary**
   State Level Environment Impact Assessment Authority
   Environment Department, Mantralya,
   Mumbai – 400 032.

5. **The Chief Executive Officer**
   Slum Rehabilitation Authority
   Bandra East, Mumbai – 400 051.

6. **The Secretary**
   Revenue and Forests Department
   (Forest Division)
   Mantralaya, Mumbai.

7. **Additional Principal Conservator of Forests (Wildlife)**
   Sanjay Gandhi National Park
   Borivali, Mumbai.

8. **Member Secretary,**
   National Board of Wildlife
   Office of the Ministry of Environment and Forests,
   Paryavaran Bhavan, CGO Complex,
   Lodhi Road, New Delhi – 110 003.

9. **M/s. Enviro Analysts and Engineers Pvt. Ltd.**
   B-1003, Enviro House, 10th Floor
   Western Edge II, W.E. Highway,

Borivali East, Mumbai – 400 066.

10. Mssrs. Omkar Realtors and Developer Pvt. Ltd.
Omkar House, Off Eastern Express Highway
Opp. Sion-Chunnabhatti Signal, Sion East
Mumbai – 400 022.

.....**RESPONDENTS**

In the Matter of M.A. No.108/2014:

Counsel for Applicant(s):

Mr. Aditya Pratap Adv, Mr. Makarand Gandhi Adv

Counsel for Respondent(s):

Mr. D.M.Gupte Adv a/w Supriya Dangare for Respondent Nos. 1 to 4.

Mr. R.M.Mahabal Adv a/w Shrilekha Golekar Adv for Respondent No.3.

Mr. S.C. Mehandia Adv a/w Mr. Akhil Kupade Adv i/b Utangade & Co. Mr. J.D. Avhad, Amruta Mahendale a/w Mr. Sanjay Chitale Adv for Respondent No.4.

Mr. Gaurav Joshi, Sr. Advocate a/w Mr. Sagar Bhandwalkar, Sanmisha Gala Advs i/b M/s Markand Gandhi & Co. for Respondent No.6.

Mr. Piyush Raherja a/w Ms. Pinky Misra Advs for Respondent No.7.

In the Matter of M.A. No.125/2014:

Counsel for Appellant(s):

Mr. Aditya Pratap, Advocate

Counsel for Respondent(s):

Mr. Krishna Ratnaparkhi, Adv. for Respondent No.1
Mr. R.M.Mahabal Adv a/w Shrilekha Golekar Adv. for Respondent Nos.2, 3 and 4
Mr. Paresh M. Mote, Adv. for Respondent No.5
Mr. A.S. Mulchandani, Adv. a/w Mr. Sunil Dange, Adv. for Respondent No.6
Mr. Sameer Khale, Adv. for Respondent No.7
Mr. Chirag Balsang, Adv. a/w Mr. Aftab Diamondwala, Hamid

Ahmad i/b Diamondwala & Co. for Respondent No.10

DATE: 4th May, 2016

O R D E R

1. These two Appeals preferred by individuals have gained access to this Tribunal under Section 16 and 18 of the National Green Tribunal Act, 2010 assailing grant of modified/revised Environmental Clearance (EC) dated 13th March, 2014 and 25th April, 2014 to the Project Proponents who are arrayed as Respondent Nos.6 and 10 respectively.

2. Appeal No.9/2014 is preferred by Mr. Anil V. Tharthare claiming to be personally affected by the project of housing complex being built by Respondent No.6 Resilience Reality Pvt. Ltd while Mr. Santosh Dandukar is Appellant in Appeal No.14/2014 assailing grant of modified/revised Environmental Clearance dated 25th April, 2014 in favour of the Respondent No.10 M/s. Omkar Realtors and Developer Pvt. Ltd., to put up multi-storeyed residential complex by way of Slum Rehabilitation Scheme and for its own benefit.

3. The Appellants in both these Appeals have sought an Order to quash the Environmental Clearance dated 13th March, 2014 issued in favour of the Respondent No.6 and Environmental Clearance dated 25th April, 2014 issued in favour of the Respondent No.10

apart from seeking several incidental and consequential reliefs, besides seeking order of demolition of the structures already put up by these Project Proponents.

4. Upon issuance of Notices in these Appeals, the Project Proponents viz the Respondent No.6 in Appeal No.9/2014 and Respondent No.10 in Appeal No.14/2014 have entered into serious contest. They have, by their miscellaneous applications registered as M.A. No.108/2014 (filed in Appeal No.9/2014) and M.A. No.125/2014 (filed in Appeal No.14/2014), questioned maintainability of the Appeals, on the grounds that the Appeals are barred by limitation and also the Appeals are not maintainable as Appellants are not "the aggrieved persons" referred to in Section 18(1) and (2) of the National Green Tribunal Act, 2010 to take the benefit of the right of Appeal under Section 16 of the National Green Tribunal Act, 2010.

5. The Appellants, by their Counter have resisted these Applications.

6. The material propositions in the memorandum of Appeal and the grounds urged are very elaborate and aplenty. We may not to be required to incorporate in this order every detail of such material propositions as we are, by this order, deciding the preliminary issue about maintainability of these Appeals on the question of

limitation and *locus standie* raised by Respondent Nos.6 and 10.

7. The relevant factual matrix to which reference needs to be made, is:

Averments in Appeal No.9/2014

1. The Respondent No.6-Resilience Realty Pvt. Ltd-developer of the land applied and obtained Environmental Clearance (EC) to construct residential complex at CTS No.646, 646 (Part) of village Bandra at Gandhi-Nagar, Bandra (E), Mumbai, locally known as MIG Colony in general and Group-II in particular on 2nd May, 2013 and commenced construction. The construction is alleged to be in violation of the Environmental Laws and the local laws, resulting in degradation of environment in the locality and in adjoining areas besides severally impacting the civic amenities ultimately leading to collapse of local infrastructure. After going ahead with such erratic, illegal construction, the PP embarked on construction of second stage in the year 2010. As in the month of April, 2011, several floors of the building were completed in violation of the earlier EC granted which is said to be in violation of the EIA Notification, 2006. Thereafter, the Project Proponent applied for modification of EC, suppressing the fact

that construction of the project was halfway through. Based on such misrepresentation, the State Level Impact Assessment Authority, (SEIAA) is alleged to have appraised the project in its 10th Meeting held on 14th and 16th March, 2013 and recommended the project be granted modified EC.

2. The Minutes of Meeting is impugned in this Appeal, copy of which is marked as Annexure A.

3. It is alleged, but for misrepresentation of the Project Proponent, the SEIAA would not have resolved to grant modified EC impugned in the Appeal. Thus, the approval granted on 2nd and 3rd April, 2013 by the SEIAA in its 58th Meeting is assailed in the Appeal. It is further alleged during intervening period the Respondent No.6-Project Proponent brought about substantial change in the project from larger lay-out which was treated as single large plot for which some FSI was extracted and then infused it into sub-plot of larger level. Pursuance to the transfer of FSI from within lay-out from one sub-plot to another sub-plot in FSI of sub-plot of Respondent No.6 has got enhanced FSI from 2.5 to about 4.14. Subsequently, the gross built-up area got increased from 32395sq.mtrs to 40480sq.mtrs. But plot size remained same. The plinth had already been reached and building had more than 15 floors against the

original sanction limit. After bringing about such expansion of the project, Respondent No.6-Project Proponent is alleged to applied for modified EC to approve the enhancement of construction area under the relevant Laws. It is alleged the project was not appraised by the SEAC but was directly taken up by SEIAA comprising of non-expert IAS officers.

4. The Appellant claims to be resident of MIG Colony, where this project is coming up. According to the Appellant, he has been residing in MIG Colony known as Gandhi-Nagar lay-out and he is entitled to use all facilities, civic amenities and free atmosphere. He alleges the project of 6th Respondent has resulted in degradation of environment in the lay-out violation of laws of the land. To arrest reckless construction and increase in pollution load of the local areas, by many times he seeks quashing of EC. The order impugned is passed on 13th March, 2014 and the Appeal has been preferred on 10th April, 2014, within thirty (30) days of the passing of impugned order.

5. In response to the Notice after admission of this Appeal, the Respondent No.6, has entered to contest and filed M.A. No.108/2014, questioning maintainability of the Appeal on the ground that the Appellant has no *locus standie* as he is not 'aggrieved person' within definition of Ss. 16 and 18 of the NGT

Act, 2010, and that the Appeal is barred by limitation.

6. They have described the Appeal-action as gross abuse of process of law and dishonest attempt on the part of Appellant to portrait himself as law abiding citizen. It is urged that the Appellant has preferred the Appeal under Section 16 of the NGT Act with no ground to support maintainability of the Appeal under that provision. Referring to Section 18(2) of the NGT Act, it is contended that the Appellant does not come in any of the category of person enumerated in Section 18(2) Clauses (a), (b), (c), (d) and (f). In this regard, it is contended that the Appellant should be 'aggrieved person' for invoking Section 16 of the Act and as he does not fall in any of the category of person enumerated in Clauses (a) (b) (c) (d) and (f) the Appeal must be dismissed with exemplary costs. In this regard they contend he is not also aware of the fact and circumstances in which 6th Respondent commenced his project. Tribunal's attention is drawn to the verification clause in the Appeal which reads as follows:

Verification:

" I, Anil V. Tharthare, resident of B/78/776 MIG Colony, Bandra East, Mumbai-400051, do hereby verify that the contents of aforesaid

paras 1 to 3 are true to my personal knowledge and the rest of the paragraphs are believed to be true on legal advice and that I have not suppressed any material fact."

7. Referring to words used in verification clause, it is contended he is not aware of all the facts and circumstances on its own admission and therefore, what is stated in the Appeal Memo cannot be taken as factually correct.

8. As regards impugned EC dated 13th March, 2014, is concerned, it is contended that it was only an amended EC and, therefore, it is not appealable order under Ss. 16 or 18 of the NGT Act. 2010.

Averments in Appeal No.14/2014:

a) M/s. Omkar Realtors and Developers Pvt. Ltd, referred for brevity as Project Proponent is arrayed as Respondent No.10 in the Appeal has undertaken developing a large extent of land under the Slum Rehabilitation Scheme in Mumbai covering 4.89 sq.mtrs. The details of the project are found in the impugned Environmental Clearance letter with the summary sheet by the Appellant as Annexure-"A-1". The scheme envisages slum rehabilitation on the land to grant free houses to the slum-dwellers. The plot was divided into two parts. The first part is earmarked for slum-dwellers with built-up area of

269 sq.fts plus other free FSI. The second part of the plot is retained by the Developer and he gets it as commensurate quantum of additional Floor Space Index (FSI). He could construct free sale apartments on such other part of the plot and appropriate for itself the money so generated.

b) Appellant contentions is that the price of real estate in Mumbai has reached greater heights as the developers in collusion with the authorities, are obtaining approved plans for the illegal constructions by illegally utilizing FSI. The project that appears to be for the benefit of slum-dwellers but is converted by the Developer as a gold mine for making a huge profit. The reason is the cost of rehabilitation is merely locality-neutral cost of construction for the tenement of the slum-dwellers whereas the free sale component gets huge revenues as the market price of the sale of buiding of free sale is enormously high. It is about Rs.15,000/- to Rs.20,000/- per sq.feet where as the cost of construction of residential unit for slum-dwellers is only Rs.2000/- per sq.feet. By this method, the Developers utilize higher FSI for free sale components and construction of houses for slum-dweller is on negligible extent of law.

c) The Appellant's case, therefore, is that financial dynamics are so fluid that the Developers indulge in speculation, violation of all laws specifically to such Slum Rehabilitation Scheme. Concomitantly it adversely affect the environment and infrastructure already stretched to breaking point by imposing an Floor Space Index of '3' in a Slum Rehabilitation Scheme gets higher against normal zonal FSI of '1'.

d) The malpractices are, therefore, indulged into at each stage from the time the project is conceived and during course of its implementation several negotiations are affected in the construction in utter disregard to environmental laws and the laws specifically to the cause.

e) The Appellant has relied on the Architect's letter received by Rehabilitation Authority on 21st October, 2011 seeking several waivers from the application of law for the project. Assertively, it is stated that most of such waivers are accorded by the Slum Rehabilitation Authority in unmindful of the severe impact on the environment, the local area as well as in the entire city of Mumbai.

f) The Appellant claims to be responsible citizen and an environmentalist assigned of his duties enshrined in Article 51A(g) of the Constitution of

India.

g) Thus, urging several grounds he has sought to quash the impugned Environmental Clearance dated 25th April, 2014 granted to by 1st Respondent to the 10th Respondent and as consequential relief sought an order to declare that the Environment Impact Assessment Report is not in accordance with EIA Manual of the MoEF and the EIA study having not being done with the Central Pollution Control Board guidelines. It is not sanctioned in the eyes of law.

h) Imposition of the cost on the Project Proponent on the principal of Polluter Pay is invoked and direction is sought against SEIAA to take all requisite steps in terms of the Office Memorandum of the MoEF dated 12th December, 2012 and the Office Memorandum of the MoEF dated 27th June, 2013 for the act of the Project Proponent

i) Action under Section 5 of the Environmental Protection Act, 1986 is sought to be taken by SEIAA.

8. We have heard learned Counsel appearing for the Project Proponents (Original Respondent Nos. 6 &10) who are Applicants in M.A. No.108/2014 and M.A. No.125/2014 and learned Counsel for the Appellants.

9. Their core contentions are:

i. the Appeal presented is a gross abuse of process of law and dishonest attempt of the Appellant to portray the project on false allegations. The Appellant has, by the allegations in the Appeal, questioned approval granted to the Applicant (Respondent No.10) fixing FSI; number of parking spaces; etc. The construction is done under the provisions of Slum Rehabilitation Scheme, hence Maharashtra Regional and Town Planning Act, 1966 applies and thus, it is not appealable to the jurisdiction of the National Green Tribunal under the provisions of National Green Tribunal Act, 2010.

ii. EIA Notification dated 14th September 2016 relates to environmental clearance of the enumerated projects and no other projects and not the one undertaken by Respondent No.10. The permission, clearance, approval etc. required under other statutes, rules and regulations are to be examined in the light of Circular dated 7th February 2012 issued by MoEF which prescribes only the height of the building. However, the representation made about jurisdiction of MoEF by Circular dated 6th June, 2013 shows that earlier circulars since being

withdrawn. Thus, the Appeal is not competent before the National Green Tribunal.

iii. That the Appeal is not maintainable under Section 14 of the National Green Tribunal Act, 2010.

iv. The Appellant has no locus to file the Appeal as he is not and cannot be an aggrieved person. In support of such a plea Respondent No.10 has contended those Appeals filed under Section 16 of the National Green Tribunal Act. The Appellant has made only perfunctory pleadings without disclosing his locus. Referring to the provision under Section 18, it is contended that the Appellant does not come under the category of "person" who has suffered injury nor he is the owner of the property to which damage is caused. He is not a person who has suffered from any environmental damage to the body or the limb. He is not an aggrieved person within the meaning of defining and hence has no locus.

v. Again it is asserted by Respondent No.10 that the Appellant does come under any of the four clauses referred to in Section 18 and thus Appeal should be dismissed in *limine*. Regarding this Tribunal's jurisdiction, Appellant has shown to be not a person aggrieved and, therefore, this Tribunal gets no jurisdiction, since National Green Tribunal Act does

not contain any provision for "Public Interest Litigation", the Appeal must fail.

vi. To support above said contentions, Respondent No.10 submits that the address of the Appellant may be perused. He is resident of Bombay Central whereas the present project is being implemented at Malad which is at distance of 40 kms. Therefore, even on facts, he is not affected by the project.

vii. Referring to the pleadings in the Appeal, the learned Counsel for 10th Respondent submitted that Tribunal must examine the wordings in the verification column of the Appeal. He stated content of Para Nos.1, 2 and 3 are true to his personal knowledge but averments in rest of the paragraphs are based on the legal advice. Thus according to the learned counsel, non-suits the Appellant because he has no personal knowledge of the facts stated in other paragraphs of the Appeal except Para Nos.1,2 and 3.

10. Having adverted to the grounds on the basis of which the Project Proponent viz. 6th Respondent in Appeal No.9/2014, and 10th Respondent in Appeal No.14/2014, have questioned maintainability of the Appeal, we shall examine first question of limitation and then the question of '*locus standie*' of the Appellants.

11. As regards first ground urged against both these Appeals is that the Appeals are barred by time, we need to refer to the relevant dates from which the period of limitation has to be reckoned. The Appeal No.9/2014, questions the order granting modified/revised EC issued to 6th Respondent/Project Proponent on 13th March, 2014 by SEIAA. The Appeal has been preferred and filed in this Tribunal on 10th April, 2014. If we reckon the period therefrom no doubt the Appeal has been filed within 28 days and thus, is within period of 30 days from the date of passing of the impugned order, issuing second/revised EC.

12. In Appeal No.14/2014, the impugned order modifying the original EC has been issued on 25th April, 2014, but was uploaded on the website of the Environment Department, Govt. of Maharashtra on 28th April, 2014. The Appeal has been preferred in this Tribunal on 26th May, 2014. If we reckon the period from 28th April, 2014, which is date of uploading of the order dated 25th April, 2014 on the website, the Appeal is within 28 days and admittedly filed within period of 30 days.

13. The provision of Section 16(1) proviso prescribes the period of limitation and spells out how the period to be calculated. Of course, the proviso to Section 16(1) further enables the Tribunal to condone delay if the Appeal is preferred beyond period of 30 days, but upto 60 days on 'sufficient cause' to be shown. In these two (2) Appeals the

Respondent Nos.6 and 10 respectively have failed to show how the Appeals are barred by time.

14. In Misc. Application No.108/2014 filed in Appeal No.9/2014, by the Respondent No.6, it is contended that the original EC was granted to the Project Proponent-Respondent No.6 on 2nd May, 2013. They reckon the period from that date of issuance of the original EC on 2nd May, 2013, to show that the Appeal is not filed within 30 days of that order, whereas, it is evident from the memorandum of Appeal and the grounds urged therein that the Appellant is not challenging the original EC dated 2nd May, 2013. He is questioning the order modifying the original EC dated 2nd May, 2013, and issuing modified/revised EC dated 13th March, 2014.

15. Similarly, in Appeal No.14/2014, the contention of Respondent No.10, in its M.A.No.125/2014, is that the original EC was granted on 10th November, 2010. Calculating the period of limitation from 10th November, 2010, it is contended that the Appeal filed dated 26th May, 2014 is barred by time.

16. We have perused the grounds and the material propositions in the Appeal and the grounds to challenge the impugned order viz. ECs. The impugned EC is issued by SEIAA on 25th April, 2014, revising thereby the EC and virtually permitting additional/totally different EC in

addition to structures already put up. Thus, the period has to be calculated from the date of revised/expansion of EC dated 25th April, 2014. The period calculated therefrom shows that the Appeal is filed well within the period of 30 days from the date of impugned EC dated 25th April, 2014.

17. On the basis of our discussion above, we hold that the Appeals are filed within the period of limitation and thus, are not barred by limitation time.

18. Second ground of challenge is that expansion/modified or revised order is not amenable to Appeal under Section 18 of the NGT Act, 2010. This contention is discounted from the provisions of Section 16(1) clause (h) of the NGT Act, 2010, which provides for Appeal. It reads:

> "16. Tribunal to have appellate jurisdiction.—any person aggrieved by,-
>
> *(h) an order made, on or after the commencement of the National Green Tribunal Act,2010, granting environmental clearance in the area in which any industries, operations or recesses or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act,1986 (20 of 1986);*
>
> *(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act,1986 (29 of 1986);*
>
> (j) xxx xxx xxx xxx xxx
>
> (Emphasis Supplied)

19. From the extracted provision, it is clear not only the order granting but refusing to grant the EC to the project is appealable under Clause (h) of Section 16 of the NGT Act but modification/revision of terms and conditions resulting in issuance of modified/revised EC is also appealable under the clause (h) of Section 16(1) of the Act.

20. In the instant two Appeals, the Appellants have questioned modified/revised ECs granted to the Respondent Nos. 6 and 10 respectively, which is one of the legal course of Appeal provided under the provisions of the NGT Act. On this ground also, we hold that the Appeals are maintainable and the contentions urged to the contrary are worth rejection.

21. We shall now deal with third ground urged in these Appeals, questioning '*locus standie*' of the Appellants. According to Respondent No.6, who is the Applicant in M.A.No.108/2014 in Appeal No.9/2014 and the Respondent No.10, who is Applicant in M.A. No.125/2014, the Appellants are not 'aggrieved person' to invoke Appellate jurisdiction of this Tribunal. This ground is urged referring to provisions of Section 18 of the NGT Act, 2010. According to them, Section 16 and 18 grant right of Appeal and confer such rights only on specified and certain persons only. The right is confined to the persons categorized in Clause (a) to (e). According to them, the

Appellants are not the persons, who have suffered injury or a legal representative of a person dead, as a result of environmental damage. They are not owners of the property to which damage has been caused or agents, authorized person in the capacity of legal representatives of owner of the property to claim damages.

22. Emphatically, they have contended that they are that 'persons aggrieved' as defined in Section 18 of the Act. Thus, contention is that the Appellants are not 'aggrieved person' and, therefore, they have no locus to prefer these Appeals.

23. We have bestowed our serious concern to the grounds urged in the Appeals. The provisions of Ss.16 and 18(1) of the Act and attending circumstances with reference to relevant facts and contentions of the contesting Respondents.

24. There is no need to refer to category of persons referred to in Clause (a) (b) (c) and (d) of Section 18(1) to which reference has been made by respective Counsel. It will suffice answer the question raised with reference meaning of 'aggrieved person' as it appears in Section 18.

25. In our opinion, who is 'aggrieved person' and who can avail the right of Appeal, on the ground that he is aggrieved by the impugned order, has been a matter of consideration in several judicial proceedings in the

Constitutional Courts, as also before the Principal Bench of National Green Tribunal where Appeal actions were brought. Fortunately, we have, as of now, plethora of judicial pronouncements on this point and hence, there is no need for us to labour much to interpret meaning of 'aggrieved person'. It will suffice if we refer the following case law on the subject.

26. In ***Vimal Bhai Vs MoEF and Ors*, on 14th December, 2011 [Appeal No. 5 of 2011]**the Hon'ble Principal Bench of National Green Tribunal at New Delhi had an occasion to deal with interpretation of Ss. 16 and 18 of the NGT Act, to explain meaning of 'aggrieved person'. For clarity and understanding relevant observations are extracted below:

> *" The person injured per-se as occurred in Section 18 (2) of the NGT Act is only for the purpose of claiming relief, compensation or settlement of disputes, is altogether different from the person aggrieved as available in Section 16. Person aggrieved and person injured are two different words which connote different meaning. Under Section 16, any person aggrieved can approach this Tribunal by way of filing an appeal, whereas, under Section 18 (2), the person injured per-se, whether it is an individual or a body of individual or a social organization or a Hindu joint family, etc.*
>
> *Further, under Section 14 and 16 any person can approach this Tribunal for appropriate relief including the relief under Section 18.*
>
> *The only exception to be made for treating an appeal/application as not maintainable could be a matter which falls beyond the*

seven (7) Acts as notified in Schedule I of the NGT Act 2010 and in a case of mala-fide and vexatious litigation brought before this Tribunal and not otherwise.

In a given case, the person living in the area or vicinity of the proposed project may not know about many intrinsic scientific details and effects of the ultimate project and any disaster, it may cause. The safety of the dam and the likely devastation and loss of properties and lives of the people in the downstream, if the dam, being situated in a highly earthquake prone area, bursts or leaks - the structural flaws of the dam and rehabilitation policies, etc. Therefore, it may not be proper for this Tribunal to reject an Application on the ground that the applicant/ appellant as the case may be, is not the resident of the area or not directly injured or aggrieved".

27. Another decision rendered by the Hon'ble NGT (Principal Bench) at New Delhi ***M.C. Mehta Vs University Grants Commission & Ors*** **on 17 July, 2014 (Original Application No.12 of 2014)** has examined and explained intent of legislature and scope of Ss.14,15 and 16 of the NGT Act, 2010. In the said decision, the Hon'ble Principal Bench spelt out that "jurisdiction under Section 16 of the Act is distinct from that of Ss.14 and 15" and held thus:

"12. This Tribunal is vested with three different jurisdictions. Firstly, it has the original jurisdiction in terms of Section 14 of the 10 NGT Act to deal with all civil cases raising a substantial question relating to environment and where such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. Secondly, it is vested with appellate jurisdiction against the various orders / directions / decisions as stated in

Section 16 (a) to (j) of the NGT Act. Thirdly it has a special jurisdiction in terms of Section 15 to grant relief of compensation and restitution as per the scheme contemplated under that provision. Admittedly, the present application has been filed under Section 14 of the NGT Act. Thus, it must plead and raise the following:

It should be a civil case.

Where a substantial question relating to environment or enforcement of any legal right relating to environment is involved.

Such question arises out of implementation of enactment specified in Schedule I of the NGT Act.

13. Once these three ingredients are satisfied, then Section 14 does not appear to place any restriction on the locus or character of the Applicant who wishes to move an application under Section 14 of the Act. Similarly, Section 15 also does not describe the description of an Applicant who can move the Tribunal for seeking reliefs like compensation, restitution of the property and the environment. In contradistinction thereto, Section 16 restricts the Applicant entitled to file an Appeal to be 'any person aggrieved'. In other words, it is only a person aggrieved who can invoke the jurisdiction of the Tribunal under Section 16 and not any Applicant. Section 18 deals with the procedure which has to be followed by an applicant or appellant, who prefers to file an application or appeal before the Tribunal. It deals with all the three jurisdictions specified under Section 14, 15 and 16 of the NGT Act. However, Section 18 (2) of the NGT Act provides the details in regard to locus and character of an Applicant who is entitled to move the Tribunal by filing an Application for grant of relief or compensation or settlement of dispute. Section 18(2) has been worded by the legislature with wide amplitude besides covering any person aggrieved and the legal representatives of the various categories. In terms of Section 16, it includes various other persons as described under clauses (a) to (d) and (f) of sub-Section 2 of Section 18. The locus

> *and character of an applicant specified under these provisions has to receive liberal construction and would cover variety of applicants. As far as Section 14 (1) of the NGT Act is concerned, the only restriction that appears to be imposed is that it must satisfy the prerequisites stated in that Section.*

28. Thus, it is held that connotation or description of category of persons as 'persons aggrieved', referred to in Section 16 and 18 of the Act must receive vide large amplitude and shall not be read in constructive or restrictive manner and to the detriment of persons who are entitled to benefit of right.

29. It is now well settled that meaning of word 'aggrieved person' or 'person aggrieved' shall receive very liberal interpretation and shall not be hyper technical to exclude bonafide individual to seek redressal at the hands of Tribunal to protect environment in the large interest of the society.

30. In our opinion, it shall not be interpreted applying acid test or straight formula jacket. The interpretation must be tailor made keeping in mind liberality of legal remedies provided under the provisions of the NGT Act for which enactment has been legislated. This Tribunal has in the case of M.C.Mehta in para 25 and 27 has observed thus:

> *"25. The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any*

order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the applicant's interest and the nature and extent of prejudice or injury suffered by him.

" 27. Further in the case of Dr. Duryodhan Sahu and Others v. Jitendra Kumar Mishra and Others (1998) 7 SCC 270, the Supreme Court, held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. In Jasbhai Motibhai Desai v. Roshan Kumar, AIR 1976 SC 578 the Court held that the expression 'aggrieved person' denotes an elastic, and to an extent, an elusive concept. It stated as follows:

"It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him."

31. For the aforesaid reasons, we find no merit in M.A.No.108/2014 filed by the Project Proponent/Respondent No.6 in Appeal No.9/2014 and M.A.No.125/2014 filed by the Project

Proponent/Respondent No.10 in Appeal No.14/2014 and, therefore, we discount all contentions urged against maintainability of the Appeals and dismiss both the Misc. Applications with costs of Rs.5,000/- each to be paid to the Appellants.

32. We order both the Appeals to be posted for hearing on merit.

List it on 8th July, 2016.

……, **JM**
(Dr. Justice Jawad Rahim)

……,**EM**
(Dr. Devendra Kumar Agrawal)
(Through Video Conferencing)

DATE: May 4th, 2016.
PUNE.
Hkk.

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2016 SCC OnLine NGT 4213

Partly reversed in *Goel Ganga Developers (India) (P) Ltd.* v. *Union of India*, (2018) 18 SCC 257

In the National Green Tribunal
(Western Zone) Bench, Pune
(BEFORE DR. JAWAD RAHIM, J.M. AND DR. AJAY A. DESHPANDE, E.M.)

In the Matter of:

Mr. Tanaji Balasaheb Gambhire, Age : Adult, Occupation : Service R/o. Flat No. 16, CTS-296, Laxmi Apartment, Near Shivaji Maratha High School, Whiter House Lane, Shukrawar Peth, Pune - 411 002. ... Applicant;

Versus

1. The Union of India, Through the Ministry of Environment & Forest, Government of India, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110 003.
2. The Principal Secretary, Environment Department, Government of Maharashtra, 15 th Floor, New Administrative Building, Mantralaya, Mumbai - 400 032.
3. State Level Environment Impact Assessment Authority Through Member Secretary 15 th Floor, New Administrative Building Mantralaya, Mumbai - 400 032.
4. Maharashtra Pollution Control Board Through its Member Secretary, Kalptaru Point, 3 rd Floor, Near Sion Circle, Opp. Cine Planet Cinema, Sion (E), Mumbai.
5. Maharashtra Pollution Control Board Through its Regional Officer, SRO-1 Jog Centre, 3 rd Floor, Mumbai-Pune Road, Wakadewadi, Pune - 411 003.
6. Pune Municipal Commissioner PMC Building, Shivajinagar, Pune - 411 005.
7. City Engineer Pune Municipal Corporation, PMC Building, Shivajinagar, Pune - 411 005.
8. District Collector - Pune President - District Environment Committee, Pune.
9. M/s. Goel Ganga Developers India Pvt. Ltd. 3 rd Floor, San Mahu Complex, Opp. Poona Club, 5, Bund Garden, Pune - 411 001 ... Respondents.

Application No. 184/2015 (WZ) [M.A. No.77/2016, M.A. No.194/2016, M.A. No.186/2016]

Decided on September 27, 2016

Counsel for Applicant(s):

Mr. Shriram P. Pingle, Advocate

Counsel for Respondent(s):

Mr. S.S. Sanyal, Advocate a/w Mrs. Supriya Dangare, Advocate for Respondent Nos. 4 and 5

Mr. P.S. Suryavanshi, Adv. for Respondent Nos.6 &7

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Mr. S.V. Mishra, Senior Advocate a/w Mr. Sachin S. Bhalerao, Advocate for Respondent No. 9

ORDER / JUDGMENT

1. This Application, numbered as 184/2015 invoking jurisdiction of this Tribunal, is under Section 14 and 15 of the National Green Tribunal Act, 2010 (for short 'NGT Act'). The Applicant Tanaji Balasaheb Gambhire has sought certain directions against the 9 th Respondent - Project Proponent (PP) M/s Goel Ganga Developers India Private Limited who is said to have envisaged construction venture to construct a commercial and residential complex.

2. In the Application, the Applicant has sought following directions:

A. Direct the Respondents to demolish the illegal structures at the site in question and restore the area to its original position.

B. Direct the State Level Impact Assessment Authority and the Maharashtra State Pollution Control Board to initiate appropriate action against the project proponent for violation of the provisions of EIA notification, 2006 and other applicable laws.

C. Direct Respondent No.2 to take appropriate action against the State Level Impact Assessment Authority for granting environment clearance in violation of the provisions of EIA Notification, 2006.

D. Direct the State Level Impact Assessment Authority and the Maharashtra State Pollution Control Board to disclose all such projects which have been granted post facto clearance or have been constructed without taking prior environment clearance.

E. Having regard to the damage to the public health, property and environment, principles of sustainable development and polluter pays principles and direct the Respondent No.9 to deposit a heavy amount of compensation to the environment relief fund.

3. In support of the reliefs so sought, he has averred factual and legal aspects to which we shall refer briefly now.

a. The 9 th Respondent obtained Environmental Clearnace (for short 'EC') for its project at Survery Nos.35 to 40 in Village Vadgaon Budruk, Sinhagad Road, Pune. The project conceived and approved by said EC is to construct 12 buildings with stilt, basment plus 11 floors vertically for 552 flats, 50 shops and 34 offices. The total plot area is 79,100 sq.mts while the total built-up area is to 57,658.42 sq.mtrs.

b. The EC was obtained by the 9 th Respondent-PP on 4 th April, 2008 and thereafter, PP has commenced construction activity. The Applicant has not brought in question the EC dated 4 th April, 2008 but has other serious grievances.

c. The Applicant would contend that after the project of 9 th Respondent-PP has sufficiently progressed, the Member Secretray of Maharashtra Pollution Control Board (MPCB) caused inspection of the construction activity on 31 st August, 2015 and thereafter, granted a personal hearing to the Respondent No.9-PP in respect of MPCB findings. The Minutes of the Meeting held on 31 st August, 2015 show that the Regional Officer of the MPCB had reported non compliance of the terms on which EC was granted to the 9 th Respondent. In that, there is clear statement that though the EC was for construction of 12 buildings but the Respondent No.9-PP has built 15 buildings and increased number of flats from 552 to 738 as also the number of shops was increased from 84 to 111.

d. The Minutes of the Meeting further show that the representative of PP had accepted the non compliance to the conditions of EC in increasing the

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construction of number of buildings, number of flats, offices and shops.

e. The Minutes of the Meeting would also record that consent for additional building of Ground plus 30 Floor was not taken though the civil work of its construction was in progress.

4. The Applicant relies on such material information recorded in the Meeting to contend that there was clear finding on inspection by the competent authority i.e. MPCB that the Respondent No.9-PP had not complied with the conditions of the EC granted. Reference is also made to the fact that MPCB having noticed such non-compliance had directed the Respondent No.9-PP to voluntarily stop construction activity till modified EC is obtained. Consequently, having noticed deliberate violation of the conditions of EC and non-compliance of its voluntary closure directions, MPCB had issued direction not only for stopping further construction activity but directed disconnection of electricity to the project by its Order dated 30 th September, 2015.

5. The Applicant further points out that despite such lapses on the part of the Respondent No.9-PP, it managed to get the Occupancy Certificate for part of the project which is complete and has virtually occupied it. This, according to the Applicant, is in total violation of the legal mandate that mandatory consent of operate should be obtained before the project activity is undertaken.

6. Amongst other issues raised he points out to the fact that building plan for construction activity of the project was revised by Respondent No.9-PP nine times. This, according to him, illustrates the significant modification in the scale of construction in terms of area, plinth area and floor heights, besides change in lay-out scheme. Refering to condition No.5 of the EC. It is alleged that the scope of the project in terms of built up area has changed. Moreover, the project lay-out as well as number of buildings also has substantially changed. Thus, the Respondent No.9-PP was obliged to obtain modified EC before undertaking such activity which is in total deviation to the original EC. Citing numerous statistical data, the Applicant would further claim that the construction activity carried out by the Repsondent-9 PP has grossly exceeded the scope of the project as approved by EC in terms of built up area and configuration of project.

7. Based on these facts, he would contend that the project activity is not as per the proposal which was considered and approved by Ministry of Environment and Forest while granting the original EC on 4 th April, 2008 and therefore there is gross violation of EC condition.

8. The other contention urged by the Applicant is to indicate failure on the part of the Statutory Authorities like Pune Municipal Corporation (PMC), State Level Environment Impact Assessment Authority (SEIAA), Department of Environment, State of Maharashtra (DoE) in discharge of its statutory functions. In this regard, he contends that Pune Municipal Corporation (for short 'PMC') was well aware of such violations but granted Completion Certificate. Reference was made to page-36 of the Rejoinder where it is stated that violation of noncompliance of EC was well within the knowledge of the concerned officer of PMC. He then refers to the action taken by Deputy Engineer of Building Construction Department of PMC who having realised the blanket violation of EC then, had directed Respondent No.9-PP on 20.2.2015 not to continue construction activity without obtaining amended EC. It is alleged, despite such clear direction of the Deputy Engineer, the Respondent No.9-PP continued construction as per its revised approved lay-out by PMC which depended totally on the validity of the EC. Thus, he contends that grant of revised lay-out plan by PMC itself is not tenable and consequently the construction activity being illegal needs to be restrained.

9. In this regard he would refer to the order passed by PMC imposing fine of Rs. 1,57,00,000/- for illegal occupancy of part of the project building which Respondent

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No.9-PP without remorse has accepted and deposited on 23 rd October, 2015.

10. The Applicant has further alleged total inaction on the part of SEAC and SEIAA and to substantiate his contention refers to the material on record which shows that SEAC sub-committee visited the project site on 29 th February, 2014 with an object to verify compliance of the 2008 EC conditions. During such visit, it noticed non-compliance of the EC by Respondent No.9-PP but conveniently failed to record that Respondent No.9-PP had increased the project activity in terms of buildings, built-up area, etc. The report of SEAC Committee is described as cursory, casual, unscientific and against realities. It is only later that SEIAA on the basis of query/complaint of Applicant, on 3 rd August, 2015 took action and in this regard proposed directions were issued under provisions of Section 5 of Environment (Protection) Act, 1986, by State Department of Environment (DOE) in August 2015 and thereafter, no follow up action was taken in terms of the directions. SEIAA which is competent to take independent decision and action against the violators of EC conditions and Project Proponents has failed to initiate any action. What he tries to say is that SEIAA, being specialised body, should have used its conferred power to take action rather than referring or depending on the action taken by Department of Environment. Thus, he contends that SEAC, SEIAA and DOE have jointly and severally failed to discharge its statutory function in taking appropriate legal permissible action against Respondent No.9-PP restraining such illegal activity for non-compliance thereby enabling the Respondent No.9-PP to further violate the EC mandate. He would contend that by keeping the proceedings before it, SEIAA has virtually allowed the Project Proponent to proceed with the illegal construction thereby wandering DoE direction issued on 3 rd August, 2015.

11. On above set of facts, he has sought certain reliefs as recorded by us in the para supra.

12. On admission of this Application, Notice was caused to all the Respondents who are total nine in numbers. Amongst them Union of India through Ministry of Environment and Forest -1 st Respondent, The Principal Secretary, Environment Department -2 nd Respondent, State Level Environment Impact Assessment Authority - 3 rd Respondent, Maharashtra Pollution Control Board - 3 rd Respondent, Regional Officer, Maharashtra Pollution Control Board - 5 th Respondent, Pune Municipal Corporation - 6 th Respondent, City Engineer, Pune Municipal Corporation - 7 th Respondent, District Collector, Pune - 8 th Respondent, M/s. Goel Ganga Developers India Pvt. Ltd. - 9 th Respondent. Amongst all, initially the Respondent No.9-PP resisted the proceedings but we have noticed a very strange conduct of the Secretary of Department of Environment falling in line with the Respondent No.9-PP as could be seen from the conduct.

13. The record would show that all the Respondents have responded to the Notice in this Application as recorded by us on 23 rd December, 2015. Certain observations made in the preamble of that Order at paragraph Nos.1 and 2, would itself show that this Tribunal had taken a note 06 the manner in which the Respondents reacted to initiation of the action by the Applicant. In para No 2-3 at page-2 of the Order and the last para on the same page, we have summarised what we noticed. Ultimately being convinced that the Applicant had made out prima facie case for grant of interim relief, lest, the Respondent No.9-PP emboldened by the inaction on the part of Statutory Authorities as likely to proceed with the construction activity which was shown by the Applicant to be legally impermissible if restrained, orders were passed against Respondent-9 PP. We had also simultaneously directed PMC to ensure that no further construction of whatsoever nature is carried out and called for report from it regarding what is the status of construction at the site within 10 days. As is expected, Respondent No.9-PP entered contest and sought vacating the Interim Order but when confronted with certain factual aspects, made a statement that no construction activity is going on and it has stopped the construction. We feel it will be worth to record that

we have taken into consideration contention urged on behalf of the Respondent No.9-PP to seek vacating of the order but we opined that let the pleadings be completed to allow all stakeholders who virtually prosecute and defend action through this Application. We also see from proceeding, considering the urgency, this Application was initially heard on merit in part. This is exactly what the Respondent No.9-PP also submitted on 16 th March, 2016 persuading us to expedite the hearing.

14. We have thus heard substantially the learned Counsel for the Applicant, Respondent Nos.1 to 8 and the learned Senior Counsel Mr. Mishra assisted by Mr. Sachin Bhalerao for the Respondent No.9-PP.

15. We have given our careful consideration to all the legal and factual contentions urged by learned Advocates. While the learned Counsel for the Applicant relies mainly on the original EC dated 4 th April, 2008 and present factual aspect showing there is marked difference in the project itself and the project has virtually changed from what it was originally conceived in terms of increase of number of buildings, plinth area, shops and other commercial activities. We have summarized the contentions of the Applicant and would like to repeat it as the same is relied upon by the Applicant.

16. Now, we need to refer to contentions of Mr. Mishra, the learned Senior Counsel for Respondent No.9-PP who in his persuasive eloquence asserted that project as conceived itself was legally permissible and during construction activity they have ensured there is absolutely no violation of any statutory regulations. He would contend that present construction activity, in terms of the FSI i.e BUA, is within the legally permissible limit and thus, refers to the numerical numbers by which the extent is measured. The affidavit filed in this case by Mr. Atul Jaiprakash Goel representing Respondent No.9-PP contains a statement in para-14 to the fact that EC dated 4 th April, 2008 issued by MoEF was to allow construction activity comprising of the utilization of the F.S.I (Floor Space Index)/BUA, to the extent of 57,658.42 sq.mtrs., based on the conceptual plan prepared by Respondent No.9. He further states that granting of permission to utilize FSI to the extent of 57,658.42 sq.mtrs was will within the EC limits.

17. On the basis of such statement, Mr. Mishra would submit that at any stretch of imagination, the contention of the Applicant cannot be sustained because he is trying to allege violation when the constructed structure is well within sanctioned FSI/BUA of 57,658.42 sq.mtrs.

18. He would further rely on an order passed by Secretary, Department of Environment on 31 st May, 2016 No.C.A.-2015/CR-6/TC-3 which is produced before this Tribunal after this case was reserved for judgment on 23 rd May 2016. Relying on it, he would submit that SEIAA who had issued direction on 30 th August, 2015 to stop construction activity had referred the matter to Department of Environment for considering explanation of Respondent No.9-PP and pass appropriate order. He submitted that such an exercise by DOE/SEIAA was in terms of the Order passed by this Tribunal on 23 rd February, 2016 in M.A. No.21/2016 to the following effect:

> "*Heard. Perused record.*
>
> *Service of Notice is waived on behalf of MoEF&CC. Replies have been filed by Respondent Nos. 2, 3, 4, 5, 6, 7 & 9. Law Officer appearing on behalf of Respondent No. 8 submits that reply filed by Respondent No. 5 MPCB is adopted as the reply of Respondent No. 8. Rejoinder dated 22nd February, 2016 to the reply of Respondent No. 9 is tendered. Copies of the rejoinder have been furnished to the Respondents.*
>
> *M.A. No.21/2016*
>
> *This Application has been moved for a mandate not to issue ex-post facto environmental clearance to Project Proponent Respondent No. 9. Learned Counsel appearing on behalf of Authorities Respondent Nos.2 and 3 makes a statement that they will be dealing with the application moved by Respondent No. 9 for grant of*

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environmental clearance strictly in accordance with law. In view of the statement made, we do not wish to interfere in the process of law.

Learned Counsel appearing for the Applicant submits that the Application be disposed of in terms of the statement made by the concerned Authorities Respondent Nos.2 and 3. Accordingly, this Applications stands disposed of with no order as to costs.

M.A. No.21/2016 thus stands disposed of.

E.A. No. 5/2016

As regards Execution Application No. 5/2016, learned counsel appearing on behalf of Applicant seeks liberty to carry out amendment in the Application so as to bring into focus the violation of the interim order dated 23rd December 2015, in relation to specific building construction and remedy available under the National Green Tribunal Act, 2010, before this Tribunal. Liberty granted to the Applicant to make necessary amendment in E.A.. Amendment shall be made within a week. Copies of the amended Application shall be furnished to the learned counsel appearing on behalf of Respondents. Respondents may file replies to the amended Application within a week thereafter. Advance copies of the replies be furnished to the Applicant who may file re-joinder thereto, if any, within three (3) days thereafter.

List this case for further consideration on 16th March 2016."

19. Thus he contends that this Tribunal itself had directed the SEIAA to consider request of the Respondent No.9-PP for modification of the EC and thus SEIAA being competent authority in that process thought fit to refer the case of the Respondent No.9-PP to Environment Department to take a decision about the violation before considering the request of the Respondent No.9-PP for modification of the EC to allow a larger construction activity.

20. He would submit that extent of 57,658.42 sq.mtrs structure cannot be described as being in excess of the permissible limit of the EC dated 4 th April, 2008.

21. With reference to what transpired later, he would submit that Respondent No.9-PP having satisfied the PMC has received the Completion Certificate in respect of part of the building that itself is sufficient to establish its project is assessed as valid, permitting grant of Completion Certificate.

22. At this juncture, we would emphasise that the Applicant had seriously challenged the order passed by Secretary, Environment Department on 31 st May, 2016 describing the order as a result of direct collusion between the officer concerned and Respondent No.9-PP to defeat any order that would be passed in this proceedings. He had through his Counsel sought opportunity to file an affidavit against the affidavit of the Respondent No.9-PP who wanted this Tribunal to take note of the order dated 31 st May, 2016.

23. We have perused the proceedings with reference to the relevant date on which the arguments were heard on merit and date of posting of case reserved for judgment. The application was heard on merit on 23 rd May, 2016 and reserved for judgment. During such period the order dated 31 st May, 2016 has been passed by the Officer referred to above. Besides, the Learned Counsel Mr. Misra on behalf of project proponent requested us to take on record the order dated 31 st May, 2016 before passing the Judgment. We took notice of the said order. In these circumstances the Learned Counsel for the applicant took opportunity to file counter to the affidavit filed by the project proponent producing the order dated 31 st May, 2016. It is quite evident that the officer concerned who has passed the order in question is representing the respondent no. 2 in this case. Thus, he is deemed to have knowledge of all the stages which this case has passed and the fact that the case was reserved for judgment by the Tribunal. It is in this context the order dated 31 st May, 2016 passed during the

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period case is pending final decision generates questionable circumstances. Further, it is seen that this order i.e. 31 st May, 2016 has been passed several months after the DoE issued directions to the project proponent to stop constructions activity on the basis that the project activity is contravening the conditions of EC dated 4 th April, 2008. In these circumstances we have heard the case again on merit with reference to order passed by Principal Secretary, DoE dated 31 st May, 2016 as desired by the project proponent himself.

24. We had allowed sufficient opportunity to Respondent No.9-PP and also Department of Environment and PMC represented by Mr. D.M.Gupte, learned Counsel respectively.

25. It is material to incorporate the relevant portion of the order dated 31 st May, 2016 passed by - Secretary DoE, Government of Maharashtra for clarity which reads thus:

> *We also refer to the clarification issued by the MoEF, G.O.I. by amendment in EIA Notification 2006 dtd. 4-4-2011, wherein the BUA was defined. Prior to the amendment in EIA Notification 2006 dtd. 4-4-2011 there was an ambiguity in definition of BUA. The EC granted by the MoEF, GOI vide letter dtd. 4-4-2008 for construction of total BUA 57658.42 sq.m. at site was prior to clarification issued by the MoEF, GOI dtd. 4-4-2011 and on the basis of the conceptual plan. Therefore, the same will apply prospectively and not with the retro-prospective effect.*
>
> *Therefore, it reveals that even though you have constructed 18 buildings at site instead of 12 buildings by changing configuration of buildings, the total BUA (ie.FSI) constructed at site is 48617.14 sq.m. which is within E.C. limit. It also reveals from the inspection report of the Pune Municipal Corporation dtd. 2-1-2016 that the actual construction carried out at site is 99416.72 sq.m. at plot No.1 and 2 (i.e. FSI-48617.14 sq.m. + Non-FSI - 50799.58 sq.m.) but the FSI constructed at site is 48617.14 sq.m. which is less than the total BUA admeasuring 57658.42 sq.m. permitted in the previous EC granted by the MoEF, GOI dtd. 4-4-2008. Hence, it is hereby concluded that there is no case of violation as prescribed in the EIA Notification, 2006 and accordingly the Proposed Directions issued vide above referred (1) is hereby withdrawn."*

26. From the extracted portion of the order it is clear that Secretary, DOE as virtually declared the activity of the Respondent No.9-PP has wholly legal, permissible and in support thereof has virtually granted a clean chit and certified the project as of now to be well within the permissible limits. It is material to note that the officer concerned has referred to FSI and BUA being same synonym of one aspect. How far this assertion in the order of the officer is legal and factually correct. Hence it needs to be dealt with in detail for the reason, the decision as to whether the construction activity of the Respondent No.9-PP is legal or contravenes any of the environment clearance depend upon clear definition of FSI and BUA in terms of its extent. We had thus called upon PMC to file a statement explaining the distinction between the extent of area covered under BUA (built-up area). We are dismayed at the fact that neither the PMC nor the Environment Department has seriously examined what is F.S.I and BUA. Thus, we gave one more opportunity to which PMC responded through its affidavit dated 17 th August, 2016 to which we shall refer.

27. The Deputy Engineer, PMC report which has been relied by Principal Secretary, DOE contains the present level of construction, the comparison of the F.S.I and Non F.S.I area gives startling factual information. It needs reference and as is extracted herein:

PMC report. Dy. Engineer (BP) dated. 19-12-2015.	PMC Report dt. 17-08-2016
Total BUA (i.e. FSI) = 48617.14 sq.m.	Built-up Area

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	Plot	F.S.I.	Non F.S.I
	1 2	48424.66 630.55	46088.47 4858.57

28. We shall now refer to what the term Built-up area and Floor Spacing Index (F.S.I.) would mean in the domain of assessment of permissibility of the project activity with reference to the environment clearance certificate granted. It would be therefore pertinent to refer to the provisions of Development Building Rules of PMC and the project activity approved by the EC of 2008.

29. The Environment Clearance dated 4 th April 2008, has clear project description which unambiguously set the project limits.

The project proponent is proposing for construction of group housing project at S.No. 35 to 40. Village Vadgaon Budruk, Singhad Road, Pune, Maharashtra at a cost of Rs.10,737.14 lakh. The project involves construction of 12 building with Stilt, basement plus 11 floors for 502 flats, 50 shops and 34 offices. The total plot area is 79,100.0 sq.m. Total built up area as indicated is 57,658.42 sq. m. Total water requirement will be 745 KLD and 400 KLD of waste water will be generated from the buildings which will be treated in Sewage Treatment Plant. The treated wastewater will be used for landscaping, DG set cooling and Horticulture purpose. The solid waste generated from the buildings will be 1500 kg./day and disposed as per the MSW Rules, 2000. The parking space is proposed for parking of 1072 cars. (Emphasis provided)

30. It is manifest from the above referred EC that while granting the EC, the authority had appraised the project with certain configuration and more pertinently, the Total Built up area. There is no reference to the term FSI area i.e. floor space index area. There is no ambiguity in the contents of EC and therefore, what can be seen from the plain reading of the EC is that the EC granted is circumscribed by the project description including its configuration and the Total built up area.

31. The term built up area has been well established in the parlance of Civil Engineering and Town Planning. The MRTP Act, which regulate Regional and Town Planning in the state, authorise Municipal Corporation to have its own Rules, and PMC has notified the development control rules under the MRTP act in order to regulate the development activities in the corporation area. In order to clarify the existing position and the understanding of the terms, Built-up area and F.S.I., it would be pertinent to refer to the 'Development Control Rules of the PMC, Pune, 1982'. Undoubtedly, both Respondent No.9-PP and PMC are required to comply with the Environment Clearance Regulations in terms of the building permissions granted by PMC to Respondent No.9-PP under the powers conferred upon PMC by the above said rules. The said Rules define 'built up area' and FAR/FSI and the relevant definitions from these rules are abstracted below :

2.1.3 : Built up area - Area covered immediately above the plinth level by the building or external area of upper floor whichever is more accepting the areas covered by Rule 15.4.2.

2.39 : Floor area Ratio (F.A.R.) - The quotient obtained by dividing the total covered area (plinth area) on all floors excluding exempted areas as given in Rule No.15.4.2 by the area of the plot.

$$F.A.R. = \frac{\text{Total covered area on all floors.}}{\text{Plot area.}}$$

Note : The term F.A.R. is synonymous with floor Space Index (F.S.I.)

32. From these definitions it is manifestly clear that the terms "built up area" and

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FSI/FAR are distinct and have different interpretation altogether. This would further negate the contention of Respondent No.9-PP that the term "built up area" was not clarified until the clarification issued by MoEF on 4 th April, 2011. There could be ambiguity in calculation of built up area as per earlier Environment Clearance Regulations, but this cannot be stretched under any circumstances to take a plea that the built up area and FSI are synonymous and interchangeable terminologies. We cannot accept but reject in totality the submissions made by PMC and the Respondent No.9-PP in this regard.

33. Though, much has been claimed by Respondent No.9-PP regarding the clarificatory notification of MoEF dated 4 th April 2011, wherein the term built up area has been clarified, we do not find any confusion or contradiction in definition of terms BUA and FSI. The Respondent No.9-PP is a major developer and must be well versed with these terminologies.

34. From the material referred to above, it leaves no scope for doubt that F.S.I. and BUA are two terms which apply with a distinction defining different extent of area.

35. It will shake the conscious of all concerned when we see a deliberate attempt on the part of DoE, SEAC and SEIAA to confuse the issue virtually falling in line with misleading statements of Respondent No.9-PP and Deputy Engineer, PMC. It is astonishing that both Respondent No.9-PP and Deputy Engineer, PMC refer to BUA as F.S.I. Despite such clear distinction in definitions and interpretations of BUA and FSI, they had attempted to mislead DoE, SEAC and SEIAA in believing that BUA and F.S.I are same. We expect an officer conferred with professional duty as 06 an engineer in the Department of Building Permission of PMC to be very meticulous in at least understanding the terms which make lot of difference to the fact of construction. We least expected 06 him as to know the distinction between BUA and FSI, as administration of Corporation would depend upon his professional advice and technical expertise to take action against the erring parties who contravene the mandate of law for safeguarding the interest of citizens which the Corporation is required to protect. We are also constrained to observe that the higher authorities of Building permission department had closed their eyes even when such incorrect affidavits are filed before the Tribunal and such misleading reports are sent to state authorities like DoE, SEAC and SEIAA.

36. Therefore, un-hesitatingly we could observe that the report dated 19 th December, 2015 of the Deputy Engineer is a compromised statement to paint a wrong picture of the project firstly to suppress deviation and secondly to create ambiguity in definition of the terms of F.S.I. and BUA to help Respondent No.9-PP to obtain orders from the other authorities. This is unveiled from the affidavit filed by PMC dated 17 th August, 2016 in pursuance to our Order dated 2 nd August, 2016. The details mentioned therein are as follows:

	Built-up Area	
Plot	F.S.I.	Non F.S.I
1	48424.66	46088.47
2	630.55	4858.57

37. We have also taken a judicial note of the fact that considering such complexity in Environment issues, MoEF had constituted Multi-disciplinary SEAC/SEIAA and had authorised it to take action against violation. SEAC and SEIAA have the necessary experience and expertise to identify violations independently by expert advice and application of mind, based on inputs from field authorities. What we observe here is that Principal Secretary of DoE just relied upon a report filed by junior most official of PMC and without any independent appraisal PS, DoE has held that construction of 18 buildings at site instead of 12 buildings, is allowed within the allowable BUA as per Environment Clearance. We do not find any environment impact appraisal or reasoning

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for such a finding. When openly excavation of the soil and damage to underground water is being impating the environment. No independent assessment or appraised is done.

38. We are, therefore clear in our mind that Applicant has substantiated that the original project conceived by Respondent No.9-PP had to confine to what was sanctioned under the EC dated 4 th April, 2008 and any extra construction or increase in building, plinth commercial structures, shops and flats should have support of modified EC. As of now, since no modified EC has been granted, the extent of project activity cannot increase beyond the limit circumscribed by EC dated 4 th April, 2008. Any such activity or construction beyond permissible limits cannot be saved by jugglery of words, misinterpreting against the statutory definition of F.S.I. and BUA.

39. We are further satisfied that the Principal Secretary, Environment Department who has authored the order dated 31 st May, 2016 has lot to explain for the reason the ultimate declaration made by him in the order declaring construction activity of Respondent No.9-PP to be in permissible limit of F.S.I. is result of his mis-interpretation of the terms F.S.I. and BUA and reflects non-application of mind.

40. The prime issue that arises for consideration in this case is as to whether the construction activity of Respondent No.9-PP, is exceeding the sanction accorded by the EC. Could the Respondent No.9-PP proceed with construction without obtaining modified EC. The answer is obviously No.

41. For the reasons aforesaid, we answer the above issue in the negative hold that the construction activity of Respondent No.9-PP to the extent it exceeds the permissible limits as per EC cannot be saved and shall stop, subject to the grant of modified EC by competent authority.

42. From the extracted portion of the order dated 31 st May, 2016 of Principal Secretary, Environment Department, it is seen that he has declared construction of 18 buildings on the site instead of 12 buildings is permissible which, according to him, only a changes on configuration of buildings. This opinion undoubtedly is based on his erroneous conclusion that total BUA which is nothing but F.S.I. consumed i.e. 48617.14 sq.mts which is within the EC limit as against the actual construction activity which has exceeded over 100000 sq.mtrs BUA. Hence we set aside that order/communication dated 31 st May, 2016.

43. Besides, another issue which confronts us based on these violations is what should be the consequence of such violation. Un-hesitatingly, it can be held that the consequences of such contravention and illegal construction will be adverse on the environment and ultimately it will lead to several incidental causes of action. That will follow if the Respondent No.9-PP is allowed to continue the illegal activity as has been done by order dated 31 st May, 2016. The complexity in environmental issues therefore requires a meticulous examination and dispassionately conclusion and finding.

44. Apart from the legal issues, we further notice that if not illegality in the order of PS DoE in question, it is certainly impropriety because the officer is deemed to have been informed of the fact that this Tribunal is seized of the matter and has reserved the case for judgment on 23.5.2016 after giving full opportunity to Department which the officer in question represents as Respondent No.2. Hence, he cannot plead ignorance of the fact that the case was posted for judgment in the circumstances he should have allowed adjudication by the Tribunal to take final decision on the main issue about the violation of the EC conditions based on the alleged enlarged construction activity. We also do not find merit in contention of learned Sr. counsel Shri. Mishra that such an order is line with the liberty given to SEIAA by Tribunal on 23.2.2016 to deal the application of PP for expansion of project on merit because the order in question is not related to EC but a decision of the proceedings of proposed directions under Environment (Protection) Act, 1986, which were issued by

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department in August 2015.

45. With these findings, it is now necessary to consider the reliefs sought by the Applicant in this Application. He has sought demolition of the illegal structures and other consequential reliefs. Learned counsel appearing for the Applicant has strenuously argued that all these violations have been done by the repsonent-9 PP in total connivance with the authorities mainly the PMC and DoE. He has even cited a visit report of SEAC expert committee to suggest the gross inadequacy in the visit report the committee.

46. It is now a matter of record that the construction of the project in question is near completion and even the occupancy certificate is granted partially. We need to consider the fact that the project in question is primarily a residential project and many individuals have invested their money in the project for meeting need for residential accommodation by having a house in city like Pune. Any order to demolish structure would also adversely affect them. The Respondent-9 has already created 3 rd party rights. Though the Respondent-9 has blatantly violated the conditions of EC, we also note the total lack of supervision and enforcement at PMC level has resulted in such illegal activity.

47. The Tribunal is expected to apart on the principles of Sustainable Development and Polluter pays principle. We are conscious of the fact that Polluter pays Principle shall not be construed as 'pay and pollute principle', and the payment has therefore to be exemplary and deterrent in order to pass a clear message that environmental compliance is supreme and the party which is non-complying the environmental standards shall be at economic disadvantage.

48. In this regard, we would like to refer to approach taken by the Hon'ble Principal Bench of National Green Tribunal, New Delhi in Original Application No.24/2011 "*Samir Mehta* v. *Union of India*" Where the Bench has noted that :

> "*The Supreme Court of India, in the case of* Sterlite Industries India Ltd. *v.* Union of India (2013) 4 SCC 575 *had held that where the industry had violated the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and had operated without obtaining consent, it was liable to pay damages of Rs.100 crores for the default period. The Court applied the Rule of Strict Liability but did not strictly compute the damages with exactitude. It only enforced the liability on general principle for awarding of damages for non-compliance to the law in force. In fact, any other approach would run contra to the Principle of Strict Liability. This judgment has been followed by the Tribunal in a large number of cases. Reference can be made to the cases of* S.P. Muthuraman 2015 All (I) NGT Reporter (2) (Delhi) 170, Krishan Kant Singh *v.* National Ganga River Basin Authority (2014) ALL (I) NGT Reporter 3 (Delhi) 1 *and* M.C. Mehta *v.* Kamal Nath, (2002) 3 SCC 653 : AIR 2002 SC 1515. *Thus, we are of the considered view that the determined damages of Rs.100 crores should be paid by and recovered from Respondents No. 5, 7 and 11, jointly and severally while Respondent No.6 is held liable to pay Rs. 5 crores as environmental compensation for dumping of the cargo in the sea and then failing to take any precautionary or preventive measures. The consignment of 60054 MT of coal has caused marine pollution and continues to be a cause and concern for environmental pollution. The Respondents are defaulting entities which have not complied with law and have adopted a most careless and reckless attitude in relation to protecting the marine environment*."

49. We also refer to the judgment of Hon'ble Principal Bench in the matter of Krishnlal Gera Vrs. State of Haryana (Appeal No.22 of 2015 dated 25 th August 2015) wherein the Tribunal has dealt with a matter regarding construction activities without the necessary prior environmental clearance. In para 58 and 59 of the judgment after discussing the legal framework, the Tribunal has imposed environmental compensation

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cost of 5 % (percent) of the total cost for restoration and restitution of the environment, in addition to payment of Rs.5 crores for violating the Law and starting and completing the project without obtaining environmental clearance, on the project proponent. These directions were issued in consonance with the dictum of Hon'ble Supreme Court.

"*Since the Project Proponent may not be directed to demolish the structure at this stage, but, shall strictly comply with the directions that we propose to pass in the present case. The scope and ambit of such directions has to be in terms of the Act of 1986 circumscribed by the statutory jurisdiction of this Tribunal. Upon detailed discussion of the laws in force, the Tribunal in the case of* S.P. Muthuraman *(supra) has clearly held that such directions can be issued by the Tribunal*."

50. The Principal Bench in "Appeal No.7/2015 in the matter of *Jalbiradari* v. *MoEF*" pronounced on 31 st May 2016, has also considered the legal consequences in case of quashing the environmental clearance for construction project, particularly with regard to the "fate accompli" situation.

16. ----------The inevitable consequence could be the Tribunal has dealt with quashing of the Environmental Clearance and set the project at in or they be directed to maintain status quo as on the date of determination. The Tribunal has dealt with large number of cases filing under the category "fate-accompli situation". There are large numbers of projects which have started their construction activity or other activities without even complying Environmental Clearance and the projects were largely completed and then either Environmental Clearance was granted or their cases for granting Environmental Clearance were delisted. In those cases following the principle of Sustainable Development and Polluter Pays Principal, the Tribunal imposed Environmental Compensation on the project proponent for degrading/damaging the environment for starting the project without complying with the provisions of law and for violating the orders and directions. The works of those projects were stopped and a Committee was appointed to revisit for grant/consideration of the Environmental Clearance and fresh Environmental Clearance orders were issued. Even where demolition was required the same was directed. All these cases have been decided by the larger bench of the Tribunal and clearly state the binding precedent. References can be mad made to S.P. Muthuraman *v.* Union of India, 2015 All (I) NGT Reporter (2) (Delhi) 170; Krishan Lal Gera *v.* State of Haryana, *Appeal No. 22 of 2015 (pronounced on 25th August, 2015) &* Forward Foundation *v.* State of Karnataka, *O.A. No. 222 of 2014 (pronounced on 7th May, 2015). In these judgments, various judgments of the Hon'ble Supreme Court have been considered by the Bench. The purpose and object of the law including CRZ Notification, Environmental Clearance is to strictly regulate the development so as to prevent causing of damage of the nature and ecology. The cases are not the cases of irreparable or irreversible situations. Largely, the 90 per cent of the projects were has already been completed except some other parts of the project. There can be proper regulations on these projects, as otherwise it will only lead to colossal waste of public funds. It will result in dual disadvantage, firstly, wastage of public funds and secondly, and more importantly the demolition of the project itself would generate so much of waste and other materials that this will become a huge environmental hazard itself. The cases are not one, which are incapable of reprisal or re- appreciation. Damage to the environment and ecology to some extent has already been caused. It will be more useful to take remedial and restorative steps. They have acted in breach of the law and carried on with their activity in an unauthorized and illegal manner.----------*

51. We are also inclined to adopt the approach taken by the Bench in the interest of

justice and fair play and based on the facts and circumstances of the case. The construction activity is not a prohibited activity in the subject, but a regulated activity. We also take a judicial note of the fact that the demolition of structures in question would also result in further environmental damage and generation of construction waste. Other option which could have been explored is asking the government to take over the additional construction and use it for public purpose but as noted above, already third party rights have been created, may be partially.

52. The purpose and object of the law including Environmental Clearance is to strictly regulate the development so as to prevent causing of damage of the environment and ecology. Though in the present case substantial damage has been caused to the environment and ecology, it will be more useful to take remedial and restorative steps.

53. The Respondent-9 is a defaulting entity which has not complied with law and has adopted a most careless and reckless attitude in relation to protecting the environment. The other Respondents, particularly the PMC and DoE have been the either the mute spectator or have not performed their statutory duties. However, we would note with appreciation that it is only MPCB that has acted on the complaints of the Applicants and have diligently taken legal actions besides bringing on record the non-compliances by Respondent-9 PP.

54. For the aforesaid reasons, the Applicant succeeds in his legal pursuit to challenge the noncompliance of EC conditions by the Respondent-9 and obtain certain directions. Hence the Application is allowed and we issue following directions:

1. The Respondent No.9-PP shall pay environmental compensation cost of Rs.100 crores or 5 % (Five percent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs. 5 crores for contravening mandatory provision of several Environment Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.
2. In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent No.9-PP by the officer of PMC, we impose fine of Rs.5 Lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs. 5 Lakh shall be paid within one month.
3. We direct the Chief Secretary, State of Maharashtra and the competent authority to take notice of the conduct of the officers concerned who have misled the Department of Environment in the matter relating to interpretation of F.S.I. and BUA in terms of which order dated 31 st May, 2016 has been issued in particular the Principal Secretary, Department of Environment who has authored the order dated 31 st May, 2016
4. PMC, DoE and SEIAA are directed to pay cost of Rs. 1 lakh each to the Applicant within 4 weeks.

55. The Application alongwith connected Misc. Applications and Execution Application is therefore disposed accordingly.

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BEFORE THE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE) BENCH, PUNE

M.A.No.22/2017

In

ORIGINAL APPLICATION NO.163 OF 2016

CORAM:

HON'BLE MR. JUSTICE U.D.SALVI
(Judicial Member)

HON'BLE DR. NAGIN NANDA
(Expert Member)

M/s. Goel Ganga Construction
A Partnership Firm
Through Atul Jayprakash Goel
Amit Jayprakash Goel
3rd Floor, San Mahu Complex,
Opp. Poona Club, 5, Bund Garden,
Pune – 411 001. **Applicant**
Original Respondent No.10

In the Matter of:

Mr. Tanajai Balasaheb Gambhire
Age: Adult, Occupation: Service
R/o. Flat No.16, CTS-296, Laxmi Apartment,
Near Shivaji Maratha High School,
White House Lane, Shukrawar Peth,
Pune-411 002. **APPLICANT**

VERSUS

1.THE UNION OF INDIA,
Through the Ministry of Environment & Forest,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi-110 001.

2.THE PRINCIPAL SECRETARY, ENVIRONMENT DEPARTMENT,
Government of Maharashtra,
15th Floor, New Administrative Building,
Mantralaya, Mumbai – 400 032.

3.STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
Through Member Secretary
15th Floor, New Administrative Building
Mantralaya, Mumbai – 400 032.

4.MAHARASHTRA POLLUTION CONTROL BOARD
Through its Member Secretary,
Kalptaru Point, 3rd Floor, Near Sion Circle,
Opp. Cine Planet Cinema,
Sion (E), Mumbai.

5.MAHARASHTRA POLLUTION CONTROL BOARD
Through its Regional Officer, SRO
Jog Centre, 3rd Floor, Mumbai-Pune Road,
Wakadewadi,
Pune – 411 003.

6.PIMPRI CHINCHWAD MUNICIPAL COMMISSIONER
Pimpri Chinchwad Municipal Corporation,
Pimpri, Pune – 411 018.

7.SHRI. MAHAVIR THALIYAPPA KAMBE
CITY ENGINEER
Pimpri Chinchwad Municipal Corporation,
Pimpri, Pune – 411 018.

8.DISTRICT COLLECTOR – PUNE
President – District Environment Committee,
Pune.

9.SHRI. SHASHANK PHADAKE
Architect & Authorised person of sole space
1+2, Building No.7,
Shraddha Heritage, Pimpri,
Pune-411019.

10. M/S. GOEL GANGA CONSTRUCTION
A Partnership Firm
Through Atul Jayprakash Goel
Amit Jayprakash Goel
3rd Floor, San Mahu Complex,
Opp. Poona Club, 5, Bund Garden,
Pune – 411 001.

11. FEDERATION OF SWAR-GANGA
CO-OPERATIVE HOSING SOCIETY LTD.
Survey No.174/A, 176/A,177/A,
Sant Tukaram Nagar, Pimpri,
Pune-411 018.

12. GANGA SKIES CO-OPERATIVE HOUSING SOCIETY LTD.
Survey No.174/A, 176/A,177/A,
Sant Tukaram Nagar, Pimpri,
Pune-411 018.

13. MR YOGESH MANGLASEN BEHAL
Vrundavan Bungalow,
Near virangula Centre,
Survey No.174/A, 176/A,177/A,
Sant Tukaram Nagar, Pimpri,
Pune-411 018.

.....RESPONDENTS

Counsel for Applicant(s):
Ms. Rashmi Shriram Pingle, Mr. Nilesh Bhandari, Mr. Abhijit Ingle

Counsel for Respondent(s):
Mr. R.B. Mahabal, Ms. Supriya Dangare for Respondent No.1.
Mr. Aniruddha S. Kulkarni, Mr. Prashant More for Respondent Nos.4 and 5
Mr. Saket Mone for Respondent Nos.10,11
Mr. Sangram Singh Bhonsle, Aarti Bhonsle, for Respondent Nos.12, 13.

Date – 8th January, 2018

O R D E R

1. Respondent No.10- M/s Goel Ganga Construction has raised exceptions to maintainability of the Main Application

No.163 of 2016 on the grounds of limitation, jurisdiction and plurality of reliefs.

2. Mr. Tanaji Gambhire, R/o Shukravar Peth, Pune has moved the Main Application for demolition of structures constructed in the project developed at Survey No.174A (Part), 175A(Part), 176A(Part) and 177A(Part), corresponding to CTS No.4859(Part), 4862(Part), 4863(Part), and 4865(Part), at Pimpri Waghere, Taluka Haveli, District Pune, falling within limits of Pune Chinchwand Municipal Corporation (PCMC) and restoration of the said area having regard to environmental damage caused by the said development. In addition thereto, the Applicant Mr. Tanaji Gambhire is seeking compensation for damage incurred to environment as a result of the said construction and for directions to the Authorities for action against the delinquents indulging in the acts of malfeasance and misfeasance, leading to development in question. At the outset, the Applicant made it clear that the relief sought at Prayer-Clause 'A' for demolition of illegal structures at the site in question and for restoration of the area is the principal relief, other reliefs being ancillary or consequential thereto.

3. Learned Counsel appearing on behalf of Respondent No.10 submitted that every Application has to be based upon a single cause of action and for one or more reliefs provided they are consequential to one another as per Rule-14 of the National Green Tribunal (Practices & Procedure) Rules, 2011.

He pointed out from the body of the Application that the Applicant had pleaded alleged violations of the Municipal Laws, the Maharashtra Regional and Town Planning (MRTP) Act,1966, the Development Control Regulations (DCR) and the Maharashtra Land Revenue Code,1966 (MLRC) at different stages of development giving rise to several causes of action and clubbed these causes of action to allege that illegal structures were raised during the development in question and sought several directions against the concerned Authorities for action against the Project Proponent (PP), the Architect of the project and City Engineer Mr. M.T. Kamble, and this approach to the case was in clear violation of Rule—14 of the National Green Tribunal (Practices & Procedure) Rules, 2011.

4. Learned Counsel appearing on behalf of Respondents countered these submissions and contended that the Applicant sought restitution of the environment damaged due to several illegalities committed by the Applicant in development of the said project by principally seeking demolition of the said illegal structures and other reliefs were ancillary or consequential thereto.

5. Examination of the Application reveals that the Applicant besides pleading the infractions of Municipal Laws, the Maharashtra Regional and Town Planning Act, the Development Control Regulations (DCR) and the Maharashtra Land Revenue Code, had also pleaded violations

of Environment Clearance Regulations (EC) and all the terms and conditions stipulated for 'Consent to Establish' or 'Consent to Operate' granted by the Maharashtra Pollution Control Board (MPCB) under the Air (Prevention & Control of Pollution) Act, 1981 and the Water (Prevention & Control of Pollution) Act, 1974 (for short, Air and Water Acts) as well as the Hazardous Wastes (Management, Handling and Trans boundary Movement) Rules, 2008 and the Acts specified in Schedule-I of the National Green Tribunal Act, 2010. The Applicant also made references to damage to environment caused as a result of violations of law pleaded in the present case. Obviously, therefore, the Applicant chose to refer to the said structures as illegal structures and sought its demolition for bringing about restoration of the area in question.

6. The nature of environmental damage, if any, caused due to such development would ultimately decide the fate of this Application. 'Cause of action' is a bundle of facts which needs to be discerned from the total pleadings. Environmental damage is what prompts the present action. The Applicant has specifically pleaded in the Limitation Clause that what prompted him to initiate the present Application are revelation made to him in response to the R.T.I query. No other cause for action except the facts is pleaded in the present case. In this view of the matter, we are of the considered opinion that there is no violation of Rule 14 of the NGT (Practices and Procedure) Rules, 2011. The Application

being based on single cause of action and made for seeking principal relief of restitution of environment.

7. As observed hereinabove, the Applicant has raised issue of environmental damage suffered by environment due to several illegalities of laws, including enactments specified under Schedule-I of the NGT Act, 2010. How the environment suffered due to transgression of the Municipal Laws, MRTP Laws, Development Control Regulations and the Land Revenue Code is the question which needs to be answered upon hearing the Application on merits; both on the point of fact and law. At this stage, it will be imprudent to dismiss those contentions in relation to the Acts other than the Acts specified under Schedule-I of the NGT Act, 2010 i.e. the Municipal Laws, MRTP Laws, Development Control Regulations and the Land Revenue Code on the plea of jurisdiction. It will be interesting to see what cumulative effect of violations of those laws along with violations of the Environmental Control Regulations, Air and Water Acts and the Solid Waste (Management & Handling) Rules, has/had on environment so as to raise a substantial question relating to environment, including enforcement of any legal right relating to environment; and whether such violations warrant restitution of environment as claimed.

8. Referring to Section 14 and 15 of the National Green Tribunal Act, 2010, the learned Counsel appearing on behalf of Respondent No.10- M/s Goel Ganga Construction

contended that the Applications under Section 14 and 15 were to be filed within the prescribed period given in the respective provisions and the period of limitation is to be computed from the date of accrual of 'first cause of action'. He submits that the offending construction was commenced on 28th March, 2006, when the Commencement Certificate was granted by the Planning Authority and the buildings were completed far back in 2009 and, therefore, the Application filed in September/October 2016, stood clearly barred by period of limitation, which has to be computed from the date of commencement of the said construction. He further submits that the legislative intent and the scheme governing period of limitation are expressed unambiguously in the said provisions by use of the phrase 'cause of action first arose' and, therefore, the premise of continuing cause of action is clearly ruled out. In order to reinforce his contentions he relied upon the cases reported/delivered in ***(2011(9) SCC 126) Khatri Hotels Pvt Ltd & Anr Vs Union of India and Anr*** and the Judgment of Hon'ble High Court of Judicature at Bombay in the case of Windsor Realty Pvt Ltd (Judgment dated 1.3.2016 in ***Writ Petition No.594 of 2015: Windsor Realty Pvt. Ltd Vs Secretary, MoEF & (8) Ors)***. He further cited the Judgment delivered by this Bench in Jai-Javan Jai Kisan's case (Judgment dated 13th June, 2017 in ***Application No.33 of 2016: Jai Javan Jai Kisan and (2) Others Vs Vidarbha Cricket Association and (9) Ors)***;

Graminee Environment Development Corporation's case (Judgment dated 18th May, 2017 in **O.A 179 of 2016: *Graminee Environment Foundation Vs Balaji Infrastructures Ltd and (6) Ors)***. Mr. Suresh Waman Dhavale's case (Judgment dated 22nd September, 2017 in **O.A No.95 of 2014: *Mr. Suresh Waman Dahvale and (2) Ors Vs MoEF and (17) Ors).***

9. It is correct that use of phrase 'cause of action first arose' has decisive consequence as regards computation of period of limitation prescribed under Section 14 and 15 of the National Green Tribunal Act, 2010. It is, therefore, necessary to examine as to when exactly 'cause of action first arose' in the present case. For understanding this, we will also have to first examine and consider the plea of dismissal of the present Application on the ground of '*locus standi*' of the Applicant. He contended that the Applicant being resident of Shukravar Peth, Pune - a faraway place from the project in question - cannot be permitted to agitate as 'aggrieved person' within meaning of Section 18(e) of the National Green Tribunal Act, 2010. He submits with reference to the Judgment of Hon'ble Apex Court in the case reported in ***(2013) 4 SCC 465: Ayubkhan Noorkhan Pathan Vs State of Maharashtra And Ors***. that the expression 'person aggrieved' does not include a person who suffers from psychological or imaginary injury and 'person aggrieved' must therefore necessarily be whose right, interest has been

totally affected or jeopardised. According to him, the Applicant is under obligation to show how he suffered legal injury. This submission sets us on enquiry to find out whether the Applicant is a stranger being removed from geographical distance between his residence within the limits of PMC at Shukravar Peth, Pune and the project site situate within the limits of PCMC.

10. Perusal of the main application reveals that the Applicant is seeking demolition of the illegal structure and consequently restoration of the area, substantially, therefore, the relief of restitution of the environment, allegedly damaged due to illegal construction - a relief under Section 15 of the National Green Tribunal Act, 2010. Besides, alleging breach of provisions of law other than those of the enactments specified in Schedule-I of the National Green Tribunal Act, 2010, the Applicant specifically contends that undue burden is cast on the resources and eco-system due to generation of waste water and solid waste beyond the limits stipulated in Consent to Establish at paragraph-18 of the Application. The Applicant has computed the total water requirement, total fresh water supply by the PCMC, total waste water generated and total solid waste generated with reference to residential, commercial and amenities provided in the project in question and presented in the application as follows:

"It is noted that the following table shows that the Actual Water Requirement, Waste Water Generated & Hazardous Waste, DG Sets installed at the site.

Table No.-12: Total Water Requirement

Sr.	Description	Population	Water Required	Total Water Required
1	Residential	3,510	135	3,73,850 Ltrs.
2	Commercial	62	45	2,790 Ltrs.
3	Amenity	755	45	33,975 Ltrs.
	Total Water Requirement Per Day			5,10,615 Ltrs/Day

It is noted that, as per Consent to Establish the daily water consumption is 473 CMD but actual water consumption in 510 CMD.

Table No.13:- Total Fresh Water Supply by PCMC

Sr.	Description	Population	Water Required	Total Water Required
1	Residential	3,510	90	3,15,900Ltrs.
2	Commercial	62	25	1,550 Ltrs.
3	Amenity	755	25	18,775 Ltrs.
	Total Water Supply by PCMC Per Day			3,36,325 Ltrs/Day

Table No.-14: Total Waste Water Generated

Sr.	Description	Population	Waste Water	Total Water Required
1	Residential	3,510	45	1,57,950 Ltrs.
2	Commercial	62	20	1,240 Ltrs.
3	Amenity	755	20	15,100 Ltrs.
4	68% of PCMC Supply			2,28,701 Ltrs.
	Total Waste Water Generated Per Day			4,02,991 Ltrs/Day

It is noted that, as per Consent to Establish, the daily waste water generation is 379 CMD but actual waste water generation in 402 CMD.

Table No.-15: Total Solid Waste Generated

That the solid waste generated is including the Organic waste, paper, plastic, Metals, Glass Rubber, Inert, STP Sludge etc.

Sr.	Description	Population	Solid Waste	Total Solid Waste Generated
1	Residential	3,510	0.6	2,106 Kg/Day
2	Commercial	62	0.3	18.6 Kg/Day
3	Amenity	755	0.2	151 Kg/Day
	Total Solid Waste Generated Per Day			2,275.6 Kg/Day

It is noted that the, as per Consent to Establish, the daily solid waste generated is 2,000 Kg/day but actual solid waste generated in 2,275.6 Kg/day."

11. Learned Counsel appearing on behalf of the Applicant submitted that there is a Nalla along the site of the said project which meets River Pawna and flows downstream to meet River Mutha in Pune. This fact is not disputed by any of the parties to the present application. Thus, it can be seen that the location where the project is situated and the city of Pune are part of the common riverine system and as such the individuals in the project area and those living in the city of Pune share a common environment.

12. The record further reveals a copy of letter dated 17th November, 2014 at Annexure-IV Colly to the Rejoinder Affidavit dated 22nd March, 2017. Reading of this document on record points out that the PCMC had issued Notice to the Managing Director of the Respondent No.10 – M/s. Goel Ganga Construction to operate the STP in the project regularly. A grievance is found made in the said communication that the health of the local citizens was endangered due to overflow of sewage and its percolation in the land abutting the Nalla flowing along the said project. Obviously, the facts disclosed from the record signify damage to the environment which adversely influence the riverine system commonly shared by the locals as well as those who are part of such adversely impacted environment in the entire riverine system.

13. Environment is defined alike both in the Environment (Protection) Act, 1986 and the National Green Tribunal Act, 2010. In Section 2(a) and 2(c) of the said Acts respectively as under:

> "2(a) "environment" includes water, air and land and the inter-relationship which exits among and between water, air and land, and human beings, other living creatures, plants and micro-organism and property;
> (c) "environment pollution" means the presence in the environment of any environmental pollutant;"

There are no boundaries to the environment, and the inter-relationship which exists among and between water, air, and human beings, other living creatures, plants, micro-organism and properties matters when we have to interpret any legal right relating to the environment.

14. In the instant case as observed hereinabove, the Applicant shares environment with the locals in the project area, he being resident of city of Pune situated in the said riverine system. The Hon'ble Supreme Court in ***Aya Aubkhan Noorkhan Pathan case (supra)*** has held that only a person, who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. Legal injury is contemplated when there is infraction of a legal right. In this context, the Hon'ble Apex Court observed in the said case as follows:

> *"**10.** A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a*

> *psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide Shanti Kumar R. Canji v. Home Insurance Co. of New York and State of Rajasthan v. Union of India)"*

15. The Applicant has prima facie shown that his legal right relating to environment i.e. right to clean environment is affected by unlawful acts of Respondent No.10 – M/s Goel Ganga Construction in the manner as pleaded in the application and it calls for its restitution. The injury alleged by the Applicant as aforesaid, therefore, cannot be dismissed as imaginary injury. The Applicant, therefore, needs to be regarded as person aggrieved having locus standi in the present proceedings.

16. In ***Khatri Hotels Private Limited and Another Vs. Union of India and Another, (2011) 9 Supreme Court Cases 126*** the Hon'ble Apex Court delineated the effect of the word "First" used by law makers in stipulating the period of limitation in following words:

> *"30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."*

17. There can be no two opinions regarding the use of the word "first" with the same rigour in Section 14 and 15

of the National Green Tribunal Act, 2010 for prescribing the period of limitation. The material provision in Section 15 of the National Green Tribunal Act, 2010 is reproduced herein below:

> "15(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose.
> Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."
>
> (emphasis supplied)

18. In ***Windsor Realty Pvt. Ltd. case (supra)*** the Hon'ble High Court was of the prima facie view from the Section 14(3) of the National Green Tribunal Act, 2010 that by no stretch of imagination the cause of action would arose from the date of knowledge of the applicant about the alleged violation of law taking place or from the date on which environmental authorities were informed about violation and inaction on their part vide Paragraph Nos.33 and 35 of the Judgment. On similar lines and considering the facts in ***Graminee Environment Development Foundation case (supra)*** we had dismissed the application for restitution of the environment. Pertinent observations made by us in the Judgment delivered in ***Graminee Environment Development Foundation case*** are quoted herein below:

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

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

For recognising the reason or cause necessary to actuate an action for restitution of the environment damaged, it is

not only the actual act of violation of law alone but it is the act and its perceptible adverse impacts on the environment necessitating its restitution that constitutes the cause of action in such cases.

19. In ***Jai Javan Jai Kisan & Ors Vs. Vidarbha Cricket Association (Application No.33/2016 disposed on 13th January, 2017)*** the application was filed by residents of Nagpur for restitution of the environment on demolition of VCA Stadium at Nagpur on 11th April, 2016. We noticed that the cause of action first arose in the year 2008 upon the observations made by us as under:

> *"11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there-under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I of the Act (including accident occurring while handling any hazardous substance) is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which gives rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VAC Stadium without EC or consent to operate under the provisions of Schedule-I Acts viz Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open species, parking spaces and tree cover. <u>These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the Application to state that</u>*

> *these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed."*
>
> *(emphasis supplied)*

20. In ***Surendra Waman Dhavale case (supra)*** we dismissed the application for restitution of environment with following pertinent observations:

> *"12. Here we are dealing with the case of patent event of massive construction perceptible to the public at large. Nothing was concealed as regards the construction in question. In such circumstance, the Ratio Decidendi arrived at in the case of Dr. V.N. Shrikhande is not applicable in the present case, more particularly for the reason that there was pre-existing jetty and nowhere the applicants have described or given the details of latent effects of harm/injury caused to the environment due to the construction in question which became patent in or about September 2013 the time when the notice dated 25th September 2013 was issued. It is the case of the Applicants that there has been massive cutting of mangroves in the year 2003 by Google imagery Communication 'A-8' for the purpose of construction of jetties. The first cause of action, therefore, in any case arose long back in the year 2003. Even by liberal estimation, the work of construction could be said to have been evident on its completion in the year 2006 vide Inspection Report dated 1st February 2006. In such situation, the Application which is filed on 6th September, 2014, in our view is grossly time barred."*
>
> *(emphasis supplied)*

21. In this background we are obliged to consider the fact situation in the present case as found pleaded in the application and as revealed from the record. In the instant case it is not violations of law alone which have given rise to the present *lis* but the fallout of those acts as stated in the application in terms of damage to the environment that constitutes the cause of action. Needless to state that the cause of action is a bundle of facts and not a single fact

alone. For a person to be aggrieved in real sense, it is necessary that there exist circumstances manifesting the adverse impacts of the acts detrimental to the environment i.e. damage to the environment.

22. Furthermore, the "cause of action" has to be complete in case of an application for restitution of the environment under Section 15 of the National Green Tribunal Act, 2010. The composite set of facts necessary to culminate into the cause of action must so combine as to present all the ingredients necessary for invoking the said provision. The restitution of environment presupposes environmental damage and as observed hereinbefore environmental damage is what prompts the present action.

23. There can be cases wherein the environmental damage may not be perceptible due to assimilative and regenerative character of the nature but when it comes to light due to either increase in anthropogenic pressure of development exceeding the nature's potential or exhaustion of nature's potential to assimilate and regenerate herself any person aggrieved thereby is furnished with the cause of action for taking action against such wrong or injury to his legal right to clean environment. It is in this context the "Discovery Rule" evolved by the Courts in United States in case of ***Morgan Vs Grace Hospital Inc. 149 W.VA.783, 144 S.E. 2d 156*** and adopted by Hon'ble Apex Court in Dr. V.N. Shrikhande case [***AIR 2011 SC 212; Dr. V.N.***

Shrikhande Vs. Mrs. Anita Sena Fernandes] become relevant. The Hon'ble Apex Court while dealing with the issue of limitation in a case of medical negligence held:

> *"In case of Medical Negligence "Cause of action" does not accrue until the patient learns of injury/harm or in the exercise of reasonable care and diligence could have discovered the act constituting negligence."*

24. A person/patient may suffer legal injury due to the medical negligence when actually the negligence occurs. However, the cause of action, the Hon'ble Apex Court held does not accrue until the patient learns of harm/injury caused by such negligence in order to discover the act constituting negligence. Occurrence of harm caused to the environment is analogous to the harm caused on account of a medical negligence in a sense that it is a species for Tort like medical negligence and it could become perceptible only upon unfolding of future events. In the instant case, the cumulative effect of various illegalities or infractions of law including those of the enactments specified in Schedule-I of the National Green Tribunal Act, 2010 became evident when the incidence of overflowing of the sewage and its percolation in the land and Nalla flowing along the said project could be noticed - vide Notice/Letter dated 17th November, 2014 addressed to the Managing Director of Respondent No.10 – M/s Goel Ganga Construction at Annexure-IV Colly to the Rejoinder Affidavit dated 22nd March, 2017. The Applicant with the facts and figures collated by him has also specifically pleaded the

case of undue burden on the resources and eco-system due to generation of waste water and solid waste beyond the limit stipulated in Consent to Establish at paragraph No.18 of the application and as quoted herein above.

25. Such was not in the case in ***Application No.95/2014 [Mr. Surendra Waman Dhavale V/s 17 Ors.]***. We had, therefore, declined to apply the Ratio *Decidendi* arrived at in the case of Dr. V.N. Shrikhande in that case and more particularly observed that nowhere the applicants had described or given the details of latent effects of harm and injury caused to the environment due to the construction which became patent in or about September, 2013 the time when the Notice dated 25th September, 2013 was issued. However, in the present case the facts are different and the Applicant has specifically pleaded the facts leading to the first accrual of the cause of the action as unfolded with the turn of events.

26. The first cause of action – composite set of facts complete and distinct – arose in the present case when the environment, more particularly, its water dimension was found adversely impacted with the overflowing of sewage as pleaded in the application. The application for restitution of environment thus adversely impacted was filed on 20th September, 2016 well within the period of five (05) years prescribed under Section 15 of the National Green Tribunal Act, 2010 therefrom.

27. In view of the aforesaid discussion, the exceptions taken to the maintainability of the present application deserve to be rejected.

M.A. No.22/2017 is, therefore, rejected.

Matter be listed for hearing on 12th February, 2018.

....., **JM**
(Justice U.D. Salvi)

....., **EM**
(Dr.Nagin Nanda)

Date: 8th January, 2018
mk

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(2018) 18 Supreme Court Cases 257

(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

GOEL GANGA DEVELOPERS INDIA PRIVATE LIMITED .. Appellant;

Versus

UNION OF INDIA THROUGH SECRETARY MINISTRY OF ENVIRONMENT AND FORESTS AND OTHERS .. Respondents.

Civil Appeals No. 10854 of 2016 with Nos. 10901 of 2016 and 5157-58 of 2018†, decided on August 10, 2018

A. **Environment Law — Environmental Clearance/NoC/Environment Impact Assessment (EIA) — Specific Clearances — Development Projects — Environment Impact Assessment (EIA) Notification, 2006 — Construction in violation of the environmental clearance (EC), as in the present case, in violation of the clearance granted under Noti. dt. 4-4-2011 — Establishment and Effect of — "Built-up area" under Notis. dt. 4-4-2011 and 14-9-2006 — Concept of floor space index (FSI)/floor area ratio (FAR) — Non-relevance of, for computation of "built-up area" for which EC is granted**

— Imposition of damages of Rs 100 crores or 10% of project cost, whichever was higher, for violation of environmental clearance in addition to Rs 5 crore damages imposed by NGT, instead of directing demolition — Detailed coercive directions issued to ensure deposit of these damages within six months

— Held, the concept of FSI or non-FSI may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC and both will have an equally deleterious effect on the environment — When EC is granted for a particular construction it includes both FSI and non-FSI areas — Held, the built-up area under the Noti. dt. 14-9-2006 means all constructed area which is not open to the sky and the built-up area under the Noti. dt. 4-4-2011 means all covered area including basement and service areas

— EC dt. 4-4-2008 was granted to the project proponent for construction of built-up area 57,658.42 sq m, whereas the total construction raised by it was 1,00,002.25 sq m — Rejecting the contention of project proponent that while calculating the built-up area the constructions mentioned in Rr. 15.4.1.1(a), (b) and (c), 17.7.3 and 15.4.2 of the Pune Municipal Corporation Development Control Rules, 1982 were to be excluded, held, the construction raised by the project proponent was in violation of the environmental clearance granted to it — However, considering that the project proponent had already taken money and a large number of flats and shops had already been

† Arising from the Judgment and Order in *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213 [National Green Tribunal, (Western Zone) Pune Bench, Application No. 184 of 2015 (WZ), dt. 27-9-2016] and *Tanaji Balasaheb Gambhire* v. *Union of India* [National Green Tribunal, (Western Zone) Pune Bench, Review Application No. 35 of 2016, dt. 8-1-2018]

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occupied and persons belonging to the middle class had invested their life's earnings, demolition not ordered/directed — However, inter alia, damages of Rs 100 crores or 10% of the project cost, whichever was higher, in addition to Rs 5 crores as levied by NGT, imposed on the project proponent — Words and Phrases — "Built-up area" — Pune Municipal Corporation Development Control Rules, 1982, Rr. 15.4.1.1(a), (b) & (c), 17.7.3 and 15.4.2 (Paras 14, 17, 53, 58.2, 66.1, 66.2 and 66.9)

B. **Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Review petition — Who can hear and where — Held, the powers of review which NGT exercises are akin to those of a civil court — In terms of Or. 47 R. 5 CPC, a review petition should normally be heard by the same Bench which passed the original order**

— Further, this normal rule should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter — Further, under sub-rule (2) of R. 22 of 2011 Rules the matter should ordinarily be heard at the same place of sitting where it was originally decided, however, this is not a mandatory direction — National Green Tribunal (Practices and Procedure) Rules, 2011 — Rr. 22(2) and 22(3) — Civil Procedure Code, 1908 — Or. 47 R. 5 — Practice and Procedure — Review (Paras 36, 38 and 40)

C. **Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Exercise of power of review — Impermissibility of, when appeal already pending**

— Statutory appeal was pending in the Supreme Court against the original order when the respondent's review application, inter alia, praying for demolition of the illegal structures and enhancement of compensation, was taken up for hearing by NGT — In the present case, held, project proponent/appellant had not only challenged original order of NGT on the ground that he had not violated EC but also on the ground that the damages awarded were highly excessive — Therefore, the Bench hearing the review application erred in holding that review application was maintainable — Civil Procedure Code, 1908 — Or. 47 R. 1(2) — Practice and Procedure — Review (Paras 7, 45 and 47)

D. **Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer — Damages for carrying out construction in violation of environmental clearance (EC) — Quantification of — Carbon footprint as basis**

— Rejecting the contention that damages should be assessed on the basis of "carbon footprint", held, the courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles — However, in a case where expert evidence is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, court may rely upon

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such data — Evidence Act, 1872 — S. 45 — Words and Phrases — "Carbon footprint" (Paras 59 to 63)

E. **Environment Law — Environment (Protection) Rules, 1986 — Rr. 3 to 5 — EIA Notifications issued under — Cannot be varied/abrogated by officials of MoEF — Environment (Protection) Act, 1986, S. 4**

F. **Public Accountability, Vigilance and Prevention of Corruption — Corruption/Abuse of Power — Environmental Clearance/NoC — Improper grant of — Fine imposed upon the PMC and direction given by NGT to PMC to take appropriate action against the erring officials, and directions to enquire into conduct of other officials concerned, also upheld**

The project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m.

The project proponent applied for environmental clearance (EC) for the project and in the proposal dated 27-6-2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. EC was granted to the project proponent on 4-4-2008.

The original applicant filed an application before the National Green Tribunal ("NGT", for short) claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance ("EC", for short) granted for the project and also in violation of the various municipal laws.

The case of the project proponent was that the term "built-up area" is synonymous with "floor space index" or FSI and that the constructed area, which is exempted from FSI area, or is a non-FSI area, is not a part of the "built-up area". The project proponent contended that while calculating the built-up area, the constructions mentioned in Rules 15.4.1.1(*a*), (*b*) and (*c*) and Rule 17.7.3 of the Pune Municipal Corporation Development Control Rules, 1982 ("DCR", for short), in addition to the areas specifically exempted under Rule 15.4.2 are to be excluded. It was contended that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008. The stand of the Union of India and the original applicant was that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006.

The issues involved in this appeal were:

1. Whether the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance.

2. Whether NGT could have entertained a review application/reviewed its order dated 27-9-2016, when an appeal against the same was already pending before the Supreme Court?

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Held :

Under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as "built-up area". There is no exception for non-FSI area. (Para 16)

Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. (Para 17)

Notification dated 4-4-2011

It is not at all necessary to decide whether the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests is clarificatory or is in substitution of the original notification of 2006. There is no ambiguity with regard to the definition of "built-up area" even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. (Para 19)

Clarification dated 7-7-2017

The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. Since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by the office memorandum dated 7-7-2017 issued by the Joint Director, Ministry of Environment, Forests and Climate Change. (Para 22)

Common Cause v. *Union of India*, (2017) 9 SCC 499, *relied on*

Environmental clearance (EC) for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017

SEIAA has laid down general conditions for pre-construction phase and the first condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. (Para 27)

In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to grant EC by treating the project as falling under Category B-2. Furthermore, the EC

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dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. (Para 28)

Allegations made by the original applicant against various officials

The law is well settled that no person can be condemned unheard. It would, therefore, not be fair to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. (Para 30)

However, as far as their official capacity is concerned, NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and therefore, directions given by NGT in its order dated 27-9-2016 in this regard, upheld. (Para 31)

Prima facie, the Principal Secretary, Environment Department, Government of Maharashtra has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. His actions need to be looked into and, therefore, direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned, upheld. (Paras 32 and 66.8)

Challenge to the order dt. 8-1-2018 passed in Tanaji Balasaheb Gambhire, 2018 SCC OnLine NGT 302

Section 19(4)(*f*) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT. (Para 34)

A review petition should normally be heard by the same Bench which originally decided the matter. A review petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. (Para 38)

Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of the Supreme Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. (Para 39)

According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall "ordinarily" be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to

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the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. (Para 40)

Northern India Caterers (India) Ltd. v. *Lt. Governor of Delhi*, (1980) 2 SCC 167 : 1980 SCC (Tax) 222, *referred to*

In terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. (Para 43)

Malthesh Gudda Pooja v. *State of Karnataka*, (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473, *relied on*

Malthesh Gudda Pooja v. *State of Karnataka*, 2009 SCC OnLine Kar 919; *Malthesh Gudda Pooja* v. *State of Karnataka*, 2009 SCC OnLine Kar 918, *referred to*

As far as the facts of this case are concerned, the original applicant could have raised all issues which he raised in the review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in the Supreme Court as he has done now. In this context, once the Supreme Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application. (Para 45)

The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before the Supreme Court. (Para 47)

Tanaji Balasaheb Gambhire v. *Union of India*, 2016 SCC OnLine NGT 4217; *Tanaji Gambhire* v. *Union of India*, 2017 SCC OnLine NGT 1954, *referred to*

On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter. (Para 51)

Tanaji Balasaheb Gambhire v. *Union of India*, 2016 SCC OnLine NGT 4201; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4204; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4205; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4206; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4219; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4203; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4207; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4208; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2015 SCC OnLine NGT 838; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 1330; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4209; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4215; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4210; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4211; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4202; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4212; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4214, *referred to*

Is demolition the only answer?

Now there are 807 flats and 117 shops which are either constructed or under construction. Keeping in view the interest of these third parties who were not parties before NGT, in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. (Para 53)

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The project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse. (Para 54)

The project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. (Para 64)

The base year has been fixed as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws. (Paras 64 and 66.9)

The project proponent is granted six months' time to deposit the amount of damages imposed above in the Registry of the Supreme Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to the project proponent to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of the Court. (Para 66.13)

Whether the original applicant is entitled to special damages?

This litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted. (Para 57)

Tanaji Balasaheb Gambhire v. *Union of India*, 2016 SCC OnLine NGT 4213, *partly reversed*

Tanaji Balasaheb Gambhire v. *Union of India*, 2018 SCC OnLine NGT 302, *reversed*

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Advocates who appeared in this case :

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

1. 2018 SCC OnLine NGT 302, *Tanaji Balasaheb Gambhire* v. *Union of India* **(reversed)** 266*e-f*, 266*h*, 267*a*, 276*f*, 277*g-h*, 283*e-f*, 286*b-c*, 287*g-h*
2. (2017) 9 SCC 499, *Common Cause* v. *Union of India* 273*g*
3. 2017 SCC OnLine NGT 1954, *Tanaji Gambhire* v. *Union of India* 281*d*, 281*d-e*
4. 2016 SCC OnLine NGT 4219, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
5. 2016 SCC OnLine NGT 4217, *Tanaji Balasaheb Gambhire* v. *Union of India* 281*c*
6. 2016 SCC OnLine NGT 4215, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*b*
7. 2016 SCC OnLine NGT 4214, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*c*, 283*d-e*
8. 2016 SCC OnLine NGT 4213, *Tanaji Balasaheb Gambhire* v. *Union of India* **(partly reversed)** 265*e-f*, 266*e*, 266*e-f*, 267*a*, 275*a-b*, 275*c*, 275*f-g*, 276*a*, 283*c*, 284*d*, 287*g*, 288*a*, 288*b-c*
9. 2016 SCC OnLine NGT 4212, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*c*
10. 2016 SCC OnLine NGT 4211, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*b-c*
11. 2016 SCC OnLine NGT 4210, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*b-c*
12. 2016 SCC OnLine NGT 4209, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*f-g*, 283*d-e*
13. 2016 SCC OnLine NGT 4208, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*d*, 282*f-g*
14. 2016 SCC OnLine NGT 4207, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
15. 2016 SCC OnLine NGT 4206, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
16. 2016 SCC OnLine NGT 4205, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
17. 2016 SCC OnLine NGT 4204, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
18. 2016 SCC OnLine NGT 4203, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
19. 2016 SCC OnLine NGT 4202, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*c*
20. 2016 SCC OnLine NGT 4201, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b*

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21. 2016 SCC OnLine NGT 1330, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*e*, 282*e-f*
22. 2015 SCC OnLine NGT 838, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*d-e*
23. (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473, *Malthesh Gudda Pooja* v. *State of Karnataka* 279*a*
24. 2009 SCC OnLine Kar 919, *Malthesh Gudda Pooja* v. *State of Karnataka* 279*a-b*
25. 2009 SCC OnLine Kar 918, *Malthesh Gudda Pooja* v. *State of Karnataka* 279*b-c*
26. (1980) 2 SCC 167 : 1980 SCC (Tax) 222, *Northern India Caterers (India) Ltd.* v. *Lt. Governor of Delhi* 278*g-h*

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.— Applications for intervention/impleadment are allowed. Application for amendment of grounds of appeal in Civil Appeal No. 10854 of 2016 is allowed.

2. These matters are being decided by one judgment since they all arise out of one original application filed by Shri Tanaji Balasaheb Gambhire (hereinafter referred to as "the original applicant") before the National Green Tribunal ("NGT", for short) being Application No. 184 of 2015.

3. The original applicant filed an application before NGT claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance ("EC", for short) granted for the project and also in violation of the various municipal laws. It was prayed that the illegal structures be demolished; the State Level Environment Impact Assessment Authority (SEIAA) and the Maharashtra State Pollution Control Board be directed to initiate appropriate action against the project proponent for violation of the Environment Impact Assessment (EIA) Notification, 2006; the Union of India be directed to take action against SEIAA; and lastly, it was prayed that the project proponent be directed to pay/deposit a heavy amount of compensation in the environment relief fund. NGT vide its order dated 27-9-2016[1] allowed the application in the following terms: (*Tanaji Balasaheb case*[1], SCC OnLine NGT para 54)

> "*54.* For the aforesaid reasons, the applicant succeeds in his legal pursuit to challenge the non-compliance of EC conditions by Respondent 9 and obtain certain directions. Hence the Application is allowed and we issue following directions:
>
> 1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

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to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several Environmental Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.

2. In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent 9-PP by the officer of PMC, we impose fine of Rs 5 lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs 5 lakhs shall be paid within one month.

3. We direct the Chief Secretary, State of Maharashtra and the competent authority to take notice of the conduct of the officers concerned who have misled the Department of Environment in the matter relating to interpretation of FSI and BUA in terms of which order dated 31-5-2016 has been issued in particular the Principal Secretary, Department of Environment who has authored the order dated 31-5-2016.

4. PMC, DoE and SEIAA are directed to pay cost of Rs 1 lakh each to the applicant within 4 weeks."

4. Aggrieved by the aforesaid order of NGT, the project proponent filed Civil Appeal No. 10854 of 2016. Pune Municipal Corporation ("PMC", for short) also challenged the said order insofar as it adversely affects PMC by filing Civil Appeal No. 10901 of 2016.

5. Review application being Application No. 35 of 2016 was filed by the original applicant before NGT. This application was partly allowed on 8-1-2018[2] and Direction 1 in the original order dated 27-9-2016[1] was modified and substituted as under: (*Tanaji Balasaheb case*[1], SCC OnLine NGT para 54)

"*54.* ...'1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC, whichever is less, for restoration and restitution of environment damage and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several environment laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.' "

6. Thereafter, the project proponent filed IA No. 8000 of 2018 for permission to amend its appeal permitting it to challenge the order passed in review application dated 8-1-2018[2], which we have allowed.

2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302
1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

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7. Appeal being Diary No. 3911 of 2018 was filed by the original applicant challenging the original order dated 27-9-2016[1] as well as the order dated 8-1-2018[2] passed in review application praying that demolition of the illegal structures be ordered and the compensation be enhanced to Rs 500 crores.

The factual matrix

8. The facts briefly stated are that the project proponent purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m. From the documents placed on record, it is apparent that as per the Development Control Plan for the city of Pune, 3 roads of the width of 36 m, 30 m and 18 m bisected this plot into two which for the sake of convenience were referred to as Plot No. 1 and Plot No. 2. As per the Development Plan, there are certain statutory reservations in addition to the roads and some land has to be left out or reserved for schools, cultural centres, open areas, etc. The remaining area is referred to as the "balance plot area" which in this case works out to 46,993.79 sq m. Out of this "balance plot area" 15% is to be reserved for amenity space and another 10% area is to be compulsorily left out as open space leaving "net plot area" of 41,455.21 sq m. Prima facie these calculations do not appear to be correct. However, this will not impact the merits of the case. Be that as it may, the undisputed fact is that FSI has to be calculated on the "net plot area". We may, at this stage, point out that the aforesaid figures are based on the written submissions submitted on behalf of the Union of India by the learned Additional Solicitor General and these figures have not been disputed before us.

9. On 12-3-2007, the project proponent applied for sanction of layout and building proposal plan on an area of 15,141.70 sq m, originally depicted as Plot No. 3 and the sanctioned FSI was 15,313.16 sq m. Thereafter, on 5-9-2007, revised layout plan was submitted for an area measuring 28,233.23 sq m and the sanctioned FSI was 39,526.54 sq m. The project proponent applied for EC for the project and in the proposal dated 27-6-2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. The EC was granted to the project proponent on 4-4-2008. Paras 2 and 3 of the communication granting EC read as under:

> "2. The project proponent is proposing for construction of group housing project at Sl. Nos. 35 to 40, Village Vadgaon Budruk, Singhad Road, Pune, Maharashtra at a cost of Rs 10,737.14 lakhs. The project involves construction of 12 buildings with stilt, basement plus 11 floors for 552 flats, 50 shops and 34 offices. The total plot area is 79,100.00 sq m. Total built-up area as indicated is 57,658.42 sq m. Total water requirement will be 745 KLD and 400 KLD of waste water will be generated from

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302

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the buildings which will be treated in sewage treatment plant. The treated waste water will be used for landscaping, DG set cooling and horticulture purpose. The solid waste generated from the buildings will be 1500 kg/day and disposed as per the MSW Rules, 2000. The parking space is proposed for parking of 1072 cars.

3. EAC after due consideration of the relevant documents submitted by the project proponent and additional clarifications furnished in response to its observations have recommended the grant of environmental clearance for the project mentioned above subject to compliance with EMP and other stipulated conditions. Accordingly, the Ministry hereby accords necessary environmental clearance for the project under Category 8(*a*) of the EIA Notification, 2006 subject to the strict compliance with the specific and general conditions mentioned below:"

10. EC was granted, subject to certain conditions. We may refer to certain relevant conditions which read as under:

"*Part A—Specific conditions*

I. Construction phase

* * *

v. Permission to draw and use groundwater for construction work shall be obtained from competent authority prior to construction/operation of the project.

* * *

5. In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry."

Concept of "built-up area" under the Notification dated 14-9-2006

11. It is not disputed that EC was granted for built-up area of 57,658.42 sq m. The main dispute is with regard to the interpretation of the term "built-up area". The case of the project proponent is that the term "built-up area" is synonymous with "floor space index" or FSI and that the constructed area, which is exempted from FSI area or is a non-FSI area is not a part of the "built-up area". On the other hand, the submission made by the original applicant as well as by the learned Additional Solicitor General appearing for the Ministry of Environment, Forests and Climate Change is that the built-up area will cover all constructed area and the concept of FSI area or non-FSI area is totally alien to environmental laws.

12. The learned Senior Counsel for the project proponent has drawn our attention to the Development Control Rules for Pune Municipal Corporation, Pune, 1982 ("DCR", for short). Under DCR, no building can be constructed without grant of building permission/commencement certificate by Pune Municipal Corporation. There is a detailed procedure for obtaining the building permission/commencement certificate wherein layout plans, building plans, etc. have to be submitted. The main emphasis was on Rule 2.13 of DCR, which defines "built-up area" as follows:

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"**2.13.** ***Built-up area***.—Area covered immediately above the plinth level by the building or external area of any upper floor whichever is more excepting the areas covered by Rule 15.4.2."

Rule 2.39 defines "floor area ratio" as follows:

"**2.39.** ***Floor area ratio (FAR)***.—The quotient obtained by dividing the total covered area (plinth area) on all floors excluding exempted areas as given in Rule 15.4.2 by the area of the plot.

$$\text{FAR} = \frac{\text{Total converted area on all floors}}{\text{Plot area}}$$

Note.—The term FAR is synonymous with floor space index (FSI)."

13. Strong reliance is placed on Rule 15.4.2, which reads as under:

"**15.4.2.** In addition to Rules 15.4.1.1(*a*), (*b*) and (*c*) and 17.7.3, the following shall not be included in covered area or FAR and built-up area calculations:

(*a*) A basement or cellar space under a building constructed on stilts and used as parking space, and air conditioning plant rooms used as accessory to the principal use;

(*b*) Electric cabin or substation, watchman's booth of maximum size of 1.6 sq m with minimum width or diameter of 1.2 m, pump house, garage shaft, space required for location of fire hydrants, electric fittings and water tanks;

(*c*) Projection as specifically exempted under these Rules;

(*d*) Staircase room and/or lift rooms above the topmost storey, architectural features, chimneys, elevated tanks of dimensions as permissible under these Rules;

Note.—The shaft provided for lift shall be taken for covered area calculations only on one floor up to the minimum required as per these Rules;

(*e*) One room admeasuring 2 m × 3 m on the ground floor of cooperative housing societies or apartment owners/cooperative societies buildings and other multi-storeyed buildings as office-cum-letter box room;

(*f*) Rockery, well and well structures, plant, nursery, water pool, swimming pool, (if uncovered) platform round a tree, tank fountain, bench, chabutra with open top and unenclosed sides by walls, ramps, compound wall, gate, slide, swing, overhead water tank on top buildings;

(*g*) (*Deleted*);

(*h*) Sanitary block subject to provision of Rule 15.4.1(*a*) and built-up area not more than 4 sq m."

14. The contention of the learned Senior Counsel appearing for the project proponent is that while calculating the built-up area the constructions mentioned in Rules 15.4.1.1(*a*), (*b*) and (*c*) and Rule 17.7.3 in addition to the

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areas specifically exempted under Rule 15.4.2 are to be excluded. He submits that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008.

15. On the other hand, the stand of the Union of India and the original applicant is that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006. The building/construction projects are covered by Item 8 of the schedule to the EIA Notification dated 14-9-2006. Construction of a project which is covered under the schedule can be commenced only after obtaining EC in terms of Para 2 of the said notification. The schedule itself categorises the various projects and activities into two categories being "Category A" and "Category B". "Category A" projects require clearance by the Central Government in the Ministry of Environment, Forests and Climate Change on the recommendation of the Expert Appraisal Committee to be constituted by the Central Government whereas those activities which form "Category B" of the schedule including modernisation and expansion of such projects require EC from the State/Union Territory Environment Impact Assessment Authority (SEIAA) and such authority is required to base its decision on the recommendation of the State/Union Territory Level Expert Appraisal Committee (SEAC). There is further division of "Category B" into B-1 and B-2. B-1 projects require Environmental Impact Assessment (EIA) Report to be prepared and scoping to be done whereas B-2 projects do not require any Environmental Impact Assessment Report. Item 8 of the schedule, with which we are concerned, reads as follows:

"(1)	(2)	(3)	(4)	(5)
8			***Building/Construction projects/Area development projects and townships***	
(*a*)	Building and construction projects		≥20,000 sq m and <1,50,000 sq m of built-up area#	#(built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
(*b*)	Townships and area development projects		Covering an area ≥50 ha and or built-up area ≥1,50,000 sq m ++	++All projects under Item 8(*b*) shall be appraised as Category B-1."

16. From a bare perusal of the two hashtags (#) in Columns 4 and 5 of Item 8(*a*), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines "built-up area" to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as "built-up area". There is no exception for non-FSI area.

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17. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble, etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built-up area in terms of the EIA Notification dated 14-9-2006.

Notification of 4-4-2011

18. Our attention has been drawn to the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests. By means of this notification, the words of Column 5 against Item 8(*a*) have been replaced and substituted as under:

> "The built-up area for the purpose of this Notification is defined as 'the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects'."

This notification clearly defines "built-up area" as all constructed area including basement and service areas without any exception.

19. The learned Senior Counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of "built-up area" even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. We may again re-emphasise that this definition also is in consonance with the concept of grant of EC for construction as explained

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above and it is obvious that the concept of FSI or non-FSI area is alien to environmental laws.

Clarification dated 7-7-2017

20. Strong reliance has been placed by the project proponent on the office memorandum dated 7-7-2017 issued by Dr Ashish Kumar, Joint Director, Ministry of Environment, Forests and Climate Change. The said office memorandum reads as follows:

F. No. 22-35/2017-IA.III
Government of India
Ministry of Environment, Forests and Climate Change
(Impact Assessment Division)
******

Indira Paryavaran Bhawan
Jor Bag Road, Aliganj,
New Delhi - 110 003
Dated 7-7-2017

OFFICE MEMORANDUM

Sub.: Clarification on the date of applicability of Notification No. S.O.(E) 695 dated 4-4-2011 issued by MoEF & CC defining "built-up area" of the project.

The Ministry is in receipt of a reference dated 3-4-2017 from Confederation of Real Estate Developers Association of India (CREDAI) seeking clarification on the abovementioned subject. CREDAI has requested that the definition of built-up area (BUA) given vide Notification No. S.O. 695(E) dated 4-4-2011 should have prospective effect.

2. The matter has been examined in the Ministry. BUA defined in Notification No. S.O. 1533 (E) dated 14-9-2006 mentions at Item 8(*a*) Columns 4 and 5 "built-up area for covered construction, in the case of facilities open to sky, it will be the activity area".

3. The Ministry has further defined BUA vide its Notification No. S.O. 695 (E) dated 4-4-2011 which reads as, "the built-up or covered area on all the floors put together including its basement and other service areas, which are proposed in the building or construction project".

4. The definition provided in the Ministry's notification will have its effect from the prospective date of the notification only. The projects which are not covered in the period of above notifications should be assessed as per the definition of built-up area provided in the building bye-laws or Development Control Regulation (DCR) of the local authorities in the States.

5. This issues with approval of competent authority.

sd/-
(Dr Ashish Kumar)
Joint Director Ph: 011-24695474
Email: ashish.k@nic.in

All States/UTs/SIEAAs/MoEF & CC Divisions

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21. It is urged on the basis of the aforesaid memorandum that prior to the Notification dated 4-4-2011, the built-up area had to be calculated and assessed as per the building bye-laws or the Development Control Regulations of the local authorities in the States. On behalf of the original applicant, it has been urged that this memorandum is meaningless and that it has been issued when the matter was pending before NGT, at the instance of one of the Directors of the project proponent, Shri Atul Goel, who was Joint Secretary of Confederation of Real Estate Developers Association of India (CREDAI), Pune.

22. Without going into this aspect of the matter, we are clearly of the view that such an office memorandum could not and should not have been issued. The Notification dated 14-9-2006 is a statutory notification issued in terms of Rule 5(3) of the Environment (Protection) Rules, 1986 which provides that before such a notification is issued, the Central Government has to give notice of its intention of issuing a notification and objections to the same are invited. No doubt the Central Government is empowered in public interest to dispense with the requirement of notice but this obviously has to be done in exceptional cases. The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011 to which we have adverted above. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. We are of the view that since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by this office memorandum.

23. We are also of the view that the so-called office memorandum is not at all clarificatory in nature. As held by us above, the notification of 2006 with regard to "built-up area" was absolutely clear and needed no clarification. We fail to understand how the concept of built-up area as understood in the building bye-laws or DCR could be introduced into the notification of 2006 by this office memorandum which virtually made the notification of 2006 totally redundant. Therefore, we quash the office memorandum dated 7-7-2017.

24. This is not the first time that we have noticed such clarificatory communications being issued by the officials of the Ministry of Environment, Forests and Climate Change, which virtually have the effect of nullifying the statutory provisions and notifications. We have adverted to some of these communications in our judgment in *Common Cause* v. *Union of India*[3]. We expect the officials of the Ministry of Environment, Forests and Climate Change to take a stand which prevents the environment and ecology from being damaged, rather than issuing clarifications which actually help the project proponents to flout the law and harm the environment.

3 (2017) 9 SCC 499

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25. In view of the above, we are clearly of the view that the EC granted to the project proponent on 4-4-2008 was for constructing a total built-up area of 57,658.42 sq m and this would include all covered construction not open to the sky. No artificial division on the basis of FSI and non-FSI area can be made. Therefore, NGT was fully justified in coming to the conclusion that the construction raised by the project proponent was in total violation of the EC granted to it.

Environmental clearance dated 20-11-2017

26. The project proponent has drawn our attention to the EC for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017. We may note that this clearance indicates that the existing construction comprises of 738 flats and 115 shops which have been completed, 69 flats and 2 shops which are under construction, meaning thereby that 807 flats and 117 shops are already in existence and in addition thereto 454 more flats and cultural centre are sought to be constructed. This will take the total number of flats to 1261 and number of shops to 117. We may also notice that SEIAA has laid down general conditions for pre-construction phase and the first condition is as follows:

> "(1) This environmental clearance (EC) is issued for total built-up area of 1,47,219.45 m^2 as approved by local planning authority. It is noted that the total proposed construction area is 1,47,219.45 m^2 which includes the area of previous EC (dated 4-4-2008) 57,658.42 m^2 and the proposed expansion area of 89,561.03 sq m. However, the above area of 1,47,219.45 sq m is notional as the non-FSI area component of the previous EC is not included in 1,47,219.45 m^2. After considering the non-FSI area of the previous EC, the total built-up area becomes 1,81,230.94 m^2. SEIAA has also taken note of the clarification issued by MoEF and CC vide office memorandum dated 7-7-2017, stating the definition of built-up area will be assessed as per the building bye-laws or DCR of the local authorities in the States."

27. The aforementioned condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. The project proponent has raised construction in Plot No. 1 of an FSI area measuring 48,424.66 sq m, and non-FSI area measuring 46,088.47 sq m. Therefore, the total construction raised in Plot No. 1 is 94,513.13 sq m. In Plot No. 2, the construction raised on an FSI area is 630.55 sq m and on the non-FSI area is 4,858.57 sq m and, therefore, the total construction already raised in Plot No. 2 is 5489.12 sq m. The total construction raised by the project proponent is 1,00,002.25 sq m against the built-up area of 57,658.42 sq m mentioned in the EC of 4-4-2008. This could not have been ignored by SEIAA.

28. In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to

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grant EC by treating the project as falling under Category B-2. Furthermore, the EC dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. The EC completely lost sight of the fact that the order dated 31-5-2016 was quashed and set aside by NGT in its order dated 27-9-2016[1]. We may note that the official who passed the order on 31-5-2016 was the same official, who held the office of Member-Secretary of SEIAA, which granted environmental clearance on 20-11-2017. Therefore, the EC dated 20-11-2017 was beyond the authority of SEIAA and was granted under a totally false assumption and the same is therefore quashed and set aside.

Allegations made by the original applicant against various officials

29. NGT in its order dated 27-9-2016[1], has found that there was suppression of facts by the officers of PMC. NGT also directed the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers who were misleading the Department of Environment. Costs were imposed on PMC, Department of Environment and SEIAA. This has been challenged before us by PMC.

30. The original applicant, both in his original application filed before NGT and in appeal filed before us as well as in other proceedings, has made serious allegations against individual officers of PMC as well as SEIAA and specially the Principal Secretary, Environment Department, Government of Maharashtra. However, for reasons best known to the original applicant, none of these individuals has been made a party in personal capacity in these proceedings. The law is well settled that no person can be condemned unheard. It would, therefore, not be fair on our part, to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. Therefore, we refrain from commenting on the conduct of the officials in their individual capacity.

31. However, as far as their official capacity is concerned, we are of the view that NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and we, therefore, uphold the directions given by NGT in its order dated 27-9-2016[1] in this regard. In view of what we have discussed above, it is more than apparent that despite notifications of 2006 and 2011 being clear and unambiguous, the officials of PMC have given an interpretation which was tailor-made to suit the project proponent. This was being done even before the clarification of 7-7-2017 was issued. This clearly indicates that some officials of PMC were espousing the case of the project proponent at the cost of the environment.

32. We may also observe that prima facie we are of the view that the Principal Secretary, Environment Department, Government of Maharashtra

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

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has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. In the original order dated 27-9-2016[1], NGT held as follows: (*Tanaji Balaseheb case*[1], SCC OnLine NGT para 42)

> "42. From the extracted portion of the order dated 31-5-2016 of Principal Secretary, Environment Department, it is seen that he has declared construction of 18 buildings on the site instead of 12 buildings is permissible which, according to him, only a changes on configuration of buildings. This opinion undoubtedly is based on his erroneous conclusion that total BUA which is nothing but FSI consumed i.e. 48,617.14 sq m which is within the EC limit as against the actual construction activity which has exceeded over 1,00,000 sq m BUA. Hence, we set aside that order/communication dated 31-5-2016."

The official holding the post of Principal Secretary must have been aware of these directions because he was a party to the proceedings before NGT. Despite that, while granting fresh EC on 20-11-2017, this official noticed that reference to the Environment Department for verification of files was withdrawn vide letter dated 31-5-2016 and the matter has been considered afresh. When the letter dated 31-5-2016 had been quashed the obvious result would be that action had to be taken in accordance with the earlier directions in the 27th meeting of SEAC III (Non-MMR) held from 10-3-2015 to 13-3-2015 and the 87th meeting of SEIAA held on 10-8-2015 to 12-8-2015. This was not done. His actions need to be looked into and, therefore, we uphold the direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned. We further direct the Chief Secretary to file detailed report in respect of the conduct of the then Principal Secretary, Department of Environment to NGT within 3 months which will thereafter pass appropriate directions in the matter.

***Challenge to the order dated 8-1-2018 passed in Tanaji Balasaheb Gambhire* v. *Union of India*[2]**

33. This order has been challenged both by the project proponent by amending the appeal and by the original applicant by filing a separate appeal.

34. Section 19(4)(*f*) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT.

35. Rule 22(2) of the National Green Tribunal (Practices and Procedure) Rules, 2011 provides that a review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the order unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
2 2018 SCC OnLine NGT 302

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the Tribunal sitting at any other place. Sub-rule (3) of Rule 22 provides that ordinarily review application shall be disposed of by circulation.

36. Since the powers of review which NGT exercises are akin to those of a civil court, it would be pertinent to refer to the relevant portions of Order 47 of the Civil Procedure Code, 1908, which read as follows:

> "**1.** ***Application for review of judgment.***—(1) Any person considering himself aggrieved—
>
> (*a*) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
>
> (*b*) by a decree or order from which no appeal is allowed, or
>
> (*c*) by a decision on a reference from a Court of Small Causes,
>
> and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.
>
> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.
>
> * * *
>
> **5.** ***Application for review in court consisting of two or more Judges.***— Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the court shall hear the same."

37. The project proponent has urged various grounds to challenge the order passed in the review application. The first ground is that whereas the original order was passed by a Bench comprising of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, the review application was heard and decided by a Bench comprising of Justice U.D. Salvi and Dr Nagin Nanda. It has been urged that Dr Justice Jawad Rahim continues to be a Judicial Member of NGT and, in fact, was sitting in the Western Bench at Pune on 8-1-2018 when the impugned judgment[2] in review was pronounced by NGT.

38. We are clearly of the view that a review petition should normally be heard by the same Bench which originally decided the matter. A review

2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302

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petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. In the present case, the review application was based mainly on the contention that the affidavit dated 18-5-2016 was not taken into consideration by the Bench.

39. It is well known that parties raise various contentions in their pleadings or in their evidence. On many occasions when arguments are heard many of the pleas are not urged. Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of this Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. If a party urges that some of the contentions urged by it have not been taken into consideration then it has to file a review application and it is but obvious that such review application should be heard by the same Bench which had originally heard the matter.

40. Sub-rule (3) of Rule 22 of the National Green Tribunal (Practices and Procedure) Rules, 2011 clearly lays down that a review application shall be disposed of by circulation. If the review application is to be disposed of by circulation then there is no problem in the matter being circulated before the very same Bench which had earlier heard the matter. This can be done even at a place which may be different from the original place of hearing. It is only if the Bench decides to give oral hearing in the review application and notice is issued to the opposite party that sub-rule (2) of Rule 22 will come into operation. According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall "ordinarily" be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. The normal rule that the same Bench should hear the review application should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter.

41. In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by V.R. Krishna Iyer, J., "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon"[4]. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra-court appeal to another

4 *Northern India Caterers (India) Ltd.* v. *Lt. Governor of Delhi*, (1980) 2 SCC 167, p. 173, para 14 : 1980 SCC (Tax) 222

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Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency.

42. We may refer to the judgment of this Court in *Malthesh Gudda Pooja* v. *State of Karnataka*[5]. In that case, a writ appeal was disposed[6] of by a Division Bench comprising of Hon'ble V. Gopala Gowda and L. Narayana Swamy, JJ., at the Dharwad Circuit Bench of the Karnataka High Court. Thereafter, a review petition was filed before a Bench comprising of Hon'ble K. Sreedhar Rao and Ravi Malimath, JJ. An objection was raised that the review petition should be heard by the same Judges who had originally heard the matter but this objection was overruled and the review petition was allowed[7] and the appeal was ordered to be listed afresh before the Division Bench. This appeal was listed before the Dharwad Circuit Bench consisting of Hon'ble D.V. Shailendra Kumar and N. Ananda, JJ. This Bench held that the order of review passed was a nullity since the Judges who had heard the review should not have heard the same especially when the Judges of the original Bench were available. The matter came to this Court and this Court after referring to Order 47 Rule 5 CPC and Rule 5 of the High Court of Karnataka Rules, 1959 and taking note of the fact that the Chief Justice of the Karnataka High Court had passed an order that the review petition be listed as per roster held as follows: (SCC pp. 341-42, paras 18-20)

> "*18.* Order 47 Rule 5 of the Code and Chapter 3 Rule 5 of the High Court Rules require, and in fact mandate that if the Judges who made the order in regard to which review is sought continue to be the Judges of the Court, they should hear the application for review and not any other Judges unless precluded by death, retirement or absence from the Court for a period of six months from the date of the application. An application for review is not an appeal or a revision to a superior court but a request to the same court to recall or reconsider its decision on the limited grounds prescribed for review. The reason for requiring the same Judges to hear the application for review is simple. Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision was rendered. They will be able to appreciate the point in issue, when the grounds for review are raised. If the matter should go before another Bench, the Judges constituting that Bench will be looking at the matter for the first time and will have to familiarise themselves about the entire case to know whether the grounds for review exist. Further, when it goes before some other Bench, there is always a chance that the members of the new Bench may be influenced by their own perspectives, which need not necessarily be that of the Bench which decided the case.

5 (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473
6 *Malthesh Gudda Pooja* v. *State of Karnataka*, 2009 SCC OnLine Kar 919
7 *Malthesh Gudda Pooja* v. *State of Karnataka*, 2009 SCC OnLine Kar 918

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19. Benjamin Cardozo's celebrated statement in *The Nature of Judicial Process* (pp. 12-13) is relevant in this context:

> 'There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognise and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired convictions … In this mental background every problem finds its setting. We may try to see things as objectively as we please. Nonetheless, we can never see them with any eye except our own.'

20. Necessarily, therefore, when a Bench other than the Bench which rendered the judgment, is required to consider an application for review, there is every likelihood of some tendency on the part of a different Bench to look at the matter slightly differently from the manner in which the authors of the judgment looked at it. Therefore the rule of consistency and finality of decisions, makes it necessary that subject to circumstances which may make it impossible or impractical for the original Bench to hear it, the review applications should be considered by the Judge or Judges who heard and decided the matter or if one of them is not available, at least by a Bench consisting of the other Judge. It is only where both Judges are not available (due to the reasons mentioned above) the applications for review will have to be placed before some other Bench as there is no alternative. But when the Judges or at least one of them, who rendered the judgment, continues to be members or member of the court and available to perform normal duties, all efforts should be made to place it before them. The said requirement should not be routinely dispensed with."

43. A perusal of the above judgment leaves no manner of doubt that this Court has held that in terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. We may reiterate the reasons given by this Court. These are:

43.1. The Judges who heard the matter originally have applied their mind and would know best the facts and legal position;

43.2. They will be in the best position to appreciate the matter in issue when a review is filed;

43.3. If the matter goes before another Bench that Bench will have to virtually hear the matter afresh;

43.4. Most importantly, when the matter goes to a new Bench the members of the new Bench may go by their own perspective and philosophy which may be totally different to that of the Bench which originally heard the matter.

44. We may again re-emphasise that judicial discipline, judicial traditions and consistency in pronouncements require that the Bench which heard the matter originally should hear the review petition unless it is virtually impractical for the original Bench to hear the matter, or where the members of the original Bench recuse.

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45. Another ground raised is that the statutory appeal was already pending in this Court against the original order when the review application was taken up for hearing. It is contended, on the basis of Order 47 Rule 1(2) CPC, that review application should not have been taken up for hearing because the original applicant could have before this Court taken up all the points which he had taken in his review application. It is also contended that this is not a case where there is an error apparent on record and as such the power of review could not have been exercised. As far as the facts of this case are concerned, we are clearly of the view that the original applicant could have raised all issues which he raised in review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in this Court as he has done now. In this context, once this Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application.

46. We may add that on 21-12-2016[8], the review application itself was listed before the Bench of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, which adjourned the matter to 25-1-2017 to hear it regarding maintainability of the review application in view of the statutory appeal provided under the National Green Tribunal Act, 2010. However, the matter got listed before the other Bench and on 25-7-2017[9], the said Bench considered this objection raised by the project proponent in terms of Order 47 Rule 1 CPC and the Bench held as follows: (*Tanaji Gambhire case*[9], SCC OnLine NGT)

> "Having perused the record, we find that the appellant is seeking quashing of the order of compensation in totality and the review applicant is seeking enhancement of the compensation granted by the Tribunal. We do not see any commonality in the grounds resorted to by the applicant and appellant in the said appeal. Exception to sub-clause (2) of Order 47 Rule 1 of the Code of Civil Procedure, therefore, does not come to the help of Respondent 9. We are, therefore, of the considered opinion that the review application is maintainable. Plea of non-maintainability of the review application is rejected."

47. We are of the view that the aforesaid finding is incorrect. The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before this Court. We are, therefore, clearly of the opinion that the Bench hearing the review application erred in holding that the review application was maintainable despite the appeal pending before this Court.

48. We may also note that the Bench which heard the review has rejected all other grounds of review mainly on the ground that there is no error apparent on the face of the record but has only dealt with the issue of enhancement

8 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4217
9 *Tanaji Gambhire* v. *Union of India*, 2017 SCC OnLine NGT 1954

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of damages to be imposed on the basis of "carbon footprint" relying on the affidavit dated 18-5-2016. The Bench noted that this affidavit had not been taken into consideration by the earlier Bench. How could the latter Bench hearing the review application know whether any reference was made to this affidavit at the time of original hearing or not? In fact, the project proponent urges that this affidavit was never filed on 18-5-2016.

49. Here, it would be pertinent to mention that according to the original applicant he was given oral permission by the Bench to file such an affidavit on 23-2-2016. We have perused the order dated 23-2-2016[10] and find that it makes no mention of any such request being made. If there is no such request then the question of issuing an oral direction to file such an affidavit does not arise. We may also add that after 23-2-2016, the matter was listed on numerous occasions i.e. 16-3-2016[11], 5-4-2016[12], 18-4-2016[13], 22-4-2016[14], 2-5-2016[15] and 5-5-2016[16] before NGT. In none of the orders there is any reference to carbon footprint or to any affidavit to be filed by the original applicant. If an oral permission had been given, obviously the original applicant would have either filed an application or would have made a request that he wants to file such an affidavit.

50. The affidavit in question is dated 18-5-2016 and it is alleged that it was filed on 18-5-2016. The matter was listed for hearing on 19-5-2016[17] on which date also there is no reference to any such affidavit. It would be pertinent to note that in between the project proponent had filed an MA No. 389 of 2016 before the Principal Bench stating that an interim order dated 23-12-2015[18] had been passed against it and the matter was not being heard and, therefore, it may be heard by a Bench presided over by Dr Justice Jawad Rahim, who apparently was holding Court in the Pune Bench at that time and the Principal Bench allowed the same on 2-5-2016[19] directing that the matter be listed before the Bench presided over by Dr Justice Jawad Rahim. On 19-5-2016, the original applicant sought time stating that he had filed review application against the order dated 2-5-2016[19] before the Principal Bench praying that the matter should be heard by the earlier Bench presided over by Justice U.D. Salvi and, therefore, the matter could not be heard by Dr Justice Jawad Rahim on that day and was further adjourned to 23-5-2016. There is no reference to carbon footprint in the order dated 19-5-2016[17]. On 23-5-2016[20], the matter was heard by the Bench presided over by Dr Justice Jawad Rahim and the orders reserved.

10 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4201
11 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4204
12 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4205
13 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4206
14 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4219
15 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4203
16 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4207
17 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4208
18 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2015 SCC OnLine NGT 838
19 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 1330
20 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4209

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In this order also there is no reference to the affidavit with regard to carbon footprint. If the filing of the affidavit would have been brought to the notice of the Bench, it would have recorded in the order that some fresh affidavit had been filed. Subsequently, the project proponent, who is the contesting respondent, filed an application on 20-7-2016 praying that in the meantime he had obtained permission of the Environment Department and SEIAA to which we have adverted hereinabove.

51. The original applicant sought time to file counter-affidavit. The matter was adjourned[21] to 28-7-2016 for rehearing deleting the same from reserved list since there were subsequent developments. On 28-7-2016[22], the matter was got adjourned to 2-8-2016 on which date[23] some execution application for implementation of the interim orders was taken up and direction was issued to PMC. The matter was again taken up on 8-8-2016[24], 19-8-2016[25] and 24-8-2016[26] when the hearing was closed and judgment was pronounced through videoconferencing on 27-9-2016[1]. In none of these orders any mention was made for carbon footprint or to the affidavit on the basis of which the review application was filed. On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter on 23-5-2016[20] or on 24-8-2016[26] on which dates the original application was reserved for orders.

52. We are of the considered view that the review application should have been heard by a Bench headed by Dr Justice Jawad Rahim who was admittedly available and in fact continues to be a member of NGT. Therefore, we are constrained to set aside the order passed in *Tanaji Balasaheb Gambhire* v. *Union of India*[2] dated 8-1-2018.

Is demolition the only answer?

53. The next issue which arises is that what we should do with the construction. A large number of flats are already occupied and a large number of persons have paid money for occupying these flats. The learned counsel appearing for those persons who have purchased the flats urged that the flats should not be demolished otherwise they shall be put to great monetary loss.

21 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4215
22 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4210
23 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4211
24 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4202
25 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4212
26 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4214
1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
20 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4209
2 2018 SCC OnLine NGT 302

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As pointed out above, now there are 807 flats and 117 shops which are either constructed or under construction. These flats are 1, 1.5 and 2 BHK flats and small shops and offices. The project proponent has already taken money from these persons and a large number of flats and shops have already been occupied and even where the remaining flats and shops are not occupied, persons belonging to the middle class have invested their life's earnings in this project. Keeping in view the interest of these third parties who were not parties before NGT, we are of the view that in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. Normally, this Court is loath to legalise illegal constructions but in the present case we have no option but to do so.

54. We hasten to clarify that the project proponent cannot be permitted to build any more flats. What we are permitting him to do is to only complete construction of 807 flats, 117 shops/offices and cultural centre including the clubhouse. We make it clear that he shall not be allowed to build the two buildings in which he was to construct 454 tenements, and will obviously have to return the money with interest @ 9% p.a. to the individual(s) who have invested in the same. There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of NGT dated 27-9-2016[1] that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse.

Whether the original applicant is entitled to special damages?

55. On behalf of the original applicant various issues were raised before us which had not been raised before NGT and find no mention either in the original order or even in the order under review. We are not considering those issues. It was urged that the project proponent has reduced the area of cultural centre. This averment is not correct as pointed out by the Senior Counsel appearing for the Union of India. The development plan is not only for the area under the project but covers a much larger area where more than one builder and projects may be involved. It is not the responsibility of only one builder to provide the entire community services and these have to be provided pro rata by all developers of projects in the area. It was also alleged that the builder had built 3 basements which are illegal.

56. On the other hand, it was contended by the learned Senior Counsel for the project proponent that one of the basements has already been blocked and the other two basements shall also not be put in use and would be completely blocked off. We make it clear that PMC and SEIAA will ensure that the project proponent blocks the basements in such a manner that they can never be put to any use. Another argument raised by the original applicant was that the project proponent had stated that though he would not use any groundwater, however, it has utilised the groundwater and violated the condition of the EC. Reliance

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

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is placed on certain photographs showing water being pumped. On the other hand, on behalf of the project proponent it has been urged that this water was being pumped out from the excavated area when the building was built and the water level had risen. We cannot decide this disputed question of fact in these proceedings.

57. We may also point out that in this case the original applicant has tried to project the case as if he is filing the case in the public interest and has prayed for certain general directions. He has also claimed special damages for himself. The main grievance of the original applicant is with regard to the violation of the EC and according to him these violations started in the year 2009. The original applicant had applied for a flat in the project in question and had issued notice to the project proponent on 21-10-2011 about deficiency in service. This notice was replied to on 17-11-2011. Thereafter, the original applicant filed Consumer Complaint No. 95 of 2012 on 22-2-2012. This complaint was decided on 20-11-2014. Thereafter, the order of the District Consumer Disputes Redressal Forum was challenged before the State Consumer Disputes Redressal Commission both by the project proponent and original applicant in February 2015. It appears that thereafter there were complaints and counter-complaints filed by the parties against each other and the project proponent filed a civil suit for defamation against the original applicant on 2-12-2015 and it was only thereafter on 7-12-2015 an application was filed in NGT by the original applicant. We are highlighting these facts only to emphasise the fact that this litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted.

Quantification of damages

58. We need to decide and re-assess the issue of damages since the original applicant has also challenged the original order of NGT. While assessing the damages we may note certain facts:

58.1. The EC was granted on 4-4-2008 but construction commenced after issuance of consent to establish dated 20-6-2009 and the EC would be valid for a period of 5 years from the date of such consent i.e. up to 19-6-2014;

58.2. The EC dated 4-4-2008 was granted for construction of built-up area of 57,658.42 sq m, whereas admittedly, as of now the constructed built-up area is 1,00,002.25 sq m. Therefore, there is clear-cut violation of the terms of the EC;

58.3. Any construction raised after 19-6-2014 is without any EC especially since we have held that EC granted on 20-11-2017 is invalid.

Carbon footprint

59. The main case of the original applicant is that the damages should be assessed on a scientific basis by calculating the damage caused to the environment by the project proponent on the basis of "carbon footprint". In the

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absence of detailed submissions, we find ourselves totally unequipped to go into this aspect of the matter.

60. In the original application filed by the original applicant before NGT, there is no reference to carbon footprint. Even when evidence was initially led, no reference was made to the same. The concept of carbon footprint was introduced by the original applicant only in his affidavit dated 18-5-2016. In fact, according to the project proponent, this affidavit was not even filed on 18-5-2016. It appears to us that there is no order of NGT specifically permitting the original applicant to file such an affidavit. The submission of the original applicant is that he was orally permitted to file the same. These disputed questions would have been only decided by the Original Bench and, therefore, we have already set aside the order passed in *Tanaji Balasaheb Gambhire* v. *Union of India*[2] dated 8-1-2018.

61. The courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles. We find that no such principles have been accepted or established in the present case. When there are no pleadings in this regard we fail to understand how the concept of carbon footprint can be introduced after evidence has been closed, at the stage of arguments. We cannot assess the impact in actual terms and, therefore, we can only impose damages or costs on principles which have been well settled by law.

62. We may also note that the method to which the original applicant referred to is not part of any law, rule or executive instructions. This method is no doubt used to compensate and impose damages on nations but we cannot apply this method while imposing damages on a person who violates the EC. We may also add that the calculation made by the original applicant in his affidavit dated 18-5-2016 filed before NGT are based on assumptions some of which we have not found to be correct, namely — (*1*) use of groundwater; (*2*) reduction of cultural centre space; (*3*) construction of basements, etc.

63. We may make it clear that we are not laying down the law that damages cannot be assessed on the basis of carbon footprint. In a case where expert evidence in this behalf is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, the Court may, in the facts and circumstances of the case, rely upon such data but, in the present case, there is no such reliable material.

64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats

2 2018 SCC OnLine NGT 302

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and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws.

65. Normally, this Court is not inclined to grant ex post facto EC. However, in the peculiar facts of this case, we direct that once the project proponent deposits the amount of damages as directed by us then the project proponent may approach the appropriate authority for grant of EC. The authority may impose such conditions for grant of EC as it deems necessary.

Findings and directions

66. We summarise our findings and directions as follows:

66.1. That built-up area under the notification of 14-9-2006 means all constructed area which is not open to the sky.

66.2. Built-up area under the Notification of 4-4-2011 means all covered area including basement and service areas.

66.3. The communication dated 7-7-2017 is totally illegal and accordingly quashed.

66.4. The original application cannot be treated as a public interest litigation.

66.5. We are not taking note of the allegations levelled against the individuals who have not been arrayed as parties.

66.6. That the order dated 27-9-2016[1] of NGT is upheld except insofar as Direction 1 is concerned.

66.7. The order in review application passed by NGT on 8-1-2018[2] is held to be totally illegal and is accordingly set aside.

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302

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66.8. We uphold the original order dated 27-9-2016[1] holding that the construction raised by the project proponent was in violation of the environmental clearance granted to it on 4-4-2008. We uphold the fine imposed upon PMC and the direction given to PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra and in addition, direct that the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27-9-2016 and will submit his report to NGT within three months from today.

66.9. We impose damages of Rs 100 crores or 10% of the project cost, whichever is higher, on the project proponent and in addition thereto, project proponent will pay Rs 5 crores as levied by NGT in its order dated 27-9-2016[1].

66.10. Project proponent shall not be permitted to raise construction of two buildings having 454 tenements.

66.11. We direct that the project proponent shall only be permitted to complete construction of a total 807 flats, 117 shops/offices and cultural centre including clubhouse.

66.12. The project proponent will only be permitted to seek environmental clearance for completion of the project subject to payment of costs in the aforesaid terms and it may be granted ex post facto environmental clearance in the peculiar facts of the case, on such terms and conditions as the environmental authority deems fit and proper.

66.13. The project proponent is granted six months' time to deposit the amount of damages imposed in terms of Direction 66.9 supra in the Registry of this Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd. as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to M/s Goel Ganga Developers India Pvt. Ltd. to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd. and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of this Court.

66.14. The matter be listed on 22-10-2018 for issuing appropriate directions as to how the amount of damages are to be utilised;

67. All the appeals are disposed of in the aforesaid terms. Pending application(s), if any, shall also stand disposed of.

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1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

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3-Judge Bench
2019
March 5

(2019) 18 Supreme Court Cases 494

(BEFORE DR A.K. SIKRI, S. ABDUL NAZEER AND M.R. SHAH, JJ.)

MANTRI TECHZONE PRIVATE LIMITED . . Appellant;

Versus

FORWARD FOUNDATION AND OTHERS . . Respondents.

Civil Appeals No. 5016 of 2016† with Nos. 8002-8003, 9227, 10992-95, 12152, 12156-60, 12326 of 2016, 1343, 4923-24 and 14966 of 2017 and 2246 of 2018, decided on March 5, 2019

A. **Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Power of NGT to direct Remedial/Compensatory/Punitive Measures**

— NGT's power to grant and give directions for relief, compensation and restitution under NGT Act, 2010 — Scope of — Overriding effect of NGT Act, 2010 over State legislation in cases of conflict — Extent of

— Held, NGT while directing restoration of environment can specify buffer zones around specific lakes and water bodies in contradiction to zoning regulations under the State Municipal Corporation Act or Master Plan framed under town planning laws, as NGT Act has overriding effect — NGT Act being a Central Act enacted under Sch. VII List I Entry 13 of the Constitution shall have overriding effect over State legislation — Therefore, specific directions of NGT relating to penalty (on basis of pollution pays principle) and environmental restoration (liability being on project proponents, who had caused damage to water bodies), affirmed even if NGT's direction relating to buffer zones (no construction zones of various lengths specified for water body types concerned) was different from zoning regulations of State Government

— But general direction of NGT relating to all buffer zones not relating to project proponents and differing from State zoning regulations, set aside — Thus Direction/Condition (1) in order dt. 4-5-2016 in *Forward Foundation*, 2016 SCC OnLine NGT 1409, set aside except directions issued against R-9 & R-10

— Constitution of India — Sch. VII List I Entry 13 — Water/River/Coastal Pollution — Water Conservation/Preservation, Development Projects and Interlinking of Rivers — Primacy of environmental laws over town planning laws — Wetlands (Conservation and Management) Rules, 2010 — Local Government, Municipalities and Panchayats — Town Planning — Ecology/Environmental clearance — Layout/Master/Zonal Plan — Primacy of environmental laws over — National Green Tribunal Act, 2010, Ss. 33, 14, 15, 20 and 22 (Paras 39 to 47 and 60 to 63)

[**Ed.**: Project proponents are Respondents 9 and 10 in Original Application No. 222 of 2014 and appellants in in Civil Appeals Nos. 5016 and 8002-03 of 2016.]

† Arising from the Judgment and Order in *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 7-5-2015) and *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 4-5-2016)

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B. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Scope**

— Held, appeal under S. 22 has to be read subject to conditions provided therein — Thus appeal restricted to substantial question of law arising from judgment of NGT — Merely because remedy of appeal is provided, it does not ipso facto permit appellants to agitate their appeal to seek re-appreciation of factual matrix of entire matter — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38 and 55)

C. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Whether raises substantial question(s) of law — Test**

— It has to be tested whether the question (i) is of general public importance, (ii) directly and substantially affects rights of parties and (iii) is an open question or is not free from difficulty or calls for discussion of alternative views — If question is settled by highest court or plea raised is palpably absurd, it would not be substantial question — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38)

D. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20, 33, 14 and 22 — Limitation of 6 months under S. 14 or 5 yrs under S. 15 — As matter related to environmental degradation and its restoration, limitation of 5 yrs under S. 15, held, would apply — A broad construction should apply to such beneficial legislation — Application before Tribunal not barred by limitation**

— Considering specific prayer of applicants before NGT, evidence supported by data, findings arrived at by NGT, and jurisdiction of NGT it is not an application under S. 14 simpliciter — It was a petition under S. 15 — Non-mention of or erroneous mention of provision of law, not a bar to pass appropriate orders, if NGT had jurisdiction in respect of same — Directions issued by NGT against both project proponents in present case did not suffer from any perversity — General Principles of Environmental Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Limitation period for approaching NGT — Reckoning of (Paras 48 to 55)

E. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20 and 33 — Application before Tribunal, when not barred by res judicata due to earlier writ petition**

— Parties, not common — Issues not directly and substantially same, writ petition related to land acquisition, present application related to environment, ecology and their restoration — No commonality of cause of action of likelihood of conflict between judgments — Prayer and genesis entirely different in their scope and relief — Practice and Procedure — Res Judicata (Paras 56 to 59)

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The present appeals were filed under Section 22 of the National Green Tribunal Act, 2010 (the NGT Act, 2010) against the judgment of restoration and penalty of the Tribunal.

Disposing of the appeals, the Supreme Court

Held :

Appeal to Supreme Court

The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by the 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. (Para 37)

Chunilal V. Mehta & Sons Ltd. v. *Century Spg. & Mfg. Co. Ltd.*, 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *relied on*

Further, merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22 of the NGT Act, 2010. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision. (Paras 36 to 38)

Jurisdiction of Tribunal

The first question is in relation to the maintainability of the application before the Tribunal. (Para 39)

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

The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act, 2010. (Para 41)

The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 of the NGT Act, 2010 for taking restorative measures in the interest of the environment. (Para 43)

The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. The existence of the Tribunal

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without its broad restorative powers under Section 15(1)(*c*) read with Section 20 of the NGT Act, 2010, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment. (Para 44)

Kishore Lal v. *ESI Corpn.*, (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *relied on*

Section 15 of the NGT Act, 2010 provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the NGT Act, 2010, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the NGT Act, 2010) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions. (Para 45)

Further, Section 18 of the NGT Act, 2010 recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. The only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. (Para 46)

Section 33 of the NGT Act, 2010 provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976; and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP. (Para 47)

The State of Karnataka is aggrieved by the Direction/Condition (1) of the order dated 4-5-2016 of the Tribunal in *Forward Foundation*, 2016 SCC OnLine NGT 1409. The applicants have no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed. Civil Appeals Nos. 5016 and 8002-03 of 2016 filed by appellant-Respondents 9 and 10 are dismissed. The impugned judgment and order insofar as appellant-Respondents 9 and 10 are concerned is sustained. All the other appeals are allowed and Direction/Condition (1) in the order dated 4-5-2016 is set aside except the direction issued against Respondents 9 and 10. (Paras 60 to 62)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 1409, *partly reversed*

Core Mind Software & Services (P) Ltd. v. *Forward Foundation*, 2015 SCC OnLine SC 1778, *referred to*

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Limitation

OA No. 222 of 2014 was not an application simpliciter under Section 14 of the NGT Act, 2010. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the NGT Act, 2010 and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose. (Para 49)

In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. Non-mention of or erroneous mention of the provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal. (Para 50)

The Tribunal has pointed out on the basis of the Committee Report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. (Paras 52 and 51)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

The findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee report and the inspection note of the expert members. The directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity. (Para 54)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

It is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by the Supreme Court under Section 22 of the NGT Act, 2010. (Para 55)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 637, *referred to*

SS-D/62061/S

Advocates who appeared in this case :

Udaya Holla, Advocate General, Shashi Kiran Shetty, Maninder Singh, Dhruv Mehta, Mukul Rohatgi, Neeraj Kishan Kaul, R. Venkataramani, Sajan Poovayya, Ms Kiran Suri and Basavaprabhu S. Patil, Senior Advocates [Mahesh Thakur, Ms Anuparna Bordoloi, Savyasachi Sahai, Ms Vipasha Singh, Gaurav Goel, V.N. Raghupathy, M/s Devasa & Co., Devashish Bharuka, Justine George, Prabhas Bajaj, Ms Kanika

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S., Ravi Bharuka, Ms Sarushree, Satish Kumar, Gaurav Agrawal, George Thomas, Anurag Gharote, A.S. Bhasme, Abid Ali Beeran P., Nishanth Patil, Rohit Prasad, Ananth Suresh, S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Shekhar G. Devasa, Bhuvanendra K.V., S. Mahesh, Manish Tiwari, Luv Kumar, Praveen Vignesh, Priyadarshi Banerjee, Pratibhanu Singh Kharola, Saransh Jain, Meka V. Ramakrishna, Madhavam Sharma, Ms Sriparna Dutta Choudhury, Udayaditya Banerjee, Mahesh Agrawal, Ankur Saigal, Ms Tanvi Manchanda, Nithin P., Ms Priyanka M.P., E.C. Agrawala, S.J. Amith, Ms Rithika Gambir, A. Shwarya Kumar, Dr (Ms) Vipin Gupta, Parikshit P. Angadi, Chinmay Deshpande, Geet Ahuja, Parikshit Angadi, Anup Kumar, O.P. Bhadani, Rajesh Mahale, Anand Sanjay M. Nuli, Dharm Singh, Sandeep Grover, Ms Pankhuri Bhardwaj and Pai Amit, Advocates] for the appearing parties.

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

1. 2016 SCC OnLine NGT 1409, *Forward Foundation* v. *State of Karnataka* **(partly reversed)** 499*e*, 499*g*, 509*a*, 514*e*, 522*e-f*, 523*e-f*
2. 2016 SCC OnLine NGT 637, *Forward Foundation* v. *State of Karnataka* 508*e*
3. 2015 SCC OnLine SC 1778, *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation* 507*f-g*
4. 2015 SCC OnLine NGT 5, *Forward Foundation* v. *State of Karnataka* 499*e*, 505*e-f*, 508*c*, 520*a-b*, 521*a*, 522*a*
5. (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *Kishore Lal* v. *ESI Corpn.* 518*a*
6. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.* 516*e-f*

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.— These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity "the NGT Act") challenging the judgment and order dated 7-5-2015[1] and 4-5-2016[2] respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short "the Tribunal").

2. The appellants in Civil Appeals Nos. 5016 of 2016 and 8002-03 of 2016 are Respondents 9 and 10 in Original Application No. 222 of 2014 (hereinafter referred to as "Respondents 9 and 10"). The said application was filed by Respondents 1 to 3 herein (hereinafter referred to as "the applicants"). Respondents 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as Respondents 1 to 4 in the application. Respondents 12 and 13 herein were subsequently impleaded in the application (for short "the impleaded respondents").

3. The State of Karnataka has filed Civil Appeals Nos. 4923-24 of 2017, challenging the general condition and Direction (1) contained in the order of the Tribunal dated 4-5-2016[2]. The other appeals have been filed by different entities, who were not parties before the Tribunal challenging the order of the Tribunal dated 4-5-2016[2] insofar as it directs a buffer/green zone of 75 m in respect of lakes, 50 m in respect of primary Rajakaluves, 35 m in

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

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case of secondary Rajakaluves and 25 m in case of tertiary Rajakaluves with retrospective effect. According to them, they are adversely affected by the aforesaid condition in the impugned order.

4. The applicants filed OA No. 222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short "KIADB") to Respondents 9 and 10 vide Notifications dated 23-4-2004 and 7-5-2004 respectively for setting up of software technology park, commercial and residential complex, hotel and multi-level car parks. The Master Plan formulated by the Bangalore Development Authority (for short "BDA"), identifies the allotted land as "residential sensitive", though the same land was identified in the Draft Master Plan as "protected zone". It was further contended that the revenue map in respect of properties as referred in the land lease agreements has multiple Rajakaluves (storm water drains). The development projects in question sit right on the catchment and wetland area which feeds the Rajakaluves, which in turn drains rainwater into Bellandur Lake. The project will thus encroach two Rajakaluves of 1.38 ac and 1.23 ac each.

5. The satellite digital images of the area from the year 2000 to 2012 show encroachment upon these Rajakaluves, as well as the manner in which they are covered by the construction. The State Level Expert Appraisal Committee (for short "SEAC"), which was to assist the State Level Environment Impact Assessment Authority (for short "SEIAA"), held its meetings on various dates to examine the project. It had required Appellant 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short "BWSSB") for the project in question. It was also observed that the project lies between Bellandur Lake and Agara Lake. Respondent 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11-11-2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

6. It was alleged that NOC was issued covering an area of 17,404 sq m whereas the built-up area, as noted by SEAC, is 13,50,454.98 sq m. Respondent 9 obtained NOC from BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent 9 had approached the Karnataka State Pollution Control Board (for short "KSPCB") for obtaining clearance, which was granted on 4-9-2012 subject to the fulfilment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by KSPCB to Respondent 9 also contained a condition with regard to obtaining environmental clearance from the competent authority and no construction was to commence until such clearance was granted.

7. The applicants further contended that Respondent 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of SEAC in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over

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the ecologically sensitive area of the lake catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities, the applicant submitted that the conversion of land from "protected zone" to "residential sensitive area" is violative of the law. The project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the Rajakaluves. Respondents 9 and 10 started to level the land by filling it with debris, thus causing damage to the drains. The conditions with regard to no disturbance to the storm water drains, natural valleys and buffer area in and around the Rajakaluves have been violated. It has in turn, affected the groundwater table and borewells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is in violation of the Wetlands (Conservation of Management) Rules, 2010 (for short "the 2010 Rules").

8. It was submitted that SEIAA in its meeting dated 29-9-2012, decided to close the file pertaining to Respondent 10 due to non-submission of requisite information and the application thereof was rejected in November 2012. Despite the rejection, Respondent 10 commenced construction on the project in full swing.

9. The applicants also relied upon the findings of the Joint Legislative Committee, constituted under the Chairmanship of Shri A.T. Ramaswamy in the month of July 2005, which stated that there were 262 waterbodies in Bangalore City in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 km of Rajakaluves have been encroached upon in several places and have become sewage channels. The applicants also relied on the report of the Committee under the Chairmanship of Hon'ble Justice N.K. Patil suggesting immediate remedial action in order to remove encroachments on the lake area and the Rajakaluves and preservation of the lakes in and around Bangalore City. It was further contended that other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore metropolitan area which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tank is not polluted. The Central Government in August 2013 had issued an advisory on conservation and restoration of waterbodies in the urban areas. The applicants claim to have obtained monitoring report of the project by Respondent 5, Ministry of Environment and Forests, through RTI on 21-8-2013. The report dated 14-8-2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that Bellandur Lake is not affected by the construction and operational phase of the project. This approach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

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10. The Lake Development Authority (for short "LDA"), after inspection in the catchment area of Bellandur Lake submitted its report dated 12-6-2013 which confirms that the project will have disastrous impact, including deleterious effect on Bellandur Lake. This report was brought to the notice of KIADB. LDA has also opined that the land should be classified and maintained as sensitive area. KIADB called upon Respondent 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, Respondents 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardising the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 m buffer zone is to be created around the lakes and 50 m buffer zone to be created on either side of the Rajakaluves. It was also pleaded that Respondent 9 had obtained the NOC from BWSSB only with regard to residential units and not for the entire project and that the environmental clearance obtained by Respondent 9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of Respondent 9 alone is approximately 4.5 million litres per day i.e. 135 million litres per month, which is more than what BWSSB supplies to the entire Agaram Ward. The construction of respective projects by Respondents 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of Bellandur Lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the waterbodies.

11. Respondent 9 in its objections contended that it was incorporated with the objective of establishing an information technology park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. It had submitted the proposal to establish such information technology park and other facilities to the State Government and requested for allotment of land for the project. Its proposal was considered in 78th High-Level Committee meeting held on 21-6-2000 and after examining the proposal, it was approved by the Government on 6-7-2000. Before the State High-Level Committee, it had informed that its requirement was 110 ac of land, 25 MW of power from the Karnataka Power Transmission Corpn. Ltd. (for short "KPTCL"), and four lakh litres of water per day from BWSSB. The lands for the project were initially notified vide Notification dated 10-2-2004. Subsequently, the lands were allotted vide letter dated 28-6-2007 for which lease-cum-sale agreement was signed on 30-6-2007. Considering the overall development of the State of Bangalore, this respondent proposed a Mixed Use Development Project consisting of an information

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technology park, residential apartments, retail, hotel and office buildings with a total built-up area of 13,50,454.98 sq m. The Project was conceived as a zero waste discharge project. The Project is located one-and-a-half kilometres away from the southern side of Bellandur Lake. Towards the north, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the east, lies the project of Respondent 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 4-7-2007 which was renewed from time to time.

12. Respondent 9 claims that it has obtained NOC from Airport Authority of India on 9-4-2010. Bharat Sanchar Nigam Ltd., vide its communication dated 16-4-2010, granted clearance for the project construction. BWSSB, vide its communication dated 26-4-2011 issued NOC for portion of the proposed construction to be built. Bangalore Electricity Supply Co. Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental clearance was granted by SEIAA vide communication dated 17-4-2012. The Director General of Police has issued NOC and KSPCB vide order dated 4-9-2012 accorded its consent for construction of the said Project subject to the conditions stated therein. It was further stated that after grant of the environmental clearance on 17-9-2012, the same was published in the leading newspapers *Kannada Prabha* and *The Indian Express* on 12-3-2012 and 14-3-2014 respectively.

13. It submitted a modified building plan which was approved by KIADB vide its letter dated 30-8-2012, which was valid up to 10-8-2014. It started the construction of the Project in November 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the environmental clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs 306.73 crores on the Project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.

14. Respondent 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and mala fides. It had submitted a revised proposal in respect of its project in question and to obtain fresh clearance on 31-8-2007 with an investment of Rs 179.22 crores. The State High-Level Committee had cleared the project which was communicated to it on 25-1-2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains

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and secondary storm water drains that exist in its properties. It has clearances from various authorities, including Environmental Clearance and consent for establishment.

15. KIADB stated that after possession of the land was handed over to Respondents 9 and 10, one year time was granted for the implementation of the Project which was extended from time to time. The building drawings were approved on 4-7-2007, and the modified building drawings were approved on 26-4-2011 and 30-8-2012 with specific conditions. In its meeting held on 16-7-2013, it was resolved to inform Respondents 9 to fully comply with the Ecology and Environment Rules and to obtain approvals from LDA and KSPCB. LDA vide its letter dated 24-9-2013, had informed KIADB that the construction activity in the catchment area in Bellandur Lake could drastically impact the lake with deleterious effects and asked it to stop construction activity of Respondents 9 and 10. However, the validity of the building drawings was again extended up to 10-8-2014. The Lokayukta on 17-12-2013 had written a letter in respect of complaint filed by the South-East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21-12-2013 to keep in abeyance the approval accorded and even the re-validations of plans. This was also informed to Respondent 9. The Board took a decision which was communicated to Respondent 9 on 2-1-2014, wherein it asked Respondent 9 to stop all construction activities on the allotted lands. The said communication was challenged by Respondent 9 and on the stop-work notice, stay was granted by the High Court of Karnataka. The stop-work notice dated 23-12-2013 issued by Bruhat Bengaluru Mahanagara Palike (for short "BBMP") was also stayed vide order dated 21-1-2014. The proposal submitted by Respondents 9 and 10 had been approved by the State Government. The land allotted to Respondents 9 and 10 does not consist of any Rajakaluves.

16. LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only when certain newspaper reports surfaced during the month of June 2013 and till that time it was in the dark. After the complaints, it inspected Bellandur Lake and Agara Lake on 12-6-2013 and prepared an inspection report. In the report, it was noticed that large-scale construction activities were going on in the catchment area of Bellandur Lake and that there was a change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB vide letter dated 6-7-2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31-8-2013, that Respondent 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23-9-2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it also communicated its objections to KIADB mentioning that construction activity

1996 SCC ONLINE True Print
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would be in contravention of the directions of the Supreme Court. Despite these warnings, KIADB granted approval to the extension of the building drawings of the project in favour of the project proponents with certain conditions, like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed. Further, the natural sloping pattern of the project site was not to be altered and the lakes and other waterbodies within and/or at the vicinity of the project area should be protected and conserved. Despite the objections, the plans were approved and approvals were extended from time to time. It has taken a categorical stand that the projects as approved by KIADB would have adverse impact on Bellandur and Agara Lakes.

17. On the basis of the pleadings of the parties, the Tribunal framed the following questions for consideration and determination:

17.1. Whether the application filed by the applicants and supported by Respondents 11 and 12, is barred by time and thus, not maintainable?

17.2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?

17.3. Whether the present application is barred by the principle of res judicata and/or constructive res judicata?

17.4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of Writ Petitions Nos. 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and

17.5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

18. The Tribunal by its order dated 7-5-2015[1] at Annexure A-2, disposed of the applications with the following directions: (*Forward Foundation case*[1], SCC Online NGT para 85)

> "*85.* ... (1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal inter alia but specifically on the issues stated hereinafter:
>
> (*a*) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
>
> (*b*) CEO of the Lake Development Authority, Karnataka State.
>
> (*c*) Chief Town Planner of BBMP, Bangalore.
>
> (*d*) Chairman of SEAC which recommended the grant of environmental clearance to the projects in question.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

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(*e*) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.

(*f*) Dr Siddharth Kaul, former Advisor to MoEF.

(*g*) A senior officer from the National Institute of Hydrology, Roorkee.

(2) Member-Secretary of the Karnataka State Pollution Control Board shall act as the Convener of the Committee and would submit the final report to the Tribunal.

(3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the waterbodies, with particular reference to lakes.

(4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of Respondents 9 and 10 or by any of the projects in the area in question.

(5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

(6) The Committee shall substantially notice if any of the conditions of the environmental clearance order in each case of Respondents 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

(7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The Committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of waterbodies.

(8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore.

(9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letters dated 4-7-2007 and 22-4-2008 respectively. Further, the Committee would also report whether both Respondents 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing, etc., in terms of letters

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dated 11-10-2013 and 3-1-2013, issued by the Karnataka Industrial Area Development Board to Respondents 9 and 10 respectively.

(10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and waterbodies.

(11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both Respondents 9 and 10 are hereby restrained from creating any third party interests or part with the possession of the property in question or any part thereof, in favour of any person.

(12) The Committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the waterbodies in the city of Bangalore.

(13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the waterbodies in and around of the area in question.

(14) For the reasons stated in the judgment Respondent 9 is liable and shall pay a sum of Rs 117.35 crores, while Respondent 10 shall pay a sum of Rs 22.5 crores respectively being 5% of the project value, within two weeks from today. The said amount would be paid to KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the project proponent in that area, after taking approval of the Tribunal.

(15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of Direction 14, onto the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorisedly."

19. Feeling aggrieved by the said order, Respondents 9 and 10 filed Civil Appeals Nos. 4829 and 4832 of 2015 before this Court. This Court by its order dated 20-5-2015[3] passed the following order: [*Core Mind Software & Services (P) Ltd. case*[3], SCC OnLine SC paras 2-5]

"2. One of the main contentions raised by the appellants in these appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs 117.35 crores against the original Respondent 9 (the appellant in CA No. 4832 of

3 *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation*, 2015 SCC OnLine SC 1778

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2015) and Rs 22.5 crores against original Respondent 10 (the appellant in CA No. 4829/2015) is imposed.

3. On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

4. With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject-matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment[1] can also be raised.

5. The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty. Mr Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties."

20. In relation to Issue 5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 6-4-2016[4] on these applications as under: (*Forward Foundation case*[4], SCC OnLine NGT)

"***MA No. 603 of 2015 and MA No. 596 of 2015***

These applications have been filed on behalf of Respondents 9 and 10 respectively. It is not necessary for us to refer to any details in view of the directions that we propose to issue in this case.

Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme Court of India primarily on the question of imposition of environmental compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf.

With the above directions MA No. 603 of 2015 and MA No. 596 of 2015 stand disposed of without any order as to cost."

21. It is evident from the above orders that the Tribunal had granted opportunity to the parties to address it "limited question", as aforementioned.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
4 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 637

2000 SCC ONLINE True Print
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The Tribunal after hearing the parties passed an order dated 4-5-2016[2] as under: (*Forward Foundation case*[2], SCC OnLine NGT)

a

"***General conditions or directions***

1. In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas,
b 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—

c

(*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

d (*iv*) 25 m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

e All the offending constructions raised by Respondents 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these respondents — project proponent would be permitted to raise any construction in this zone.

f All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified
g by CPCB/MoEF.

3. Bangalore City receives treated potable water of 1360 MLD from River Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of groundwater exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the

h

2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

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BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

(*i*) At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a prerequisite for grant of EC.

(*ii*) All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.

(*iii*) Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

Specific conditions/directions for Respondent 9

In addition to the above directions which should be equally part of EC condition in respect of Respondents 9 and 10, following specific conditions shall apply to Respondent 9:

(*i*) Reclaimed area of the lake to the extent of 3 ac 10 guntas in Survey No. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent 9 to the authorities concerned immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.

(*ii*) In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the Rajkalewa should be maintained as green belt.

(*iii*) Several irrigation canals or tertiary Rajkalewas taking off from the Agara tank were passing through the area of Respondent 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between Agara Lake and Belandur Lake, Respondent 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.

(*iv*) The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic metres in the depth range of 0 to 9 m. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by

2002 SCC ONLINE True Print
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SEIAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur Lake.

(*v*) The kharab land identified by Revenue Department admeasuring 1 ac 2 guntas should be demarcated and maintained separately as green belt.

(*vi*) The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.

(*vii*) In view of the heavy traffic load in the adjoining Sarjapur Road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

* * *

10. Though, at the time of hearing prior to passing of the judgment, we had heard the parties on all aspects but still we have provided rehearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent 9 calls for no variation and Respondent 9 should be called upon to pay the said amount of Rs 117.35 crores determined under the judgment prior to commencement of any project activity at the site. Respondent 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent 10 and the fact that the remedial measures can more effectively be taken by Respondent 10, we reduce environmental compensation payable by Respondent 10 to Rs 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

General directions

1. We direct SEIAA, Karnataka to issue amended order granting environmental clearance within four weeks from today incorporating all the conditions stated in this judgment and such other conditions as it may deem appropriate in light of this judgment and inspection note of the expert members. The project proponents would be permitted to commence activity only after issuance of amended environmental clearance order.

2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting environmental clearance, this judgment, notification of 2006 and other laws in force.

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3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the authorities concerned are directed to incorporate such conditions in the projects to whom environmental clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other lakes/wetlands in the city of Bengaluru.

4. We hereby direct the State of Karnataka to submit a proposal to MoEF for demarcating wetlands in terms of the Wetland Rules, 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.

5. Both Respondents 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said respondents.

6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent 9 is concerned. Admittedly the respondent has been allotted and is in possession of land admeasuring 63.94 ac, though environmental clearance has been granted for 2,92,636.03 sq m which is equivalent to 72.22 ac. For this reason alone, environmental clearance cannot be given effect to. While issuing the amended environmental clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent 9 to submit a fresh layout plant and the entire project may be revised in accordance with law.

7. Both the respondents (project proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended environmental clearance that would be issued.

8. The amount of environmental compensation will be deposited prior to issuance of amended environmental clearance.

With the above directions, Original Application No. 222 of 2014 and Miscellaneous Applications Nos. 596 of 2016 and 603 of 2016 are finally disposed of while leaving the parties to bear their own costs." (emphasis in original)

22. Appearing for the appellants in CA No. 5016 of 2016, Shri Mukul Rohatgi, learned Senior Counsel, has submitted that the State Government in exercise of the power conferred under the Karnataka Industrial Areas Development Act (for short "the KIAD Act") declared the land in question as an industrial area. Thereafter, the land in question has been acquired by the State Government in the year 2004. Following the acquisition, on 28-6-2007, the land was allotted to the appellant by KIADB. SEIAA granted environmental clearance which was followed by public notice concerning clearance on 14-3-2012.

2004 SCC ONLINE True Print
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Neither the allotment of land nor the environmental clearance was challenged before the Tribunal. Thus, none of the statutory decisions or processes, are the cause of action for the purpose of the application. The averments made in the original application does not satisfy or meet the requirements of Sections 14(1) and (3) of the NGT Act and the original application does not spell out the cause of action relevant for the purpose of the said provision. Since the statutory processes and clearances could not have been challenged for being hit by Section 14(3), the construction activities which were the alleged cause of action could not have been challenged. Therefore, the Tribunal ought to have held that the application was not maintainable.

23. Further, the application is barred by limitation. Though environmental clearance was granted on 17-2-2012 and it was published in two leading newspapers on 12-3-2012 and 14-3-2012, modified plan was approved by KIADB on 30-8-2012, the application ought to have been filed within six months from the date on which cause of action for the dispute first arose in terms of Section 14 of the NGT Act. The present application has been filed in March 2014 which was much beyond the prescribed period of limitation. No application seeking condonation of delay has been filed accompanying the application. Hence, the Tribunal ought to have dismissed the application on the ground that as it is barred by time.

24. It was also argued that buffer zone laid down by NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22-6-2007. This is contrary to the Karnataka Town and Country Planning Act, 1961 (for short "the Planning Act").

25. Shri Neeraj Kishan Kaul and Shri R. Venkataramani, learned Senior Counsel appearing for the appellants, in this case have also made similar submissions. It was argued that the direction imposing penalty/compensation is illegal on the ground that the applicants did not allege that the construction work of the project has caused environmental wrong. No wrong or injury either to Bellandur Lake waterbody or to Bellandur Lake area, has been alleged and established. As such, there is no question of any enquiry relating to imposition of penalty or any compensation.

26. Shri Maninder Singh, learned Senior Counsel appearing for the appellants, in CAs Nos. 5016 and 10995 of 2016, while supporting the submissions made by Shri Rohatgi, has submitted that the appellant has obtained sanction and approvals for the project from the competent authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible i.e. 30-9-2013. Hence, imposing penalty/compensation is entirely unsustainable.

27. The learned Advocate General, Shri Udaya Holla, appearing for the appellant State of Karnataka in CAs Nos. 4923-24 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of NGT to the extent of setting aside the buffer zone in respect of waterbodies and drains specified in

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the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation. Therefore, the order of NGT to that extent is liable to be set aside.

28. The learned Senior Counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 m buffer zone around the lakes and a buffer zone of 50 m, 25 m and 15 m from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 m around the lake and 50, 35 and 25 m respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan.

29. On the other hand, Shri Sajan Poovayya, learned Senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in CAs Nos. 5016 and 8002-03 of 2016 (Respondents 9 and 10). He has no objection to set aside the order insofar as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of NGT in para 1 of the order dated 4-5-2016[2] except the directions issued against Respondents 9 and 10. In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeals Nos. 4923-24 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents 9 and 10.

30. Shri Poovayya has strongly opposed the submissions made by the learned Senior Counsel appearing for the appellants in CA No. 5016 of 2016 and CAs Nos. 8002-03 of 2016. It is submitted that the Tribunal is a specialised body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act. Section 14 provides for the jurisdiction over all civil cases where a substantial question relating to environment is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. The Tribunal has the jurisdiction under Section 15(1)(*a*) of the NGT Act to provide relief

2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

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and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Sections 15(1)(*b*) and 15(1)(*c*), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas, as the Tribunal may think fit. Sections 15(1)(*b*) and 15(1)(*c*) have not been made relatable to enactment specified in Schedule I of the Act. Section 15(1)(*c*) is an entire island of power and jurisdiction read with Section 21 of the Act. He submits that whenever ecology is being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment. The limitation provided in Section 14 is period of six months from the date on which cause of action first arose whereas in Section 15 it is five years. Therefore, the petition is not barred by time.

31. He has further submitted that the provisions of Section 33 shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force. This gives the Tribunal overriding powers over anything inconsistently contained in the KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short "the KMC Act"). Therefore, the Tribunal while providing for restoration of environment in an area can specify buffer zone around specific lakes and waterbodies in contravention with zoning regulation.

32. Regarding limitation, he has submitted that the application filed by Respondents 1 to 3 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining sensitive area in its natural condition so that ecological balance of the area is not disturbed. Therefore, the petition was under Section 15 of the Act and it can be filed within five years from the date on which the cause for such compensation or relief first arose.

33. It was further submitted that right to appeal under Section 22 is not a vested right unless provided by statute. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Section 22 of the Act provides for an appeal on the ground specified in Section 100 of the Code of Civil Procedure, 1908 (for short "CPC"). Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. In the instant case, the appeal does not involve any substantial question of law hence it has to be dismissed in limine. He has taken us through various materials placed on record in order to substantiate that the direction passed and penalty imposed by the Tribunal upon to project proponents are sustainable. He prays for dismissal of the appeals.

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34. We have carefully considered the submissions of the learned counsel of the parties and perused the materials placed on record.

35. Before considering the other contentions of the learned counsel for the parties, let us first consider the scope of enquiry in appeals filed under Section 22, which is as under:

> "**22.** ***Appeal to Supreme Court.***—Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):
>
> Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."

36. It is settled that there is no vested right of appeal unless the statute so provides. Further, if a statute provides for a condition subject to which the appropriate appellate court can exercise jurisdiction, the court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided under Section 22 is to be read subject to the conditions provided therein.

37. Section 22 provides for an appeal to the Supreme Court on the grounds specified in Section 100 CPC. Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. The scope of appeal under Section 22, therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.*[5] This Court has laid down the test as under: (AIR p. 1318, para 6)

> "*6.* … The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

38. It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to

5 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

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seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision.

39. The first question raised by the learned counsel is in relation to the maintainability of the application before the Tribunal.

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

41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

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

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

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore*

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Lal v. *ESI Corpn.*[6], para 17.) The existence of the Tribunal without its broad restorative powers under Section 15(1)(*c*) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Sections 14 and 15 as self-contained jurisdictions.

46. Further, Section 18 of the Act recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the scheduled enactments, cumulatively, leave no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976 (the KMC Act); and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP.

48. The second question raised by the appellants is that the petition is barred by time. According to the appellants, environmental clearance was granted to Respondent 9 on 17-2-2012 for which notice was published in the leading newspaper on 12-3-2012 and 14-3-2012. Modified building plan was approved on 30-8-2012, which was followed up to 10-8-2014. Similar events had taken place in regard to the project of Respondent 10 who had been

6 (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1

2010 (11) SCC
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granted environmental clearance on 30-9-2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.

49. OA No. 222 of 2014 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

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

51. Shri R. Venkataramani, learned Senior Counsel, appearing for the appellant in CA No. 5016 of 2016 has submitted that the constructions had not commenced before the grant of environment clearance. The inspection report dated 11-1-2012 of the Chairman of KSPCB observes that "no construction" had commenced on the date of inspection. This report cannot be overlooked on the basis of some dumping of debris which could not be attributed to the appellant. He has pointed out the report of the Committee appointed by the Tribunal in the month of August 2015, wherein it was stated that "it started construction after obtaining clearance". In this regard he has also taken us through various documents placed on record and submits that there is absolutely no justification in imposing monitoring penalty/compensation without assessment of impact.

52. The Tribunal has pointed out on the basis of the Committee report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee

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constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. That is why, the Tribunal has observed[1] as under: (*Forward Foundation case*[1], SCC OnLine NGT para 72)

> "*72.* In light of the above scope of the project and records before the Tribunal and the defaults on the part of the project proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:
>
> (1) The construction of both the projects had started prior to the grant to environmental clearance.
>
> (2) The EIA Notification of 2006 requires that without grant of environmental clearance, no project can commence its activity. This restriction applies not only to operationalisation of the project but even for the purposes of establishment.
>
> (3) Revenue map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
>
> (4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
>
> (5) Google satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13-11-2000 and 23-11-2010. Secondly, it reveals the excavation work carried out by Respondents 9 and 10 commenced prior to obtaining environmental clearance.
>
> (6) Restriction in regard to extraction of groundwater was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.
>
> (7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to lakes and other waterbodies within and/or at the vicinity of the project area to be protected and conserved. The inspection report by MoEF clearly notes that Conditions (xxxix) and (xl) in the environmental clearance of Respondent 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase."

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

2012 (11) SCC
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53. In para 81, the Tribunal has observed as under: (*Forward Foundation case*[1], SCC OnLine NGT para 81)

> "*81.* ... Another very important aspect which cannot be overlooked by the Tribunal is with regard to Respondents 9 and 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with Conditions (xxxix) and (xl) (or alike conditions) in the order granting the environmental clearance. This has even been noticed by MoEF in its monitoring report dated 14-8-2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof."

54. In our view, the findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee's report and the inspection note of the expert members. Therefore, the directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity.

55. We are also of the view that it is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by this Court under Section 22 of the NGT Act.

56. Shri R. Venkataramani, learned Senior Counsel has also raised a subsidiary issue relating to res judicata. According to him, Respondents 12 and 13 filed Writ Petitions Nos. 3656-57 of 2013 seeking similar reliefs in a representative capacity. The issues raised therein are same as those canvassed in the application before the Tribunal. The reliefs sought for are essentially the same. Hence, the applications are barred by the principle of res judicata.

57. The Tribunal has answered this issue in paras 47 to 51 of the order. There was no dispute insofar as filing of the writ petitions is concerned. However, the parties are not common nor the issues in application and the writ petitions are directly and substantially the same. After examination of the pleadings, the Tribunal has recorded a finding of fact that there is no commonality of a cause of action or likelihood of a conflict between the judgments. The prayers and the genesis of the respective proceedings are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment ecology and its restoration while the proceedings before the High Court relate to entirely different issues with acquisition of land, its allotment and transfer to the third party. These issues in both the proceedings are neither substantial nor materially identical.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

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58. After elaborately considering this question, the Tribunal has concluded as under: (*Forward Foundation case*[1], SCC OnLine NGT para 51)

> "*51.* ... For these reasons, we find no merit in this contention of Respondents 9 and 10. The purpose of the doctrine of res judicata is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of reagitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality insofar as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The "cause of action" in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor *constructive res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of "judicial propriety", because of the writ petitions pending before the Hon'ble High Court of Karnataka."

59. We do not find any error in the aforesaid conclusion of the Tribunal. We are of the view that the Tribunal was justified in holding that the objections taken by Respondents 9 and 10 do not satisfy the basic ingredients to attract the application of res judicata or constructive res judicata.

60. The State of Karnataka is aggrieved by the following offending portion of the order dated 4-5-2016[2]: (*Forward Foundation case*[2], SCC OnLine NGT)

> "*1.* In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to the 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—
>
> > (*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

2014 SCC ONLINE True Print
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(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

(*iv*) 25 m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these respondents — project proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore." (emphasis in original)

61. We have already noticed that Shri Poovayya has no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed.

62. In the light of the above discussion, we pass the following order:

62.1. Civil Appeal No. 5016 of 2016 and Civil Appeals Nos. 8002-03 of 2016 filed by the appellant-Respondents 9 and 10 are hereby dismissed. The impugned judgment and order insofar as the appellant-Respondents 9 and 10 are concerned is sustained.

62.2. All the other appeals are hereby allowed and Direction/Condition (1) in the order dated 4-5-2016[2] is hereby set aside except the direction issued against Respondents 9 and 10.

63. There will be no order as to costs.

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2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

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2019 SCC OnLine NGT 1662

In the National Green Tribunal[†]

(Before Adarsh Kumar Goel, Chairperson and K. Ramakrishnan, Member (Judicial) and Nagin Nanda, Member (Expert))

Cavelossim Villagers Forum ... Applicant(s);

Versus

Village Panchayat of Cavelossim ... Respondent(s).

Original Application No. 61/2014 (WZ) (M.A. No. 24/2015)

Decided on April 24, 2019, [Hearing on: 24.04.2019]

Advocates who appeared in this case :

Mr. N.DA Costa Frias, Ms. Faria M. Mesquita, Advocate for the Applicant(s);

Mr. Krishnan Venugopal, Sr. Advocate, Mr. Ninad Laud, Mr. Nitin Sawant, Mr. Kaushik Mishra, Mr. Shivshankar Swaminathan, Mr. Ivo D'Costa, Advocates for Respondent no. 8 Mr. Anu Tiwari, Mr. Shaurya Garg, Advocates for the Respondent(s).

ORDER

1. This application filed by Cavelossim Villagers Forum has a grievance against illegal construction activities adversely affecting the natural water bodies/*nallas*/channels/paddy fields. The application was filed on 23.05.2014. It is stated that a big project of construction of building has been undertaken by Balaji Concepts, Margao, Goa by destroying natural water bodies at Khandi-bandoi, Cavelossim, Salcete, Goa. Construction has been undertaken without due permission from the concerned authorities. Water access has been blocked due to illegal dumping of mud in violation of the Goa Irrigation Act, 1973 and Land Revenue Code. The construction is within 100 mtrs of the River Sal. The applicant has relied upon the inspection report dated 21.03.2014 by the Assistant Engineer, Water Resources Department. The applicant has also filed revenue record, Google image, copy of complaint lodged and photographs.

2. In the inspection report dated 21.03.2014, it is stated as follows:

"It is found that in Survey No. 90/5 a nallah is diverted to a length of about 20 mts and the bank of the same are constructed with R.C.C. walls with extra steel reinforcement to cover the nallah with concrete slab from top. An another nallah in Survey No. 90/5 was filed with mud by stopping the free flow of water. The pond in Survey No. 91/1 is encroached by filing mud, is shifted close to nallah and R.C.C. columns are erected to construct the building. A letter No. WRD/SDI/WD II/F.45/590/2013–2014, Dt. 18/02/2014 was sent to Balaji Concept requesting to stop all the construction activities in the above said affected area by destroying original water bodies and nallahs which will prevent free flow of water in rainy season and stagnation of water in the paddy fields at upstream side thus leading to breeding of mosquitos and to restore all the water bodies in their existing form within 15 days or to face action.

A joint inspection was held on 13.03.2014 at the site of Balaji Concept at Khandi Bandoi along with Shri. Gonsalo Rodrigues, Technical Assistant, Vinod Kapoor, Gaurish Kandeparker, site Engineer of Balaji Concepts, the Members of Cavelossim Villagers forum and its President, the Sarpanch of V.P. Cavelossim and its Panchayat Members. It is found that neither the construction activities of the project of Balaji Concept are stopped nor the illegal structures in the water bodies of the said area are rectified or removed by the builders in Sy. No. 90/5, 90/6 &

90/1 in response to the letter No. WRD/SDI/WDII/F.45/590/2013–2014 dt: 18.02.2014. Only a nallah in Sy. No. 91/5 which was filed with mud is restored but with changes from its original alignment at the middle to allow their construction of structures conveniently. Secondly location of the pond in Survey No. 91/1 is not restored. The work of construction of banks of the Nallah with R.C.C. is still carried on vigorously in defiance of the request."

3. The Village Panchayat of Cavelossim, respondent No. 1 has filed a reply justifying the grant of construction license under the Panchayat Act. On the issue of damage to the water channels, it is stated that the notice was duly issued on 28.05.2014 to the project proponent, respondent No. 8. The project proponent in reply dated 30.05.2014, produced various permissions, including permission granted by the Executive Engineer of the Water Resources Department, vide letter dated 23.05.2014, approving the proposal as follows:

"With reference to your proposal submitted vide your letter referred above, the proposal has been scrutinized by this office and this office does not have any objection to the said modification as suggested from the water resource point of view in your property subjected to the following conditions;

1. *The area of pondages/water bodies in the survey numbers should be maintained as per the drawings approved and should not be reduced.*
2. *Proper connectivity should be ensured to all the nallas/drains entering in to the property to discharge storm water/any discharges into the river Sal.*
3. *Proper slopes and cross sections should be maintained as per approved drawings for the nallas/drains.*
4. *Other necessary permissions if any should be obtained by the applicant.*
5. *Seven (7) drawing copies showing lay outcross sections are approved and returned back."*

4. The applicant also filed an additional affidavit dated 28.10.2014 to the effect that on 24.06.2014, officials of Goa Agricultural Department and Goa State Biodiversity Board carried out a joint inspection. The report of the joint inspection was furnished under the RTI Act, 2005 by the Goa Coastal lone Management Authority (GCZMA). The said report *inter-alia* states as follows:

"GE image 02-2013: A significant portion of the NDZ (0-100m) has been filled and reclaimed with mud. This activity is tantamount to a major violation of CRZ 2011 laws.

Several buildings are identified beyond the NDZ. A water body is seen between the buildings (beyond NDZ).

GE image 12-2013: The water body has been filled up and buildings are seen within it. This aspect has been confirmed in the field.

Field inspection showed clear violations of CRZ 2011 notification: a large part of the mandatory NDZ along the river side is filled with mud. The entire area is strewn with construction material as debris is dumped here. New boulders and new metal was also observed. An antecedent waterlogged stretch along the river is being reclaimed gradually (see GE image 02-2013).

Also, a road runs parallel and close to the river; a water tanker was seen parked along the river. Some hutments are present along the river bank. Reclamation is confirmed in the field. The mud road (used by trucks?) is again a CRZ violation.

A mangrove creek, elongated in shape, is noted. This saline water body is connected to the river through a functional sluice gate."

5. The project proponent, respondent no. 8 filed a counter affidavit to the amendment application. The project proponent has also filed an application to dismiss the application being M.A. No. 17 of 2015 in pursuance of the order of the High Court

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of Bombay at Goa dated 19.01.2015 to which reference will be made later, raising the plea of limitation. It is stated that the applicant made a complaint on 02.09.2013 seeking inspection of illegal activities and in view of the said application, cause of the applicant accrued on that date. The said information was withheld while filing the application. During the course of hearing, written submissions have also been filed on behalf of the project proponent giving factual background as well as the submissions on the issue of limitation. It is pointed out that the project commenced on 12.12.2010 after construction licence was granted by the Panchayat.

6. We note that against interim order of the Tribunal, the matter was carried to the Bombay High Court by the project proponent by way of *W.P. No. 594 of 2015* and decided in a group of matters in *Windsor Reality Pvt. Ltd.* v. *Ministry of Environment and Forest* and connected matters, 2016 SCC Online Bom 5613 decided on 09.06.2016. The High Court considered the issue of locus and limitation in the light of two judgments of the National Green Tribunal in *Rana Sen Gupta* v. *U.O.I.*, Appeal No. 54/2012 and *Goa Foundation* v. *Secretary, MoEF*, M.A. No. 49/2013 in Application No. 26/2012. In *Goa Foundation* (Supra), it was held that cause of action arises from the date of knowledge and the date of inaction of the authorities while in *Rana Sen Gupta* (Supra), the view taken is that the applicant therein did not have the locus not being the an aggrieved party. The High Court held that *prima facie*, cause of action is the starting point of limitation and not the date of knowledge. If date of knowledge is cause of action, complaints can be filed even after ten to twenty years. At the same time, the issue of violation of environment law needs to be looked into through the forum where such question to be raised remains a question. Accordingly, the High Court remanded the matter for fresh decision which is as follows:

> *"36. Taking an overall view of the matter and considering the importance of the issues which are raised by the Petitioners and original Applicant and also the fact that impugned order does not address the issue in its proper perspective, we set aside the impugned order and remand the matter to the Tribunal to decide afresh on merits and in accordance with law. During the pendency of the said Misc. Application, further proceedings in the main Application are stayed. Tribunal shall also frame a preliminary issue on the question of limitation and locus after giving an opportunity to both sides and lay down the concept of "aggrieved person" and also on the point whether NGT can entertain an application which is in the nature of PIL which is otherwise maintainable in the High Court and Supreme Court of India. We direct the NGT to decide all these issues within a period of three months."*

7. The applicant carried the matter to the Hon'ble Supreme Court by way of *SLP Civil No. 34831/2016* which has been disposed of on 26.10.2018 with the direction that the Tribunal may pass appropriate orders in terms of para No. 36 of the judgment of the High Court.

8. Accordingly, we have heard the learned counsel for the parties and proceed to deal with the matter.

9. Following questions arise for consideration:

i. Whether the application is within limitation and whether the applicant has locus to file the petition and is an 'aggrieved person' for the purpose.

ii. Whether the NGT can entertain the application in the nature of PIL which is maintainable before the High Court and the Hon'ble Supreme Court.

iii. Order required to be passed on merits.

10. Our consideration and findings are as follows:

Re (i): Whether the application is within limitation and whether the applicant has locus to file the petition and is an 'aggrieved person' for the purpose.

11. Shri Krishnan Venugopal, learned senior counsel for the project proponent

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submitted that limitation under Section 14(3) of the NGT Act, 2010 is six months from the date of cause of action when the dispute first arose. Delay can be condoned not exceeding sixty days. It was submitted that the limitation commences when the cause of action first arises and there is no scope for the concept of continuing cause of action. Reliance has been placed on *Khatri Hotels (P) Ltd.* v. *Union of India*, (2011) 9 SCC 126, wherein question considered was in the context of Article 58 of the Schedule to Limitation Act, 1963 laying down that limitation for a suit for declaration commences when the right to suit first accrues. It was held that successive violation of right will not give rise to fresh cause of action. In *Popat Bahiru Govardhane* v. *Land Acquisition Officer*, (2013) 10 SCC 765, the question for consideration was in the context of Section 28A of the Land Acquisition Act, 1984. It was held that Law of Limitation is to be applied with all its vigour. In *N.C. Dhoundial* v. *Union of India*, (2004) 2 SCC 579, the issue of limitation in the context of Section 36 of the Protection of Human Rights Act came up for consideration. The violation alleged was wrongful detention and date of detention was held to be the point of commencement of limitation.

12. Learned counsel also referred to the judgment of the Bombay High Court referred to above, wherein *prima facie* observations have been made. No laws has been laid down while remanding the matter. Reference has also been made to two orders of this Tribunal being *Aradhana Bhargava* v. *MoEF*, 2013 SCC Online NGT 84 and *Graminee Environment Development Foundation* v. *balaji Infrastructure Ltd.*, 2017 SCC Online NGT 1098. In *Aradhana Bhargava* (Supra), it was held that the applicants had knowledge of the project and did not take the remedy for a long period and thus, the application was barred by limitation. In *Graminee Environment Development Foundation* (Supra), the cause of action started in December, 2008 and the application was filed in the year 2016 which was held to be barred by limitation.

13. Learned counsel for the applicant submitted that the present application is within limitation. Cause of action did not arise merely from sanction of the project or commencement of construction but on arising of 'substantial question of environment' in terms of Section 14 of the NGT Act, 2010. On inspection in December, 2013 and in March, 2014 violations came to light. Representation of 02.09.2013 was general. On that basis alone, the applicant could not involve jurisdiction of the NGT. The judgments relied upon are distinguishable and do not stand against the applicant.

14. It is undisputed that the matter is governed by limitation laid down under Section 14(3) of the NGT Act, 2010. The limitation is six months from the date the cause of action first arose which can be extended up to sixty days. No doubt, the starting point of limitation is the cause of action and not the knowledge but cause of action is a bundle of facts on which it is based. In the said bundle of facts, there may be series of facts. Merely because one part of the fact comes into existence may not be enough if further facts on which the cause is based are of a later date.[1] In *The Forward Foundation* v. *State of Karnataka*[2]., it was held:

> *"24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the*

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period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: Liverpool and London S.P. and I Asson. Ltd. *v.* M.V. Sea Success I, *(2004) 9 SCC 512*, J. Mehta *v.* Union of India, *2013 All (I) Ngt Reporter (2) Delhi, 106*, Kehar Singh *v.* State of Haryana, *2013 All (I) Ngt Reporter (Delhi) 556*, Goa Foundation *v.* Union of India, *2013 All (I) Ngt Reporter Delhi 234].*

Furthermore, the 'cause of action' has to be complete. For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as afore-stated would have to be considered as to when it first arose.

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

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: Khatri Hotels Private Limited *v.* Union of India (UOI), *(2011) 9 SCC 126*, Bal Krishna Savalram Pujari *v.* Sh. Dayaneshwar Maharaj Sansthan, *AIR 1959 SC 798*, G.C. Sharma *v.* Municipal Corporation of Delhi, *ILR (1979) 2 Del 771*, Kuchibotha Kanakamma *v.* Tadepalli Ptanga Rao, *AIR 1957 AP 419].*

29. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011, shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and therefore, there is

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exclusion of the concept of the 'joinder of causes of action' under the Rules of 2011. The multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time. In first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may gives rise to a fresh cause of action.

To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such recurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its recurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of M.R. Gupta *v.* Union of India, *(1995) 5 SCC 628, the Court held that:*

> *"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that it the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other*

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words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action. The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao *v.* Mattapalli, Raju *AIR 1950 FC 1."*

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: Ex. Sep. Roop Singh *v.* Union of India, *(2006) 91 DRJ 324*, Bengal Waterproof Limited *v.* Bombay Waterproof Manufacturing Company, *(1997) 1 SCC 99].*

32. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may

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be at different stages. This expression would not de bar a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose."

15. The above observations fully deal with the issue. Limitation commences not merely from first step in the matter but from continuing facts which show substantial question of environment on account of violation of relevant environmental laws.

16. In the present case it is seen that the cause of action for the applicant is based *inter-alia* on:

i. A report dated 21.03.2014 of the Water Resources Department stating that construction activity was destroying the original water body and will prevent free flow of water.

ii. Letter dated 23.05.2014 of the Water Resources Department imposing conditions while permitting modification of existing water bodies, particularly, the condition that the area of pondage should not be reduced, connectivity of water bodies may be maintained and slope and cross sections are maintained as per the drawing.

iii. Report dated 24.06.2014 by the GCZMA to the effect that activity of the project proponent is a violation of CRZ, 2011 laws.

17. The application filed on 27.05.2014 cannot thus be held to be barred by limitation merely because on 02.09.2013, the applicant had made a complaint of general nature. The said complaint can hardly be said to be complete cause of action and foundation of the present application. The said complaint is quoted in full as follows:

"Sub: Fix date to conduct inspection of Balaji Concepts site at Khandi-Bandoi of Village Cavelossim.

Madam,

We have noticed that Balaji Concepts is moving several truckloads of mud into its area to fill the waterlogged bodies thereby destroying the existing ponds and water access within its area. It is also notice that most of the areas within its vicinity got water logged and the stagnant water smells due to blockage of water access. Such act of water blockade is illegal and bound to create disastrous consequences.

As the water is stagnant due to blockage of water passage in the surrounding areas, it is most likely that several types of mosquitoes may start breeding. This may result in spread of several types of epidemics due to breeding of mosquitoes.

It is also noticed that they have blocked the pathways/public access to river which is illegal.

Hence, you are hereby requested to fix date to conduct inspection of the site of Balaji Concepts immediately and intimate us so as to enable us to attend the said inspection."

18. The cause of action for approaching the Tribunal is a substantial question of environment and not merely a general allegation which may not amount to such substantial question. It may be difficult to say that complaint dated 02.09.2013 without further facts of alleged violation as mentioned in the reports which have been relied upon by the applicant by itself was substantial question of environment. We

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thus hold that the application is within limitation.

Re (ii): Whether the NGT can entertain the application in the nature of PIL which is maintainable before the High Court and the Hon'ble Supreme Court.

19. As regards the applicant being aggrieved party, learned counsel for the project proponent fairly states that this objection is not being raised in the present application but in other cases. However, learned counsel for the applicant points out that the matter is already dealt with by the Tribunal vide order dated 23.08.2016 in *Sameer Mehta* v. *U.O.I.*, 2016 NGTR (3) PB 1, giving an interpretation to the expression 'aggrieved person' and observing that the expression has to be seen liberally once a substantial question of environment arises. While jurisdiction of the NGT is *sui generis* in terms of statutory provisions under the NGT Act, 2010, an order necessary for protection of environment can be passed to enforce principles under Section 20 of the Act i.e. 'Precautionary' principle, 'Sustainable Development' principle and 'Polluter Pays' principle. It may be inevitable to pass orders in the nature of public interest. It may be said to be comparable or otherwise to PIL jurisdiction. Fact remains that jurisdiction under Section 15 read with Section 20 of the Act has to be exercised meaningfully to protect environment. The question is answered accordingly.

Re (iii): Order required to be passed on merits.

20. Coming to the merits, we are informed on behalf of the project proponent that 80% of the project has already completed. Learned counsel for the project proponent also states that water bodies have been filled only to the extent permitted by the Water Resources Department of the State of Goa and there is no violation of the environment norms or conditions subject to which the permission has been granted by the Water Resources Department.

21. We may also note that in the application violation alleged is of Goa State laws, learned counsel for the applicant submits that facts disclose violation of Schedule I laws, including Environment (Protection) Act, 1986.

22. Learned counsel for the applicant relies upon the report of the Water Resources Department of the State of Goa and GCZMA referred to above and submits that the alleged violations need to be gone into.

23. Since the matter has been pending for the last about five years, having regard to the need for expeditious disposal based on correct and latest factual position, we consider it appropriate to direct furnishing of a joint report by representatives of the MoEF & CC, GCZMA, Goa State Pollution Control Board and Water Resources Department, State of Goa. The GCZMA will be the nodal agency for co-ordination and compliance. Such factual report dealing with the issue may be furnished within three months by email at ngt.filing@gmail com. A copy of the order be sent each to the MoEF & CC, GCZMA, Goa State Pollution Control Board and Water Resources Department, State of Goa by email.

24. It will be open to the parties to furnish their respective versions to the GCZMA. It will also be open to the joint Committee to carry out inspection to ascertain status and assess the damage to the environment, if any, and suggest remedial measures.

List for further consideration on 28.08.2019.

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† Principal Bench, New Delhi (Through Video Conferencing)

[1] *Kehar Singh* v. *State of Haryana*, 2013 SCC Online NGT 52

[2] 2015 ALL (i) NGT REPORTER (2) (DELHI) 81

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(2019) 9 Supreme Court Cases 288

(BEFORE DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.)

GOEL GANGA DEVELOPERS INDIA PRIVATE LIMITED .. Appellant;

Versus

UNION OF INDIA THROUGH SECRETARY, MINISTRY OF ENVIRONMENT AND FORESTS AND OTHERS .. Respondents.

IA No. 64665 of 2019† in Civil Appeal No. 10854 of 2016, decided on September 11, 2019

Environment Law — Development vis-à-vis Ecology: National, Urban and Rural Development — Constructed area which is to be treated as "built-up area" for reckoning environmental impact — Ruling in *Goel Ganga Developers*, (2018) 18 SCC 257, that municipal building laws regarding FSI and FAR are irrelevant for reckoning "built-up area" for environmental impact, held, not only does not in any way violate judgment of three-Judge Bench in *Okhla Bird Sanctuary case*, (2011) 1 SCC 744, but rather furthers the spirit of the law laid down therein — Concern of three-Judge Bench in *Okhla Bird Sanctuary case*, was not to reduce the ambit of "built-up area", but rather to enhance it

— Concern of Bench in *Okhla Bird Sanctuary case* was that not only constructed area which is not open to the sky be treated as "built-up area", but *additionally* that constructed area which *is* open to the sky should in appropriate circumstances be treated as "built-up area" due to its environmental impact, and not as "activity area" — Environment Impact Assessment (EIA) Noti. dt. 14-9-2006 — Item 8(a) Columns (4) & (5) — Interpretation — Thus, held, ruling in *Goel Ganga Developers.*, (2018) 18 SCC 257 that all constructed area, which is covered and not open to sky has to be treated as built-up area and that there is no exception for non-FSI area, and that municipal laws regarding FSI and FAR have no relevance, affirmed — Words and Phrases — "Built-up area" (Paras 2 to 7)

NOIDA Memorial Complex Near Okhla Bird Sanctuary, In re, (2011) 1 SCC 744, *explained* and *followed*

Goel Ganga Developers (India) (P) Ltd. v. *Union of India*, (2018) 18 SCC 257, *affirmed*

IA dismissed SS-D/63084/C

Advocates who appeared in this case :

A.N.S. Nadkarni, Additional Solicitor General, Mukul Rohatgi, Ranjit Kumar and Ms Sonia Mathur, Senior Advocates (Venkita Subramoniam T.R., Rahat Bansal, Mehul Gupta, V. Mudgal, Rohit Raj, Shankey Agrawal, Mukesh Verma, Pawan Kr. Shukla, Yash Pal Dhingra, Makarand D. Adkar, Vijay Kumar, Ms Aparna Jha, Nitin Lonkar, Ms Sonali Suryawanshi, Shankey Agrawal, D.L. Chidananda, Ms Suhasini Sen, G.S. Makker, Dr Nishesh Sharma, Ranjan Kr. Chaurasia, Nishant Sharma, Nishant Ramakantrao Katneshwarkar and Aman Verma, Advocates) for the appearing parties.

† Arising from the Judgment and Order in *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213 [National Green Tribunal, Application No. 184 of 2015 (WZ), dt. 27-9-2016]

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

1. (2018) 18 SCC 257, *Goel Ganga Developers (India) (P) Ltd.* v. *Union of India* 289*e-f*, 290*e*, 291*d-e*
2. (2011) 1 SCC 744, *NOIDA Memorial Complex Near Okhla Bird Sanctuary, In re* 289*b*, 290*d*, 290*e*, 290*f*, 291*a-b*, 291*c*, 291*d*, 291*e*

ORDER

1. The only issue involved in this application is whether non-consideration of a judgment delivered by a three-Judge Bench in *NOIDA Memorial Complex Near Okhla Bird Sanctuary, In re*[1], hereinafter referred to as "*NOIDA Park case*", has led to wrong conclusions by this Court with regard to the interpretation of built-up area in terms of Item 8 of the Schedule of the Environment Impact Assessment (EIA) Notification dated 14-9-2006. The relevant portion of the notification reads as follows:

"(1)	(2)	(3)	(4)	(5)
8		*Building/Construction projects/Area development projects and Townships*		
(*a*)	Building and construction projects		≥20,000 sq m and <1,50,000 sq m of built-up area#	#(built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
(*b*)	Townships and area development projects		Covering an area ≥50 ha and or built-up area ≥1,50,000 sq m ++	++All projects under Item 8(*b*) shall be appraised as Category B-1."

2. While interpreting this clause, one of us (Deepak Gupta, J.) held as follows: (*Goel Ganga Developers case*[2], SCC pp. 270-71, paras 16-17)

"*16*. From a bare perusal of the two hashtags (#) in Columns 4 and 5 of Item 8(*a*), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines "built-up area" to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as "built-up area". There is no exception for non-FSI area.

17. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority

1 (2011) 1 SCC 744
2 *Goel Ganga Developers (India) (P) Ltd.* v. *Union of India*, (2018) 18 SCC 257

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which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble, etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built-up area in terms of the EIA Notification dated 14-9-2006."

3. The contention raised on behalf of the applicant is that since the three-Judge Bench had in para 84 of the judgment in *NOIDA Park case*[1] observed that the EIA Notification dated 14-9-2006 calls for a close second look by the authorities concerned especially in respect of the projects/activities falling within the ambit of Items 8(*a*) and 8(*b*) of the Schedule to the Notification which need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness, the two-Judge Bench which delivered the judgment[2] was bound by this judgment[1] of the three-Judge Bench and could not have held that the Notification dated 14-9-2006 clearly shows that all constructed area which is covered and not open to the sky, has to be treated as built-up area.

4. Though the observations in para 84, at first blush, support the contention of the applicant, one has to appreciate the factual background in which these observations were made. In *NOIDA Park case*[1], this Court was asked to intervene and halt a project in which a huge park was being constructed. As far as Item 8(*a*) of the Schedule to the EIA Notification, 2006 is concerned, the contentions in this regard start from para 38. MoEF took the stand that no environmental clearance was required because the project area was 33.43 ha, which was less than 50 ha and the built-up area was 9542 sq m, which was less than 20,000 sq m.

5. It was contended on behalf of the petitioners and the Amicus Curiae that the project would fall under Section 8(*a*) because though the covered construction of the project was only 6999.50 sq m, the project by its very nature provided facilities open to the sky and the whole of this open area, which

1 *NOIDA Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744
2 *Goel Ganga Developers (India) (P) Ltd.* v. *Union of India*, (2018) 18 SCC 257

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was activity area, should be treated as the built-up area. The park consisted of certain constructed structures like pathways, walkways, statues, fountains, etc. which were open to the sky and treated as activity area. The contention of the Amicus Curiae and the petitioners who were objecting to the project was that the construction which was open to the sky and was to be treated as activity area should also be considered as part of the built-up area.

6. The main dispute in *NOIDA Park case*[1] was whether the project was a building and construction project or a township and area development project. This Court held that this was a township and area development project. While considering this dispute the Court felt that there was some ambiguity. This issue did not arise in the case in hand. The second point urged before the Court was that the facilities open to the sky i.e. the activity area should also be included in the built-up area and it was this confusion which the Court wanted the Central Government to settle. No party had raised any contention in *NOIDA Park case*[1] about the covered area being built-up area. All the parties were ad idem that covered construction was built-up area and the Court also held so.

7. This Court in this judgment has only held that all covered construction shall be deemed to be built-up area and that the municipal laws regarding floor space index (FSI) or floor area ratio (FAR) have no relevance. This issue did not arise in *NOIDA Park case*[1]. Therefore, in our opinion, the earlier judgment will have no impact on the present case.

8. Reference was also made to the Notification dated 4-4-2011 and the Clarification dated 7-7-2017. These have already been dealt with in the judgment dated 10-8-2018[2] and those were not points of issue in *NOIDA Park case*[1]. Therefore, we find no merit in the application and the same is dismissed accordingly.

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1 *NOIDA Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744
2 *Goel Ganga Developers (India) (P) Ltd.* v. *Union of India*, (2018) 18 SCC 257

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2021 SCC OnLine SC 897

In the Supreme Court of India

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

Civil Appeal Nos. 12122-12123 of 2018

Municipal Corporation of Greater Mumbai ... Appellant(s);

Versus

Ankita Sinha and Others ... Respondent(s).

With

Civil Appeal No. 86/2019

Civil Appeal No. 5902/2019

Civil Appeal No. 6273 of 2021

(Arising out of SLP(C) No. 6732/2021)

Civil Appeal No. 6274 of 2021

(Arising out of SLP(C) No. 5930/2021)

Civil Appeal No. 6275 of 2021

(Arising out of SLP(C) No. 6733/2021)

Civil Appeal No. 6276 of 2021

(Arising out of SLP(C) No. 16448 of 2021)

Diary No. 11655/2021

Civil Appeal No. 6277-6278 of 2021

(Arising out of SLP(C) No. 16449-16450 of 2021)

Diary No. 13789/2021

Civil Appeal No. 6279 of 2021

(Arising out of SLP(C) No. 16451 of 2021)

Diary No. 13811/2021

Civil Appeal No. 6280-6281 of 2021

(Arising out of SLP(C) No. 16452-16453 of 2021)

Diary No. 13890/2021

Civil Appeal No. 2897/2021

Civil Appeal No. 6282 of 2021

(Arising out of SLP(C) No. 11426 of 2021)

Civil Appeal No. 6283 of 2021

(Arising out of SLP(C) No. 11427 of 2021)

Civil Appeal No. 6262 of 2021

Diary No. 16948 of 2021

Civil Appeal No. 6284 of 2021

(Arising out of SLP(C) No. 11798 of 2021)

Civil Appeal No. 6285 of 2021

(Arising out of SLP(C) No. 12669 of 2021)

Civil Appeal No. 6286 of 2021

(Arising out of SLP(C) No. 16454 of 2021)

Diary No. 19534/2021

Civil Appeal Nos. 12122-12123 of 2018, Civil Appeal No. 86/2019, Civil Appeal No. 5902/2019, Civil Appeal No. 6273 of 2021 (Arising out of SLP(C) No.

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6732/2021), Civil Appeal No. 6274 of 2021 (Arising out of SLP(C) No. 5930/2021), Civil Appeal No. 6275 of 2021 (Arising out of SLP(C) No. 6733/2021), Civil Appeal No. 6276 of 2021 (Arising out of SLP(C) No. 16448 of 2021), Diary No. 11655/2021, Civil Appeal No. 6277-6278 of 2021 (Arising out of SLP(C) No. 16449-16450 of 2021), Diary No. 13789/2021, Civil Appeal No. 6279 of 2021 (Arising out of SLP(C) No. 16451 of 2021), Diary No. 13811/2021, Civil Appeal No. 6280-6281 of 2021 (Arising out of SLP(C) No. 16452-16453 of 2021), Diary No. 13890/2021, Civil Appeal No. 2897/2021, Civil Appeal No. 6282 of 2021 (Arising out of SLP(C) No. 11426 of 2021), Civil Appeal No. 6283 of 2021 (Arising out of SLP(C) No. 11427 of 2021), Civil Appeal No. 6262 of 2021, Diary No. 16948 of 2021, Civil Appeal No. 6284 of 2021 (Arising out of SLP(C) No. 11798 of 2021), Civil Appeal No. 6285 of 2021 (Arising out of SLP(C) No. 12669 of 2021), Civil Appeal No. 6286 of 2021 (Arising out of SLP(C) No. 16454 of 2021) and Diary No. 19534/2021

Decided on October 7, 2021

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.:—

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

2. Leave granted in the Special Leave Petitions.

3. The consideration to be made in these matters is whether the National Green Tribunal (for short "the NGT") has the power to exercise *Suo Motu* jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short, "the NGT Act 2010").

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

5. The NGT took *suo motu* cognizance of the above article vide order dated 07.08.2018 and directed that the article writer Ankita Sinha be the applicant in the case OA No. 510 of 2018, registered at the NGT's instance. Thereafter, steps were taken for inspection of the Deonar Dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of Greater Mumbai (for short "the MCGM"). Pursuant to the Report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, the NGT vide order dated 30.10.2018 noted that '*damage to the environment and public health is self-evident*' and ordered MCGM to pay compensation to the tune of Rs. 5 crores.

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

7. Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, Mr. Dhruv Mehta, Mr. Atmaram Nadkarni, Mr. Krishnan Venugopal, Mr. V. Giri, Mr. Sajan Poovayya and Mr. Sidhartha Dave, learned Senior Counsel together with Mr. E.M.S Anam, Ms. Amrita

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Sharma, Mr. S. Thananjayan have taken a common stand. They have argued that the NGT is a Tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act *suo motu*, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed. The learned counsel also argue that the NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, the NGT by acting *suo motu* cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with the NGT (which is available with superior courts) is highlighted to keep away *suo motu* power from the NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in later part of this order.

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

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

10. Representing the Central Government, Ms. Aishwarya Bhati, the learned Additional Solicitor General of India submitted that *Suo Motu* power is not exercisable by the NGT since the same has not been conferred on the forum under the NGT Act, unlike the situation in the now repealed *National Environment Tribunal Act, 1995* (hereinafter referred to as the "NET Act"). The counsel refers to the provisions of the NGT Act and submits that the concept of *locus standi* was expanded for NGT's intervention under Section 18(2)(e) but the tribunal is not vested with *suo motu* power to take action on its own unlike the High Courts and the Supreme Court. The learned ASG, however, submits that even on receipt of a letter, the NGT can commence action on environmental matters. Thus, on exercise of epistolary jurisdiction by the NGT, the ASG is on the same page as the *amicus curiae* but as earlier noted both counsel argue for keeping away the *suo motu* power from the NGT.

11. Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away *suo motu* power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered* v. *Dharminder Bhohi*[2] wherein, provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus, Section 19(25)

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conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

12. Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore* v. *Union of India*[3], opined on behalf of a Division Bench that,

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

13. The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak* v. *Achyut Kashinath*[4], observed as under:—

> "34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised."

14. The second limb of contention is that the Act is applicable to '*disputes*' as, necessarily referring to a *lis* between two parties. The counsel has relied upon *Techi Tagi Tara* v. *Rajendra Singh Bhandari*[5] wherein the term '*substantial question relating to environment*' was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

> "19. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute — it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.
>
> 20. ...In *Prabhakar* v. *Deptt. of Sericulture* [*Prabhakar* v. *Deptt. of Sericulture*, [(2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] the following definition of "dispute" was noted in paras 34 and 35 of the Report : (SCC p. 21)
>
> "*34*. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:
>
> '"*Dispute*".—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;'
>
> *35*. *Black's Law Dictionary*, 5th Edn., p. 424 defines "dispute" as under:
>
> '*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.'"

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

16. Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226

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and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board* v. *Sterlite Industries (I) Ltd.*[6] Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

> "41. ...Suffice it to say that the NGT is not a tribunal set up either under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act.....
>
> 43. ...In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(*b*) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges and Immunities of State Legislatures, In re* [*Powers, Privileges and Immunities of State Legislatures, In re*, [(1965) 1 SCR 413 : AIR 1965 SC 745], made in the following words : (SCR p. 499 : AIR p. 789, para 138)
>
> > "*138*. We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.
> >
> > 'Prima facie', says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England*, Vol. 9, p. 349]'."
>
> For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in *BSNL* [*BSNL* v. *TRAI*, [(2014) 3 SCC 222], we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in *Wilfred J.* v. *Ministry of Environment & Forests* [*Wilfred J.* v. *Ministry of Environment & Forests*, [2014 SCC OnLine NGT 6860] must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected."

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

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

18. In order to understand the contours of jurisdiction of the NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which

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shaped the creation of the NGT and the broad issues that they sought to address through the specialized institution should now be brought to the fore.

19. The precursor to the NGT Act was the 186th Report of the Law Commission of India dated 23.9.2003 where the Law Commission had made the following pertinent observation espousing the case for the creation of a specialized Court to deal with environmental issues:—

> "It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.
>
> These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Art. 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer Courts at the District and State level, the High Courts have consistently refused to entertain writ petitions under Art. 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.
>
> It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts."

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

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

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

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of India, [(1997) 3 SCC 261.

No doubt, the Environment Court exercising powers of a Civil Court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter."[7]

22. Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of the NGT.

23. This is how the proposed forum was made free from the rules of evidence and the NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts etc. The observance of the principles of natural justice was however mandated.

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

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

"2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at *Rio de Janeiro* in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a

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specialized tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."

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

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

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

28. The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

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

III. THE NEED FOR PURPOSIVE INTERPRETATION

30. While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgement, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging societal concerns and these have prompted us to opt

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for purposive interpretation. The Statue will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes*, authored by Justice G.P. Singh who explained thus,

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

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

32. The application of the *Heydon's Rule* could adequately aid us here as the Rule directs adoption of that construction which "*shall suppress the mischief and advance the remedy*" as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co.* v. *State of Bihar*[8],

> "...the office of all judges is to make such construction as shal suppresses the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

33. Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

> 'A purposive construction of an enactment is one which gives effect to the legislative purpose by—
>
> (*a*) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or
>
> (*b*) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.'

34. Justice Frankfurter of US Supreme Court in '*Some Reflections on the Reading of Statutes*', has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner,

> 'The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.
>
> ...
>
> Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'."[9]

35. Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo's phraseology in *Panama Refining Co.* v. *Ryan*, and the same is taken as a lodestar in our quest,

> "the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view"[10].

36. The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew

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procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.[11] The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

IV. SALIENT STATUTORY FEATURES OF NGT ACT

37. Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions will require the Court's attention. Section 2(1)(c) of the NGT Act defines the term "environment"; Section 2(1)(m) defines "substantial question relating to environment". Chapter III relates to jurisdiction, power and proceedings of the Tribunal. The Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) "*as the Tribunal may think fit*". Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) "*any person aggrieved including any representative body/organization*" and the *locus standi* is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the CPC and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

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

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

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

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

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the environmental principles and even hauling up authorities for inaction, when need be.

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

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

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

V. NON-ADJUDICATORY ROLES OF NGT

44. As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See *Vellore Citizens' Welfare Forum* v. *UOI*[12]; *M.C. Mehta* v. *UOI*[13] etc.]

45. The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc. As one looks at these enactments, an expanded role for the NGT is clearly discernible. The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

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

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

> "The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. .... The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive

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jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time."

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

49. With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan* v. *Union of India*[14], highlighted the NGT's role in the context, in the following words:—

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice."

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

VI EXERCISE OF SUO MOTU POWER BY NGT

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

52. Explaining the purpose for constituting the special court to deal with environmental issues, in *Mantri Techzone (P) Ltd.* v. *Forward Foundation*[15], Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:—

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

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

54. Elaborating further, in paragraphs 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that,

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

55. Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri* v. *DDA*[16] was not to constrict the *suo motu* powers of the NGT. To appreciate the implication of the ratio in *Rajeev Suri*, it must be noticed that it was in the specific context of '*Merits Review*' and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

> "503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

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

57. The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in *Andhra Pradesh Pollution Control Board* v. *Prof. M. V. Nayudu (Retd.)*[17] where Justice M. Jagannadha Rao speaking for a Division Bench referred to a comparable court in Australia and noted the following,

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

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

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VII. UNIQUENESS OF NGT VIS-A-VIS OTHER TRIBUNALS

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

60. The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok Bhushan in *State of Meghalaya* v. *All Dimasa Students Union*[18], fittingly observed thus:—

> "163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain* v. *CIT* [*L. Hirday Narain* v. *CIT*, [(1970) 2 SCC 355], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14 : (SCC p. 359)
>
> > "14. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private— of a citizen."

61. Reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising "*wide range of jurisdiction*" and the "*wide range of powers*", given to it by the statute.

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

> "The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the rule of law and promoting good governance."[19]

VIII. THE SUI GENERIS ROLE OF NGT

63. The NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution. The structure of *Sui generis* institutions was explained in *Paramjit Kaur* v. *State of Punjab*[20], wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,

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

64. In *DG NHAI* v. *Aam Aadmi Lokmanch*[21], Justice S. Ravindra Bhat commenting on the *sui generis* role of the NGT, so appropriately stated as follows:—

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

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

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

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

70. The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

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

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

73. It may also be relevant to bear in mind that while dealing with contested cases,

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the NGT is required to pass "*award*" and "*order*" and the statute repeatedly uses the word "*decision*". Therefore, it is appropriate to correlate the word "*decision*" to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in *DG, NHAI* (supra).

74. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in *State of Punjab* v. *Shamlal Murari*[22] has so correctly prioritized the substantive rights and observed succinctly,

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

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

X. THE PRECAUTIONARY PRINCIPLE

76. Tracing the origin of the *Precautionary Principle*, Scott Lafranchi in his treatise[23] has expounded on the proactive role of the authorities in the following passage:—

> "Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm."16 The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "'can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies.'"

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

78. As earlier seen, S.20 of the NGT Act which includes the term "*decision"*, in addition to "*order*" and "*award*", also require the Tribunal to apply the '*Precautionary Principle*' and the statutory mandate being relevant is extracted:—

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

79. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other '*decisions*' or '*orders*' to governmental authorities or polluters, when they fail to "*to anticipate,*

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prevent and attack the causes of environmental degradation"[24]. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

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

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

81. The above could be a pointer towards the preemptive functions of the NGT as a *sui generis* body.

XI. ENVIRONMENTAL JUSTICE AND ENVIROMENTAL EQUITY

82. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.[25] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

83. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role of the Courts in Environmental Law*, wrote the following evocative passage on the concept of environmental justice,

> "Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity", which is understood to mean the fair distribution of environmental risks and protection from environmental harms."[26]

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

> "Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school",

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whereas the people who reside there do little or nothing to harm their community."[27]

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

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

> "The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."[28]

87. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the '*Blindfold of Lady Justice*', which symbolizes "*the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class.*"[29] The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

88. Proceeding with the above understating, we can comfortably place the NGT within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing- *Environmental Law And Policy In India*, have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights[30], liberalizing the concept of *locus standi* in environmental matters, exercising *suo motu* powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.[31]

89. By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a pollution free environment for a holistic existence.[32] Most crucially, the expansion of Right to Life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar* v. *State of Bihar*, this Court explicitly held the following,

> "Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life."[33]

90. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the '*Absolute Liability Principle*'[34] by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and

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mechanisms in this sphere have been created, on account of this Court's initiative.

> "The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. ...The right was recognized as part of the right to life in 1991. ... The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."[35]

91. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.[36] There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the '*at risk*' nature of some populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.[37]

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

> "The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.
>
> ...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned."[38]

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

94. Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand Management & Development Authority* v. *Central Empowered Committee*[39] so succinctly said that,

> "40. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools - conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges - of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the

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preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts."

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

"With reference to the judicial enforcement of environmental law - which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order - the National Green Tribunal of India seems to be the most comprehensive and promising among the specialized environmental Courts created in Asia over the last decade."[40]

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

X. CONCLUSION:

97. Before we set out our conclusion, we acknowledge the able contribution of Mr. Anand Grover as *amicus curiae*, assisted by Ms. Astha Sharma, AOR who were requested to assist the Court on the central issue of *suo motu* jurisdiction of NGT.

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

99. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists[41] with many countries declaring climate emergencies and many others being urged to follow suit[42].

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

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

102. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum

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created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "*global impacts of climate change will fall disproportionately on minority and low-income communities*".[43] Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

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

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

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

106. One could admit to the argument of danger of *suo motu* jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedurals safeguards clarified above in play, the nature of the trigger itself viz. a letter or a '*suo motu*' initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

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

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

109. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being

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heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

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[1] *Beckett, S.* (1954). Waiting for Godot : Tragicomedy in 2 Acts.

[2] (2013) 15 SCC 341

[3] (2008) 1 SCC 125

[4] (2011) 9 SCC 541

[5] (2018) 11 SCC 734

[6] (2019) 19 SCC 479

[7] Chapter II, 186th Law Commission Report.

[8] (1955) 2 SCR 603; AIR 1955 SC 661

[9] 47 Columbia Law Review 527

[10] 293 US 388 (1935) (dissenting)

[11] *Sarah Mathew* v. *Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62, *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia*, (2008) 3 SCC 279.

[12] (1996) 5 SCC 647

[13] (1997) 2 SCC 353

[14] (2012) 8 SCC 326

[15] (2019) 18 SCC 494

[16] 2021 SCC OnLine SC 7.

[17] (1999) 2 SCC 718

[18] (2019) 8 SCC 177

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

[20] (1999) 2 SCC 131

[21] 2020 SCC OnLine SC 572

[22] (1976) 1 SCC 719

[23] Scott La Franchi, Surveying the Precautionary Principle's Ongoing Global Development : *The Evolution of an Emergent Environmental Management Tool*, [32 B.C. Envtl. Aff. L. Rev. 679 (2005)

[24] *Vellore Citizens* (supra), *S. Jagannathan* v. *Union of India*, (1997) 2 SCC 87, *Karnataka Industrial Areas Development Board* v. *C Kenchappa*, (2006) 6 SCC 371.

[25] Schlosberg D, Defining Environmental Justice : Theories, Movements, and Nature (Oxford University Press 2009)

[26] Schiffer, L. J., & Dowling, T. J. (1997). Reflections On The Role Of The Courts In Environmental Law. Environmental Law, 27(2), 327-342.

[27] Jeff Todd, *A "Sense of Equity" in Environmental Justice Litigation*, [44 HARV. ENVTL. L. REV. 169, 193 (2020).

[28] Supra Note 26.

[29] Ibid

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[30] *Rural Litigation And Entitlement Kendra* v. *State Of U. P.*, AIR 1985 SC 652, *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613, *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577

[31] See M.A.A. Baig, Environmental Law And Justice(1996). Domenico Amirante, Environmental Courts In Comparative Perspective : Preliminary Reflections On The National Green Tribunal Of India (2012). M.K. Ramesh, Environmental Justice : Courts And Beyond, Indian Jo. Of Envtl. L. 20(2002).

[32] Maheshwara Swamy, N. Law Relating to Environmental Pollution and Protection. India, Thompson Reuters, Vol.I, Ed.5.

[33] (1991) 1 SCC 74.

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

[35] Rajamani, Lavanya. 2007. Public Interest Environmental Litigation in India : Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability. Journal of Environmental Law

[36] Supra, Note 19.

[37] *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176, *Indian Council for Environmental-Legal Action* v. *Union of India*, (1996) 3 SCC 212, *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718, *A.P. Pollution Control Board II* v. *M.V. Nayudu*, (2001) 2 SCC 62.

[38] Justice T.S. Doabia, Environmental & Pollution Laws in India, 3rd Ed., Vol 2 (2017).

[39] (2021) 4 SCC 309

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

[41] Indian Network for Climate Change Assessment, Climate Change and India : A 4X4 Assessment - A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16 November 2010

[42] Secretary-General's Remarks at the Climate Ambition Summit. United Nations. United Nations, December 12, 2020.

[43] Supra Note 23.

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