

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE, AT PUNE

ORIGINAL APPLICATION NO. 83/2019

Tanaji Balasaheb Gambhire ... **APPLICANT**

V/s

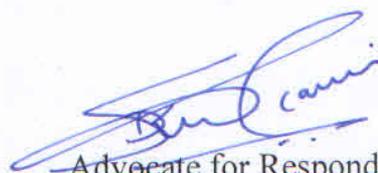
Union of India and others ... **RESPONDENTS**

COMPILATION OF JUDGMENTS ON BEHALF OF
RESPONDENT No.10

<u>Sr.No.</u>	<u>Judgment</u>	<u>Page Nos.</u>
1.	2019-9-SCC-479 Tamil Nadu Pollution Control Board V/s Sterlite Industries (India) Ltd. & Ors	721-767
2.	2011-SCC Online-NGT-14 M/s.Athiappa Chemicals Pvt. Ltd. V/s Puducherry Pollution Committee & Ors	768-770
3.	Original Application No.135 of 2015 Narinder Kumar Shukla & Ors. V/s. Jagish Saphiya & Ors.	771-793
4.	2010-5-SCC-388 Goan Real Estate & Construction Ltd V/s Union of India & Ors.	794-806

Pune

Date: 9-1-2021



Advocate for Respondent No.10

T.N. POLLUTION CONTROL BOARD v. 479
STERLITE INDUSTRIES (I) LTD.

(2019) 19 Supreme Court Cases 479

2-Judge
Bench

2019
Feb. 18

a (BEFORE ROHINTON FALI NARIMAN AND NAVIN SINHA, JJ.)
TAMIL NADU POLLUTION CONTROL BOARD . . . Appellant;
Versus
STERLITE INDUSTRIES (INDIA) LIMITED
AND OTHERS . . . Respondents.

b Civil Appeals Nos. 4763-64 of 2013[†] with Nos. 8773-74
and 9542-43 of 2013, 5782 of 2014, 23 of 2019[‡], 1552-54
of 2019 and 1582 of 2019, decided on February 18, 2019

c **A. Environment Law — National Green Tribunal — Appellate jurisdiction — Scope of — Original orders of TNPCB made under S. 27 of the Water Act and S. 21 of the Air Act — Appeal against, before NGT — Non-exhaustion of remedy of first appeal before appellate authority under S. 28 of Water Act or under S. 31 of the Air Act — Appeal before NGT, on facts, held, not maintainable — Since no decision has been made by appellate authority under the Water Act or Air Act, any direct appeal to NGT against the original order of TNPCB is not maintainable — Thus NGT's order in said appeal is without statutory powers and therefore, without jurisdiction — An appeal is a creation of statute and an Appellate Tribunal has to act strictly within domain prescribed by statute — Leapfrog appeals to the NGT not prescribed by statute would necessarily be without jurisdiction**

d — Orders of NGT set aside on ground of maintainability — Relief — Parties relegated to position that the six orders impugned before NGT are alive and operative — Respondents given liberty to file writ petition before High Court against said six orders — As respondent's plant had been shut down since 9-4-2018 and was involved in import/export of important product, respondents given liberty to approach High Court for expeditious disposal of their writ petition (Para 46)

e — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 27, 28 and 33-B — Air (Prevention and Control of Pollution) Act, 1981 — f Ss. 21, 31 and 31-B — National Green Tribunal Act, 2010, Ss. 16(a) and (f) (Paras 22 to 33 and 46)

g **B. Environment Law — National Green Tribunal — Appellate jurisdiction — Scope of — Original composite orders of TNPCB under S. 33-A of the Water Act and S. 31-A of the Air Act — Appeal against, before NGT — Directions under Water Act appealable to NGT but not those under Air Act — Composite appeal to NGT, held, not maintainable — Not possible to split aforesaid orders and say that so far as they affect water pollution, they**

h [†] Arising from the Judgment and Order in *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 1886 (National Green Tribunal, Principal Bench at New Delhi, Appeal No. 57 of 2013, dt. 31-5-2013); *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68 (National Green Tribunal, Appeal No. 57 of 2013, dt. 8-8-2013)
[‡] Arising from the Judgment and Order in *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239 (National Green Tribunal, Appeal No. 87 of 2018, dt. 15-12-2018)

are appealable and not appealable so far as they relate to air pollution — Plea based on S. 14 of the NGT Act not tenable as S. 14 only refers to original jurisdiction of NGT and not appellate jurisdiction

— Water (Prevention and Control of Pollution) Act, 1974 — Ss. 33-B and 33-A — Air (Prevention and Control of Pollution) Act, 1981 — Ss. 31-B and 31-A — National Green Tribunal Act, 2010, Ss. 16(c) and 14 (Paras 36 and 46)

C. Environment Law — National Green Tribunal — Appellate jurisdiction — Scope of — Order of State Government under S. 18 of the Water Act, not appealable to NGT either under Water Act or under NGT Act, held, cannot be judicially reviewed by NGT — NGT has no general powers of judicial review as those vested in High Court under Art. 226 of the Constitution — NGT is not a tribunal set up either under Art. 323-A or Art. 323-B of the Constitution

— An appeal being a creature of statute, an order passed under S. 18 of the Water Act is either appealable or not — If it is not, general argument as to NGT being an expert body set up to deal with environmental matters can be of no help — Argument that order under S. 18 of the Water Act can be traced to S. 29 of the Water Act, not tenable — S. 18 of the Water Act order does not purport to be an order which either affirms or sets aside any order made under Ss. 25, 26 or 27 of the Water Act — Order under S. 18 of the Water Act is, thus, not a quasi-judicial order and cannot be traced to revisional powers under S. 29 of the Water Act — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 18, 29 and 25 to 27 — Courts, Tribunals and Judiciary — Courts, Tribunals and Special Courts — Tribunals — Jurisdiction and powers of a tribunal — Strictly circumscribed by statute creating the tribunal — Constitution of India, Arts. 323-A and 323-B and Art. 226 (Paras 40 to 46)

The respondent industry allegedly violated provisions of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) as well as the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) for which the local residents complained of several health problems. Though the Tamil Nadu Pollution Control Board (TNPCB) had initially granted permission to commence production, the respondent industry allegedly did not comply with the conditions imposed. The TNPCB therefore, directed the closure of respondent industry and refused to renew the consent for its operation. During pendency of appeal before the appellate authority against the orders of the TNPCB, the Tribunal took up the matter and finally disposed them of by its orders. The appeal before the appellate authority became infructuous. The main issue in present case is as to maintainability of the orders passed by the National Green Tribunal [NGT] dated 31-5-2013, 8-8-2013 and 15-12-2018.

Disposing off the appeals, the Supreme Court

Held :

(I) Re: Order dated 9-4-2018

The Order dated 9-4-2018 is an order which rejected renewal of consent to operate, and therefore, is traceable to Section 27 of the Water Act and Section 21

a of the Air Act. There is no doubt whatsoever that an appeal against an order made under Section 27 of the Water Act is appealable to the appellate authority under Section 28 of the said Act. Under Section 33-B(a) of the said Act, if a person is aggrieved by an order or decision of the appellate authority under Section 28, it is then appealable to the NGT. This is made clear also by Section 16(a) of the NGT Act. Equally, an order refusing consent under Section 21 of the Air Act is appealable to the appellate authority under Section 31 of the Air Act, and thereafter, from the said appellate authority's order, to the NGT, under Section 31-B of the Air Act and Section 16(f) of the NGT Act. (Para 22)

b An appeal to the appellate authority under the Air Act and the Water Act was, in fact, preferred, being Appeals Nos. 36-37 of 2018. While these appeals were pending before the appellate authority, the composite Appeal No. 87 of 2018 was filed on 22-6-2018 before the NGT inter alia against the order of refusal of consent to operate dated 9-4-2018. The respondents submitted that the appeals could not be heard since the State Government had passed an order dated 28-5-2018 directing the TNPCB to close down the plant permanently. What is missed by the respondents is the fact that the said order expressly states that the appeals could not be decided *at this juncture* and were hence adjourned to 10-7-2018. The said appeals on 10-7-2018 were further adjourned, and it is only on 18-12-2018 that they were finally withdrawn as being infructuous in view of the fact that the NGT had passed its order on 15-12-2018 in which it had set aside the order dated 9-4-2018. (Para 23)

c An appeal is a creature of statute and an Appellate Tribunal has to act strictly within the domain prescribed by statute. It is obvious that an appeal would lie from an order or decision of the appellate authority under Section 28 of the Water Act to the NGT only under Section 33-B(a) of the Water Act read with Section 16(a) of the NGT Act. Similarly, an appeal would lie from an order or decision of the appellate authority under Section 31 of the Air Act to the NGT only under Section 31-B of the Air Act read with Section 16(f) of the NGT Act. Obviously, since no order or decision had been made by the appellate authority under either the Water Act or the Air Act, any direct appeal against an original order to the NGT would be incompetent. NGT's jurisdiction being strictly circumscribed by Section 33-B of the Water Act, read with Section 31-B of the Air Act, read with Sections 16(a) and (f) of the NGT Act, would make it clear that it is only orders or decisions of the appellate authority that are appealable, and not original orders. On the facts of the present case, it is clear that an appeal was pending before the appellate authority when the NGT set aside the original order dated 9-4-2018. This being the case, the NGT's order being clearly outside its statutory powers conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction. (Para 32)

d *Manohar Lal v. Ugrasen*, (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524; *Kundur Rudrappa v. Mysore Revenue Appellate Tribunal*, (1975) 2 SCC 411; *Cellular Operators Assn. of India v. Union of India*, (2003) 3 SCC 186; *B. Himmatlal Agrawal v. Competition Commission of India*, (2018) 17 SCC 421; *Raja Soap Factory v. S.P. Shantharaj*, (1965) 2 SCR 800 : AIR 1965 SC 1449; *Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd.*, (1997) 4 SCC 452; *Arcot Textile Mills Ltd. v. Regl. Provident Fund Commr.*, (2013) 16 SCC 1 : (2014) 3 SCC (L&S) 358, *relied on*

Kundur Rudrappa v. Mysore Revenue Appellate Tribunal, 1973 SCC OnLine Kar 47 : ILR 1973 Mys 281; *Cellular Operators Assn. of India v. Union of India*, 2002 SCC OnLine Tdsat 9, held, reversed

Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393; *Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad*, (1999) 4 SCC 468 : 1994 SCC (L&S) 993; *State of Haryana v. Maruti Udyog Ltd.*, (2000) 7 SCC 348; *Super Cassettes Industries Ltd. v. State of U.P.*, (2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280; *Raj Kumar Shivhare v. Directorate of Enforcement*, (2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712; *Competition Commission of India v. SAIL*, (2010) 10 SCC 744; *Edukanti Kistamma v. S. Venkatareddy*, (2010) 1 SCC 756 : (2010) 1 SCC (Civ) 244, cited

In the United Kingdom, there are several Acts under which a leapfrog appeal is permitted if a point of law of general public importance is involved. No such provisions, as are contained in the UK Acts, being present in any of the Acts of present case, such leapfrog appeals to the NGT would necessarily be without jurisdiction. (Paras 33 to 35)

S. Franses Ltd. v. Cavendish Hotel (London) Ltd., (2018) 3 WLR 1952 : 2018 UKSC 62, referred to

(II) Re: Orders passed under Section 33-A of the Water Act and Section 31-A of the Air Act

It is important to state that Section 33-B of the Water Act and Section 31-B of the Air Act were both enacted on 18-10-2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33-B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued under Section 33-A of the Water Act are appealable to the NGT, directions issued under Section 31-A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given under Section 31-A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. The argument that these orders being substantially relatable to the Water Act is not tenable. Equally disingenuous is the reference to Section 14 of the NGT Act which only refers to the original jurisdiction of the NGT and not to its appellate jurisdiction. Also, to state generally that the subject-matter of environment lies with the NGT, is an argument of despair that must be dismissed for the reason that an appeal being a creature of statute, a statute either confers a right of appeal or it does not. In the present case, so far as directions issued under Section 31-A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. In the present case, all the appellate proceedings to the NGT, whether under the Air Act, the Water Act, or the NGT Act have been brought into force on the same date. Whereas the identical power to give directions by the Board under the Water Act is appealable to the NGT, the same power to give directions by the Board under the Air Act is not so appealable. The absence of any mention of Section 31-A in Section 31-B of the Air Act, given the statutory scheme as aforesaid, makes it clear that even this argument must be rejected. Also, “directions” that are issued under Section 31-A of the Air Act are of a different quality from “orders” referred to in Section 31 of the same Act. Directions are issued in the exercise of powers and performance of functions under the Act and

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a are not quasi-judicial in nature, whereas orders that are appealed against under Section 31 are quasi-judicial orders made, inter alia, under Section 21 of the Air Act. It is argued, with particular reference to the Explanation to Section 31-A of the Air Act that “directions” partake of the nature of “orders” when closure of any particular industry or stoppage of supply of electricity qua any single industry is made, and therefore, such directions are appealable as orders under Section 31 of the Air Act. This argument is also of no avail as Section 33-A of the Water Act contains an identical explanation to that contained in Section 31-A of the Air Act.

b Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. (Para 36)

c *Garikapati Veeraya v. N. Subbiah Choudhry*, 1957 SCR 488 : AIR 1957 SC 540, *relied on* *Kanhiya Lal Omar v. R.K. Trivedi*, (1985) 4 SCC 628; *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*, (1984) 4 SCC 27; *Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.*, (2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765; *Allokam Peddabbayya v. Allahabad Bank*, (2017) 8 SCC 272 : (2017) 4 SCC (Civ) 62, *distinguished*

Paritosh Bhupeshkumar Sheth v. Maharashtra State Board of Secondary and Higher Secondary Education, 1980 SCC OnLine Bom 148 : 1981 Mah LJ 587, *held, reversed*

P. Ramanatha Aiyar’s Law Lexicon and *Black’s Law Dictionary*, *referred to*

d **(III) Re: Order passed under Section 18 of the Water Act**

e So far as the order dated 28-5-2018 is concerned, this order is expressly stated to be made under Section 18 of the Water Act. There is no doubt whatsoever that such an order is not appealable to the NGT either under the Water Act or under the NGT Act. However, it was argued that Section 18 is referable to orders generally made, and falls under Chapter IV of the Water Act, which deals with powers and functions of Boards, as opposed to the sections that follow in Chapter V, which deals with prevention and control of water pollution, which orders are made against individuals and individual industries. On the assumption that this argument is correct, such order can only be set aside in a suit by a civil court, or under Article 226 of the Constitution of India by a High Court. It is not possible to agree with the argument of Shri Sundaram that such orders can be ignored, being non est.

f It is settled that an administrative order, when made, does not bear the brand of invalidity on its forehead. Therefore, this order can only be set aside either in a suit, or by the High Court in the exercise of judicial review. It was then argued that though the said order states that it is traceable to Section 18 of the Water Act, it can, in fact, be traced to Section 29 of the same Act. Section 29 deals with the revisional power, in which the State Government is to pass a quasi-judicial order after hearing both the State Board and the person who is affected. Quite obviously, this order is not a quasi-judicial order as the State Government has not found it necessary to hear either the State Board, or any person affected by such order. Further, such order does not purport to be an order which either affirms or sets aside any order made under Sections 25, 26, or 27 of the Water Act. This argument of despair, therefore, must also be rejected. (Para 40)

g *Smith v. East Elloe Rural District Council*, 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL); *State of Punjab v. Gurdev Singh*, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082; *Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*, (1997) 3 SCC 443;

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Pune Municipal Corpn. v. State of Maharashtra, (2007) 5 SCC 211; *Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*, (2011) 3 SCC 363; *Port of Kandla v. Hargovind Jasraj*, (2013) 3 SCC 182 : (2013) 2 SCC (Civ) 1, *relied on*

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. Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985. (Para 41)

L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577, *distinguished* *Union of India v. Madras Bar Assn.*, (2010) 11 SCC 1; *State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.*, (2012) 10 SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Cri) 35 : (2013) 1 SCC (L&S) 56, *cited*

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. There is a distinction between a superior court of record and courts of limited jurisdiction. The State Government's 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. The NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India. (Para 43)

BSNL v. TRAI, (2014) 3 SCC 222, *followed*

Powers, Privileges and Immunities of State Legislatures, In re, (1965) 1 SCR 413 : AIR 1965 SC 745, *relied on*

Wilfred J. v. Ministry of Environment & Forests, 2014 SCC OnLine NGT 6860, *partly overruled*

Halsbury's Laws of England, Vol. 9, p. 349, *referred to*

If as submitted, the order submitted by the State Government is a direction to the TNPCB and not to the respondent, there would have been no necessity to file an appeal before the NGT against such order. To then say that this order which is challenged would be defended on certain grounds, as a result of which, the NGT then gets vested with the jurisdiction to decide the same, is again to put the cart before the horse. It is clear that no appeal is provided against orders made under Section 18 of the Water Act, and the attempt to bring the NGT in by the backdoor, as it were, would, therefore, have to be rejected. Also, to argue that as against a writ court acting under Article 226 of the Constitution of India, the NGT is an expert body set up only to deal with environmental matters, again does not answer the specific issue before the Court. An appeal being a creature of statute, an order passed under Section 18 of the Water Act is either appealable or it is not. If it is not, no general argument as to the NGT being an expert body set up to hear environmental matters can be of any help. (Para 44)

a Equally, so far as the order dated 8-8-2013 is concerned, the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. This, again, is an argument that cannot be countenanced. If an appellate authority is either not yet constituted, or not properly constituted, a leapfrog appeal to the NGT cannot be countenanced. The NGT is only conferred with appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction. (Para 45)

b In conclusion, the court is cognizant of the fact that the respondent's plant has been shut down since 9-4-2018. Since the impugned judgments of the NGT is set aside on the ground of maintainability, the order dated 22-1-2019 passed by the TNPCB, being a consequential order, is also set aside. The respondents are relegated to the position that the six orders impugned before the NGT, dealt with by the impugned judgment dated 15-12-2018, and the order dated 29-3-2013, dealt with by the final judgment dated 8-8-2013, are alive and operative. Thus, it will be open for the respondents to file a writ petition in the High Court against all the aforesaid orders. If such writ petition is filed, it will be open for the respondent to apply for interim reliefs considering that their plant has been shut down since 9-4-2018. Also, since their plant has been so shut down for a long period, and they are exporting a product which is an important import substitute, the respondent may apply to the Chief Justice of the High Court for expeditious hearing of the writ petition, which will be disposed of on merits notwithstanding the availability of an alternative remedy in the case of challenge to 9-4-2018 order of the TNPCB. The appeals are disposed of accordingly. (Para 46)

c *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 1886; *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68; *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239, *reversed*

e *National Trust for Clean Environment v. Union of India*, 2010 SCC OnLine Mad 6495; *Vedanta Ltd. v. Inspector General of Police*, 2018 SCC OnLine Mad 10223; *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3334; *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1238; *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3335; *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3337, *referred to*

SS-D/62520/S

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

h 1. 2018 SCC OnLine Mad 10223, *Vedanta Ltd. v. Inspector General of Police* 488g
2. 2018 SCC OnLine SC 3337, *State of T.N. v. Vedanta Ltd.* 491a-b
3. 2018 SCC OnLine SC 3335, *State of T.N. v. Vedanta Ltd.* 490g

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5.	2018 SCC OnLine NGT 1239, <i>Vedanta Ltd. v. State of T.N. (reversed)</i>	487d-e, 489d-e, 489f-g, 494b, 494b-c, 506b, 507f, 509c-d, 525c	a
6.	2018 SCC OnLine NGT 1238, <i>Vedanta Ltd. v. State of T.N.</i>	490e-f, 491a, 494a-b	
7.	(2018) 17 SCC 421, <i>B. Himmatlal Agrawal v. Competition Commission of India</i>	511b	
8.	(2018) 3 WLR 1952 : 2018 UKSC 62, <i>S. Franses Ltd. v. Cavendish Hotel (London) Ltd.</i>	515g-h	b
9.	(2017) 8 SCC 272 : (2017) 4 SCC (Civ) 62, <i>Allokam Peddabbayya v. Allahabad Bank</i>	518a	
10.	(2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765, <i>Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.</i>	517g	
11.	(2014) 3 SCC 222, <i>BSNL v. TRAI</i>	522d, 522e, 524c	
12.	2014 SCC OnLine NGT 6860, <i>Wilfred J. v. Ministry of Environment & Forests' (partly overruled)</i>	524d	c
13.	(2013) 16 SCC 1 : (2014) 3 SCC (L&S) 358, <i>Arcot Textile Mills Ltd. v. Regl. Provident Fund Commr.</i>	513e-f	
14.	(2013) 3 SCC 182 : (2013) 2 SCC (Civ) 1, <i>Port of Kandla v. Hargovind Jasraj</i>	519c	
15.	2013 SCC OnLine NGT 1886, <i>Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board (reversed)</i>	487d-e, 488c-d	d
16.	2013 SCC OnLine NGT 68, <i>Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board (reversed)</i>	487d-e, 488d, 488e, 493a-b, 495b, 506a-b, 506b, 506b-c, 525a, 525c-d	
17.	(2012) 10 SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Cri) 35 : (2013) 1 SCC (L&S) 56, <i>State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.</i>	523d	e
18.	(2011) 3 SCC 363, <i>Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group</i>	519c	
19.	(2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524, <i>Manohar Lal v. Ugrasen</i>	506g-h, 507a, 513b-c, 513d	
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21.	(2010) 10 SCC 744, <i>Competition Commission of India v. SAIL</i>	514c	
22.	(2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712, <i>Raj Kumar Shivhare v. Directorate of Enforcement</i>	514c	f
23.	(2010) 1 SCC 756 : (2010) 1 SCC (Civ) 244, <i>Edukanti Kistamma v. S. Venkatarreddy</i>	508b-c	
24.	2010 SCC OnLine Mad 6495, <i>National Trust for Clean Environment v. Union of India</i>	488a-b	
25.	(2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280, <i>Super Cassettes Industries Ltd. v. State of U.P.</i>	514c	
26.	(2007) 5 SCC 211, <i>Pune Municipal Corpn. v. State of Maharashtra</i>	519b-c	g
27.	(2003) 3 SCC 186, <i>Cellular Operators Assn. of India v. Union of India</i>	510f	
28.	2002 SCC OnLine TDSAT 9, <i>Cellular Operators Assn. of India v. Union of India (held, reversed)</i>	510f-g	
29.	(2000) 7 SCC 348, <i>State of Haryana v. Maruti Udyog Ltd.</i>	514b-c	
30.	(1999) 4 SCC 468 : 1994 SCC (L&S) 993, <i>Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad</i>	514b-c	
31.	(1997) 4 SCC 452, <i>Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd.</i>	512d-e	h

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	32. (1997) 3 SCC 443, <i>Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.</i>	519b-c
a	33. (1997) 3 SCC 261 : 1997 SCC (L&S) 577, <i>L. Chandra Kumar v. Union of India</i>	496d, 519e, 519e-f, 519f, 521g, 522e, 523d
	34. (1991) 4 SCC 1 : 1991 SCC (L&S) 1082, <i>State of Punjab v. Gurdev Singh</i>	519b-c
	35. (1985) 4 SCC 628, <i>Kanhiya Lal Omar v. R.K. Trivedi</i>	517b-c
	36. (1984) 4 SCC 27, <i>Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth</i>	517d
b	37. 1980 SCC OnLine Bom 148 : 1981 Mah LJ 587, <i>Paritosh Bhupeshkumar Sheth v. Maharashtra State Board of Secondary and Higher Secondary Education (held, reversed)</i>	517d
	38. (1975) 2 SCC 411, <i>Kundur Rudrappa v. Mysore Revenue Appellate Tribunal</i>	509f
	39. (1974) 2 SCC 393, <i>Ganga Bai v. Vijay Kumar</i>	514b
	40. 1973 SCC OnLine Kar 47 : ILR 1973 Mys 281, <i>Kundur Rudrappa v. Mysore Revenue Appellate Tribunal (held, reversed)</i>	510e-f
c	41. (1965) 2 SCR 800 : AIR 1965 SC 1449, <i>Raja Soap Factory v. S.P. Shantharaj</i>	511f-g
	42. (1965) 1 SCR 413 : AIR 1965 SC 745, <i>Powers, Privileges and Immunities of State Legislatures, In re</i>	523g-h
	43. 1957 SCR 488 : AIR 1957 SC 540, <i>Garikapati Veeraya v. N. Subbiah Choudhry</i>	518b-c
	44. 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL), <i>Smith v. East Elloe Rural District Council</i>	519b

d The Judgment of the Court was delivered by

ROHINTON FALI NARIMAN, J.— The present appeals arise out of orders that have been passed by the National Green Tribunal [“NGT”] dated 31-5-2013¹, 8-8-2013² and 15-12-2018³. The brief facts necessary to appreciate the controversy raised in the present case are as follows.

e 2. The respondent, Sterlite Industries (India) Ltd./Vedanta Ltd., was operating a copper smelter plant at the State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) Industrial Complex at Thoothukudi, Tamil Nadu. On 1-8-1994, the respondent received a No-Objection Certificate [“NOC”] from the Tamil Nadu Pollution Control Board [“TNPCB”] for the production of blister copper and sulphuric acid. The environmental clearance to the project by the Ministry of Environment, Forest, and Climate Change [“MoEF”] followed on 16-1-1995. On 17-5-1995, the State MoEF also granted environmental clearance to the respondent. The TNPCB granted its consent under the Air (Prevention and Control of Pollution) Act, 1981 [“the Air Act”] and the Water (Prevention and Control of Pollution) Act, 1974 [“the Water Act”] on 22-5-1995. After obtaining the requisite permissions, the consent to operate the plant was issued on 14-10-1996 by the TNPCB. Production commenced on 1-1-1997. However, the environmental clearances that were granted were challenged before the Madras High Court in Writ Petitions Nos. 15501-503 of 1996, 5769 of 1997 and 16961 of 1998. On 20-5-1999, the TNPCB granted its consent for production of two more products, namely, phosphoric acid

h ¹ *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 1886
² *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68
³ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239

and hydrofluorosilicic acid. On 21-9-2004, a Supreme Court Monitoring Committee was constituted to verify the compliance status of hazardous waste management. It recommended to the MoEF that the environmental clearance for the proposed expansion should not be granted, and if granted, should be revoked. On 19-4-2005, the TNPCB issued consent to operate, subject to fulfilment of various conditions for the expanded capacity. Meanwhile, the Madras High Court, on 28-9-2010⁴, allowed the various writ petitions that had been filed and quashed the environmental clearances granted to the respondent and directed the TNPCB to close down the plant.

3. Meanwhile, on 23-3-2013, the residents of nearby areas started complaining of irritation, throat infection, severe cough, breathing problem, nausea, etc. due to emissions from Sterlite Industries. Reports were obtained after inspection of the premises by the TNPCB. Based on these reports, the TNPCB issued a show-cause notice dated 24-3-2013 and directed closure of the unit under Section 31-A of the Air Act on 29-3-2013. This order was stayed by the NGT on 31-5-2013¹, allowing the respondent to commence production subject to certain conditions. Against this, the TNPCB filed Civil Appeals Nos. 4763-64 of 2013, which will be disposed of by the judgment delivered in this case. Finally, on 8-8-2013², the NGT set aside the TNPCB order dated 29-3-2013, against which, Civil Appeals Nos. 8773-74 of 2013 were filed, which again will be disposed of by this judgment. It is important to note that the appellants herein raised the issue of maintainability of the respondent's appeal before the NGT, stating that an appeal should have been filed first before the appellate authority under the Air Act/the National Green Tribunal Act, 2010 ["the NGT Act"]. This ground of maintainability was decided against the appellants by the impugned order dated 8-8-2013².

4. Owing to various interim orders passed by the NGT, the respondent continued to operate its plant. On 13-4-2016, the TNPCB granted consent to operate the plant for one year subject to certain conditions. Post inspection of the unit of the respondent in March 2017, the TNPCB issued a show-cause notice dated 14-3-2017 for violations under the Air Act and the Water Act which, apparently, was not pursued. On 6-9-2017, an inspection report by the TNPCB was made, and an order passed on 7-9-2017, granting renewal of consent to operate only till 31-3-2018 subject to various conditions. Meanwhile, a protest had been organised in March 2018 by some persons against the proposed expansion sought by the respondent. The respondent, therefore, had to file Writ Petition No. 7313 of 2018 before the Madurai Bench of the Madras High Court for police protection. This writ petition was disposed of by an order dated 4-4-2018⁵ with a direction to consider the respondent's application. On 9-4-2018, the TNPCB refused renewal of consent to operate to the respondent's unit based on non-compliance with certain conditions that were laid down

⁴ *National Trust for Clean Environment v. Union of India*, 2010 SCC OnLine Mad 6495

¹ *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 1886

² *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68

⁵ *Vedanta Ltd. v. Inspector General of Police*, 2018 SCC OnLine Mad 10223

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a under the Air Act and the Water Act. On 12-4-2018, the respondent filed Appeals Nos. 36-37 of 2018 before the appellate authority under Section 28 of the Water Act. In these appeals, various orders were passed, until, on 6-6-2018, the following order was passed:

“Applications Nos. 28 & 29 of 2018, Applications Nos. 30 & 31 of 2018 and Appeals Nos. 36 & 37 of 2018:

Heard.

b In view of the government order passed by the Government of Tamil Nadu in GOMs No. 72, Environment & Forests (EC-3) Department dated: 28-5-2018, directing the Tamil Nadu Pollution Control Board to close the plant permanently, we feel it is not appropriate to hear the appeals and decide the issue at this juncture.

c Hence the appeals and applications are adjourned to 10-7-2018.”

On 10-7-2018, the matter was further adjourned as follows:

“Applications Nos. 28 & 29 of 2018, Applications Nos. 30 & 31 of 2018 and Appeals Nos. 36 & 37 of 2018:

d In view of the remarks made in the adjudication proceedings on 6-6-2018 and as the position is same now, the appeals and applications are adjourned to 21-8-2018.”

5. Finally, on 18-12-2018 i.e. three days after the impugned order was passed by the NGT on 15-12-2018³, an order passed by the appellate authority was as follows:

e *“Applications Nos. 28, 29, 30 & 31 of 2018 and Appeals Nos. 36 & 37 of 2018:*

Ms Janani, counsel for the appellant and Mr V. Vasanthakumar, counsel for the respondent Board are present. None is present on behalf of the 1st, 2nd and 3rd interveners.

f Counsel for the appellant seeks permission to withdraw the appeals. She has also filed a memo to that effect.

In view of the order passed by the Hon’ble National Green Tribunal, Principal Bench, New Delhi on 15-12-2018 in *Vedanta Ltd. v. State of T.N.*³ setting aside the impugned order dated 9-4-2018 which is subject-matter of these appeals pending before this appellate authority, the appeals have become infructuous and hence they are closed.”

g 6. On 12-4-2018, an order was passed by the TNPCB under Section 33-A of the Water Act and Section 31-A of the Air Act directing that the respondent’s unit shall not resume production without obtaining prior approval/renewal or consent from the TNPCB. This was followed by two orders, both dated 23-5-2018, again issued under the same sections, this time to close down the respondent’s unit and disconnect power supply to it. Finally, on 28-5-2018,

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³ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239

an order was issued by the Government of Tamil Nadu under Section 18(1)(b) of the Water Act stating:

“It is brought to the notice of the Government that Tamil Nadu Pollution Control Board did not renew the Consent to Operate to M/s Vedanta Ltd., Copper Smelter Plant, SIPCOT Industrial Complex, Thoothukudi District in its order dated 9-4-2018. Subsequently, on 23-5-2018, Tamil Nadu Pollution Control Board has also issued directions for closure and disconnection of power supply to the Unit. The power supply has been disconnected on 24-5-2018.

2. Under Article 48-A of the Constitution,

‘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.’

3. Under Section 18(1)(b) of the Water Act, 1974 in the larger public interest, the Government endorse the closure direction of the Tamil Nadu Pollution Control Board and also direct the Tamil Nadu Pollution Control Board to seal the unit and close the plant permanently.”

7. On the same date, the TNPCB issued a letter to the District Collector, inter alia, directing him to seal the respondent’s unit. These six orders became the subject-matter of a composite Appeal No. 87 of 2018 under Section 16 of the NGT Act.

8. A writ petition was filed by the respondent before the Madurai Bench of the Madras High Court on 18-6-2018 so that the respondent could access its unit to maintain its plant. This was dismissed as withdrawn on 9-7-2018.

9. The appellants then took up a plea of maintainability of the composite appeal. As this was not being disposed of by the NGT, this Court, by its order dated 17-8-2018⁶, directed the NGT to render its final findings, both on maintainability as well as on merits. On 20-8-2018⁷, the NGT constituted a Committee to go into the material produced by the parties to the civil appeal and to visit the site. This Committee was ultimately headed by Justice Tarun Agarwala, former Chief Justice of the Meghalaya High Court, together with two experts, one being a representative of the Central Pollution Control Board [“CPCB”] and another a representative of the MoEF. Aggrieved by this order, the appellants knocked on the doors of this Court. This Court disposed of this appeal on 10-9-2018⁸, by stating: (*Vedanta Ltd. case*⁸, SCC OnLine SC paras 1-2)

“1. By our order dated 17-8-2018⁶, we had made it clear that the NGT may continue to hear the matter both on merits as well as on maintainability and finally decide the matter on both counts.

⁶ *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3334

⁷ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1238

⁸ *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3335

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a 2. Since our order is not referred to in the order dated 20-8-2018⁷
passed by the NGT, we need only to state that once the Committee's report
is given to the Tribunal, it will proceed to decide the matter in accordance
with our order dated 17-8-2018⁶."

A review petition that was filed against this order was dismissed⁹.

b **10.** The Committee constituted by the NGT then inspected the site on
various dates in September/October 2018, and heard all parties concerned
as well as interveners. It then came out with a detailed Enquiry Report
dated 20-11-2018, in which it concluded as follows:

c "On the basis of the site visit, public hearing and after hearing the
appellant Company, State of Tamil Nadu, Tamil Nadu Pollution Control
Board, and the interveners and, upon consideration of the issues raised, the
Committee is of the opinion:

1. The impugned orders cannot be sustained as it is against the
principles of natural justice. No notice or opportunity of hearing was
given to the appellant.

d 2. The grounds mentioned in the impugned orders are not that
grievous to justify permanent closure of the factory.

3. Other issues raised also do not justify the closure of the factory
even if the appellant was found to be violating the conditions/norms/
directions.

e 4. In the event the Hon'ble Tribunal is of the opinion that the
factory should commence production, the Committee is of the opinion
that the following directions may be issued:

f (a) As per Condition 44 of the Consent Order dated 19-4-2005,
the appellant should be directed to monitor ground water quality
including heavy metals such as Arsenic, Cadmium, Silver, Copper,
Fluoride, etc. in and around the factory premises and nearby
villages once a month and such report should be furnished to the
TNPCCB.

(b) The sampling of the above should be taken in the presence
of an official from TNPCCB.

g (c) In addition to the above, the sampling of effluent/emission
and solid waste should also be done by a monitoring group to be
constituted by TNPCCB comprising a representative of the District
Collector, an official of TNPCCB, NGOs and academicians as per
Condition 43 of Consent Order dated 19-4-2005.

(d) Both the reports should be sent by TNPCCB to CPCB for
analysis. Recommendations made by CPCB should be followed.

h ⁷ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1238

⁶ *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3334

⁹ *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3337

(e) Copper slag dumped at all the eleven sites including the Uppar River should be removed. If copper slag has been used for landfill purposes, then the excess amount of the slag over and above the level of ground would be removed and thereafter the landfill should be compacted with one feet of soil, so that the copper slag is not blown away by the strong winds. a

(f) The dead stock of copper slag lying in the dump yard inside the factory premises which has solidified should be removed in a time-bound manner. Thereafter, the bottom of the dump yard and the side walls should be covered with HDPE liner. Further, the Company should ensure that the generation and disposal of copper slag is maintained in the ratio of 1:1 and that the Company at best, can retain 10 days' generation of copper slag in its dump yard. b

(g) The dead stock of gypsum lying in the dump yard inside the factory premises which has solidified should be removed in a time-bound manner. Thereafter, the bottom of the dump yard and the side walls should be covered with HDPE liner. Further, the Company should ensure that the generation and disposal of gypsum is maintained in the ratio of 1:1 and that the Company at best, can retain 10 days' generation of gypsum in its dump yard. c

(h) The Company before disposing copper slag, gypsum (or) any other waste product will seek previous permission from the TNPCB. d

(i) Application of the Company for obtaining valid authorisation for disposal of hazardous waste under Hazardous & Other Wastes (Management, & Transboundary Movement) Rules, 2016 should be disposed of by the TNPCB in a time-bound manner. e

(j) Even though there is no requirement of analysing the air samples through an accredited laboratory nonetheless a direction should be issued to the appellant that they will conduct a periodical survey for ambient air quality/noise level/stack emission through accredited laboratories of MoEF&CC/NABL and furnish such report to the TNPCB. f

(k) The appellant Company should be directed that they shall develop a green belt of 25 metres' width around the battery limits of its factory by planting native and high foliage tree and also in and around the factory.

(l) The State of Tamil Nadu/TNPCB should collect data from their primary health centres and government hospitals to monitor the various ailments that are being complained of by the inhabitants living in and around the factory premises. g

(m) The State Government should specify the module to the appellant for conducting the proper and designed health monitoring study. h

a (n) Direction (iii) on “Source Apportionment Study” and Direction (ix) on “conducting a study on health hazards” passed by the NGT in its judgment dated 8-8-2013 in *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*² should be carried out by the Tamil Nadu State Government and TNPCB. Such reports should be furnished to NGT in a time-bound manner.

b (o) The appellant should be directed to start the construction of gypsum pond immediately and complete the same in a time-bound manner as per the conditions laid down in the guidelines given by CPCB in October 2014.

c (p) The appellant shall undertake a fresh detailed hydrogeological study for determining aquifer vulnerability and migration of leachate from the existing phosphogypsum pond through a reputed organisation approved by the TNPCB as per Condition 15 of the Consent Order dated 19-4-2005.

d (q) Direction should be given to the TNPCB as well as to the appellant to take independent ground water samples from the same points for the purpose of finding out groundwater pollution if any. Such reports should then be compared by the CPCB. Recommendations made by CPCB should be followed.

(r) Directions/regulation may be framed for import of high grade copper ore.

e (s) Irrespective of the norms, stack height in any case be increased in order to remove the ambiguity and the grievance of inhabitants of the people of Tuticorin with regard to emission of SO₂.

(t) Till such time, the stack height is not increased, the production of copper as well as sulphuric acid should be restricted/reduced to match the existing stack height.

f (u) The transportation of copper ore concentrate from the port to the factory premises should be done in a closed conveyance or through a pipe conveyor system.

g (v) Self-monitoring mechanism needs to be prepared by the appellant for the periodic monitoring of ambient air quality/stack emissions/fugitive emissions/ground water quality/surface water quality/soil quality/slag analysis through third party and report shall be furnished to the regulatory agencies concerned.

(w) All the monitoring data, compliance reports of CTE/CTO/EC and environmental statement shall be uploaded on the website of the Company.

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(x) TNPCB should be directed to commission “Regional Environmental Impact Assessment Study” in and around Tuticorin District by engaging a reputed national agency.

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(y) CPCB recommendations as contained in the order of NGT, dated 20-8-2018⁷ to be complied with.”

Both the respondent as well as the appellants made their detailed comments on the Committee’s report. The NGT then heard final arguments and dictated the impugned order on 15-12-2018³, in which it substantially accepted the Committee’s recommendations. In doing so, it set aside the six impugned orders in the composite appeal. One major bone of contention of both the State of Tamil Nadu as well as the TNPCB in this case is that the appeal before the NGT is not maintainable and hence, the order dated 15-12-2018³ is without jurisdiction.

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11. As a postscript to this order, the TNPCB looked into the matter again, and issued yet another rejection letter dated 22-1-2019, by which the respondent’s application seeking renewal of consent to operate was rejected, stating that the conditions of various previous consents over the last 20 years had not been followed.

c

12. We have heard wide-ranging arguments from the learned counsel appearing on behalf of all the parties as well as the interveners, on maintainability as well as on merits. Since we will be deciding this case on maintainability alone, we have not ventured to state anything on the merits of the case.

d

13. Shri C.S. Vaidyanathan, learned Senior Advocate appearing on behalf of the TNPCB, showed us various provisions of the Water Act, the Air Act, and the NGT Act and argued that the six impugned orders before the NGT were orders which could not have been corrected by the NGT. Insofar as the first order dated 9-4-2018 was concerned, an appeal was pending before the appellate authority, as a result of which, the NGT, when it set aside the said order, could not have done so. Similarly, the orders dated 12-4-2018, 23-5-2018 and 28-5-2018, made under Section 33-A of the Water Act and Section 31-A of the Air Act, were composite orders issued. As orders under Section 31-A of the Air Act were not appealable to the NGT either under the Air Act or under Section 16 of the NGT Act, the Tribunal acted without jurisdiction in interfering with these orders. Further, the order dated 28-5-2018, issued by the Government of Tamil Nadu under Section 18 of the Water Act, was certainly not an appealable order under either the Water Act or the NGT Act, and could only have been corrected in judicial review in a writ petition filed under Article 226 of the Constitution of India or in a suit before a civil court. According to him, therefore, the setting aside of such an order was also completely without jurisdiction. Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the State of Tamil Nadu, added to these submissions. He cited some

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⁷ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1238

³ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239

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a of our judgments as well as statutes and judgments of the English courts to show that once an appeal is available to an appellate authority, after which an appeal lies to the NGT, a party cannot leapfrog directly to the NGT. Apart from this, the learned Senior Advocate also argued, based on the scheme of the Water Act, the Air Act, and the NGT Act, that all the appeals filed before the NGT were incompetent. Shri Guru Krishnakumar, learned Senior Advocate appearing on behalf of the TNPCB, also went on to criticise the order passed by b the NGT dated 8-8-2013² on maintainability. According to him, no doctrine of necessity could be imported if an Appellate Tribunal was not constituted, as a result of which an appeal could not be argued before the appellate authority. Consequently, a leapfrog appeal would not be maintainable before the NGT. According to the learned Senior Advocate, this order also had to be set aside for the reason that even assuming that the appellate authority was not constituted c on the date on which an appeal could have been preferred to it, the NGT, being a second Appellate Tribunal, would not have jurisdiction, and that either a suit or a writ petition under Article 226 would have to be filed against the original order.

14. As against these arguments, Shri C.A. Sundaram, learned Senior Advocate appearing on behalf of the respondents in all three appeals, sought d to sustain the order of the NGT in these three appeals. The learned Senior Advocate painstakingly took us through all the orders that were impugned before the NGT, together with the relevant provisions of the Air Act, the Water Act, and the NGT Act. According to the learned Senior Advocate, so far as the order dated 9-4-2018 is concerned, thanks to a government affidavit filed, the appeal before the appellate authority had become infructuous, as a result e of which, a direct appeal to the NGT would obviously become maintainable. Insofar as the combined orders under Sections 33-A and 31-A of the Water Act and the Air Act, respectively, are concerned, according to him, an express appeal is provided to the NGT against orders passed under Section 33-A of the Water Act, and even if there is no appeal provided under Section 31-A of the Air Act, yet, as four out of five items in these orders dealt with the f Water Act, the order could be stated to be substantially an order under the Water Act, and therefore, appealable as such. He added that, in any case, such orders could be corrected under Section 14 of the NGT Act to avoid piecemeal litigation. Further, in any case, according to the learned Senior Advocate, a direction made under Section 31-A of the Air Act is undoubtedly equivalent to an order made under Section 31 of the Air Act, and therefore, g would be expressly appealable under Section 16 of the NGT Act. Another without prejudice argument was made, that assuming all other arguments failed, these matters are only procedural, and therefore, appeals must necessarily land up before the expert tribunal which is so constituted as an expert tribunal to deal with all matters relating to the environment. For this, he referred to and relied strongly upon Sections 14, 15, 29, and 33 of the NGT Act. Insofar as h

2 *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68

the attack made upon the order dated 28-5-2018 of the Government of Tamil Nadu under Section 18 of the Water Act is concerned, Shri Sundaram argued that on a proper construction of Section 18 read with the other provisions of the Water Act, only a general order, dealing with general matters, could be passed under the said Section, and not an order to shut down one particular industry. Since the Section 18 order purports to deal with only one particular industry, it is non est and liable to be ignored. An alternate argument made is that even though the order states that it is made under Section 18, it can otherwise be traced to Section 29 of the Water Act as an order made in revision, and would, therefore, be appealable as such. The learned Senior Advocate then argued that, in any case, this is an order by which a direction has been made by the State Government to the TNPCB and, therefore, does not directly affect his client. He also argued that when this order was challenged before the NGT, the defence of the Government and the TNPCB would be that this is an order which, though binding on the TNPCB, would also impact the respondent. This being the case, the NGT could always go into whether such a defence is a valid defence, and could, therefore, decide the matter. He also went on to state that the NGT is an expert body constituted specifically under a special Act, which is far better equipped than the High Court under Article 226 exercising its powers in the writ jurisdiction, and therefore, all matters dealing with the environment should necessarily be decided by the NGT alone. He also relied upon our judgment in *L. Chandra Kumar v. Union of India*¹⁰ [*“L. Chandra Kumar”*], in which it has been made clear that Tribunals can exercise powers of judicial review and that, therefore, being the equivalent of a High Court, the NGT could, in exercise of its powers of judicial review, have interfered with the State Government’s orders passed under Section 18 of the Water Act.

15. Having heard the learned counsel for all parties, it is important first to advert to the provisions of the three Acts in question.

16. The relevant sections of the Water Act are as follows:

“18. Powers to give directions.—(1) In the performance of its functions under this Act—

(a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and

(b) every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it:

Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

* * *

25. Restrictions on new outlets and new discharges.—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

¹⁰ (1997) 3 SCC 261 : 1997 SCC (L&S) 577

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a (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

b (c) begin to make any new discharge of sewage:

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

c

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

d

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may—

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being—

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(i) in cases referred to in clauses (a) and (b) of sub-section (1) of Section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

f

(iii) that the consent will be valid only for such period as may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

g

(b) refuse such consent for reasons to be recorded in writing.

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

discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

a

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

b

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

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(8) For the purposes of this section and Sections 27 and 30,—

(a) the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

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(b) the expression “new discharge” means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

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26. Provision regarding existing discharge of sewage or trade effluent.—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 be, 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 to be made under sub-section (2) of that section shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette.

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27. Refusal or withdrawal of consent by State Board.—(1) A State Board shall not grant its consent under sub-section (4) of Section 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established

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as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.

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(2) A State Board may from time to time review—

(a) any condition imposed under Section 25 or Section 26 and may serve on the person to whom a consent under Section 25 or Section 26 is granted a notice making any reasonable variation of or revoking any such condition;

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(b) the refusal of any consent referred to in sub-section (1) of Section 25 or Section 26 or the grant of such consent without any condition, and may make such orders as it deems fit.

(3) Any condition imposed under Section 25 or Section 26 shall be subject to any variation made under sub-section (2) and shall continue in force until revoked under that sub-section.

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28. Appeals.—(1) Any person aggrieved by an order made by the State Board under Section 25, Section 26 or Section 27 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the appellate authority) as the State Government may think fit to constitute:

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Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) An appellate authority shall consist of a single person or three persons, as the State Government may think fit, to be appointed by that Government.

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(3) The form and manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the appellate authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the appellate authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

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(5) If the appellate authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then,—

(a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;

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(b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable.

29. Revision.—(1) The State Government may at any time either of its own motion or on an application made to it in this behalf, call for the records of any case where an order has been made by the State Board under Section 25, Section 26 or Section 27 for the purpose of satisfying itself as to the legality

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or propriety of any such order and may pass such order in relation thereto as it may think fit:

Provided that the State Government shall not pass any order under this subsection without affording the State Board and the person who may be affected by such order a reasonable opportunity of being heard in the matter. a

(2) The State Government shall not revise any order made under Section 25, Section 26 or Section 27 where an appeal against that order lies to the appellate authority, but has not been preferred or where an appeal has been preferred such appeal is pending before the appellate authority. b

* * *

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. c

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. d

33-B. Appeal to National Green Tribunal.—Any person aggrieved by,—

(a) an order or decision of the appellate authority under Section 28, made on or after the commencement of the National Green Tribunal Act, 2010; or e

(b) an order passed by the State Government under Section 29, on or after the commencement of the National Green Tribunal Act, 2010; or

(c) directions issued under Section 33-A by a Board, on or after the commencement of the National Green Tribunal Act, 2010,

may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.” f

17. The relevant sections of the Air Act are as follows:

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

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

application for such consent within the said period of three months, till the disposal of such application.

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(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

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Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

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(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

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

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

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

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely—

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(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

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(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;

(v) such other conditions as the State Board may specify in this behalf; and

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(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that—

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv),

no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the prior approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of the opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

* * *

31. Appeals.—(1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the appellate authority) as the State Government may think fit to constitute:

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The appellate authority shall consist of a single person or three persons as the State Government may think fit to be appointed by the State Government.

(3) The form and the manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the appellate authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the appellate authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

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

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any directions in writing to any person, officer or 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

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

31-B. Appeal to National Green Tribunal.—Any person aggrieved by an order or decision of the appellate authority under Section 31, made on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.”

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18. The relevant sections of the NGT Act are as follows:

“2. *Definitions.*—(1) In this Act, unless the context otherwise requires,—

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(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,—

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(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;

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(ii) the environmental consequences relate to a specific activity or a point source of pollution;

* * *

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.

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(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:

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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.

15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas,

as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(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.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.

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

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);

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a (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);

b (f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

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

d (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) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

e may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

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

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29. Bar of jurisdiction.—(1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

g (2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by
h the civil court.

* * *

33. Act to have overriding effect.—The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

19. It is important now to advert to both the orders dated 8-8-2013² and 15-12-2018³, insofar as they deal with the maintainability of the appeals before them.

20. By the judgment of the NGT dated 8-8-2013², the NGT disposed of the plea on maintainability as follows: [*Sterlite Industries (India) Ltd. case*², SCC OnLine NGT paras 62-64]

“62. Another aspect that would support the view that we are taking is the doctrine of necessity. Wherever in the facts and circumstances of the case, it is absolutely inevitable for a person to exercise another right available to it under the statute and where it is unable to exercise the preliminary right of appeal because of non-existence or non-proper constitution of the appellate authority and for its effective and efficacious exercise of right, it becomes necessary for the appellant Company to invoke another remedy, then the same would be permitted unless it was so specifically barred by law governing the subject and the rights of the parties. It was upon the appellant Company, particularly keeping in view the emergent situation created by issuance of the order dated 29-3-2013, to avail of its right to appeal without any undue delay and as was rightly done by it within two days of the passing of the order. The unit of the appellant Company had been directed to be shut down and the appellant Company obviously could not have taken recourse to the remedy under Section 31 of the Air Act as the authority itself was not properly constituted and was not functional. Besides the aid of the doctrine of necessity, the appellant Company has also placed its reliance on Section 31-B of the Air Act. An appeal against the order passed by the appellate authority in exercise of its powers under Section 31 of the Air Act lies to the NGT in terms of Section 31-B of the Air Act. In other words, the appellate order passed by the proper authority under Section 31 of the Air Act is appealable to the NGT in terms of Section 31-B. Thus, the NGT is the appellate authority of the appellate authority constituted under Section 31 of the Air Act by the State Government. The appellant Company has itself given up its right of first appeal before the appellate authority in view of the peculiar facts and circumstances of the case. The respondents have placed reliance upon the judgment of the Supreme Court in *Manohar Lal v. Ugrasen*¹¹ where the Court had taken the view that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor the superior authority can mortgage its wisdom and direct

² *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68

³ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239

¹¹ (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524

a the statutory authority to act in a particular manner. Firstly this judgment on facts and law has no application to the present case. Secondly, the non-constitution of the authority itself would bring the present case outside the application of the judgment of the Supreme Court in *Manohar Lal*¹¹.

b 63. We are unable to contribute ourselves to the contention raised that a direction passed under Section 31-A of the Air Act is not covered under the expression "order" used in Section 31 of the Air Act. Any direction essentially would contain an element of order as it requires and calls upon the parties to comply with the same. "Direction" itself means an order; an instruction how to proceed, like the Judge's direction to the jury, while "order" is defined as a command, direction or instruction. This is how *Black's Law Dictionary*, 9th Edn., refers to these two expressions. In other words, they can be used as synonyms. They are not conflicting terms and one can be read into the other. Thus, we find no substance in this contention raised on behalf of the respondents.

c 64. An appellate authority, which is constituted under the statute, is completely distinct and different from an administrative authority constituted otherwise even to deal with adjudicatory proceedings. In the case of an appellate authority, it must satisfy the existence *de facto* and must function *de jure*, in accordance with law. If the appellate authority itself was not in conformity with the notification, it cannot be said that it could function in accordance with law without constitution of the three-member appellate authority. The cumulative effect of this discussion is that the objection in regard to maintainability is without any substance and is liable to be rejected. In view of this finding, it is not necessary for us to examine whether this could be treated as a petition under Section 14 of the National Green Tribunal Act (for short "the NGT Act") even if it was not maintainable in view of the objection taken by the respondent in regard to maintainability of the present appeal."

d 21. Insofar as the judgment dated 15-12-2018³ is concerned, the NGT, on maintainability, held as follows: (*Vedanta Ltd. case*³, SCC OnLine NGT paras 44-46 & 48-49)

e "44. It is undisputed that this Tribunal is an appellate authority as far as orders of closure under the Air Act and the Water Act are concerned. The impugned orders dated 12-4-2018, 23-5-2018 and 28-5-2018 are such orders. Mere fact that an appeal against the order declining renewal of Consent to Operate is provided for and was filed cannot be in the facts and circumstances of the present case, be a bar to exercise of powers of the appellate authority by this Tribunal. As already noted, the appellate authority has declined to proceed with the matter. The grounds in the impugned orders dated 9-4-2018, 12-4-2018, 23-5-2018 and 28-5-2018 are

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11 *Manohar Lal v. Ugrasen*, (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524
3 *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239

identical. If the appeals are held to be not maintainable, the appellant will be without any remedy against the order of closure. Order of the appellate authority is also appealable before this Tribunal under Section 16(f) of the NGT Act, 2010. We, thus, do not find any merit in this case in the objections of the respondent.

45. Mere fact that the State of Tamil Nadu also endorsed the order of the TNPCB and that order of the State is not appealable to this Tribunal, does not deviate from the legal position that order of TNPCB is appealable to this Tribunal. Moreover, order of the State of Tamil Nadu is not a policy matter but mere endorsement of order of the TNPCB.

46. The judgments relied upon by the respondents are distinguishable. Unlike *Edukanti Kistamma v. S. Venkatarreddy*¹², this is not a case where the first order has not been challenged. Challenge before us is to the first order as well as subsequent orders. Basis for all the orders is common.

* * *

48. The order of the Government of Tamil Nadu issued under Section 18(1)(b) of the Water Act also cannot be said to be an independent order but relied on and endorsing the views of the TNPCB which is under challenge and that are not sufficient for ordering closure or refusal to grant even consent. If there are no other materials for the Government of Tamil Nadu to arrive at conclusion of closure on the ground of irreversible pollution being caused to the environment allowing the unit to function, then it cannot be said to be a policy decision to close down the industry permanently and if any order was passed based on the order by the Pollution Control Board, without independent application of mind and arbitrarily, then that can also be incidentally considered by the Tribunal for the purpose of deciding the question of legality of that order. So, under the present circumstances, it is not a case of this Tribunal entertaining the appeals where there is inherent lack of jurisdiction to entertain the same.

49. In the present proceedings, as already noted, the appellate authority having declined to proceed with the matter and the order of closure being appealable before this Tribunal, there is no ground to reject the appeal on the ground of maintainability so as to deprive the appellant of any judicial remedy in the matter.”

(I) Re: Order dated 9-4-2018

22. This order is an order which rejected renewal of consent to operate, and therefore, is traceable to Section 27 of the Water Act and Section 21 of the Air Act. There is no doubt whatsoever that an appeal against an order made under Section 27 of the Water Act is appealable to the appellate authority under Section 28 of the said Act. Under Section 33-B(a) of the said Act, if a person is aggrieved by an order or decision of the appellate authority under Section 28, it is then appealable to the NGT. This is made clear also by Section 16(a) of the NGT Act. Equally, an order refusing consent under Section 21 of the Air

a Act is appealable to the appellate authority under Section 31 of the Air Act, and thereafter, from the said appellate authority's order, to the NGT, under Section 31-B of the Air Act and Section 16(f) of the NGT Act.

b 23. As has been stated hereinabove, it is clear that an appeal to the appellate authority under the Air Act and the Water Act was, in fact, preferred, being Appeals Nos. 36-37 of 2018. While these appeals were pending before the appellate authority, the composite Appeal No. 87 of 2018 was filed on 22-6-2018 before the NGT inter alia against the order of refusal of consent to operate dated 9-4-2018. Shri Sundaram, however, argued before us that the order dated 6-6-2018 made by the appellate authority, which we have set out hereinabove, makes it clear that the appeals could not be heard since the State Government had passed an order dated 28-5-2018 directing the TNPCB to close down the plant permanently. What is missed by Shri Sundaram is c the fact that the said order expressly states that the appeals could not be decided *at this juncture* and were hence adjourned to 10-7-2018. The said appeals on 10-7-2018 were further adjourned, and it is only on 18-12-2018 that they were finally withdrawn as being infructuous in view of the fact that the NGT had passed its order on 15-12-2018³ in which it had set aside the order dated 9-4-2018.

d 24. What becomes clear from the above narration of facts is the fact that while an appeal was still pending before the appellate authority, the NGT took up a matter directly against the original order dated 9-4-2018 which was challenged before the appellate authority even before the appellate authority could decide the same. However, Shri Sundaram referred to Section 28(4) of the Air Act and Section 31(4) of the Water Act to argue that appeals to the appellate e authority must be decided expeditiously, and if they were not so decided, an appeal would lie to the NGT against a decision by the appellate authority not to decide the matter before it expeditiously. This argument must also be negated as, in point of fact, no appeal was preferred from any orders of the appellate authority adjourning the proceedings. As we have seen, an appeal was directly f filed from the order of the TNPCB dated 9-4-2018.

25. At this point, it is important to advert to a few judgments of this Court. In *Kundur Rudrappa v. Mysore Revenue Appellate Tribunal*¹³, this Court, while dealing with Section 64 of the Motor Vehicles Act, 1939, stated: (SCC pp. 413-14, paras 4-5)

g "4. The point that arises for consideration is whether any appeal lay under Section 64 of the Act to the State Transport Appellate Tribunal against the issue of a permit in pursuance of an earlier resolution of the Regional Transport Authority granting the permit. It is only necessary to read Section 64(1)(a) which is material for the purpose of this appeal:

'64. Appeals.—(1) Any person—

h ³ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239
13 (1975) 2 SCC 411

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

* * *

may within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.’

We are not required to consider the other clauses of Section 64(1) which are admittedly not relevant. Section 64 has to be read with Rule 178 of the Rules which prescribes the procedure for appeal to the various authorities.

5. *Appeal is a creature of the statute.* There is no dispute that Section 64 of the Act is the only section creating rights of appeal against the grant of permit and other matters with which we are not concerned here. *There is no appeal provided for under Section 64 against an order issuing a permit in pursuance of the order granting the permit.* Issuance of the permit is only a ministerial act necessarily following the grant of the permit. The appeals before the State Transport Appellate Tribunal and the further appeal to the Mysore Revenue Appellate Tribunal are, therefore, not competent under Section 64 of the Act and both the Tribunals had no jurisdiction to entertain the appeals and to interfere with the order of the Regional Transport Authority granting the permit which had already been affirmed in appeal by the State Transport Appellate Tribunal and further in second appeal by the Mysore Revenue Appellate Tribunal. There was, therefore, a clear error of jurisdiction on the part of both the Tribunals in interfering with the grant of the permit to the appellant. The High Court was, therefore, not right in dismissing¹⁴ the writ application of the appellant which ought to have been allowed.” (emphasis supplied)

26. Similarly, in a concurring judgment of Sinha, J., in *Cellular Operators Assn. of India v. Union of India*¹⁵, the learned Judge observed: (SCC p. 211, para 27)

“27. TDSAT was required to exercise its jurisdiction¹⁶ in terms of Section 14-A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14-A thereof. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as also the dispute made in an application under sub-section (1) thereof. *The approach of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is,*

¹⁴ *Kundur Rudrappa v. Mysore Revenue Appellate Tribunal*, 1973 SCC OnLine Kar 47 : ILR 1973 Mys 281

¹⁵ (2003) 3 SCC 186

¹⁶ *Cellular Operators Assn. of India v. Union of India*, 2002 SCC OnLine TDSAT 9

a therefore, wholly unsustainable. The extent of jurisdiction of a court or a tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by Parliament in the amending Act of 2000. TDSAT, thus, failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law.” (emphasis supplied)

b 27. In *B. Himmatlal Agrawal v. Competition Commission of India*¹⁷, this Court, while dealing with Section 53-B of the Competition Act, 2002 held: (SCC p. 424, para 10)

c “10. The aforesaid provision, thus, confers a right upon any of the aggrieved parties mentioned therein to prefer an appeal to the Appellate Tribunal. This statutory provision does not impose any condition of pre-deposit for entertaining the appeal. Therefore, right to file the appeal and have the said appeal decided on merits, if it is filed within the period of limitation, is conferred by the statute and that cannot be taken away by imposing the condition of deposit of an amount leading to dismissal of the main appeal itself if the said condition is not satisfied. Position would have been different if the provision of appeal itself contained a condition of pre-deposit of certain amount. That is not so. Sub-section (3) of Section 53-B specifically cast a duty upon the Appellate Tribunal to pass order on appeal, as it thinks fit i.e. either confirming, modifying or setting aside the direction, decision or order appealed against. It is to be done after giving an opportunity of hearing to the parties to the appeal. It, thus, clearly implies that appeal has to be decided on merits. *The Appellate Tribunal, which is the creature of a statute, has to act within the domain prescribed by the law/statutory provision.* This provision nowhere stipulates that the Appellate Tribunal can direct the appellant to deposit a certain amount as a condition precedent for hearing the appeal. In fact, that was not even done in the instant case. It is stated at the cost of repetition that the condition of deposit of 10% of the penalty was imposed insofar as stay of penalty order passed by the CCI is concerned. Therefore, at the most, stay could have been vacated. The Appellate Tribunal, thus, had no jurisdiction to dismiss the appeal itself.” (emphasis supplied)

g 28. In *Raja Soap Factory v. S.P. Shantharaj*¹⁸, the plaintiffs instituted an action in the nature of passing off against the defendants in the High Court of Mysore, stating that they are exclusive owners of a particular trade mark. This Court found that exercise of jurisdiction by the High Court of Mysore is governed by Mysore Act 5 of 1962. Holding that the said High Court does not exercise any original jurisdiction, this Court held: (SCR p. 802 : AIR p. 1450, paras 5-6)

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17 (2018) 17 SCC 421
18 (1965) 2 SCR 800 : AIR 1965 SC 1449

“5. The High Court of Mysore is by its constitution primarily a court exercising appellate jurisdiction; it is competent to exercise original jurisdiction only in those matters in respect of which by special Acts it has been specifically invested with jurisdiction. The High Court is competent to exercise original jurisdiction under Section 105 of Trade and Merchandise Marks Act 43 of 1958 if it is invested with the ordinary original civil jurisdiction of a District Court, and not otherwise, and the High Court of Mysore not being invested by any statute or under its constitution with that jurisdiction was incompetent to entertain a passing off action. a

6. But it was urged that in a State the High Court is at the apex of the hierarchy of civil courts and has all the powers which the subordinate courts may exercise, and it is competent to entertain all actions as a court of original jurisdiction which may lie in any court in the State. For this exalted claim, there is no warrant in our jurisprudence. Jurisdiction of a court means the extent of the authority of a court to administer justice prescribed with reference to the subject-matter, pecuniary value and local limits. Barring cases in which jurisdiction is expressly conferred upon it by special statutes e.g. the Companies Act; the Banking Companies Act, the High Court of Mysore exercises appellate jurisdiction alone. As a court of appeal it undoubtedly stands at the apex within the State, but on that account it does not stand invested with original jurisdiction in matters not expressly declared within its cognizance.” b

29. In *Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd.*¹⁹, Section 129-D of the Customs Act, 1962 was referred to, under which, the Board of Excise and Customs may direct a Collector to apply to the Appellate Tribunal for determination of points which arise out of an order or decision. In repelling an argument that even without such direction, the Union of India may file an appeal directly, this Court held: (SCC pp. 464-65 & 468, paras 10 & 12) c

“10. ... The aforesaid provisions of the Act leave no room for doubt that they represent a complete scheme or code for challenging the orders passed by the Collector (Customs) in exercise of his statutory powers. ... So far as departmental authorities themselves are concerned including the Collector of Customs no direct right of appeal is conferred on the Collector to prefer appeal against his own order before the CEGAT. However there is sufficient safeguard made available to the Revenue by the Act for placing in challenge erroneous orders of adjudication as passed by the Collector of Customs by moving the Central Board of Excise and Customs under Section 129-D(1) for a direction to the Collector to apply to the CEGAT for determination of such point arising out of the decision or order as may be specified by the Board of Revenue in this connection. ... d

* * *

12. ... But even if it is so, the statutory procedure laid down by Parliament in its wisdom for enabling the challenge to the adjudication e

a order of the Collector of Customs by way of appeals or revisions as per the
 aforesaid relevant statutory provisions, to which we have made a mention,
 has got to be followed in such an eventuality. Bypassing the said statutory
 procedure a direct frog leap to CEGAT is contra-indicated by the statutory
 scheme of the Act. If such direct appeals are permitted the very scheme of
 Section 129-D(1) would get stultified. It must, therefore, be held that direct
 appeal filed by the Union of India through Industries Ministry to CEGAT
 b under Section 129-A(1) was clearly incompetent. It may be added that the
 Union of India could have used the mode set out in Section 129-D, but it
 did not do so.”

30. In *Manohar Lal v. Ugrasen*¹¹, one of the questions involved, under sub-
 para 2(a) of the judgment, was as follows: (SCC p. 562, para 2)

c “2. In these appeals, three substantial questions of law for consideration
 of this Court are involved. They are, namely:

(a) As to whether the State Government, a revisional authority
 under the statute, could take upon itself the task of a lower statutory
 authority?”

d After reviewing a number of cases, this Court then concluded: (*Manohar Lal
 case*¹¹, SCC p. 567, para 23)

e “23. Therefore, the law on the question can be summarised to the
 effect that no higher authority in the hierarchy or an appellate or revisional
 authority can exercise the power of the statutory authority nor can the
 superior authority mortgage its wisdom and direct the statutory authority
 to act in a particular manner. If the appellate or revisional authority takes
 upon itself the task of the statutory authority and passes an order, it remains
 unenforceable for the reason that it cannot be termed to be an order passed
 under the Act.”

f 31. In *Arcot Textile Mills Ltd. v. Regl. Provident Fund Commr.*²⁰, appeals
 lay to the Tribunal constituted under the Employees’ Provident Funds and
 Miscellaneous Provisions Act, 1952, under Section 7-I of the Act. Whereas
 appeals lay against orders passed under Section 7-A of the Act, which provided
 for determination of monies due from employers, no appeal lay against orders
 made under Section 7-Q of the said Act, which spoke of interest payable by the
 employer. This Court held: (SCC p. 10, para 20)

g “20. On a scrutiny of Section 7-I, we notice that the language is
 clear and unambiguous and it does not provide for an appeal against the
 determination made under Section 7-Q. It is well settled in law that right of
 appeal is a creature of statute, for the right of appeal inheres in no one and,
 therefore, for maintainability of an appeal there must be authority of law.
 This being the position a provision providing for appeal should neither be

h 11 (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524
 20 (2013) 16 SCC 1 : (2014) 3 SCC (L&S) 358

construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See *Ganga Bai v. Vijay Kumar*²¹, *Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad*²², *State of Haryana v. Maruti Udyog Ltd.*²³, *Super Cassettes Industries Ltd. v. State of U.P.*²⁴, *Raj Kumar Shivhare v. Directorate of Enforcement*²⁵, *Competition Commission of India v. SAIL*²⁶.)”

In para 21, this Court further went on to hold that in case an order under Section 7-A speaks of delay in payment as well as interest, a composite order passed would be amenable to appeal under Section 7-I, as interest is only parasitic on the principal sum due under Section 7-A. However, if an independent order is passed under Section 7-Q for interest alone, the same was held to be not appealable.

32. From the above authorities, it is clear that an appeal is a creature of statute and an Appellate Tribunal has to act strictly within the domain prescribed by statute. It is obvious that an appeal would lie from an order or decision of the appellate authority under Section 28 of the Water Act to the NGT only under Section 33-B(a) of the Water Act read with Section 16(a) of the NGT Act. Similarly, an appeal would lie from an order or decision of the appellate authority under Section 31 of the Air Act to the NGT only under Section 31-B of the Air Act read with Section 16(f) of the NGT Act. Obviously, since no order or decision had been made by the appellate authority under either the Water Act or the Air Act, any direct appeal against an original order to the NGT would be incompetent. NGT’s jurisdiction being strictly circumscribed by Section 33-B of the Water Act, read with Section 31-B of the Air Act, read with Sections 16(a) and (f) of the NGT Act, would make it clear that it is only orders or decisions of the appellate authority that are appealable, and not original orders. On the facts of the present case, it is clear that an appeal was pending before the appellate authority when the NGT set aside the original order dated 9-4-2018. This being the case, the NGT’s order being clearly outside its statutory powers conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction.

21 (1974) 2 SCC 393

22 (1999) 4 SCC 468 : 1994 SCC (L&S) 993

23 (2000) 7 SCC 348

24 (2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280

25 (2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712

26 (2010) 10 SCC 744

a 33. In fact, in the United Kingdom, there are several Acts under which a leapfrog appeal is permitted if a point of law of general public importance is involved. Thus, the Administration of Justice Act, 1969 states that such a leapfrog appeal directly to the Supreme Court may be filed on grant of certificate by the trial Judge in the following terms:

b “12. *Grant of certificate by trial Judge.*—(1) Where on the application of any of the parties to any proceedings to which this section applies the Judge is satisfied—

(a) that the relevant conditions are fulfilled in relation to his decision in those proceedings or that the conditions in sub-section (3-A) (“the alternative conditions”) are satisfied in relation to those proceedings, and

c (b) that a sufficient case for an appeal to the Supreme Court under this Part of this Act has been made out to justify an application for leave to bring such an appeal, ...

(c) * * *

the Judge, subject to the following provisions of this Part of this Act, may grant a certificate to that effect.

d (2) This section applies to any civil proceedings in the High Court which are either—

(a) proceedings before a Single Judge of the High Court (including a person acting as such a Judge under Section 3 of the Judicature Act, 1925), or

(b) * * *

(c) proceedings before a Divisional Court.

e (3) Subject to any Order in Council made under the following provisions of this section, for the purposes of this section the relevant conditions, in relation to a decision of the Judge in any proceedings, are that a point of law of general public importance is involved in that decision and that that point of law either—

f (a) relates wholly or mainly to the construction of an enactment or of a statutory instrument, and has been fully argued in the proceedings and fully considered in the judgment of the Judge in the proceedings, or

(b) is one in respect of which the Judge is bound by a decision of the court of appeal or of the Supreme Court in previous proceedings, and was fully considered in the judgments given by the court of appeal or the Supreme Court (as the case may be) in those previous proceedings.”

g 34. To similar effect are sections of the Tribunals, Courts and Enforcement Act, 2007, and the Employment Tribunals Act, 1996. Such appeals in the UK are referred to as “leapfrog appeals” [see *S. Franses Ltd. v. Cavendish Hotel (London) Ltd.*²⁷, para 7].

h 35. It is, therefore, clear that no such provisions, as are contained in the UK Acts, being present in any of the Acts that we are concerned with, such leapfrog appeals to the NGT would necessarily be without jurisdiction.

(II) Re: Orders passed under Section 33-A of the Water Act and Section 31-A of the Air Act

36. We have referred to the orders dated 12-4-2018, 23-5-2018, and 28-5-2018 passed by the TNPCB under Sections 33-A and 31-A of the Water Act and the Air Act respectively. At this juncture, it is important to state that Section 33-B of the Water Act and Section 31-B of the Air Act were both enacted on 18-10-2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33-B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued under Section 33-A of the Water Act are appealable to the NGT, directions issued under Section 31-A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given under Section 31-A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. Shri Sundaram's argument that these orders being substantially relatable to the Water Act would, therefore, not hold, as such orders are composite orders made *both* under the Water Act and the Air Act. Equally disingenuous is the reference to Section 14 of the NGT Act which only refers to the original jurisdiction of the NGT and not to its appellate jurisdiction. Also, to state generally that the subject-matter of environment lies with the NGT, is an argument of despair that must be dismissed for the reason that as held by us hereinabove, an appeal being a creature of statute, a statute either confers a right of appeal or it does not. In the present case, we have seen that so far as directions issued under Section 31-A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. The ingenious argument made by Shri Sundaram that, in any case, a "direction" under Section 31-A of the Air Act is nothing but an "order", and would, therefore, be appealable as such under Section 31-B of the Air Act read with Section 16(f) of the NGT Act would drive a coach-and-four through the statutory scheme that has just been adverted to. We have seen how all the appellate proceedings to the NGT, whether under the Air Act, the Water Act, or the NGT Act have been brought into force on the same date. Whereas the identical power to give directions by the Board under the Water Act is appealable to the NGT, the same power to give directions by the Board under the Air Act is not so appealable. The absence of any mention of Section 31-A in Section 31-B of the Air Act, given the statutory scheme as aforesaid, makes it clear that even this argument must be rejected. Also, "directions" that are issued under Section 31-A of the Air Act are of a different quality from "orders" referred to in Section 31 of the same Act. Directions are issued in the exercise of powers and performance of functions under the Act and are not quasi-judicial in nature, whereas orders that are appealed against under Section 31 are quasi-judicial orders made, inter alia, under Section 21 of the Air Act. For this reason also, we cannot accept the aforesaid argument of Shri Sundaram. However, Shri Sundaram argued, with particular reference to

a the Explanation to Section 31-A of the Air Act that “directions” partake of the nature of “orders” when closure of any particular industry or stoppage of supply of electricity qua any single industry is made, and therefore, such directions are appealable as orders under Section 31 of the Air Act. This argument is also of no avail as Section 33-A of the Water Act contains an identical explanation to that contained in Section 31-A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. Hence, reference made to *P. Ramanatha Aiyar’s Law Lexicon* and *Black’s Law Dictionary*, which state that in certain circumstances, orders are also directions and vice versa, would not apply to the present case, given the express statutory scheme. In this connection, Shri Sundaram cited *Kanhiya Lal Omar v. R.K. Trivedi*²⁸, and relied upon para 17, where this Court held, referring to Article 324(1) of the Constitution of India, that a “direction” may be equated with a specific or a general order. The context of Article 324 being wholly different, it is obvious that this authority also has no application, given the statutory scheme in the present case.

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37. Shri Sundaram then cited *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*²⁹. In this judgment, the High Court had struck down³⁰ Regulation 104 of the Maharashtra Secondary and Higher Secondary Boards Regulations, 1977, by which, no re-evaluation of an answer book given in an examination can be undertaken. In setting aside the High Court judgment, this Court stated that the process of re-evaluation of answer papers is extremely time-consuming, would involve several thousand man-hours, and is bound to throw the entire system out of gear. Further, it is in public interest that the results of public examinations, when published, should have some finality attached to them [see para 27]. It is in this context that this Court held: (SCC p. 57, para 29)

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“29. ... It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice.”

To bodily lift the aforesaid sentence and apply it to the fact situation here would be a huge leap which we are not prepared to make. Further, given the statutory scheme as aforesaid, it is not possible for us to provide *an appeal where there is none* in the guise of making an appellate system workable in practice.

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38. Shri Sundaram then relied upon this Court’s judgments in *Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.*³¹ and

28 (1985) 4 SCC 628

29 (1984) 4 SCC 27

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30 *Paritosh Bhupeshkumar Sheth v. Maharashtra State Board of Secondary and Higher Secondary Education*, 1980 SCC OnLine Bom 148 : 1981 Mah LJ 587

31 (2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765

*Allokam Peddabbayya v. Allahabad Bank*³² for the proposition that the right of appeal is a statutory right, and like all other statutory rights, it can be waived, unless its waiver is detrimental to public interest. The question in these appeals is not whether an appellant may waive a statutory right of appeal. The question is whether the NGT, which is only invested with the jurisdiction of entertaining an appeal from an order of an appellate authority, is jurisdictionally capable of entertaining an appeal directly from the original authority. It is clear, as has been held by us, that the NGT possesses no such jurisdiction.

39. One further argument was made that these matters are only procedural, and therefore, substantially, an appeal to the NGT would be maintainable. It is well settled that the right to appeal is not a procedural matter but a substantive one. In *Garikapati Veeraya v. N. Subbiah Choudhry*³³, this Court held: (SCR pp. 514-15 : AIR p. 553, para 23)

“23. From the decisions cited above, the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.”

This argument must, therefore, be rejected.

(III) *Re: Order passed under Section 18 of the Water Act*

40. So far as the order dated 28-5-2018 is concerned, this order is expressly stated to be made under Section 18 of the Water Act. There is no doubt whatsoever that such an order is not appealable to the NGT either under the Water Act or under the NGT Act. However, Shri Sundaram has argued that Section 18 is referable to orders generally made, and falls under Chapter IV of the Water Act, which deals with powers and functions of Boards, as opposed to

32 (2017) 8 SCC 272 : (2017) 4 SCC (Civ) 62

33 1957 SCR 488 : AIR 1957 SC 540

a the sections that follow in Chapter V, which deals with prevention and control of water pollution, which orders are made against individuals and individual industries. On the assumption that Shri Sundaram is correct in this argument, it is clear that such order can only be set aside in a suit by a civil court, or under Article 226 of the Constitution of India by a High Court. It is not possible to agree with the argument of Shri Sundaram that such orders can be ignored, being non est. It is settled that an administrative order, when made, does not bear the brand of invalidity on its forehead, as has been held in *Smith v. East Elloe Rural District Council*³⁴, All ER p. 871, which has been followed by this Court in *State of Punjab v. Gurdev Singh*³⁵, SCC p. 6; *Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*³⁶, SCC p. 455; *Pune Municipal Corpn. v. State of Maharashtra*³⁷, SCC p. 225; *Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*³⁸, SCC p. 369 and *Port of Kandla v. Hargovind Jasraj*³⁹, SCC p. 193. Therefore, this order can only be set aside either in a suit, or by the High Court in the exercise of judicial review. Faced with this, Shri Sundaram then argued that though the said order states that it is traceable to Section 18 of the Water Act, it can, in fact, be traced to Section 29 of the same Act. Section 29 deals with the revisional power, in which the State Government is to pass a quasi-judicial order after hearing both the State Board and the person who is affected. Quite obviously, this order is not a quasi-judicial order as the State Government has not found it necessary to hear either the State Board, or any person affected by such order. Further, such order does not purport to be an order which either affirms or sets aside any order made under Sections 25, 26, or 27 of the Water Act. This argument of despair, therefore, must also be rejected.

e **41.** Shri Sundaram then argued that this Court in *L. Chandra Kumar*¹⁰ made it clear that tribunals that are set up, generally have the power of judicial review, save and except a challenge to the vires of the legislation under which such tribunals are themselves set up. For this, he relied strongly upon paras 90 and 93 of the judgment in *L. Chandra Kumar*¹⁰. It is important to notice that *L. Chandra Kumar*¹⁰ pertained to a tribunal that was set up under Article 323-A of the Constitution of India. Under Article 323-A(2)(d), the Administrative Tribunal so set up would be able to exercise the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136 of the Constitution. This would mean that the Administrative Tribunal so set up could exercise the jurisdiction of all High Courts when it came to the matters specified in Article 323-A. This is further made clear by a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985, which read as follows:

34 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL)

35 (1991) 4 SCC 1 : 1991 SCC (L&S) 1082

36 (1997) 3 SCC 443

37 (2007) 5 SCC 211

38 (2011) 3 SCC 363

39 (2013) 3 SCC 182 : (2013) 2 SCC (Civ) 1

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

“14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to—

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All-India Service; or

(ii) a person not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

*Explanation.—*For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union Territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by the Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other

T.N. POLLUTION CONTROL BOARD v.
STERLITE INDUSTRIES (I) LTD. (*Nariman, J.*)

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a authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to—

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

b (b) all service matters concerning a person other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

* * *

c **28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution.**—On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except—

d (a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force,

e shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or matters concerning such recruitment or such service matters.”

f Article 323-B of the Constitution of India also provides for tribunals for certain other matters which are specified by clause (2) thereof. 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. Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985.

g **42.** It is in the context of Article 323-A and the Administrative Tribunals Act, 1985 that this Court in *L. Chandra Kumar*¹⁰ has observed in para 93 as follows: (SCC pp. 308-09)

“93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes

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

for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.”

43. In *BSNL v. TRAI*⁴⁰ [“*BSNL*”], this Court had to construe the appellate power that is contained in Section 14 of the Telecom Regulatory Authority of India Act, 1997, by which, the TDSAT was conferred with the power to hear and dispose of appeals against any direction, decision, or order of the TRAI. In this context, after distinguishing the judgment in *L. Chandra Kumar*¹⁰, this Court held: (*BSNL case*⁴⁰, SCC pp. 293, 297 & 303-04, paras 108, 114 & 123-24)

“108. Before the 2000 Amendment, the applications were required to be filed under Section 15 which also contained detailed procedure for deciding the same. While sub-section (2) of Section 15 used the word “orders”, sub-sections (3) and (4) thereof used the word “decision”. In terms of sub-section (5), the orders and directions of TRAI were treated as binding on the service providers, Government and all other persons concerned. Section 18 provided for an appeal against any decision or order of TRAI. Such an appeal could be filed before the High Court. The amendment made in 2000 is intended to vest the original jurisdiction of TRAI in TDSAT and the same is achieved by Section 14(a). The appellate jurisdiction exercisable by the High Court is also vested in TDSAT by virtue of Section 14(b) but this does not include decision made by TRAI. Section 14-N provides for transfer to all appeals pending before the High Court to TDSAT and in terms of clause (b) of sub-section (2), TDSAT was required to proceed to deal with the appeal from the stage which was reached before such transfer or from any earlier stage or de novo as

⁴⁰ (2014) 3 SCC 222

¹⁰ *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577

T.N. POLLUTION CONTROL BOARD v.
STERLITE INDUSTRIES (I) LTD. (*Nariman, J.*)

523

a considered appropriate by it. Since the High Court while hearing appeal did not have the power of judicial review of subordinate legislation, the transferee adjudicatory forum i.e. TDSAT cannot exercise that power under Section 14(b).

* * *

b 114. ... From the above-extracted portion of the order it is evident that the Bench, which decided the matter, felt that the view taken by TDSAT would encourage rampant violation of the orders without any penal consequence and the entire scheme of the TRAI Act would become unworkable. The word “directions” used in Section 29 of the TRAI Act was interpreted to include orders and regulations in the context of the factual matrix of that case and the apprehension of the Court that Section 29 would otherwise become unworkable, but the same cannot be read as laying down a proposition of law that the words “direction”, “decision” or “order” used in Section 14(b) would include regulations framed under Section 36, which are in the nature of subordinate legislation.

* * *

d 123. In *Union of India v. Madras Bar Assn.*⁴¹ and *State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.*⁴², this Court applied the principles laid down in *L. Chandra Kumar case*¹⁰ and reiterated the importance of tribunals created for resolution of disputes but these judgments too have no bearing on the decision of the question formulated before us.

e 124. In the result, the question framed by the Court is answered in the following terms: in exercise of the power vested in it under Section 14(b) of the TRAI Act, TDSAT does not have the jurisdiction to entertain the challenge to the regulations framed by TRAI under Section 36 of the TRAI Act.”

f 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*⁴³, made in the following words: (SCR p. 499 : AIR p. 789, para 138)

h 41 (2010) 11 SCC 1
42 (2012) 10 SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Cri) 35 : (2013) 1 SCC (L&S) 56
10 *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577
43 (1965) 1 SCR 413 : AIR 1965 SC 745

“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 court⁴⁴. ”

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*⁴⁰, 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*⁴⁵ 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.

44. Shri Sundaram then argued that, in any case, this order is an order made by the State Government against the TNPCB, and is therefore, a direction to the TNPCB and not a direction to his client. If this were so, and the order had no effect on his client, there would have been no necessity to file an appeal before the NGT against such order. We have seen, however, that this order has been challenged on merits by the respondent before the NGT. To then say that this order which is challenged would be defended on certain grounds, as a result of which, the NGT then gets vested with the jurisdiction to decide the same, is again to put the cart before the horse. It is clear that no appeal is provided against orders made under Section 18 of the Water Act, and the attempt to bring the NGT in by the backdoor, as it were, would, therefore, have to be rejected. Also, to argue that as against a writ court acting under Article 226 of the Constitution of India, the NGT is an expert body set up only to deal with environmental matters, again does not answer the specific issue before this Court. As we have held earlier, an appeal being a creature of statute, an order passed under Section 18 of the Water Act is either appealable or it is not. If it is not, no general argument as to the NGT being an expert body set up to hear environmental matters can be of any help.

44 *Halsbury’s Laws of England*, Vol. 9, p. 349

40 *BSNL v. TRAI*, (2014) 3 SCC 222

45 2014 SCC OnLine NGT 6860

a 45. Equally, so far as the order dated 8-8-2013² is concerned, we have seen how the NGT stated that the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. This, again, is an argument that cannot be countenanced. If an appellate authority is either not yet constituted, or not properly constituted, a leapfrog appeal to the NGT cannot be countenanced. As has been held by us supra, the NGT is only conferred appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, b the NGT has no jurisdiction.

c 46. In conclusion, we are cognizant of the fact that the respondent's plant has been shut down since 9-4-2018. Since we have set aside the impugned judgments of the NGT on the ground of maintainability, the order dated 22-1-2019 passed by the TNPCB, being a consequential order, is also set d aside. The respondents are relegated to the position that the six orders impugned before the NGT, dealt with by the impugned judgment dated 15-12-2018³ and the order dated 29-3-2013, dealt with by the final judgment dated 8-8-2013², are alive and operative. Given the fact that we are setting aside the NGT judgments involved in these appeals on the ground of maintainability, we state that it will be open for the respondents to file a writ petition in the High Court against e all the aforesaid orders. If such writ petition is filed, it will be open for the respondent to apply for interim reliefs considering that their plant has been shut down since 9-4-2018. Also, since their plant has been so shut down for a long period, and they are exporting a product which is an important import substitute, the respondent may apply to the Chief Justice of the High Court for expeditious hearing of the writ petition, which will be disposed of on merits notwithstanding the availability of an alternative remedy in the case of challenge to the 9-4-2018 order of the TNPCB. The appeals are disposed of accordingly.

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2 *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68
3 *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239



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2011 SCC OnLine NGT 14

National Green Tribunal New Delhi (Principal Bench)

(BEFORE C.V. RAMULU, J.M. AND DEVENDRA KUMAR AGRAWAL, E.M.)

Between:

M/s Athiappa Chemicals (P) Ltd., Through its Authorized Signatory
 Jothis Kumar. K.H. R/o A-52 to A-55, PIPDIC Industrial Estate,
 Mettupalayam, Puducherry, ... Applicant;

and

1. Puducherry Pollution Control Committee, Government of
 Pondicherry, Department of Science, Technology and
 Environment, 3rd Floor, Housing Board Complex, Anna Nagar,
 Puducherry-605005
2. Central Pollution Control Board, Represented by its Member
 Secretary Parivesh Bhawan, CBD-cum-Office Complex, East
 Arjun Nagar Delhi 110032 Represented by its Member Secretary
3. Government of Pondicherry Department of Science, Technology
 and Environment, 3rd Floor, Housing Board Complex, Anna
 Nagar, Puducherry - 605005
4. Union of India Through its Secretary, Ministry of Environment &
 Forest, Paryavaran Bhawan, CGO Complex, Lodhi Road, New
 Delhi - 110003 ... Respondents.

Application No. 30 of 2011

Decided on December 14, 2011

(Advocates Appeared: Shri A. Venayagam Balan, for the Applicant and Counsel for
 the Respondent 1 and 3 - Shri S Prabhu Ramasubramanian and Shri V.G. Pragasam)

JUDGMENT

(Judgment Delivered by the Bench)

This is an application filed under Section 14 of the National Green Tribunal Act 2010 challenging the Order dated 16.11.2011 issued by the Puducherry Pollution Control Committee, Pondicherry under Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 directing the Applicant to stop all the manufacturing activities until the three directions mentioned therein are complied with.

At the outset, we may notice that against the order made under Section 31-A of the Air (Prevention and Control of Pollution) Act 1981, an appeal is provided under Section 31 of the said Act which reads as under:

Section 31-- "Appeals.—(1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute:

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Appellate Authority shall consist of a single person or three persons as State Government may think fit to be appointed by the State Government.

(3) The form and the manner in which an appeal may be preferred under sub-

section (1), the fees payable for such appeal and the procedure to be followed by the Appellant Authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible."

Under Section 31 of Air Act, an effective remedy of appeal against the Order made by the Authority under section 31-A of the Air Act is available. When this Tribunal expressed doubt as to the maintainability of the appeal, the Learned Counsel for the Applicant drawn our attention to the provisions of Section 2 (m) and 14 of the NGT Act which reads as under:

"Section 2(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."

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."

And submitted that this Tribunal has been conferred with vast powers and the application of this nature is maintainable since a substantial question of law had arisen for the consideration of the Tribunal. According to him, the Appellate Authority is not a regular Tribunal which conducts sittings on day to day basis. The Appellate Authority sits periodically once in a month or once in two months, therefore, the appeal under Section 31 of the Air Act is not an effective remedy. Further, Section 14 of the NGT Act contemplates that this Tribunal can entertain any application and assume jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved. According to the Learned Counsel, the order passed by the authority under Section 31-A, arises under Air Act which is one of the Acts enumerated in Schedule 1 of the NGT Act and the order of the authority under Section 31-A is arbitrary, atrocious and illegal. If the appeal is not entertained within a reasonable time say one or two weeks, the Applicant would suffer irreparable loss and injury. There is no impediment in entertaining this Application under Section 14 of the NGT Act, since, for the protection of the Applicant's interest, there is no remedy available. Therefore, the factual position of non-availability of an effective remedy itself is a substantial question of law apart from other legal grounds raised for assuming jurisdiction by this Tribunal. The Tribunal can at least make some interim arrangement protecting the interest of the Applicant before an appeal is entertained by the Authority under Section 31 of the Air Act. Absolutely, there is no bar for this Tribunal to entertain a Application of this nature. The jurisdiction of this Tribunal is inclusive and not exhaustive when Section 2(m) is read with Section 14 of the NGT Act. If the impugned order is not stayed, the legal rights of the applicant arising under the Air Act are jeopardized. If the applicant industry is closed for indefinite time, it will not only suffer economic loss but the hundred and odd employees working will be put to hardship.

Further, according to the learned counsel for the applicant, when the matter was

earlier considered by the authority and directed for closure of the industry, the applicant had to approach the Hon'ble High Court of Madras by way of filing writ petitions and on both the occasions, the Hon'ble High Court was pleased to allow the writ petition by setting aside the order passed by the authority. This is the third time a similar impugned order is passed. Therefore, the remedy available to the Applicant cannot said to be both efficacious and alternative remedy. Apart from this, the learned counsel also raised certain questions virus of the Act on the ground that the delegation of powers under Section 31-A of the Act, etc.

We are afraid; we may not be able to agree with the submissions made by the learned counsel for the Applicant. The National Green Tribunal is a statutory Tribunal and it cannot examine the virus challenged of any act or provision thereof. It is for the constitutional courts to examine such matters. A statutory Tribunal can interpret the provisions of law with which it is supposed to deal with. Therefore, we cannot go into the questions raised by the Applicant such as:

"Whether essential powers and functions of the Central Pollution Control Board under the Act can be delegated to the respondent Committee which is constituted under Section 11 of the Air (Prevention and Control of Pollution) Act 1981. Whether the exercise of such powers by the Respondent Committee under Section 31-A amounts to excessive delegation beyond the scope of delegation etc."

Apart from this, against the impugned order, an appeal is provided under Section 31 of the Air Act., as noticed above. Merely because the appellate authority under Section 31 of the Air Act conducts sittings periodically, this Tribunal cannot assume jurisdiction under Section 14 of the NGT Act. The question of entertaining a Application under Section 14 of the NGT Act, bypassing the effective appeal provided under section 31 of the Air Act does not arise. In fact, against an order passed by the Appellate Authority under Section 31 of the Air Act, an appeal is provided under Section 16(f) of the NGT Act which reads as under:

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

(f) *"An order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981)"*.

Thus, entertaining an application of this nature amounts to allowing the Applicant to jump the statutory appeal which is not permissible under the law. Unless, all the forum available under the Act are exhausted by the Applicant including the appeal under Section 31 of Air Act, it cannot approach this Tribunal directly -- whatever, may be the merits and the questions of Law raised and arise for consideration. This Tribunal being statutory in its nature, cannot entertain the Applicant of this nature much less any substantial question of law has arisen under Section 14 of the NGT Act for consideration. Therefore, we are of the considered opinion that the Application is not maintainable and being devoid of merits and is liable to be dismissed. Accordingly, the Application stands dismissed at admission stage itself.

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

.....

**Original Application No.135/2015
(M.A No.1309/2015)**

In the matter of:

1. Narinder Kumar Shukla & Ors

S/o Late Sh. H.K Shukla
C-25, 2nd Floor, Paryavam complex Opp. Saket
New Delhi-110030

2. Sh. Satpal Sharma

S/o Late Sh. Bhagi Rath Sharma

3. Sh. Shashi Sharma

Sakoh, the Jaisingpur

.....Applicants

Verses

1. Sh. Jagish Saphiya

S/o Subedar Singh
Village Jagrup Nagar
P.O. Alampur
Teh:- Jai Singhpur, Dist: Kangra, H.P

2. Sh. Kapil Shapahya

S/o Sh. Jagdish Shapahya
Village Jagrup Nagar
P.O. Alampur
Teh:- Jai Singhpur, Dist: Kangra, H.P

3. Sh. Sanjay Patharia

S/o Not Known
MS Ashok Teal Stall
Sakoh (Village), Teh:- Jaisinghpar
Disttrect Kangra, H.P

4. The Secretary,

Department of Industries
Geological Wing, Udyog Bhawan,
Bemloe, Shimla-171001

5. The Secretary,

State Government of Himachal Pradesh,
Shimla, H.P

6. The Deputy Commissioner

Kangra at Dharamsala, H.P

7. The Director,

Mining Office
Dharamshal, Kangra, H.P

8. Ravi Sharma

Mining Guard of Beas River,
Lamba Gaon, Teh: Jaisinghpur
Himachal Pradesh

.....Respondents

Counsel for Applicant:

Mr. Amita Babbar, Mr. Rahul Sharma & Mr. Jitin, Advs

Counsel for Respondents :

Mr. S.C Rana, Adv for respondent no. 1 to 3
Mr. Suryanaryana Singh, AAG for respondent no. 4 to 8

ORDER/JUDGMENT**PRESENT:**

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Prof. A.R Yousuf (Expert Member)

Reserved on: 21st March, 2016
Pronounced on: 27th May, 2016

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 M.S Nambiar (Judicial Member)

1. The Application is filed under section 14, 15 and 17 of National Green Tribunal Act, 2010, seeking direction to the

respondents to remove the stone crusher from the bank of river Beas with its junction of Khad Bhariva at Village Sakoh, Tehsil Jaisinghpur, District Kangra (H.P.) and also to remove all the structures, transports and other connected items from the bank of river Beas where those are parked/installed/placed and to pay compensation to the applicants and other villagers who have been affected by the illegal activities.

2. The applicants are residents of village Sakoh and Alampur of Jai Singhpur holding properties therein. Respondent No. 4 is the Secretary, Department of Industries, respondent no. 5- Secretary, State Govt. of Himachal Pradesh, respondent no. 6- the Deputy Commissioner, Kangra, respondent no. 7-the Director, Mining Office, and respondent no. 8- the Mining Guard of Beas River. Respondent no. 1 is alleged to be an active political worker of the ruling party. It is alleged that using his political influence, he managed to install one stone crusher on the Bhariva Khad, at the meeting point of the Khad in the river Beas, in the name of his son- Mr. Kapil Saphia, the respondent no. 2. According to the applicants, to reach the meeting point of Bhariva Khad and the Beas River, Respondents nos. 1 and 2 illegally constructed a road along the properties of the villagers without their permission and they also cut hundreds of trees to lay the road. Operation of the crusher is yet to be started, but the foundation has been laid by respondent no. 1 to 3. They are digging sides of Beas River and Khad Bhariva for taking out hundreds of trucks of sand and small stones/pebbles everyday for selling in the market. In spite of intimating the mining

guard, who was personally brought at the site, no action was taken, though it was promised that they will be prosecuted. As per the latest rules framed by the State of Himachal Pradesh, no stone crusher can be installed within two kilometers from the residential area, whereas the disputed crusher has been installed just at a distance of half a kilometer from the village abadi. This causes air pollution and is a source of respiratory diseases. If the respondents are allowed to continue their illegal acts, it would cause environmental degradation. The Bulldozer and the JCB machines on work are shown in the photographs annexed to the application. Respondent no. 1 to 3 are continuing the work of excavation, sale of sand, Bajri and stones from the Beas River and Khad Bhariva. They work between 4 am to 9 am, taking advantage of the absence of the villagers, who would be sleeping. In spite of the complaints filed before the authorities, no action has been taken on these illegal activities. The applicants are therefore seek the reliefs stated earlier.

3. Respondent no. 4, 7 and 8 together filed a reply contending that as per the records, no person in the name of respondent no. 2 or 3 had applied for grant of mining lease for setting up of stone crusher. One Mr. Sanjay Pathania S/o Sh. Jagroop Singh has applied for grant of mining lease for excavation/ collection of sand, stone and bajri in Khasra No. 410 measuring 04-81-86 Hects of Govt. land Mauza Alampur for a period of 15 years for setting up of stone crusher. The joint inspection committee inspected the area applied for mining lease on 13.11.2013 and recommended the area

for granting the mining lease. On the recommendation, a letter of intent was issued on 17.06.2014, after completing all the formalities in favour of Sh. Sanjay Pathania for extraction/collection of sand, stone & bajri in Khasra no. 410 for setting up of stone crusher. The said Sanjay Pathania had applied for installation of stone crusher in Khasra no. 652/1 measuring 17-96 hecets of private land falling in Mauza Alampur, Mohal Sakoh and the site was inspected by the site appraisal committee on 13.11.2013. The committee found that the site comprising Khasra no. 652/1 measuring 15-58 is suitable for installation of stone crusher. The area has been approved as per notification dated 29.04.2003 as amended on 10.09.2004 by Department of Science and Technology. The Govt. of Himachal Pradesh vide notification dated 29.05.2014, has modified the earlier notification dated 29.04.2003 and the sitting parameters for installation of stone crushers have been changed and some are incorporated afresh. In view of the said notification, directions have been issued to the Mining Officer, Kangra on 17.06.2015 to get the site re-inspected as per notification dated 29.05.2014. There exist an approach road to the site approved for the proposed stone crusher, and applied for grant of mining lease by Sh. Sanjay Pathania, and this road was noticed even before the joint inspection of the said area by the joint inspection committee. The Assistant Mining Inspector, Palampur conducted spot inspection of the site on 07.05.2015 and during inspection the Pradhan of the Gram Panchayat certified that the said road is very old and stone crusher owner has neither cut any tree nor undertaken any excavation or mining. Some basic civil

work for installation of stone crusher has been undertaken by the Respondent No. 3 and no illegal activities were noticed by the concerned field staff. Though the photographs annexed show the JCB, it does not show the registration No. of the JCB. No land mark has been shown to fix the identity of the land or the owner of the JCB. Perusal of the photographs of the trucks show the registration nos. It was revealed that these trucks do not belong to Respondent No. 3 but to one Sh. Pradeep and Sh. Mohar Singh. The mining officer has reported that in the absence of land mark, it is not possible to identify the exact part of the land seen in the photographs. The mining officer has issued notices to the owners of the trucks and if they are found indulging in illegal mining, action will be taken against them in accordance with the law. Respondent No. 9, the mining guard inspected the site along with the applicant and assured them that in case of illegal mining the offenders will be prosecuted. Respondent no. 8 did not notice any illegal mining. The area applied for grant of mining lease, with respect to which letter of intent was issued in favour of Sh. Sanjay Pathania, forms part of bed of Beas River and the proposed mining activities involve only collection of minor mineral stone, bajri and sand from the river bed, therefore, apprehension made by the applicant with respect to the environmental degradation is without any basis. The status of the approach road leading towards the river bed was also got verified from the Pradhan of Gram Panchayat Sakoh. It was informed that it is a very old road and stone crusher owner has neither cut any tree nor undertook any excavation. The Gram Panchayat has also furnished a certificate to that effect. As there is no illegality or

environmental degradation, the applicants are not entitled to any relief sought for.

4. Respondent No. 3 in his reply contended that he had applied for grant of mining lease for extraction/collection of sand, stone and Bazri in Khasra No. 410 measuring 4.81.86 Hectare which is a Government land in Mauza Alampur for the period of 15 years for setting up of a stone crusher. The Joint Committee inspected the site on 13.11.2013 and recommended the area for grant of lease and letter of intent was issued in favour of the respondent on 17.06.2014 for the said period, in Khasra No. 410. Respondent applied for installation of stone crusher in Khasra No.652/1 measuring 17-96 hectares in the same Moza Mohal. The Site Appraisal Committee inspected the site on 13.11.2013 and found the site suitable for installation of the stone crusher as per the prescribed parameters. The earlier Notification dated 29.04.2003 was amended by fresh Notification dated 29.05.2014. It is known that directions have been issued to the Mining Officer to re-inspect the site as per the prescribed parameters as per amended Notification dated 29.05.2014 and no activity could take place till the matter is finally decided by the appropriate government. There exists an approach road from Alampur Jaisinghpur Harsipatan which was a very old one. For more than 70 years the villagers used to take cattle to the catchment areas of the banks of the said rivers for grazing, watering and washing their pets. The said road exist in the revenue records also. Respondent has not cut any tree or caused any damage to the environment. He has not used any

JCB or trucks and the photographs annexed to the application is not that of the respondent or used by him. The Applicant is not entitled to any relief sought for.

5. Respondent no.1 & 2 in their reply contended that the application is filed due to political rivalry. The respondent no.1 has not used any influence for granting of mining lease or permission to install the crusher. Respondent no. 1 & 2 have neither any interest in the crusher plant nor in the mining area. The policy relating to installation and working of crusher plant within the territory of Himachal Pradesh falls within the purview of geological wing of Department of Industries to the Govt. of Himachal Pradesh. Respondent No. 1 & 2 have nothing to do with the department or the crusher or the mining and the allegations against the respondents are false and the application is only to be dismissed.

6. The applicants filed rejoinders to the replies contending that the Committee formed for consideration of grant of lease must have been misguided by respondent no.3. The Joint Committee had not physically visited the site and instead inspected the records from the office. In spite of the contention in the reply that no activity could take place till the matter is finally decided, respondent no.1 to 3 are continuing their activities and on everyday hundreds of trucks loaded with sand and bajri are mined and sold. It is thus clear that respondent no.1 & 3 had violated the directions and indulged in illegal mining. Though there existed a road to the catchment area, it was blocked by the installation of the stone crusher in the grazing land. The respondents made a new road through the land which

was fraudulently purchased from the villagers. The Notification dated 29.05.2005 provides the prescribed distance where installation of stone crusher are permitted. No stone crusher can be installed within a distance of less than 500m from village abadi. The village Pratap Nagar of Alampur is only 200m away from the site of the stone crusher and village Sakoh Mauza abadi is about 300m from the site of crusher. The natural spring of village Pratap Nagar and Babli is only 100m away from the site of the stone crusher. Competent authorities have not taken these facts into consideration. As per the inspection report dated 12.05.2015 submitted by Assistant Mining Inspector, he visited Khasra No. 410 applied for lease for mining by Mr. Sanjay Pathania and found that no mining activities are being carried on. It is also stated that road from Harshipattan to Alampur is an old road and no new road has been constructed. If so, the crusher has to be on the road going from Harshipattan to Alampur, which is contrary to the notification dated 29.05.2014. Khasra No. 410 of Mohal Jagroop Nagar, Mauza Alampur is situated in River Beas, where no stone crusher can be installed in water. The report of the Joint Inspection Committee reveals that they have not visited the site, as mining lease granted in Khasra No. 410 is in the river. No mining lease could have been granted or any crusher could legally be installed in the river.

7. Subsequently, the applicants got amended the applications contending that the stone crusher is being installed about 50m away from the bank of River Beas and respondent no. 3 is the cousin of respondent no. 1. It was also contended that photographs

annexed to the application are in respect of Khasra no.650, 642, 651, 656 and 664. The reliefs sought for were also modified for a direction to remove the stone crusher being installed at Khasra No. 650, 642, 651, 656 and 664 from the bank of River Beas with its junction of Khad Bhariva.

8. Respondent no. 4 to 6 in their additional reply contended that respondent no. 3 had applied for installation of stone crusher in Khasra No. 652/1 and not in Khasra no. 650,642,651,656 and 664. It is also contended that there was physical inspection and there was no illegal mining activities and the mining lease was granted in compliance of the provision of notification dated 29.05.2014 and the crusher was also installed legally.

9. The learned counsel appearing for the applicant and respondents were heard. The arguments of the learned counsel appearing for the applicants is that, the mining lease granted in favour of respondent no. 3 are in violation of the guidelines issued by the State of Himachal Pradesh and as per the Notification no mining lease could be granted for the purpose of crusher, in respect of the Government land and in violation of the provision, lease was granted for mining in the Government land. The learned counsel also argued that no crusher could be installed or operated, in the area, though it is a private land, in violation of the parameters fixed. The learned counsel appearing for the respondent no. 3 and the Additional Advocate General appearing for the State of Himachal Pradesh argued that the guidelines relied on by the applicant, has no relevance in view of the promulgation of Himachal Pradesh,

Minor Mineral Concession and Minerals Prevention of illegal mining transportation and storage Rules, 2015. The learned counsel also pointed out that as per the 2015 rules, lease can be granted for mining in Government land and there is no violation. It is also argued that respondent no. 3 has obtained all the requisite licenses and permissions and there is no illegality and in such circumstances, the applicants are not entitled to the reliefs sought for.

10. The following points arise for consideration:

- i.) Whether there is any violation in granting of the mining lease in favour of respondent no. 3
- ii.) Whether the installation of the stone crusher by respondent no.3 is in violation of any law, rule or regulation.
- iii.) Whether the respondents 1 to 3 have caused any environmental degradation and if so, what are the directions to be issued for restoration/restitution of the environment and whether the applicants are entitled to any compensation.

11. Discussion on the points (i) to (iii)

Though the application was originally vague on the reliefs sought for, subsequently it was got amended and the relief sought for is for removal of the stone crusher from Khasra no. 650, 642, 651, 656 and 664 from the bank of River Beas with its junction of Khad Bhariva and to remove all the structures used for transporting sand, stone, bajri and pebbles from the said site.

Though there is no specific prayer with regard to the mining lease, the case of the applicant is that, a stone crusher could be permitted to be operated or installed, only if there is a valid lease for mining and no lease for mining can be granted in respect of Government land for and hence, no crusher could have been installed. The applicants are relying on the guidelines to establish their case. The guidelines relied on by the applicants is "River/stream bed mining policy guideline in the State of Himachal Pradesh". Clause viii therein is the relevant provision of the guideline, relied on by the applicants. It reads as follows:-

"Extraction of minor minerals to be done in selected rivers/streams or the river/stream sections:

- 8.1 *Based on the action plan as mentioned the lease/contract shall be granted as per Himachal Pradesh Minor Mineral (Concession) Revised Rules, 1971 and by following the procedures as mentioned in the policy.*
- 8.2 *Extreme care and caution shall be taken to identify mining area in the perennial river/streams so as to avoid mining activities in these areas.*
- 8.3 ***Permission for the extraction of sand, stone and bajri for open/free sale in the River/Stream Beds falling in the Government land shall be granted through auction/tender whereas mining lease for the same purpose shall be granted only in private land.***

Provided that neither auction shall be done nor mining lease for open sale of mineral shall be granted in border areas like Nalagarh Sub-Division and Kasauli Tehsil of District Solan, where there are chances of over exploitation of River/Stream beds and illegal transportation of mineral outside the State.

Other border areas shall also be included on the basis of study to be conducted.

8.4 *Leases for free sale up to area measuring 5 hectare for a period up to 5 years in areas other than as specified in para 9.2 above shall be granted in private land subject to the condition that no boulders/cobbles/hand broken road ballast shall be allowed to be transported outside State.*

8.5 *Priority shall be given to Government Departments, i.e., PWD, IPH, etc. if mineral is required for departmental bonafide use, by engaging departmental labour.*

12. It is the argument of the learned counsel appearing for the applicants that in view of clause 8.3, no mining lease could be granted in respect of Government land, as it could only be granted in respect of private land and admittedly respondent no. 3 was granted mining lease in respect of Government land and, therefore, it is illegal.

13. As rightly pointed out by Additional Advocate General, in the light of the Himachal Pradesh, Minor Mineral Concession and Minerals Prevention of illegal mining transportation and storage Rules, 2015 (in short "Rules 2015"), provides a complete procedure for granting of lease in respect of minor minerals. In case of any contradiction in the guidelines and the Rules, the provisions of the Rules would prevail. Chapter II of Rules 2015 deals with grant of mineral concession and conditions grant of mining lease. Rule 6 provides the restriction on grant of mining lease. Rule 6 reads:-

"6. Restriction on grant of mining lease-

(1) No mining lease shall be granted in respect of land within a distance of two kilometers from the immediate outer limits of Municipal Corporation/Municipal Committee., one kilometer from the immediate outer limits of Nagar Panchayat, except under special circumstances by the Competent Authority.

(2) No mining lease shall be granted up to 100 meters from the edge of National Highway/Express way, 25 meters from the roads except on special exemption by the Joint Inspection Committee.

(3) No mining operation shall be permitted within a distance stipulated by the Joint Inspection Committee from public utilities.

(4) No mineral concession shall be granted to a person who does not hold a Certificate of Approval.

(5) No mining lease shall be granted to a person who is not a citizen of India.

(6) No mining lease and installation of stone crusher shall be granted to a person in a Scheduled area without the prior recommendation of the concerned Gram Sabha.

(7) In areas other than Scheduled area for granting mining lease and permission for installation of stone crusher, the concerned Gram Panchayat shall be consulted and it shall be incumbent upon the Gram Panchayat to convey its approval or refusal within a period of three months failing which it shall be deemed that the Gram Panchayat has no objection. In case of refusal or any objection raised by the concerned Gram Panchayat, sufficient reasons for such refusal/objection shall be recorded in writing. The objection shall be reviewed/decided by the granting authority after taking input/opinion from the Joint Inspection Committee:

Provided that for grant of mining lease of brick earth and ordinary earth clay in private lands having an area less than 500 hectares, no consultation and approval of the Gram Panchayat concerned shall be required.

(8) No mining lease shall be granted in the forest area without forest clearance from the Central Government in accordance with the provisions of the Forest Conservation Act, 1980 and the rules made thereunder.

(9) No mining lease shall be granted in respect of any such minor mineral as the Government may notify in this behalf from time to time.”

14. Rule 9 deals with priority for granting of mining lease. The said rule reads:

“Priority for grant of mining lease:-

(1) Priority in granting mining lease shall be given to the following:-

(a) First priority shall be given to all agencies concerned with the implementation of infrastructure projects in the department of Multi-purpose Projects and Power and National Highway Authority of India and other departments like Himachal Pradesh Public Works Department, Irrigation and Public Health Department etc and projects of State importance and their authorized agents or contractors to whom works have been awarded on the recommendation of concerned Department.

(b) Second priority shall be given to discoverer of new mineral; and

*(c) **Third priority shall be given to a person who intends to set up a mineral based industry in the State:***

Provided that where two or more persons of the same category have applied for a mining lease in respect of the same land, the applicant whose application is received earlier shall have a preferential right for the grant of the lease over an applicant whose application is received later: Provided further that where such application are received on the same day, the Government after taking into consideration the following factors, may grant mining lease to such one of the applicants as it may deem fit:-

(a) Experience of the applicant in mining:

(b) Financial soundness, stability and special knowledge in the field of geology and mining of the applicant;

(c) Special knowledge of geology and mining of the technical staff already employed or to be employed for the work:

(d) Clearance of Government dues and royalties where the applicant or his/her family member has been engaged in the mining business previously; and

(e) Satisfactory performance of the applicant where he has been engaged in the mining industry previously.

(2) The Government may for special reasons to be recorded in writing, grant a mining lease to an applicant whose application is received later in preference to an applicant whose application is received earlier.

(3) The State Government may, for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or over a part of the area applied for.

(4) A priority register of mining lease application(s) shall be maintained.

(5) The Applicant, for reasons to be recorded in writing can withdraw the priority at any stage.”

15. Therefore, as against the provisions of the guidelines, the Rules 2015, enables the State to grant mining lease in respect of Government land, to a person who intends to set up a mineral based industry in the State. The stone crusher as defined under rule 2(ZM) means “stone crusher to be registered under these rules and shall include a machine which use metal surface to break rock/ minerals or compress material to reduce particles size for the manufacturing of grit/ bajri or further reduce to finer size to to be used as a raw material for manufacturing reinforced or pre-stressed cement concrete products or building material or for

construction purpose, except pulverizing or grinding and crushing of rock for reducing size in a cement plant for the production of clinker/cement: and converting rock fragments into sand without using conveyor belts.”

16. Therefore, stone crusher would come within ambit of a mineral based industry. As rightly argued by the Additional Advocate General, if a person intends to set up a mineral based industry in the State, the Rules 2015, provides for granting mining lease to such person for that purpose. Therefore, the grant of mining lease in favour of respondent no.3 is not bad in law. In any case it cannot be challenged based on the guideline referred to earlier. Moreover the mining lease as such was not challenged. Therefore, we find no merit in the contention of the Applicants that the grant of mining lease was illegal and due to the said illegality no crusher could be permitted to be installed.

17. Vide order dated 22.09.2015, the State Level Environment Impact Assessment Authority (in short SEIAA), Himachal Pradesh, granted the environmental clearance to the respondent no.3 for mining in Khasra No. 4-81-86 hectares of Government land in Khasra No.410 falling in Mauza Alampur. The said environmental clearance shows that the State Environment Impact Assessment Authority examined the proposal in its 23rd meeting held on 17.08.2015 and considered the recommendations made by SEAC in its 40th meeting held on 07.09.2015 and considering the recommendations of the State Level Expert Appraisal Committee, environmental clearance was granted to the project as per the EIA

Notification of 2006 providing specific and general conditions enumerated therein. Therefore, respondent no.3 has the necessary environmental clearance for mining in 4-81-86 land in Khasra no.410 in Mauza Alampur. Though the environmental clearance is subject to an appeal, appellants have not preferred any appeal and therefore they are not entitled to challenge the environment clearance in the application filed under section 14 of the NGT Act, 2010, without filing an appeal under section 16.

18. Vide order dated 02.11.2015, the Himachal Pradesh State Pollution Control Board has accorded consent to establish the stone crusher in favour of respondent no.3. The said consent establishes that respondent no.3 has approached the Board for issuing consent to establish under the Water Act, 1974 and Air Act, 1981 for establishment of the stone crusher and extraction of stone, bajri and sand and the Assistant Environment Engineer has recommended the case for consent to establish the stone crusher. The consent was finally granted on the conditions stipulated. Vide order dated 22.01.2016 the Pollution Control Board has also granted consent to operate for extraction, collection of sand, stone and bajri at VPO, Sakho in favour of respondent no.3. Therefore, it is clear that respondent no.3 has got the legal Authority and permission for installation of the stone crusher.

19. The argument advanced by the learned counsel appearing for the applicant as against the consent granted for establishment of the stone crusher by respondent no.3 is that it does not satisfy the parameters fixed. The Notification dated 29.05.2014 was issued by

the Government of Himachal Pradesh, in supersession of the earlier Notification no. STE-E(4)-1/2003 dated 29.04.2003 and amendments carried out therein from time to time, regarding setting up of stone crusher units in the State of Himachal Pradesh, in exercise of the powers conferred by section 5 of Environment (Protection) Act, 1986 read with the Notification S.O 152 (E) dated 10.02.1988 of Ministry of Environment and Forest, in pursuance of the provisions of section 7 of the Environment (Protection) Act, 1986, the directions of the High Court of H.P in *CWP No. 7949/2011, Deshraj Vs. State of Himachal Pradesh & Ors* and in *CWP No. 7951/2011, Yograj Vs. State of Himachal Pradesh & Ors*. Regarding setting up of stone crusher units on the site suitability provides the criteria of minimum distance from village abadi-deh as 500 m, though earlier to the Notification of 2014, it was only 250 m. The argument is that though the Site Appraisal Report in respect of the mining lease, granted to respondent no.3 shows the distance as 700 m, the Performa for the joint inspection of the area applied for grant of mining lease, shows that the area applied for grant of mining lease is bed of river Beas and therefore, granting of consent for the stone crusher is bad and the respondents are to be directed to dismantle and remove the machineries of the stone crusher. Though the said Performa for the joint inspection of area applied for grant of mining lease shows that the area applied is river bed of Beas, the exact distance of the stone crusher from the village abadi has been specifically shown in the Site Appraisal Report based on the inspection by Sub-Divisional level Site Appraisal Committee on 30.09.2015. It shows that the stone crusher site satisfies all the criterions provided under the rules. The Site

Appraisal Report itself shows that the inspection by the Committee on 30.09.2015 was to verify whether the sites identified for proposed crusher unit fulfils the conditions. The relevant part of the report reads:

“It is also further observed that there exist a natural barrier in the shape of valley behind and in the front of the crusher site, it will further minimize the adverse effect on the environment by the crusher.

During the course of inspection of above said site, it was observed by the committee that the area under reference identified for installation of proposed crusher unit fulfill the condition at Sr. No. 14 of Notification No. STE-E(3)-17/2012 dated 29.05.2014 and the committee recommended the Kh. No. 652/1 measuring to 0-15-58 Hect., which is 700 meters from secondary course of river Beas and fulfill the condition at Sr. No. 14 of Notification No. STE-E(3)-17/2012 dated 29.05.2014.

The condition at Sr. No. -8, the committee observed that no, spring, Canal, reservoir or functional water supply, percolation well, sewerage treatment plant, water infiltration exists near the area. The other conditions except condition No. -8 and 14 mentioned in the notification has already been recommended by the Site Appraisal Committee inspected on 13/11/2013 and same has also been mentioned in this report.

During the course of site appraisal inspection, the Mining Officer appraised the committee that if the stone crusher is to be installed on the basis of mining activities of minor minerals from mining lease, then possession of valid mining lease is pre-requisite for according permission for installation of stone crusher unit, whereas the mining lease of the area applied for, is yet to be granted by the competent authority which will be granted only after the applicant obtains the Environmental clearance from the competent authority of Ministry of Environment and Forest (MoEF).

Keeping the above in view, it was found by the Site Appraisal Committee that the site over an area comprising of Kh. No. 652/1 measuring to 0-15-58 Hect. in Mohal Sakoh Mauja Alampur The. Jaisingpur, Distt. Kangra identified for installation of proposed stone crusher unit by the applicant fulfills the sitting parameters framed vide notification No. STE-E(3)-17/2012 dated 29.05.2014. The committee found suitable the above said site, subject to following conditions:

- *That the installation of stone crusher unit can only be allowed whenever the applicant shall hold a valid mining lease/ source.*
- *Issuance of NOC by the Tourism department and other stipulations made above.”*

20. During the course of the inspection of the above said site, it was observed by the Committee that the area identified for installation of proposed crusher unit fulfils the conditions at serial no. 14 of the Notification STE-E(3-17/2012) dated 29.05.2014 and the Committee recommended Khasra No. 652/1 measuring 0.15-58 hectares, which is 700 mtrs from the course of the river and hence fulfils condition no. 14 of the Notification dated 29.05.2014. Based on the inspection it was recorded that “it was found by the Site Appraisal Committee that the site was an area comprising of Khasra No. 652/1 measuring 20.15-58 hectares in Mohal, Sakho, Mauza, Alampur, The-Jaisinghpur of Dist: Kangra indentified for installation of the proposed stone crusher unit by the applicant fulfils the site parameters fixed by Notification dated 29.05.2014.”

21. We have already found that the respondent no.3 is having a valid mining lease and the mining lease so granted is perfectly in order. Though the learned counsel appearing for the applicant, based on the Site Appraisal Report prepared on the basis of the inspection dated 13.11.2013 and 30.09.2015 respectively argued that as the distance from the village abadi is only 300m and as per the notification dated 29.05.2014 referred to earlier, the minimum distance from village abadi-deh should be 500m, the notes 1.2.2 specifically provide that the distance are relaxable in the case of any

natural barrier between site of the unit. The relevant note to the site suitability provided under the notification reads:

“1.2.2 In the guidelines distances are relaxable in the case of any natural barrier between the site of the unit and any of the features indicated in the guidelines natural barrier may be defined as ‘any natural physical entity except any kind of river/khad/natural stream/tree canopy which obstructs the physical view and/or prevents the movement of air and noise so as to keep air and noise pollution within prescribed limits”.

The Government may relax the guidelines for a limited period in specific cases wherein setting up of stone crushing unit is necessary in public interest but it is not practically feasible to adhere to any or all of the guidelines, provided that such relaxation will be considered only on the recommendation of the Joint Inspection Committee as proposed in para 1.3.2.”

22. The Site Appraisal Reports show that though the minimum distance from the village abadi is only 300 mtrs, the site is surrounded by hills, which serve as a natural barrier and therefore, the minimum distance of 500 mtr is not applicable. Therefore on that basis, it cannot be said that consent granted for the establishment and operation of the stone crusher is bad.

23. We therefore, find no substance in the contentions of the applicants on violation of the site parameters.

28. Even otherwise, it is seen from the records produced that the receipt of application for mining lease was submitted by respondent no.3 on 12.10.2014. The State Level Environment Impact Assessment Authority (SEIAA), accorded environment clearance for the project on the specific and general conditions provided therein.

That clearance was granted based on the application submitted seeking prior environmental clearance for extraction/collection of sand/stone and bajri by respondent no.3. As the E.C was granted as early as 22.09.2015, the applicant could not have preferred an appeal under Section 16 of NGT Act, 2010 challenging the EC on 23.04.2015, the day when the application was filed before the Tribunal. When the order granting E.C, is an appealable order, and the applicant failed to challenge the E.C within the statutory period, or the period provided for condonation of delay, the same cannot be challenged in the guise of an application under section 14 of the National Green Tribunal Act, 2010.

24. In such circumstances, the application can only be dismissed as there is no violation of the relevant rules or the parameters. The application is therefore dismissed but without any order as to cost.

M.A No. 1309/2015 & 220/2016

As the main application is dismissed the miscellaneous applications itself are dismissed.

Hon'ble Mr. Justice M.S.Nambiar
Judicial Member

Hon'ble Prof. A.R Yousuf
Expert Member

New Delhi,
May, 2016

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names were already mutated in the land records and after purchase, Respondent 1's name came to be mutated in the records. Corporation number was allotted to it. It had started paying corporation taxes as well as NALA tax and electricity dues. Its possession for the last more than 60 years had never been disturbed. It had constructed multi-storeyed building only after obtaining sanction and permission from the Municipal Corporation. In the earlier writ petition filed by them in the High Court, Municipal Corporation and the appellant State both were parties, which ultimately resulted in favour of the respondents, no such ground was raised. Thus, it could not be established even in the earlier litigation that the land belonged to the State. a

32. In fact, second proceedings initiated by the appellant under Section 8 of the Act, would be barred by constructive res judicata as envisaged under Section 11 of the Code of Civil Procedure, even though such a ground was neither taken nor raised before us by the respondents. Thus, it is no more necessary to further deal with this issue. b

33. Thus, in our considered opinion, no fault can be found either in the judgment and decree of the Special Court or in the judgment and order passed by the Division Bench of the High Court, in the appellant's writ petition. c

34. Keeping the aforesaid facts in mind, we are of the opinion that there is no merit or substance in this appeal. It is hereby dismissed with no order as to costs. d

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(BEFORE K.G. BALAKRISHNAN, C.J. AND J.M. PANCHAL, J.)

GOAN REAL ESTATE AND CONSTRUCTION
LIMITED AND ANOTHER

.. Petitioners; e

Versus

UNION OF INDIA THROUGH SECRETARY,
MINISTRY OF ENVIRONMENT AND OTHERS

.. Respondents. f

Writ Petition (C) No. 329 of 2008[†], decided on March 31, 2010

A. Environment Protection and Pollution Control — Coastal areas — Constructions in — Validity of — CRZ Notification dt. 19-2-1991 as amended by Notification dt. 16-8-1994 — Constructions completed and constructions ongoing pursuant to plans sanctioned under 1994 Notification — Validity of, held, not affected by judgment dt. 18-4-1996 in *Indian Council for Enviro-Legal Action case*, (1996) 5 SCC 281 declaring part of 1994 Notification illegal — Operation of 1994 Notification not having been stayed by Supreme Court or by Government till date of said judgment, held, all orders passed under 1994 Notification, and actions taken pursuant thereto remained unaffected by said judgment — Environment (Protection) Act, 1986 — Ss. 3(1) & (2)(v) — Environment (Protection) Rules, 1986, R. 5(3)(d) g

[†] Petition under Article 32 of the Constitution of India h

- B. Precedents — Interpretation of judgments — Judgment prospective or retrospective — Principles for determination of, and factors to be taken into consideration therefor, restated — Situations and jurisdictions in which said question arises — Applying said principles, held, judgment in *Indian Council for Enviro-Legal Action case*, (1996) 5 SCC 281 invalidating part of Notification dt. 16-8-1994 amending CRZ Notification dt. 19-2-1991 issued under R. 5(3)(d), Environment (Protection) Rules, 1986, was intended to be operative prospectively — Environment (Protection) Act, 1986 — Ss. 3(1) & (2)(v) — Environment (Protection) Rules, 1986 — R. 5(3)(d) — Constitution of India — Art. 141**

Held :

- It is well settled that an order of a court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of the Supreme Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Observation made in a judgment, it is trite, should not be read in isolation and out of context. (Para 31)

- While interpreting the judgment in *Indian Council for Enviro-Legal Action case*, it is important to take into consideration the view expressed over the matter in controversy by various governmental authorities formed under the purview of the Environment (Protection) Act, 1986 to implement the provisions of the said Act, although such view or opinion is not binding on the Court. By various communications issued by the Additional Director of Ministry of Environment and Forests and decision of NCZMA, it is brought on record that all the authorities unanimously opined that the said judgment dated 18-4-1996 would operate prospectively and further clarified that any developmental activity which had been initiated between 16-8-1994 and 18-4-1996 after obtaining all requisite clearances from the agencies concerned including the Town and Country Planning Authority should be construed as ongoing projects and were not hit by the said judgment. (Paras 31 to 33)

- While interpreting the judgment, public interest should be taken into consideration. When judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions or prospectively to the transactions in future only. This process is limited not only to common law traditions, but exists in all jurisdictions. It is, therefore, for the court to decide, on a balance of all relevant considerations, whether a decision which unsettles the previous position of law should be applied retrospectively or not. The Court would look into the justifiable reliance on the previous position by the administration, ability to effectuate the new rule adopted in the overruling case without doing injustice, whether its operation is likely to burden the administration of justice substantially or would retard the purpose. All these factors are to be taken into account while determining whether a judgment is prospective or otherwise. (Para 34)

The Court would adopt either the retroactive or non-retroactive effect of a decision after evaluating the merits and demerits of a particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard the object of the judgment. (Para 35)

- ECIL v. B. Karunakar*, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704, reiterated

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The purpose of the old rule, the mischief sought to be prevented by the judgment and the public interest are equally germane and should be taken into account in deciding whether the judgment has prospective or retrospective operation. It is well known that the courts do make the law to prevent administrative chaos and to meet ends of justice. (Paras 35 and 36)

The contention of the respondents that although the construction already completed would not be affected by the judgment, incomplete constructions could not be permitted to be completed is devoid of merits. Two amendments made in the year 1994 were declared to be illegal vide judgment dated 18-4-1996. Till then, its operation was neither stayed by the Supreme Court nor by the Government. Therefore, a citizen was entitled to act as per the said notification. The rights of the parties were crystallised by the amending notification till part of the same was declared to be illegal by the Supreme Court. Therefore, notwithstanding the fact that part of the amending notification was declared illegal by the Supreme Court, all orders passed under the said notification and actions taken pursuant to the said notification would not be affected in any manner whatsoever. (Para 38)

On the facts and in the circumstances of the case, it is held that the judgment dated 18-4-1996 rendered in *Indian Council for Enviro-Legal Action case*, (1996) 5 SCC 281 declaring part of the amending Notification dated 16-8-1994 to be illegal, will not affect the completed or the ongoing constructions undertaken pursuant to the plans sanctioned under the amending Notification of 1994 till two clauses of the same were set aside by the Supreme Court. (Paras 40 and 41)

Indian Council for Enviro-Legal Action v. Union of India, (1996) 5 SCC 281, clarified

C. Constitution of India — Art. 226 — Exercise of power — Relief — Conduct of parties — Failure to fully comply with earlier directions — Environment protection case — Omission to challenge decision of National Coastal Zone Management Authority (NCZMA) — Consequences — Writ petition filed before High Court challenging order of Village Panchayat renewing permission to respondent to construct under CRZ Notification specified — High Court directing NCZMA to consider the matter after hearing the parties and to make a report — High Court also granting liberty to each of the parties to challenge the report if adverse to it — NCZMA deciding against writ petitioner — Writ petitioner not challenging the report at first and then only belatedly — In such circumstances, writ petitioner's contention that instead of taking decision itself, NCZMA ought to have directed the parties to approach High Court for appropriate orders, rejected (Paras 37 and 23)

D. Environment Protection and Pollution Control — Coastal areas — Constructions in — Validity of — CRZ Notification dt. 19-2-1991 as amended by Notification dt. 16-8-1994 — Decision taken by NCZMA that the stand taken by MoEF in its various letters was correct and that all the properties and assets constructed or under construction during the period between 16-8-1994 and date of decision in *Indian Council for Enviro-Legal Action case*, (1996) 5 SCC 281 were valid — Applicability — Held, applicable not only to the writ petitioners in the present case, but, to all such cases in coastal areas of the country — Environment (Protection) Act, 1986 — Ss. 3(3), (1) & (2)(v) — Environment (Protection) Rules, 1986, R. 5(3)(d)

(Paras 39 and 21)

H-D/A/45867/C

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Advocates who appeared in this case :

- a G.E. Vahanvati, Attorney General for India, K.K. Venugopal and Mukul Rohatgi, Senior Advocates [Mahesh Agarwal, Rishi Agrawal, Mohammed Himayatullah, Saurabh Kirpal, Ms Rohma Hameed (for E.C. Agarwala), Ms Anitha Shenoy, Ms Noma Alvares, Ms Mamta Saxena, Gopal Shankar Narayanan, Sanjay Parikh, Anish R. Shah, Ms Manjula Gupta, Mihir Chatterjee and Devadatt Kamat, Advocates] for the appearing parties.

Chronological list of cases cited

on page(s)

- b 1. (1996) 5 SCC 281, *Indian Council for Enviro-Legal Action v. Union of India* 392d, 392f-g, 393g-h, 396c-d, 396g-h, 397b, 397e, 397f-g, 397g, 397h, 398c, 398f, 398g-h, 399a, 399e-f, 399f, 400a-b, 400b, 400f, 400g
2. (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704, *ECIL v. B. Karunakar* 399a-b

The Judgment of the Court was delivered by

- c **J.M. PANCHAL, J.**— By filing this petition under Article 32 of the Constitution, the petitioners have prayed to declare that the building plans sanctioned and constructions made and ongoing constructions pursuant to the Coastal Regulation Zone Notification dated 19-2-1991 as amended by the Notification dated 16-8-1994 issued by the Central Government are valid.

- d 2. The relevant facts emerging from the records of the case are as under:
d Petitioner 1 is the owner of the land situated near River Zuari at Goa. It submitted plans in the year 1993 for construction of a hotel and residential complex. The Central Government, through the Ministry of Environment and Forests (“MoEF”, for short), issued the Coastal Regulation Zone Notification dated 19-2-1991 in exercise of powers under Rule 5(3)(d) of the Environment (Protection) Rules, 1986. As per the said notification, the area up to 100 metres from the high tide line was earmarked as “No-Development Zone” and no construction was permitted within this zone except for repairs, etc.

- e 3. However, the Central Government issued another Notification on 16-8-1994 amending Notification dated 19-2-1991 and relaxing the “No-Development Zone” to 50 metres from 100 metres. In view of the said relaxation, the petitioners who had earlier obtained construction permissions in respect of a project beyond 100 metres, submitted an additional proposal to the Panchayat of Village Curca, Bambolim and Taloulim, Taluka Tiswadi, Goa for construction of 18 blocks between 50 metres and 100 metres. The Village Panchayat referred the matter to the Town and Country Planning Authority, as required under the rules for technical evaluation. The Town and Country Planning Authority approved the abovementioned additional construction to be made between 50 metres and 100 metres vide order dated 31-7-1995. Based on this approval, vide its order dated 31-7-1995, the Village Panchayat sanctioned the plans and granted permission to construct. It is the case of the petitioners that they had commenced construction in accordance with newly approved plans which were revalidated from time to time and are valid till this date.

- h 4. An NGO by the name of Indian Council for Enviro-Legal Action filed a public interest litigation in this Court under Article 32 of the Constitution

against the Union of India making prayer to direct the Central Government to implement Notification dated 19-2-1991 by which Coastal Regulation Zones (CRZs) were formed and restrictions on development were placed. The grievance made was that the non-implementation of the said notification had led to continued degradation of ecology. In the said petition, Goa Foundation, a society registered under the Societies Registration Act, 1860 filed an application challenging the vires of Notification dated 16-8-1994 by which main Notification dated 19-2-1991 was amended. This Court took into consideration the salient features of the main Notification dated 19-2-1991 and noticed that the said notification was issued to ensure that the development activities were consistent with the environmental guidelines for beaches and coastal areas and, therefore, by the said notification, restrictions on the setting up of industries which had detrimental effect on the coastal environment were imposed. The Court thereafter proceeded to examine validity of Notification dated 16-8-1994. After noticing that six amendments were made in the main notification, this Court found that reduction of the ban on construction from 100 metres to 50 metres was illegal and power given to the Central Government for relaxation of developmental activities in the entire 6000 kilometres long coast line was unbridled and capable of being abused.

5. Thus, by judgment dated 18-4-1996 which is reported as *Indian Council for Enviro-Legal Action v. Union of India*¹, the abovementioned two amendments were held to be bad in law by this Court. From the final directions given by this Court in para 47 of the judgment, it is evident that this Court partly accepted the petition by striking down two amendments which were introduced by the Notification dated 16-8-1994. From para 39 of the judgment, it transpires that during the course of arguments, the learned Additional Solicitor General of India brought to the notice of this Court, the fact that construction had already taken place along such rivers, creeks, etc. at a distance of 50 metres and more. This Court observed that there could not have been uniform basis for demarcating "No-Development Zone" and it would depend upon the requirements by each State Authority concerned in their own management plan, but no reason had been given as to why in relation to tidal rivers, there was a reduction of the ban on construction from 100 metres to 50 metres.

6. This Court in *Indian Council for Enviro-Legal Action case*¹ also took into consideration the fact that no explanation had been given in the affidavit filed on behalf of the Union of India as to why the construction was permitted at a distance of 50 metres and more along rivers, creeks, etc. This Court found that reduction of the ban on construction from 100 metres to 50 metres would permit new constructions to take place and, therefore, the reduction could not be regarded as a protection only to the existing structures. Further, this Court noticed that there was absence of a categorical statement in the affidavit to the effect that such reduction would not be harmful or result in serious ecological imbalance. The Court expressed its

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a inability to conclude that the amendment was made in the larger public interest and was valid. The said amendment was held to be contrary to the object of the Environment (Protection) Act and found not to have been made for any valid reason. Thus, the two amendments out of six amendments introduced by the amending notification were declared to be illegal.

b 7. From the record, it becomes clear that the petitioners had made an application to the Panchayat to inspect the construction made on Survey Nos. 12/1 and 99/2 which were stretches of lands lying between 50 metres and 100 metres. In view of the contents of the said letter, a Panchayat official had inspected the site on 25-9-1996 and prepared a site inspection report. The said report indicated that the petitioners had completed foundation work up to the plinth level and in some of the areas of the property, the construction work of the building was complete and ready for occupation.

c 8. However, People's Movement for Civic Action i.e. Respondent 4 herein made a complaint to the local Goa Coastal Zone Management Authority i.e. Respondent 3 regarding constructions made by the petitioners between 50 metres and 100 metres. Pursuant to the said complaint, the Goa Coastal Zone Management Authority on 22-10-2006 issued communication through its Secretary to the Additional Collector stating that on a joint inspection of the site at Survey Nos. 99/2, 12/1 and 96, it was found that the construction work was going on in violation of CRZ guidelines inasmuch as d construction was made between 50 metres to 100 metres of "high tide line". By the said letter, Respondent 3 requested the Additional Collector to ascertain whether clearance under CRZ norms had been obtained.

e 9. On 22-10-2006, an order was passed by the Collector, North Goa District directing the petitioner to stop the construction at the site. Based on a complaint by Goa Bachao Abhiyan to the Chief Secretary regarding alleged violation of CRZ norms, the Additional Collector, North Goa issued a stop-work order dated 22-12-2006 and directed the police and the Town and Country Planning Authority to maintain the status quo at the site.

f 10. On 28-12-2006, Petitioner 1 made a representation to the MoEF to issue clarification that the project of Petitioner 1 was an ongoing project and as the same was sanctioned according to the rules and regulations then applicable, the stop-work notice by the Additional Collector was illegal.

g 11. The Central Government, through the Ministry of Environment and Forests ("MoEF", for short) vide Letter dated 24-1-2007 addressed to the petitioner with a copy to the Director and Joint Secretary, Department of Science, Technology and Environment, Government of Goa, clarified that new developmental activities to be carried out in the zone between 50 metres and 100 metres in the high tide line along with inland tidal water bodies would attract the provisions of CRZ Notification of 1991 from the date of the order of the Supreme Court¹ i.e. from 18-4-1996. In spite of the receipt of abovementioned communication, the Goa Coastal Zone Management Authority did not act upon the directions issued by the MoEF. Therefore, h

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Petitioner 1 made another representation to the Central Government with a request to issue necessary clarifications to the authorities.

12. A further clarification dated 13-2-2007 was issued by the Additional Director of the MoEF. In the said clarification, earlier communication dated 24-1-2007 was referred to and it was clarified that any developmental activity which had been initiated between 16-8-1994 and 18-4-1996 after obtaining all the requisite clearances from agencies concerned including the Town and Country Planning Authority should be construed as an ongoing project. Even after this clarification, the stop-work order was not lifted. a

13. The Goa Coastal Zone Management Authority ("GCZMA", for short) addressed a communication dated 28-3-2007 to the Additional Collector stating that it was decided that on the property of Petitioner 1, "No-Development Zone" should be marked at 100 metres and the stop-work order, if any, in operation beyond such "No-Development Zone" should be vacated. On receipt of communication dated 28-3-2007 from the Goa Coastal Zone Management Authority, the Additional Collector, Goa, passed an order dated 23-5-2007 purporting to vacate the stop-work order dated 12-12-2006 but, in fact, permitting the construction beyond 100 metres and not 50 metres. b

14. The petitioners, therefore, made third representation to MoEF and requested to issue fresh clarifications. The petitioners had also annexed copy of the letter dated 28-3-2007 addressed by the GCZM Authority to the Additional Collector. c

15. On receipt of the said representation, the MoEF, Government of India, issued clarification dated 16-5-2007. A reference was made to its earlier Letter dated 13-2-2007, it was mentioned therein that it was not clear as to why GCZMA had not taken into consideration the clarification dated 13-2-2007 of MoEF before addressing letter dated 28-3-2007 to the Additional Collector, Goa in relation to the development made in property bearing Survey Nos. 12/1 (pt.), 12/2 and 99/2 of Village Bambolim, Taluka Tiswadi, Goa. By the said communication, the Member-Secretary, Department of Science, Technology and Environment of Government of Goa was requested to get the matter examined by the Goa Coastal Zone Management Authority keeping in view the clarifications issued by the Ministry vide Letter dated 13-2-2007. d

16. In spite of the receipt of the communication from MoEF, the stop-work orders were not lifted and allowed to operate. Therefore, the petitioners filed Writ Petition No. 365 of 2007 in the High Court of Bombay at Goa challenging the stop-work orders dated 22-12-2006 and 23-5-2007 passed by the Additional Collector, Goa. e

17. During the course of hearing of the writ petition on 24-7-2007, the learned Additional Solicitor General appearing for the MoEF made a statement before the Court that from the records it was clear that the project of the petitioners had been treated by the Central Government acting through the MoEF as an ongoing project. In view of this statement made on behalf of the Central Government, the learned Advocate General appearing for the Goa f

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a Coastal Zone Management Authority and for the State of Goa stated at the Bar that the State of Goa would withdraw the stop-work orders dated 22-12-2006 and 23-5-2007 to the extent they imposed an embargo on construction between 50 metres and 100 metres and that the withdrawal letter would be issued to the petitioners within a period of one week from the date of the order. The record shows that the statements made at the Bar by the learned Additional Solicitor General and the learned Advocate General were accepted by the Court and, therefore, the petitioners had not pressed the said writ petition. The writ petition was accordingly disposed of by order dated 24-7-2007.

b 18. The record further shows that thereafter Writ Petition No. 403 of 2007 was filed by People's Movement for Civic Action and Goa Foundation, a society registered under the Societies Registration Act challenging the order dated 8-10-1998 passed by the Panchayat of Curca, Bambolim and Talaulim, Goa by which permission to construct was renewed in favour of the petitioners.

c 19. Initially, the Court had directed the parties to maintain status quo. The Court had also directed the Secretary, MoEF to place the stand of the Environment Ministry of the Central Government on the record by filing an affidavit. The record shows that in compliance with the said direction, an affidavit affirmed on 12-9-2007 by Mr K. Uppily, Additional Director in the MoEF, Government of India was filed expressing the view of the Ministry that any developmental activity which had been initiated between 16-8-1994 and 18-4-1996 after obtaining all the requisite clearances from the agencies concerned including the Town and Country Planning Authority should be construed as an ongoing project. In the said affidavit, it was also mentioned that the Ministry had decided to place the matter before the National Coastal Zone Management Authority in its meeting which was scheduled to be held in October 2007 and the contentions of People's Movement for Civic Action, etc. as also the communications dated 17-7-2007 of the Goa Coastal Zone Management Authority and the contentions of the petitioners would be examined by the said Authority.

d e f g h 20. In the light of the facts mentioned in the affidavit filed on behalf of the Ministry, the High Court directed the National Coastal Zone Management Authority to consider the matter referred to it by the Ministry and submit a report to the Court after giving a personal hearing to all the parties concerned. The High Court clarified that the National Coastal Zone Management Authority should decide the matter on merits without being influenced in any way by the filing of writ petition or the observations made by the Court. It was also clarified that if the order was adverse to the petitioners, they would be at liberty to challenge the same. Further, the Goa Coastal Zone Management Authority was directed to take action in accordance with law subject to the rights of the petitioners to challenge the said report. The Court further stated in its order that the People's Movement for Civic Action and Goa Foundation would also be at liberty to move the

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Court for appropriate relief in case the report of the National Coastal Zone Management Authority was adverse to it.

21. The record shows that the National Coastal Zone Management Authority considered the matter in detail in its meeting held on 30-10-2007. The Authority, after detailed discussions, was of the view that there would be several cases all over the coast wherein there would be some instances indicating that constructions work had been completed or was in progress pursuant to the Notification dated 16-8-1994. Therefore, the Authority concluded that the stand taken by the MoEF vide Letters dated 24-1-2007, 13-2-2007 and 16-5-2007 was correct one and was in accordance with the CRZ Notification of 1991. The Authority also noticed that the clarification given by the MoEF was applicable to all cases in the coastal areas of the country.

22. What was reported by the said Authority was that this Court while setting aside two out of six amendments dated 16-8-1994 in Writ Petition No. 664 of 1993 (*Indian Council for Enviro-Legal Action v. Union of India*¹) had not passed any orders with regard to cases in which the construction had been completed or was in progress and, therefore, all the properties and assets constructed or under construction in the period between 16-8-1994 and 18-4-1996 during which the setback line was changed from 100 metres to 50 metres were valid. The Authority noted that if it would have been otherwise, this Court would have passed specific orders. The Authority ultimately expressed the view that the interpretation of phrase “ongoing” by the Goa Coastal Zone Management Authority was incorrect and all the properties and assets constructed or under construction during the period between 16-8-1994 and 18-4-1996 should be maintained and should not be destroyed.

23. Thereafter, the public interest litigation was placed for final hearing before the High Court. The Court was of the opinion that as the Supreme Court had struck down the notification amending the earlier notification, ordinarily all activities between 50 metres and 100 metres from the high tide line must cease. Having expressed this view, the Court considered the report of the National Coastal Zone Management Authority (“NCZMA”, for short) and noticed that the said report/order was not challenged by the petitioners who had instituted the public interest litigation. On the request of the petitioners, the Court permitted them to amend the petition so as to enable them to challenge the order of NCZMA. The said order permitting the original petitioners to amend the petition was challenged by the present petitioners by filing SLP (C) No. 16728 of 2008 before this Court. The petitioners were also directed to maintain status quo and, therefore, feeling aggrieved by the said order, they have preferred SLP (C) No. 19767 of 2008 which is also heard along with this writ petition.

24. The case of the petitioners is that this Court in its judgment dated 18-4-1996¹ had not specifically directed demolition of the existing structures nor the directions of the Court had affected the ongoing constructions which were coming up as per plans sanctioned during the period when the said

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a amending Notification dated 16-8-1994 was valid and in force. It is mentioned by the petitioners that the Central Government and thereafter NCZMA after considering the facts and circumstances of the case and in the larger public interest had concluded that the stand taken by the MoEF vide its Letters dated 24-1-2007, 13-2-2007 and 16-5-2007 was correct and, therefore, a case is made out for issuance of a clarification that the judgment of this Court rendered in *Indian Council for Enviro-Legal Action*¹ on 18-4-1996 does not prejudice or affect either the completed construction or

b ongoing construction.

25. Under the circumstances, the petitioners have filed the instant petition and claimed the relief to which reference is made earlier.

c 26. On service of notice, Dr. A Senthil Vel, Additional Director, Ministry of Environment and Forests has filed reply-affidavit and supported the case of the petitioners. After filing of the additional affidavit by the petitioners, Mr Claude Alvares, has filed affidavit in opposition on behalf of Respondent 5 whereas affidavit-in-rejoinder is filed by Mr Vijender Kumar Sharma, on behalf of the petitioners.

d 27. This Court has heard the learned counsel for the parties at great length and in detail. This Court has also considered the documents forming part of the petition and other proceedings.

e 28. The question which falls for consideration is whether the constructions made or ongoing pursuant to the plans sanctioned on the basis of the Notification dated 16-8-1994 would be affected or not. For this purpose, it will be necessary to construe the judgment rendered in *Indian Council for Enviro-Legal Action*¹.

f 29. A critical study of the judgment in *Indian Council for Enviro-Legal Action*¹ makes it clear that this Court had examined the validity of six amendments made by the Notification dated 16-8-1994 in the Notification dated 19-2-1991. Two out of the six amendments were found by this Court to be arbitrary and illegal and, therefore, they were struck down. When one part of the notification was found to be legal and another part of the said notification to be bad in law, it would not be proper to construe the judgment affecting past transactions.

g 30. The tenor of the judgment indicates that this Court intended to give prospective effect to the judgment dated 18-4-1996 rendered in *Indian Council for Enviro-Legal Action*¹. It is to be noted that this Court in its judgment dated 18-4-1996¹ had not specifically directed demolition of existing structures. It is also pertinent to note that this Court had not stated as to what will be the fate of ongoing constructions which were coming up or ongoing as per sanctions during the period when the said amending Notification dated 16-8-1994 was valid and in force. In view of the circumstances, now it has become essential to understand the real intention of this Court ingrained in the judgment dated 18-4-1996¹.

h 31. It is well settled that an order of a court must be construed having regard to the text and context in which the same was passed. For the said

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purpose, the judgment of this Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Observation made in a judgment, it is trite, should not be read in isolation and out of context. On perusal of para 10 of the judgment, it is abundantly clear that even under the 1991 Notification which is the main notification, it was stipulated that all development and activities within CRZ will be valid and will not violate the provisions of the 1991 Notification till the management plans are approved. Thus, the intention of legislature while issuing the Notification of 1991 was to protect the past actions/transactions which came into existence before the approval of the 1991 Notification.

32. In para 39 of the judgment in *Indian Council for Enviro-Legal Action*¹, this Court considered the argument proposed by the learned Additional Solicitor General that construction has already taken place along such rivers, creeks, etc. at a distance of 50 metres and more. This plea was specifically answered by observing that even if this be so, such reduction would permit new constructions to take place and this reduction could not be regarded as a protection only to the existing structures. Thus, on perusal of the above statement, it is clear that this Court had quashed the amendment because the amendment would permit new constructions to take place which was contrary to the provisions of the Environment (Protection) Act, 1986 and not because of the reason that there was evidence before the Court that constructions already made or ongoing pursuant to the plans sanctioned on the basis of the Notification of 1994 had, in fact, frustrated the object of the Act. Thus, para 39 clearly reflects intention of this Court that the Court wanted to give the judgment prospective effect. On perusal of the judgment in entirety, it is abundantly clear that the judgment is in form of directions to the Central Government and other authorities formed within the purview of the Environment (Protection) Act, 1986 and those directions are to be followed in future.

33. While interpreting the judgment in *Indian Council for Enviro-Legal Action*¹, it is important to take into consideration the view expressed over the matter in controversy by various governmental authorities formed under the purview of the Environment (Protection) Act, 1986 to implement the provisions of the Environment (Protection) Act, 1986 although such view or opinion is not binding on the Court. By communications dated 24-1-2007, 13-2-2007 and 16-5-2007 issued by the Additional Director of Ministry of Environment and Forests and decision of the National Coastal Zone Management Authority dated 30-10-2007, it is brought on record that all the authorities unanimously opined that judgment of this Court dated 18-4-1996¹ will operate prospectively and further clarified that any developmental activity which has been initiated between 16-8-1994 and 18-4-1996 after obtaining all requisite clearances from the agencies concerned including the

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Town and Country Planning Authority should be construed as ongoing projects and are not hit by the judgment of this Court dated 18-4-1996¹.

- a 34. It is pertinent to note that while interpreting the judgment, public interest should be taken into consideration. In *ECIL v. B. Karunakar*² this Court considered the factors which are to be taken into consideration while giving prospective operation to a judgment. When judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions or prospectively to the transactions in future only. This process is limited not only to common law traditions, but exists in all jurisdictions. It is, therefore, for the court to decide, on a balance of all relevant considerations, whether a decision which unsettles the previous position of law should be applied retrospectively or not. The Court would look into the justifiable reliance on the previous position by the administration, ability to effectuate the new rule adopted in the overruling case without doing injustice, whether its operation is likely to burden the administration of justice substantially or would retard the purpose. All these factors are to be taken into account while determining whether a judgment is prospective or otherwise.

- d 35. The Court would adopt either the retroactive or non-retroactive effect of a decision after evaluating the merits and demerits of a particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard the object of the judgment. The purpose of the old rule, the mischief sought to be prevented by the judgment and the public interest are equally germane and should be taken into account in deciding whether the judgment has prospective or retrospective operation.

- e 36. It is well known that the courts do make the law to prevent administrative chaos and to meet ends of justice. Taking into consideration all these factors, this Court refuses to interpret the 1996 judgment¹ in a manner which would give it a retrospective effect. It is clear from the tenor of the judgment and from other background circumstances, more importantly in view of decisions of NCZMA which is a statutory body that the three-Judge Bench decision in 1996 case¹ intended to give it prospective effect.

- g 37. The contention of Mr K.K. Venugopal, learned Senior Counsel for the respondents that decision should not have been taken by NCZMA on 30-10-2007 stating that all the properties and assets constructed or under construction during the period between 16-8-1994 and 18-4-1996 when the setback line stood changed from 100 metres to 50 metres, is valid and the said Authority should have directed the parties to approach the High Court for appropriate orders, cannot be accepted. As observed earlier, the whole matter was reconsidered by NCZMA pursuant to the order passed by the Division Bench of the Bombay High Court. It is well to remember that the said order was never challenged by the respondents before higher forum and

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by their conduct, the respondents had permitted the said order to attain finality.

38. The contention raised on behalf of the respondents that the construction already completed would not be affected in any manner by decision of this Court in *Indian Council for Enviro-Legal Action*¹ but incomplete construction cannot be permitted to be completed is devoid of merits. Two amendments made in the year 1994 were declared to be illegal vide judgment dated 18-4-1996¹. Till then, its operation was neither stayed by this Court nor by the Government. Therefore, a citizen was entitled to act as per the said notification. This Court finds that the rights of the parties were crystallised by the amending notification till part of the same was declared to be illegal by this Court. Therefore, notwithstanding the fact that part of the amending notification was declared illegal by this Court, all orders passed under the said notification and actions taken pursuant to the said notification would not be affected in any manner whatsoever.

39. The plea that the petitioner would get benefit of interpretation placed by the statutory bodies and others would not get any benefit and, therefore, the petition should be dismissed has no substance. A bare glance at the minutes of the 16th meeting of NCZMA held on 30-10-2007 makes it more than clear that it was concluded by the Authority that the stand taken by the Ministry vide Letters dated 24-1-2007, 13-2-2007 and 16-5-2007 was correct and was in accordance with the Coastal Regulation Zone Notification of 1991. What is relevant to notice is that the said Authority has in terms held that the clarification given by the MoEF is applicable to all such cases in the coastal areas of the country. Therefore, the plea that only petitioners have been favoured by the Authority and, therefore, the petition should be dismissed cannot be accepted.

40. On the facts and in the circumstances of the case, this Court is of the opinion that a good case has been made out by the petitioners for issuance of a declaration that the judgment dated 18-4-1996 rendered in *Indian Council for Enviro-Legal Action*¹ will not affect the ongoing constructions or completed constructions pursuant to the plans sanctioned under the amending Notification of 1994 till two clauses of the same were set aside by this Court.

41. For the foregoing reasons, the petition partly succeeds. It is declared that the judgment dated 18-4-1996 in *Indian Council for Enviro-Legal Action v. Union of India*¹, declaring part of the amending Notification dated 16-8-1994 to be illegal, will not affect the completed or the ongoing constructions being undertaken pursuant to the said notification. The rule is made absolute to the extent indicated hereinabove. There shall be no order as to costs.

h