

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 1190 OF 2024

IN THE MATTER OF: -

Ajayveer Singh

...Applicant

-Versus-

State of Uttar Pradesh & Ors.

...Respondent(s)

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Company**

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Date: 08.04.2025

Place: New Delhi

FILED BY:A handwritten signature in blue ink, appearing to read 'Jaiswal', is shown within a light blue rectangular box.

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

Appeal No. 5 of 2011

Wednesday, the 14th day of December, 2011

Quorum:

1. **Hon'ble Justice Shri C.V. Ramulu**
(Judicial Member)
2. **Hon'ble Dr. Devendra Kumar Agrawal,**
(Expert Member)

Between:

1. **Vimal Bhai**
D 334/10 Ganesh Nagar
Pandav Nagar Complex, DELHI-110 092
 2. **Dr. Bharat Jhunjunwala**
Lakshmoli, P.O. Maletha, VIA Kirti Nagar
DT. Tehri, UK – 249161
 3. **Briharshraj Singh Tariyal**
Village: Naurakh, P.O. Pipalkoti,
DT. Chamoli, Uttarakhand
- ...Appellants

and

1. **Ministry of Environment & Forests**
Through the Secretary
Government of India
Paryavaran Bhawan
Lodi Road, New Delhi - 03
2. **Tehri Hydro Development Corporation**
Pragati Puram, Rishikesh,

DT. Dehradun, UK

3. Department of Forest

Through Principal Chief Conservator of Forests,
Uttarakhand Forest Department,
Indira Nagar, Forest Colony
Dehra Dun

.....**Respondents**

(Advocates Appeared: Shri Ritwick Dutta & Ms. Parul Gupta, Advocates for Appellants and Mrs. Neelam Rathore, Advocate for Respondent No. 1. Shri Shail Kumar Dwivedi and Shri Abhinav Shrivastava, Advocates for Respondent No. 2 and Shri Ashutosh Kumar Sharma for Respondent No. 3.)

J U D G M E N T

(Judgment delivered by the Bench)

This appeal is filed being aggrieved by the grant of Forest Clearance (for short FC) accorded by the First respondent through its Order No. 8-65/2009 – FC dated 3rd of June 2011 under which deforestation of 80.507 hectares of government forest land diverted for construction of 65m high diversion dam across river Alakhnanda near village Helong in Chamoli District of Uttarakhand State for the purpose of generating hydroelectricity power.

Before going to the facts of this case it may be necessary to notice that the Environmental Clearance (for short EC) was already granted as early as on 22nd August 2007 by the first respondent. Though, it is more than three years, the EC was not challenged and the same is valid. However, after issuance of the FC by the First respondent, questioning the same the present appeal is filed. Thus, the only challenge made is for the grant of FC and not EC.

Submissions:

According to the appellants, the appellant No. 1 is a Gandhian Social Activist working for the Environment Protection and Peoples' right over the natural resources in middle Himalaya area since 1988. The appellant No. 2 is an economist and a former Professor of Indian Institute of Management, Bangalore and lives on the bank of the river Alaknanda. The appellant No. 3 is a Social Activist and elected as Van Sarpanch of Village Naurakh. And all of them are affected by the FC of the Vishnugad-Pipalkoti hydro power project in which construction of a 65m high diversion dam across river Alaknanda at Helong Village, Chamoli district of Uttarakhand State is proposed.

The total land requirement of the project is about 120 hectares. Out of which, about 40ha is agriculture land and about 80 hectares is government forest land. The project is being developed by the Respondent No. 2. Respondent No. 3 had sent proposal for diversion of forest land vide their letter no. 65/IG-2521(Chamoli) dated 2nd September 2009. The said proposal was considered by the Forest Advisory Committee (for short FAC) of Respondent No. 1 on 30th/31st May 2011. While that being so, the matter of diversion of forest land for Kotlibhel 1A and Kotlibhel 1B hydroelectric Projects appears to have come up before the Hon'ble Supreme Court and the Respondent No. 1 herein was directed to conduct a detailed study with defined scope of work. The grant of FC in the present case was substantially based on the study made by Indian Institute of Technology, Roorkee (for short IITR) and Wildlife Institute of India, Dehradun (for short WII). As per the scope of work, "effectiveness of mitigative measures and compliance of stipulated conditions on which various projects earlier have been examined", was to be completed, however, no such study was conducted. Thus, the

recommendation of the FAC was based on non-existent study and as such is arbitrary and whimsical. Further, even the environmental flows study recommendations by IITR were also not done scientifically. The environmental flow requirement suggested by the IITR has not taken the ecological functions of flood flows into account. The cost benefit analysis was not evaluated properly and the negative aspects were not taken into account.

The Respondents No. 1 to 3 have filed their detailed reliefs. According to them, all the allegations made and the grounds raised in the appeal are all baseless and liable to be rejected. Further, the very appeal is not maintainable, since the appellants are neither interested parties nor they are aggrieved and/or injured persons as defined in the Act. They are neither directly nor indirectly affected by the project. The Respondent No. 2, in this regard, relied upon several sections of the National Green Tribunal's Act 2010 and also referred to various Judgments of Apex Court as well as High Courts. In fact, diversion of forest land for Kotlibhel 1A and 1B projects had come up before the Hon'ble Supreme Court much before the Respondent No. 1 received proposal seeking prior approval of the Central Government for diversion of the forest land for the Vishnugad-Pipalkoti hydroelectric Project. In compliance to orders of Hon'ble Supreme Court, Respondent No. 1 placed the proposals of Kotlibhel 1A and 1B before them. On examination of the FAC recommendations, the Hon'ble Supreme Court constituted Central Empowered Committee (for short CEC) and entrusted the matter for examination. The suggestions made by CEC were placed before the Hon'ble Supreme Court where Respondent No. 1 was directed for a study and place the matter for reconsideration before the newly constituted FAC. The FAC entrusted the matter to a sub-committee. The sub-committee examined the whole issue in proper perspective and recommended for grant of FC only after taking into consideration the

study made on comprehensive study of carrying capacity of river Ganga in the hilly terrain upto Haridwar. In so far as Cumulative Impact Assessment (for short CIA) or carrying capacity study is concerned, this was undertaken by IITR and WII. Final reports were submitted by them. In view of the same, the appeal is devoid of merits and is liable to be dismissed.

The Counsel on either side advanced elaborate arguments and also submitted their written arguments.

Discussion:

We have given our earnest consideration to the respective submissions made by the learned counsel on either side and perused the material made available on record.

We are of the considered opinion that the following questions arise for considerations in this appeal.

- a) Whether the appellants can be called as aggrieved and /or injured "person(s)" as defined under the National Green Tribunal (for short NGT) Act and the appeal is maintainable by them;
- b) Whether the appellants are justified in raising grounds that may be available for challenging the EC or its conditions in the guise of challenging the grant of present FC;
- c) Whether the FC granted in favour of project proponent is in consonance with the principles of sustainable development and precautionary measures;

- i) Whether the environmental flows fixed by the authority is in accordance with the fixed standards or not;
- ii) Whether the cost benefit analysis have been properly conducted while applying for grant of FC;
- iii) Whether the impacts of deforestation on wildlife ecology and environment have been considered or not.

The above points have been examined in detail as under:

Point (a) :

Whether the appellants can be called as aggrieved and /or injured "person"(s) as defined under the NGT Act and the appeal is maintainable by them;

Before going into the arguments advanced by the Counsel on either side it may be necessary to notice few sections of the NGT Act 2010 in this regard, which reads as under:

Section 2 (j) :

"person" includes—

- i) an individual;
- ii) a Hindu undivided family;
- iii) a company;
- iv) a firm;
- v) an association of persons or a body of individuals, whether incorporated or not;
- vi) trustee of a trust;
- vii) a local authority; and
- viii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Section 16 (e) :

Tribunal to have appellate jurisdiction -- Any person aggrieved by—

(a to d).....

- (e) an order or decision made, on or after the commencement of the National Green Tribunal Act 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980).

Section 18 - Application or appeal to Tribunal:

(1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by –

- i) the person who has sustained the injury; or
- ii) the owner of the property to which the damage has been caused; or
- iii) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or
- iv) any agent duly authorized by such person or owner of such property or all or any of the legal representative of the deceased, as the case may be; or
- v) any person aggrieved, including any representative body or organization; or
- vi) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environmental (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application:

Provided further that the person, the owner, the legal representative, agent, representative body or organization shall not be entitled to

make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organization have preferred an appeal under section 16.

(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

We may also have to take note of the Preamble and Section 20 of the NGT Act, 2010 which reads as under:

Preamble of NGT Act 2010 – “An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.”

Section 20:“Tribunal to apply certain principles–The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pay principle.”

A combined reading of the Preamble and Section 20 of the NGT Act, 2010 would reveal that this Tribunal has got vast jurisdiction to decide the environmental disputes such as enforcement of legal rights relating to environment, compensation, damages to persons and property, and matters connected therewith and incidental thereto including conservation of natural resources. Keeping this in view, we have to examine the case on hand.

The project in question is a hydroelectric power project on Alakhnanda river. According to the Respondent No. 2, the appellants are neither **aggrieved person (s)** nor **injured person (s)** for maintaining an appeal of this nature. According to him, the **person** as defined under Section 2 (j) or as appear in Section 16 or 18 of the Act have no application to the facts of this case. The appellants are neither directly nor indirectly affected and as such cannot **be called** as **aggrieved/injured person (s)**.

Further, the learned counsel for the Respondent No. 2 strenuously contended that may be the Section 2 (j) and **person** as noticed in Section 16 and 18 all inclusive definition. But Section 18 (2) (a) entitles only a **person** who had sustained injury *per-se* to approach this Tribunal. Further, the **aggrieved person** as contemplated in the Act refers to substantial grievance as to denial of some personal, pecuniary or property right or imposition upon a party of a burden or obligation. In any case the grievance must be substantial and cannot be fanciful. Mere sentimental grievance does not make a person aggrieved (Nekumar K. Porwal vs. Mohanlal Harigovindas, AIR 1963 Bom, 246). A **person aggrieved** must be a **person** who has suffered a legal grievance i.e. a man who has been wrongfully deprived of something or to whom something has been refused wrongfully (2003) 3 SCC 393. Further, the technical considerations, if any involved, Courts generally will not interfere into such matter, since the technicalities are the matters on which experts might disagree which involve nice issues of judgment and choice which required the exercise of informed discretion (1988) 4SCC page 59. It is also the case of Respondent No. 2 that the EC in this case was granted 4 years ago and the same was widely published in the local newspapers and the Appellant No. 1 was individually informed of the same. If the appellants are concerned with the environmental impact of the project, they should have raised the issue in accordance with the law at the stage of EC itself. The appellants have no concern with the environmental

effect of the project but there is ideological bias against the development of projects. The Appellant No. 1 had put forth certain demands at the time of "Public Hearing" regarding the EC. The same was considered and redressed. The appellant did not raise any objection. Thus, the Respondent No. 2 moved forward with the project and also for the sanction of investment of the project. According to the Respondent No. 2, the *mala-fide* intention of the appellants is evident from the recent communications which they have sent to the World Bank demanding review of the loan sanctioned by it. The Appellants also threatened that there has been a challenge of FC accorded and they hope to succeed in the same. Therefore, it cannot be said that they have approached this Tribunal with clean hands and can be called that they are the **aggrieved persons**. The learned counsel for the Respondent No. 1 and 3 also submitted arguments on the same lines.

The appellants however, vehemently submitted that they are the lovers of nature, environment and ecology. Their grievance is genuine and they cannot be thrown out saying that they are not the persons directly aggrieved or injured.

A reading of Section 2(j) (i) to (viii) would reveal that any individual, Hindu undivided family, Company, Firm, an association of persons or a body of individuals whether incorporated or not, trustees of a trust, a local authority and every artificial juridical person not falling within any of the preceding sub-clauses, would indicate "**person**" who can maintain an application/appeal under the NGT Act. But, it is the argument of the learned counsel of the Respondent that even the above defined person shall be a **person** either **aggrieved** or **injured** directly or indirectly and not otherwise.

Then the question arises whether in the environmental matters, a **person** who is really **aggrieved/ injured** shall alone be permitted to approach this Tribunal. A combined reading of the above sections, would indicate, that any person whether he is a resident of that particular area or not whether he is **aggrieved** and/or **injured** or not, can approach this Tribunal. In such situations, it is of course necessary to scan and find out the credentials of the applicant/appellants as to their true intentions and motives. No doubt that in the present case though the appellants have participated in the EC proceedings and they have not challenged the same. However, that does not mean that they cannot challenge the FC proceedings on any available legal grounds (However, it is to be noted that in the guise of challenging the FC, the appellants cannot be permitted to raise the grounds which might be raised, had the EC was challenged). Appellants apprehend a great danger and disaster to the environment and ecology, if the project is not properly envisaged and does not satisfy the principles of sustainable development and precautionary principles as is mandated under Section 20 of the NGT Act. In the matters of environmental cases, any individual or persons and body of individuals can agitate as to the correctness of the study of environment and ecology made by the granting authority. Further, nothing substantial has been demonstrated to doubt the credentials of the appellants except saying that they (appellants) are not **aggrieved** and/or **injured person (s)** under the Act and they are a busy body and their motives are ulterior. The **person injured per-se** as occurred in Section 18 (2) of the NGT Act is only for the purpose of claiming relief, compensation or settlement of disputes, is altogether different from the **person aggrieved** as available in Section 16. **Person aggrieved** and **person injured** are two different words which connote different meaning. Under Section 16, any person aggrieved can approach this Tribunal by way of filing an appeal, whereas, under Section 18 (2), the person injured **per-se**, whether it is an individual or a body of individual or a social organization or a Hindu joint family, etc.

Further, under Section 14 and 16 any **person** can approach this Tribunal for appropriate relief including the relief under Section 18.

The only exception to be made for treating an appeal/application as not maintainable could be a matter which falls beyond the seven (7) Acts as notified in Schedule I of the NGT Act 2010 and in a case of *mala-fide* and vexatious litigation brought before this Tribunal and not otherwise.

In a given case, the person living in the area or vicinity of the proposed project may not know about many intrinsic scientific details and effects of the ultimate project and any disaster, it may cause. The safety of the dam and the likely devastation and loss of properties and lives of the people in the downstream, if the dam, being situated in a highly earthquake prone area, bursts or leaks - the structural flaws of the dam and rehabilitation policies, etc. Therefore, it may not be proper for this Tribunal to reject an Application on the ground that the applicant/appellant as the case may be, is not the resident of the area or not directly injured or aggrieved. The nature has been created over lakhs of thousands of years and such nature cannot be allowed to do away with one stroke of pen, in the guise of development, without properly examining the environmental and ecological impact of the project proposed. No scientific study assumes finality as with the progress of time our knowledge and understanding of the subject matter undergoes metamorphous with new evidence.

It is further very apt to note the relevant provisions of the Constitution of India which reads as under:

“Article 48A – Protection and improvement of environment and safeguarding of forests and wild life: *The State shall endeavor to*

protect and improve the environment and to safeguard the forests and wildlife of the country.”

“Article 51A - Fundamental Duties: It shall be the duty of every citizen of India:

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

From the above it is clear that the State shall endeavor and safeguard the environment and wild life and it is the fundamental duty of the citizen to improve the natural environment including forests, lakes, rivers, and wildlife and also to have compassion for living creatures. Once, the protection and improving the natural environment is the fundamental duty of a citizen, any person can approach this Tribunal and agitate his grievance as to protection and improvement of the natural environment. The statutory provisions are subservient to the constitutional mandates. The person as defined or person aggrieved as occurs in Section 2(j) 16 and 18 (2) of the NGT Act cannot be placed above **“every citizen”** as appears in Article 51A of the Constitution of India. Once the mandate is of every citizen, any person can approach this Tribunal complaining environmental threat in the activities of the State or any organization or individual.

Therefore, we are of the view that the appellants are interested **persons** in the environment and ecology of the area, though they are not directly **affected/ injured** at this point of time. But, they can be definitely called **aggrieved persons** since they apprehend some danger, if the project is launched without taking proper precautions. The **person aggrieved** in environmental matters must be given a liberal construction and needs to be flexible. Therefore, we are of the considered opinion that **persons** like

the appellants are also entitled to approach this Tribunal and the appeal is maintainable.

Point (b)

Whether the appellants are justified in raising grounds that may be available for challenging the EC or its conditions in the guise of challenging the grant of present FC?

The learned counsel for the appellant vehemently submitted that the grounds which are available for challenging EC or its conditions can be raised in this appeal while challenging the grant of FC. According to him, it is a matter of environment and ecology and grant of EC & FC cannot be viewed independently. We are of the considered opinion, in view of the legal provisions as to the period of limitation, etc., it may not be proper on our part to examine such areas which fall into the area of grant of EC while considering the FC under challenge. The EC, which was issued, was liable to be challenged within 30 days from the date of decision (Section 16 of the Act). Admittedly, the EC was granted to the project on 22.8.2007 and no challenge was made to EC. The FC alone is under challenge in this Appeal, which was granted on 3.6.2011. Now, it is more than four years and the Appellant No. 1 in fact participated in the EC proceedings and having raised several objections, did not challenge the EC. Therefore, the submission made by learned counsel for the appellant that all the issues that arise from the EC can also be raised in this appeal cannot be countenanced and accepted. But an exception can be made when the issues overlap i.e. the issues that were considered at the time of grant of EC and again while granting FC, since they are considered one after the other, independently. In fact, in the present case, few of the stipulations made under the EC have since been revised, based on the studies that were undertaken for various reasons, as discussed herein after for grant of FC, have been considered in this appeal.

Point (c)

Whether the FC granted in favour of project proponent is in consonance with the principle of sustainable development and precautionary measures.

At the outset, it may be noticed that Vishnugad-Pipalkoti HEP is a national project being carried out by the Tehri Hydro Development Corporation (for short THDC). The appeal before this Tribunal is directed against FC dated 3rd June, 2011 under Section 2 of the Forest (Conservation) Act, 1980 granted by Respondent No. 1 whereby Stage-I approval of the Central Government under the Forest (Conservation) Act, 1980 for diversion of 80.507 Ha of forest land in favour of THDC for 30 years for construction of 444 MW Hydroelectric Project in District Chamoli, Uttarakhand has been granted subject to terms and conditions stipulated in the aforesaid order. No challenge has been made so far as the procedural aspects are concerned and no irregularities have been brought to our notice. Therefore, we are of the opinion that the procedure for grant of FC followed does not suffer from any illegality or irregularity.

The appellants have raised grounds pertaining to negative impact of tunneling on water springs and its subsequent impact on forests and agriculture; Methane emissions from reservoirs; deterioration in water quality due to less absorption of beneficent chemicals; loss of aesthetic and 'non-use values'; value of free-flowing rivers; breeding of mosquitoes in reservoirs and the negative impact on health; deprivation of sand and fish to local people; negative cultural impacts; and negative impact of blasting/ tunneling, etc. Whereas the respondents have filed detailed replies countering the allegations and relied on various

documents/ reports starting from Environment Impact Assessment/Environment Management Plan report, Geological reports, Appraisal documents for World Bank loan, etc. ***At the face of facts placed, it appears that a majority of the issues have been addressed in one or the other document and accordingly, general and specific conditions have been imposed in the EC & FC granted to the project.*** The main question that arise from the arguments pertains to the fundamental question as to 'whether the project follows the sustainable development and precautionary principles or not?' After detailed arguments and subsequent evaluation of the records made available, following additional documents were sought from Respondent No. 1:

- a. The full report of the sub-committee of FAC under the chairmanship of Dr. Mahesh Rangrajan constituted to prepare a detailed report on cumulative environmental impact of various Hydroelectric Projects which was placed before the FAC on 11/12-12-2009.
- b. The Terms Of Reference (for short TOR) for the Cumulative Impact Assessment (for short CIA) study of various Hydropower Projects awarded to IITR and WII separately including any additional TOR, if any.
- c. Final copy of the report and recommendations of the CIA Study awarded to IITR and WII.
- d. Whether any study made in respect of physical and social environment including project configuration (layout) as a part of the CIA or separately while considering FC in respect of the project in question.

A perusal of the documents reveals that:

1. The diversion of forest land for Kotlibhel 1A and 1B hydroelectric projects had come up before the Hon'ble Supreme Court much before the Respondent No. 1 received proposal seeking prior approval of the Central Government for diversion of forest land for the Vishungad-Pipalkoti Hydroelectric Project.

2. State Government of Uttarakhand in August, 2007 and January, 2008 submitted two separate proposals to obtain prior approval of Central Government under the Forest (Conservation) Act, 1980 for diversion of forest land for construction Kotlibhel 1A and Kotlibhel 1B hydropower projects respectively.
3. The FAC constituted by the Central Government in accordance with Section 3 of the Forest (Conservation) Act, 1980 after examination of these proposals in its meeting convened on 29th April 2008 recommended diversion of the forest land required for construction of the aforementioned two projects.
4. In compliance of the order passed by the Hon'ble Supreme Court on 27th April 2007 in IA No. 1413, 1414 etc. in WP © No. 202/1995 in the matter of T.N. Godavarman Thirumulpad versus Union of India and others, wherein Hon'ble Supreme Court inter-alia directed that "...fresh cases may be cleared Project-wise by the FAC and thereafter such clearances shall be placed before this Court for approval...", " as such the proposal seeking prior approval of the Central Government under the Forest (Conservation) Act, 1980, for diversion of forest land required for construction of Kotlibhel-A and Kotlibhel-1B projects along with the recommendations of the FAC on these proposals were placed before the Hon'ble Supreme Court which in turn referred the matter to CEC for their views.
5. On examination of the said proposals and FAC recommendations, the CEC recommended as below:

"The CEC is of the view that it would be prudent that the reconstituted FAC reviews these projects after considering the findings of the studies regarding as follows:-

- (a) *Cumulative environmental impact of various hydroelectric projects particularly on the riverine ecosystem and land and aquatic biodiversity; and*
- (b) *Effectiveness of the mitigative measures and compliance of the stipulated conditions on which various projects have earlier been cleared”.*

6. After examination of the above proposals, the Hon'ble Supreme Court vide order dated 20th February 2009 inter-alia directed as below:

“CEC had made certain recommendations regarding diversion of 258.737 ha of forest land for Kotlibhel Hydro Electric Projects in favour of the National Hydro Power Corporation Ltd. and diversion of 496.793 ha of forest land for Kotlibhel Hydro Electric Projects in favour of National Hydro Electric Power Corporation Ltd. The FAC will review its earlier order and take a fresh decision and decision may be taken at the earliest at least within a period of five months”.

7. In pursuance to the said order dated 20th February 2009 passed by the Hon'ble Supreme Court, the afore-mentioned proposals were placed before the newly constituted FAC in its meeting convened on 2nd April 2009. After careful consideration, FAC recommended that a sub-committee under the chairmanship of Dr. Mahesh Rangarajan may be constituted to prepare a detailed report on cumulative environmental impact of various hydroelectric projects, particularly on the riverine ecosystem and land and aquatic biodiversity, effectiveness of the mitigative measures and compliance of the stipulated conditions on which various projects have earlier been cleared.

8. The FAC Sub-committee met on 06th June for the first time. On 30th June, 2009, all the project proponents of major hydroelectric projects on river Ganga made their presentations on cumulative environmental impact of projects on river Ganga and study done so far, mitigative measures suggested therein and their compliance.

9. The FAC Sub-committee conducted a field visit of Kotlibhel Stage 1A, Kotlibhel Stage 1B, Kotlibhel Stage II and Srinagar HEP on 29th October to 1st November, 2009. The FAC Sub-committee also interacted with NGOs, local people and user agencies and considered their views and representations.
10. After thorough study and site visits, the FAC Sub-committee submitted its report containing following major recommendations:
- (a) Minimum natural water flow (i.e. ecological water flow) should be maintained for continuity of aquatic eco-system of river Ganga. This may be decided by the National Ganga River Basin Authority (NGRBA for short), constituted in February 2009. However, till time it should be 16 cumecs or 20% of the lean season flow, whichever is higher.
 - (b) Mahseer Conservation Reserve as proposed by State Wildlife Department should be established.
 - (c) Aquatic Otter Conservation area should be properly demarcated as suggested in the Environmental Management Plan and should have restricted access.
 - (d) A corpus of 5% of the project costs of these three projects should be established for sustaining above mentioned activities.
 - (e) The corpus should be managed by a society registered under Society Act, with representative of the MOEF, representative of State Forest Department and State Wildlife Department, two independent experts and representative of NHPC. This will be constituted by the State Government.

11. The FAC after examination of the report of the FAC Sub-Committee in its meeting convened on 11th and 12th December, 2009, in general agreed with the report submitted by the FAC Sub-Committee and observed that in view of preliminary assessment done and the fact that several dozen more small, medium and large similar projects are on various stages of formulation, there is potential for irreparable and irreversible damage to the entire riverine eco-system in the future. The FAC therefore, recommended that no further projects of this nature can be considered by the FAC, without a comprehensive study of carrying capacity of River Ganga in the hilly terrain up to Haridwar.
12. Apart from the Kotlibhel 1A and Kotlibhel 1B, following three proposals seeking prior approval of Central Government under the Forest (Conservation) Act, 1980 for diversion of forest land for construction of Hydropower projects in Ganga River Basin were received by the MOEF:
- (a) Diversion of 658.282 ha of forest land for construction of 530 MW capacity Kotlibhel Hydro-electric Power Project (Stage-II) on lease for 30 years in favour of NHPC, in the district of Pauri-Gharwal Uttarkhand.
 - (b) Diversion of 80.507 ha of forest land for construction of 444 MW Vishnugad-Pipalkoti Hydro Electric Project in favour of Tehri Hydro Development Corporation for 30 years in district Chamoli, Uttarkhand.**
 - (c) Diversion of 60.513 ha of forest land in favour of M/s GMR Energy Ltd. For construction of Alaknanda Hydro-electric Project in Chamoli district of Uttarakhand.

13. Accordingly, the NGRBA was requested to study and fix the minimum ecological water flow with TOR having issues like minimum ecological water flow in river Ganga vis-à-vis sustainable aquatic eco-system and bio-diversity therein, as per their mandate. The NGRBA was also requested that the study should include suitable provision to assess the level of minimum water flow to have a sustainable aquatic eco-system and bio-diversity, impact of these projects on terrestrial flora and fauna, etc. However, it was realized that the NGRBA has not been envisaged as a separate project clearance body. Therefore Forest Conservation Division in the MOEF commissioned the study involving the WII and other appropriate institutions having special knowledge and practical experience in the field of terrestrial, aquatic flora & fauna and bio-diversity. The Forest Conservation Division in the MOEF, therefore, assigned the said study to the WII. Meanwhile, the National River Conservation Directorate of the MOEF also assigned a study on Assessment of Cumulative Impact of Hydropower Projects in Alaknanda and Bhagirathi basins up to Devprayag to the Alternate Hydro Energy Centre of the IITR.
14. The Respondent No. 1 keeping in view the non-availability of any credible study on the issues raised by CEC and as a measure of abundant caution and also to carry out the directions of the Hon'ble Supreme Court, considered the findings of these studies in taking decision on diversion of forest land even for the Vishnugad-Pipalkoti Hydropower Project.
15. In the meanwhile, it is also noticed here that the Vishnugad-Pipalkoti project is a project being carried out by the Tehri Hydro Development Corporation. The Techno-commercial viability to Vishnugad-Pipalkoti project was accorded by the Central Electricity Authority in

September 2006. The Environment Impact Assessment/Environment Management Plan studies of the project were carried out by M/s Water and Power Consultancy Services, a Government of India enterprise, in 2006. The Public Hearing for the project was held in the month of January 2007 at project site. The EC was accorded in August 2007. Further, investment approval for the project was accorded by the Cabinet Committee on Economic Affairs in August 2008. In the meantime, in 2006 it was decided that the project may be considered by the World Bank for funding. As per the World Bank requirements, an additional study entailing detailed field investigations, community consultations and consolidation of previous studies on environmental issues was conducted by an independent environmental engineering firm, M/s Consulting Engineering Services over the period April 2008-May 2009. The additional studies included:

- i. Study of managed river flows in the project stretch of the Alaknanda River;
- ii. Assessment of the terrestrial biodiversity impacts of the Project, including supplemental study of project impact on the Kedarnath Wildlife Sanctuary;
- iii. Assessment of archeological, physical and cultural resources;
- iv. Safety Assurances Plan for the project;
- v. Catchment area treatment plan for the project prepared by the Uttarakhand State Forest Department; and
- vi. Social Impact Assessment and Resettlement Action Plan

In addition to these studies, in the course of time, the project pioneered numerous other good practices in order to minimize the disruption to people living in the project area and to the natural environment. These included:

- i. Engagement of a reputed NGO, Shri Bhubaneshwari Mahila Ashram, to act as THDC's interface with Project-affected communities, including in Garhwali, the local language;
- ii. Mandatory use of a Tunnel Boring Machine instead of the traditional drill-and-blast method of driving tunnels to minimize the disruption on people in the project area (blasting will be reduced to the absolute minimum), which also brings environmental benefits;
- iii. Translation of the entire Environmental Impact Assessment into Hindi;
- iv. Insurance for all houses within a defined corridor of impact along the Tunnel to ensure that in the unlikely event of any damage accruing to these structures as a result of project excavation, the local people would not have to bear the damage;
- v. Compensation for loss of fuel and fodder at the rate of 100 days of minimum agriculture wages to each entitled house hold for a period of 5 years;
- vi. Extending benefits to the project affected people beyond the requirement of NPRR 2007. Besides, project has also taken action for upliftment of the area which includes:
 - a) Imparting training to the local youth for gainful employment;
 - b) Promoting education by providing scholarships;
 - c) Providing employment contracts to local people by way of providing small contracts, engaging their vehicles, etc.;
 - d) Making available free medical services to PAFS from THDC hospital;
 - e) Adoption of ITI at Gopeshawar for imparting skills to local youth; and
 - f) Development of infrastructures in the project affected villages.

In addition to above, other important studies such as Sediment optimization, adequacy of water ways for spillways, Geological Baseline Report were also executed. Based on the detailed studies, the project scheme was prepared in an optimized manner giving

due attention to all the aspects, be it social, environmental or technical. The stringent norms of the World Bank were followed while developing the project scheme and also while finalizing the project parameters.

Following the completion of the additional studies and their incorporation into a single consolidated Environmental Impact Assessment/Environmental Management Plan, in September 2009, THDC organized a Public Hearing at which the findings of all the relevant studies and the associated mitigation measures were shared with project-affected people. At the Public Hearing in September 2009, pradhans, sarpanches and local leaders addressed the public to give their strong endorsement of the project.

Having considered the sound project scheme and robust project preparation the Board of Directors of the World Bank after considering the World Bank's Project Appraisal Document dated 10.06.2011 sanctioned a loan amounting to US\$ 648 million for the Vishnugad-Pipalkoti project on 30.06.2011 and the loan agreement was signed on 10.08.2011.

It would be worth mentioning that a conventional project and site-specific approach to EIA has its limitations when it comes to assessing potential cumulative effects on environmental resources because the impact of a particular project on an environmental resource may be considered insignificant when assessed in isolation, but may be significant when evaluated in the context of the combined effect of all past, present, and reasonably foreseeable future activities that may have or have had an impact on the resources in question. Cumulative effects generally refer to impacts that are additive or interactive (synergistic) in nature and result from

multiple activities over time, including the project being assessed.

Cumulative effects

- (i) are caused by the aggregate of past, present, and future actions;
- (ii) are the total effect, including both direct and indirect effects, on a given resource, ecosystem, and human community of all actions taken, no matter who has taken the actions;
- (iii) need to be analysed in terms of the specific resource, ecosystem, and human community being affected;
- (iv) cannot be practically analysed beyond a reasonable boundary; the list of environmental effects must focus on those that are meaningful;
- (v) rarely correspond to political or administrative boundaries;
- (vi) may result from the accumulation of similar effects or the synergistic interaction of different effects;
- (vii) may last for many years beyond the life of the project that caused the effects; and
- (viii) should be assessed in terms of the capacity of the affected resource, ecosystem, and/or human community to accommodate additional effects.

The process of analysing cumulative effects is an enhancement of the traditional EIA components: (i) scoping, (ii) describing the affected environment, and (iii) determining the environmental consequences. The CIA studies in the instant case were awarded to IITR & WII separately with elaborate TOR and time bound deliverables as evidenced from the material placed on record. The TOR not only covered the physical, biological and social aspects but also highlighted the grey areas where specific inputs were sought such as determination of environmental flow, etc. The TOR clearly envisaged capitalizing on the available expertise of the expert institutions in their respective subject area. The scope of work also included integration of

specific inputs/outputs by the two institutions leading to a comprehensive document to be able to provide direction to Respondent No. 1 in taking a final decision.

It is noted from the records made available that IITR submitted its report titled '*Study on Assessment of Cumulative Impact of Hydropower projects in Alaknanda and Bhagirathi Basin up to Devprayag*' in March 2011 whereas WII submitted its **interim report** titled '*Assessment of Cumulative Impacts of Hydroelectric Projects on Aquatic and Terrestrial Biodiversity in Alaknanda and Bhagirathi Basins, Uttarakhand*' in May 2011. The voluminous reports of IITR focused on all existing and proposed hydropower projects of the river basins for the Remote Sensing & GIS Studies, Geological Studies, Seismological Aspects, Water Quality, Biodiversity and River Ecology, Hydrological Studies, Hydropower Development, Impact on Places of Cultural & Religious Importance, Hydropower and Stakeholders to undertake CIA through assessment of hydroelectric projects components of ecosystem to give Conclusions and Recommendations. The **interim report** of WII whereas took account of only five projects i.e. Kotlibhel IA, Kotlibhel IB, Kotlibhel II, Vishnugad-Pipalkoti and Alaknanda-Badrinath and after defining the zone of influence, established the baseline data for floral and faunal attributes. Impact prediction and Evaluation on biodiversity has been done after developing the criterion for scoping and weightage of impacts to give interim findings. It is evidenced from the material papers on record that IITR report looks mostly on physical and social aspects in greater details whereas the **interim report** of WII gives consideration to aquatic and terrestrial ecology only.

It is further noted from the records that the appellants have raised certain objections (similar to the grounds of appeal of the present case) to the IITR report and the same have been forwarded by the Respondent No. 1 to IITR for incorporation in the final report. On the other hand, it is seen that the

WII *interim report* which considers CIA of aquatic and terrestrial ecology only (the final report was expected in September 2011; however, has not been made available to this Tribunal as of date).

In the meantime, after examining the above records, the FAC of Respondent No. 1 took the decision to recommend the project under reference for grant of FC giving due emphasis to the fact that cumulative impact of project (on biodiversity) under reference is least. Undoubtedly, in Indian context, the concept of CIA is an emerging subject area and due to lack of available data base, a lot of constraints are posed in conducting CIA; and in the instant case, we sincerely appreciate the efforts put forward by the two leading institutions of the country namely, IITR and WII in producing the voluminous reports with lot of primary database. However, it is surprising that integration of the physical, biological and social aspects of the environment for arriving at the crucial decision making stage, has been somehow not been attempted at all and Respondent No. 1 has overlooked/ignored its own set of awarded TOR for the CIA. To illustrate this point while attempting CIA, impacts such as quantum loss of agricultural land, barren land, river bed land, number of project affected families, villages, infrastructure, geological setting etc. have not been considered. In view of the stated figures and facts, it is difficult to surmise that what would be the outcome of the CIA study, if integration of physical, biological and social aspects in the present case is undertaken – may be the recommendation remains the same. Given the situation, where a large volume of database is available through project specific EIAs apart from these two CIA reports from IITR & WII, it would be appropriate if a single integrated CIA report is finalized and a final decision is taken. By and large, though it appears that every study was made but it does not appear to have made an integrated and comprehensive study for the purpose of a flawless approach in making the CIA report which is required to satisfy the

principles of sustainable development and precautionary principles, subject to suggestions indicated infra.

Point (c) - (i):

Whether the environmental flows fixed by the authority is in accordance with the standards or not.

With regards to question pertaining to environmental flow, though originally part of EC, it is argued that the Respondent No. 1 has stipulated at para (xi) of the FC that minimum environmental flow as recommended in ITR study report shall be released whereas, the environmental flow determined by ITR is erroneous owing to limited data, non-use of Building Block Method and mechanical application of other methodologies as examined by Mr. Himanshu Thakkar and Parineeta Dandekar of South Asian Networks on Dams, Rivers and People. In this context, a study of International Water Management Institute (for short IWMI) has been quoted that gives environmental flow recommendations for the Ganges basin. The environmental flow requirement critically depends upon the development stage of the region and what the society expects from the river. The indicative values could not have been taken as final values. The report of IWMI gives value of 67.6 per cent of Mean Annual Run off (for short MAR) for Ganges, if it is treated as class 'A' river, against 12.1 per cent if it is treated as Class 'F' river. The ITR made a fundamental error in calculating environmental flow requirement at 7.62 per cent to 10.72 per cent and FAC made a similar error in accepting the ITR recommendations. The ITR treated Ganges as Class 'F' river which stands for highly degraded river without application of mind. The ITR has not taken the ecological functions of flood flows into account and not ensured that adequate flood flows shall be released.

The respondents argued that considering the constraints, a multi-disciplinary team of experts used various methods and arrived at range of environmental flow to be released from the project under reference. Finally, Respondent No. 1 accordingly revised the originally envisaged environmental flow of 3 cumecs as approved in EC to 15.65 cumecs subject to the condition that this would be further reviewed once the final report of ITR is accepted. It was also argued that the IWMI report gives the recommendation for the entire Ganges basin not the area under reference that is only a small fraction of it apart from the fact that interpretation of term MAR has been done erroneously by the Appellants. Replies also clarified that normal flood flows are proposed to be released and hence the ecological functions of them are not likely to be altered significantly.

Undoubtedly, hydropower projects provide substantial benefits, but, if poorly planned, designed or operated, they can also have serious consequences in terms of health of rivers and the economic and social well-being of communities dependent upon the goods and services provided by rivers. Traditionally, assessments of the environmental and social effects of hydropower projects focused primarily on areas in the immediate vicinity of the project, however, these projects can impact downstream areas by changing the water flow (volume and timing), water chemistry, physical structure of river channels and floodplains, and hydrologic connections between upstream and downstream and between a river and its floodplain. In recent times, planners are realizing the need to maintain adequate water flows and other habitat conditions to sustain river in the further downstream reaches.

It is well recognized that even with the best-available expert knowledge and analysis, impacts of infrastructure development projects involving especially natural resources such as hydropower projects, the environmental consequences of infrastructure development and operations cannot be

predicted with complete certainty. To have ecologically and socially sustainable, water and energy development and management, strong need is for monitoring, evaluation, and adjustment in the development process. It is further expected that the operating objectives of development projects will change over time in response to changing social priorities, scientific and technological advancements, and climate change. These require options for having flexibility to modify the operation policy, if required.

A number of case studies suggest that it is possible to improve the environmental performance of existing hydropower projects in a cost-effective manner, and sometimes with little or no social or economic disruption. This can be accomplished by implementing various water or energy management techniques that increase the flexibility of reservoir storage and releases such that environmental flows can be released into the downstream channel and floodplain. However, it is always easier and more cost-effective to integrate environmental flow considerations into the planning and design of hydropower projects than to modify or retrofit the design and operation of existing schemes.

It is also accepted that scientific opinion of various experts/institutions can have differing views. However, it is important to view the argument from the view point of application of principles of sustainable development and adoption of precautionary principles.

After examining the figures and facts and the arguments made and considering the provisions made in the stipulations in the FC based on a scientific study by IITR within the available timeframe and resources coupled with flexibility option for revising the same, we are of the considered opinion that the stipulations regarding environmental flow certainly follows the sustainable development and precautionary principles.

Point (c) – (ii):

Whether the cost benefit analysis has been properly conducted while applying for grant of FC.

The appellants argued that the FC can be granted only if the benefits are huge and costs are less while diverting the required forest land for the purpose of the project. The true cost- benefit analysis has not been done in the instant case before allowing diversion of the forest land. The appellants in this context relied on the few cost-benefit statements filed by other hydropower proponents and stated that following errors are made routinely:

- (1) Future benefits are not discounted to present values;
- (2) Gross revenues are shown as benefits;
- (3) Environment costs are not calculated in money terms and not taken into account;
- (4) Decline in generation due to recession of glaciers is not taken into account; and
- (5) Long term viability of the project due to low-cost solar and other alternative sources of electricity is not examined.

Drawing parallel between other hydropower projects cost-benefit statements and their own suggested framework for cost-benefit stream parameters, appellants tried to demonstrate that the cost-benefit for the project is 0.13 only as against the projected cost-benefit ratio of 7.81 given by the project developer.

In this context, the respondents invariably stated that the cost-benefit analysis has been carried out adopting detailed guidelines issued for the purpose by Respondent No. 1 (which has been submitted on records). It is

further argued by all the respondents that the cost-benefit analysis prepared in accordance with these guidelines is to be furnished along with the proposals seeking prior approval of central government under the Forest (Conservation) Act, 1980 for diversion of forest land required for such projects. The respondents have further advanced the argument that the case studies of cost-benefit analysis submitted by the Appellants is not in accordance with the guidelines of Respondent No. 1 and details of unit rates, their basis and method, etc. have not been provided and more importantly parallels cannot be drawn to the case study of other project with the project under reference.

Given the finite public and private resources, one need a standard for evaluating trade-offs, setting priorities, and making choices about how to allocate scarce resources among competing uses. The cost benefit analysis provides a way of doing this and this offers a technique for assessing the monetary social costs and benefits of a capital investment project over a given time period. This has traditionally been applied to big public sector projects such as new highway, dams, bridges, flood protection schemes and new industries. At the center of any appraisal decision, the key question remains as to 'does the planned project lead to a net increase in social welfare?' For undertaking cost-benefit analysis, social costs & social benefits are worked out which include calculation of tangible benefits and costs (i.e. direct costs and benefits) and intangible benefits and costs (i.e. indirect costs and benefits – externalities). This aspect is very important as it involves trying to identify all of the significant costs and benefits. Subsequently, the future value of benefits is discounted to the present value since the costs and benefits accrue over time. Individuals normally prefer to enjoy the benefits now rather than later – so the value of future benefits has to be discounted. There are several objections to the use of cost benefit analysis especially when natural resources are involved as they involve problems in attaching valuations to costs and benefits. Some costs are easy to value such as the

running costs (e.g. staff costs), capital costs (new equipment), etc. Other costs are more difficult – not least when a project has a significant impact on the environment. The value attached to the destruction of a habitat is to some “priceless” and to others “worthless”. Costs are also subject to change over time. Similarly, the cost benefit analysis may not cover everyone affected – inevitably with major construction projects; there are a huge number of potential “stakeholders” who stand to be affected (positively or negatively) by the decision. It is in above context that the appellants wish to place a substantial value on public goods such as the environmental attributes.

We must keep in mind that the cost benefit analysis is basically an appraisal technique that tries to place monetary values on all benefits arising from a project and then compares the total value with the project's total cost. It has numerous potential applications although there are inherent difficulties with the issue of valuation. Essentially the process of cost benefit analysis is a comparative one, so that we can perhaps make judgment about which projects from a limited choice should be given the go ahead.

Upon hearing the arguments and perusal of the records furnished, we are of the considered view that the appellants as such intend to have more cost and benefit parameters such as greenhouse gas emissions, climate change, etc. to be included while carrying out the cost benefit analysis. From the records made available, it is noted that guidelines by Respondent No. 1 are available and it is expected that the same should be used while submitting the proposal for diversion of forest land by the project proponent and this cost benefit analysis should be examined with utmost care by the agencies responsible for grant of FC.

In the instant case, however, it is observed that despite elaborate guidelines (Form 'A', Item 1 (v) of form for seeking prior approval under Section 2 of the proposal by the State Government and other authorities in the Forest

(Conservation) Rules, 2003 and prescribed parameters for cost and benefit stream, Annexure VI (a), (b) and (c) in Forest (Conservation) Rules, 2003, against parameters such as item No. 5 of Annexure VI (b), items No. 3, 4, 6 and 8 of Annexure VI (c) of Forest (Conservation) Rules, 2003, only general qualitative statements have been made rather than quantitative statements while making the cost benefit analysis and the same has been accepted by the Respondent No. 1.

In view of the facts stated, we are of the considered opinion that though the cost benefit analysis furnished by the project proponent is not in total accordance with the guidelines of Respondent no. 1 and the same has also been ignored by the Respondent no. 1 during appraisal, who is the custodian of the forest resources of the country. Considering the nature of project, and its likely benefits and comparatively very less loss of forest cover; probably the cost benefit analysis would not alter significantly even if the guidelines are followed in totality with the parameters suggested for inclusion in the cost and benefit stream. However, some suggestions have been made (infra) for better appreciation of the cost benefit analysis while considering such proposals may be taken care of.

Point (c) – (iii):

Whether the impacts of deforestation on wildlife, ecology and environment have been considered or not.

The allegation that FAC has assumed that fish migration can be managed by suitable measures, negative impacts on terrestrial and aquatic bio-diversity are also amenable to mitigation and there will be no impact of the project in question on the Kedarnath Wildlife Sanctuary, etc. was also argued in greater details by the Respondents. No substantial evidence has been placed before the Tribunal to come to a different conclusion than what it was recorded by the FAC that though the population status of Cheer pheasant,

which is very poor has been taken note of and no damage is caused to the wildlife available in the area. The project is a national project undertaken by the Government of India and all the precautionary principles were incorporated in the EC and FC to meet the mitigative measures in handling the project; may be in the form of stipulations to implement all the measures as suggested by the respective institutions/authorities. It is also noted that considering the proximity to the Kedarnath Wildlife Sanctuary, it has been mandated in the FC that the proposal requires clearance from National Board of Wildlife. In view of the said facts, we are of the considered opinion that all precautionary measures and principles of sustainable development have been followed in these matters.

Conclusions:

For the all the above discussion and reasons, we are of the opinion that there are no substantial merits calling for our interference into the FC, in question, granted by the Respondent No. 1. The appeal stands disposed of subject to the following directions:

1. ***Integrated CIA Report preparation:*** The first respondent shall setup an appropriate committee of experts drawn from IITR and WII in the preparation of CIA report of the five projects considered in WII report to integrate the physical, biological and social impacts in making ***comprehensive cumulative impact assessment report*** and ***frame appropriate conclusions and recommendations*** within a reasonable timeframe for consideration and final review by the Ministry of Environment and Forest to avoid any unforeseen environmental and ecological threat in the study area in the light of the discussion made against Point (c).

If this direction is not carried out, the appellant is at liberty to take appropriate steps as required under the law.

2. Preparation of Cost Benefit Analysis Norms: Considering the need for better procedures in making sound evaluation of the forest land diversion proposals as discussed in Point c(ii), following options for cost benefit analysis shall be explored for future proposals:
- the guidelines for cost benefit analysis may be updated/modified to provide clear instructions regarding the various cost and benefit elements to be incorporated for the purpose of arriving at cost benefit ratio; and
 - the cost benefit analysis for each proposal received for diversion of forest land shall be done adopting the prescribed procedure.

The appeal accordingly stands disposed of. No costs.

(Dr. Devendra Kumar Agrawal)
Expert Member

(Justice C.V. Ramulu)
Judicial Member

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

APPEAL NO. 6 of 2012

In the matter of:

1. MEHNATKASH MAZDOOR KISHAN EKTA SANGATHAN

Through Its Secretary Sh. Harihar Patel
Village Gare, Tamnar, Chhattisgarh – 496197

2. RAMESH AGARWAL

Satyam Kunj, Naya Ganj,
Raigarh, Chhattisgarh – 496001

APPELLANTS

VERSUS

1. UNION OF INDIA

Through the Secretary,
Ministry of Environment and Forests
Paryavaran Bhawan, CGO Complex
Lodhi Road, New Delhi – 110003

2. CHHATTISGARH ENVIRONMENT CONSERVATION BOARD

Through the Member Secretary
 1-Tilak Nagar, Shiv Mandir Chowk
 Main Road, Avanti Vihar, Raipur
 Chhattisgarh – 492001

3. M/s JINDAL POWER LTD

Through its Managing Director
 Jindal Centre, 12, Bhikaji Cama Place
 New Delhi – 110066

RESPONDENTS**Counsel for Applicants:**

Mr. Ritwick Dutta
 Mr. Rahul Choudhary

Counsel for Respondents:

Mr. Pinaki Mishra
 Mr. S. Patra
 Ms. Neelam Rathore
 Ms. Yogmaya Agnihotri

ORDER**PRESENT:**

Justice A.S. Naidu (Acting Chairperson)

Prof. R. Nagendran (Expert Member)

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Dated 26th April, 2012

The Environmental Clearances(EC) dated 18th March, 2011 and 4th November, 2011 granted by the Ministry of

Environment and Forests (MoEF) to M/s. Jindal Power Limited for expansion of 4x600 MW (2400 MW) Coal Based Thermal Power Plant at Tamnar, Taluk, Raigarh in the District of Chhatisgarh is assailed in this appeal on several grounds.

2. The scenario of facts reveal that way back in the year 2007, the MoEF on being satisfied that all the paraphernalia have been complied, granted EC to M/s. Jindal Power Limited for establishing 1000 MW Coal Based Power Plant at Tamnar in the District of Raipur of Chhattisgarh. Subsequently, an application was submitted for setting-up 2400 MW (6x400 MW) Coal Based Power Plant. The MoEF after conducting appropriate studies and after considering the impact on the environment, being satisfied that all the criteria for establishing 2400 MW Coal Based Thermal Power Plant are satisfied, by the Order dated 18th March, 2011, granted EC. It appears due to non-availability of coal M/s. Jindal Power Limited established a plant for 1200 MW i.e., (2x600 MW) and commenced production.

Order dated 18th March, 2011 issued by the MoEF specifically stipulated the following condition:

“Environmental Clearance shall be applicable for 2x600 MW. However, at a later stage when

firm coal linkage for third and fourth unit of 600 MW are also available, the project proponent may request the Ministry for inclusion of these units of 600 MW each, for which the Ministry shall be consider appropriately.”

Thus, it is clear that expansion of the project and further enhancement to 2x600 MW was subject to appropriate consideration and was not automatic.

3. While matters stood thus, M/s. Jindal Power Limited (Respondent No. 3) managed to import coal. Consequently, another application was filed for granting clearance for additional 2x600 MW Coal Based Thermal Power Plant. The said application was allowed and the EC was granted by the MoEF by Order dated 4th November, 2011. The said Order along with the Order dated 18th March, 2011 is assailed in this appeal.

4. After receiving notice, Respondent No. 3 appeared and filed a preliminary reply on the question of limitation. Mr. Mishra, Learned Sr. Advocate appearing for Respondent No. 3, drawing our attention to Section 16 of the National Green Tribunal Act, 2010 forcefully submitted that time for filing an appeal assailing an Order being 30 days from the date on which the Order was passed or communicated, the

present appeal filed after the prescribed time, is grossly barred and should be dismissed on that ground alone.

5. Mr. Mishra further submitted that the prayer in the appeal being to quash the Order dated 18th March, 2011 and 4th November, 2011, the jurisdiction of this Tribunal Under Section 14 cannot be invoked.
6. In support of his submission, Mr. Mishra relied upon the judgment of this Tribunal in the case of A.S. Mani vs. the State Level Environment Impact Assessment Agency and others (Appeal No. 5 of 2012) and submitted that the delay being more than 90 days under no circumstances the same can be condoned. Further, according Mr. Mishra in the guise of challenging the Order dated 4th November, 2011, the appellant seeks to assail the Order dated 18th March, 2011 and such an attempt should not be allowed. In other words, according to Mr. Mishra if a person is prohibited under law to assail an Order, he cannot be allowed to challenge the same Order in an indirect manner and prayed to dismiss the appeal *in limini*.
7. Mr. Panjwani, Learned Sr. Advocate appearing for the appellant, on the other hand, contended that in fact the Order dated 4th November, 2011 is a composite one and the clearance dated 18th March, 2011 merges with the Order dated 4th November, 2011. Relying upon the

communications received by the appellant via e-mail (**Exhibit – A 2**), Mr. Panjwani submitted that the EC was uploaded on the website of the MoEF and / or otherwise made available to the Appellant only after 7th of December, 2011. The appeal having been filed on 4th January, 2011 there is absolutely no delay and the same is within time.

8. Heard Learned Counsel for both the parties at length, perused the e-mail communications, copies of which are available in record and have been marked as **Annexure – A 2**. The letter dated 26th December, 2011 issued by Shri W. Bharat Singh, CPIO and Deputy Director of MoEF reveals that a copy of the letter issued by the Ministry on 4th November, 2011, amending the Environmental Clearance (EC) accorded on 18th March, 2011, was communicated to appellant along with the said letter. Thus, it is clear that the Order dated 4th November, 2011 was communicated to the Appellant only in December, 2012, and as such the cause of action, for assailing the said Order arose only from the date of communication i.e., in December, 2012. The appeal having i.e., been filed in January, 2012, according to us is within time.

9. However, we find some force in the contentions raised by Mr. Mishra, Learned Sr. Advocate to the effect that on the guise of challenging the EC granted for expansion of the

project dated 4th November, 2011, the Appellant cannot be permitted to assail or challenge the EC granted way back on 18th March, 2011. Admittedly, the project was installed according to the EC dated 18th March, 2011. The said EC having not been assailed within time specified, cannot be assailed at this belated stage. That apart, the cause of action for challenging the order dated 18th March, 2011 has become grossly barred by afflux of time and thus has attained finality.

10. In view of the discussions made above, we hold that Appeal no. 6 of 2012 shall be confined only to EC granted by the MoEF by Order dated 4th November, 2011. In other words, the propriety or otherwise of the EC granted on 18th March, 2011 shall not be considered in this Appeal.

11. The Respondents are granted liberty to file their replies confining to the EC dated 4th November, 2011 on or before 10th May, 2012.

List this matter on 15th May, 2012.

Prof. R. Nagendran
Expert Member

Justice A.S. Naidu
Acting Chairperson

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

MISC. APPLICATION NO. 21 of 2012

ARISING OUT OF

APPEAL NO. 33 of 2011

In the matter of:

1. CONSUMER FEDERATION TAMIL NADU (REGD.)

Represented by Executive Secretary M. Nizamudeen
72, Netaji Road, Cuddalore – 907001
Tamil Nadu

APPELLANT

VERSUS

1. UNION OF INDIA & 5 OTHERS

Through the Secretary,
Ministry of Environment and Forests
Paryavaran Bhawan, CGO Complex
Lodhi Road, New Delhi – 110003

2. The Chairman / Member – Secretary

Tamil Nadu Pollution Control Board
76, Mount Road, Annasalai, Guindy
Chennai

3. The Collector

Cuddalore District
Cuddalore Tamil Nadu

- 4. The District Engineer**
Tamil Nadu Pollution Control Board
Cuddalore – 2, Tamil Nadu
- 5. SRM Energy Ltd**
Project Office
88, Anmol Palani – III – Floor
GN Chetty Road
T. Nagar, Chennai-600017
- 6. SRM Energy Administrative Office, Mumbai**
601, Pressman House
70-A Nehru Road, Ville Parle (E)
Mumbai-400099

RESPONDENTS

Counsel for Applicants:

Mr. Aagney Sail

Counsel for Respondents:

Ms. Neelam Rathore
Mr. A. Prasanna Venkat
Mr. Dinesh Rastogi

ORDER**PRESENT:****Justice A.S. Naidu (Acting Chairperson)****Dr. G. K. Pandey (Expert Member)**

.....
Dated 30TH April, 2012
.....

The Order dated 18th May, 2011, granting Environmental Clearance (EC) to M/s SRM Energy Limited for installation of 3x660 MW Super-Critical Imported Coal Based Thermal Power

Plant, at villages Poovalai, Alamelumangapuram and adjoining Palavuttanan, Vilangipattu, Manikollai, of Chidambaram Taluk, in Cuddalore Distt., in Tamil Nadu is assailed in Appeal no. 33 of 2011. The said Appeal was filed on 20th November, 2011 along with application for condonation of delay. The said application is the subject matter of this Misc. case.

2. In paragraph 2 of the Application, the Appellant has categorically admitted that the order granting EC dated 18th May, 2011 was communicated by Respondent no. 5 vide letter dated 6th June, 2011 and was received by the Appellant on 7th June, 2011. The said order it appears was also published in newspaper on 15th June, 2011.

3. After coming to know of the order granting EC, it is stated, the appellant filed an application under the Right to Information Act, seeking certain information.

4. According to the Appellant, the Respondent no. 1 adopted deli-dilly tactics in furnishing all the information sought for and due to lack of information, the appellant was prevented from preferring an appeal within the time prescribed. It appears that the appeal was initially filed in the month of November, 2011 but then the same was not registered as the fees required Under Section 12 of the National Green Tribunal Act, 2010, was not deposited and also there were some other defects. After receiving notice from the Tribunal, the appellant took

steps for removal of the defects and finally the appeal was registered on 29th November, 2011. According to the appellant, there were a delay of 69 days and the same could not be attributed to the appellant who was pursuing the lis diligently.

5. After receiving notice, a preliminary reply has been filed on behalf of Respondent no. 1, repudiating the averments made in the petition for condonation of delay. According to Ms. Rathore, the delay in filing the appeal is not 69 days, on the other hand, the same is 99 days. Relying upon the proviso to Section 16 of the National Green Tribunal Act, 2010, Ms. Rathore submitted that under no circumstances, a delay of more than 90 days can be condoned and that this Tribunal lacks the jurisdiction to entertain any appeal, filed after 90 days from the date of Order, and as such the appeal should be dismissed on that ground alone.

6. The application for condonation of delay has set out the reasons as to why the Appellant could not file the appeal within the period of 30 days from the date of receipt of the order granting EC. The reasons, for which the appeal could not be filed, even thereafter, till 14th September, 2011 are also lucidly described in the Memorandum of Appeal. Explanation for not approaching this Tribunal in time has also been set out vividly. After going through the reasons assigned, we were initially satisfied and inclined to take a liberal view and condone the delay, but then Section-16 of the National Green Tribunal

(NGT) Act, 2010 has circumvented the power of this Tribunal from entertaining an appeal filed after thirty plus sixty i.e. ninety days there by creating an emliorgo in condoning the delay. For the sake of brevity, relevant provision of Section-16 dealing with limitation is quoted herein below:

“Within a period of 30 days from the date on which the order or decision 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”.

7. Admittedly, the Order impugned in the appeal was passed on 18th May, 2011, the time prescribed for preferring an appeal as per Section-16 being thirty days, the same should have been filed on or before 17th June 2011. In consonance with the proviso of Section 16, if the Appellant is able to satisfy that he was prevented by sufficient cause from filing the appeal within the said period, this Tribunal can allow the appeal to be filed within a further period **not exceeding sixty days**. Thus, the last date for filing of the appeal was 5th September, 2011. The

appeal was however, filed on 14th September, 2011, thus, there is a delay of almost eight days beyond ninety days.

8. Mr. Aagney Sail, Learned Counsel, for the appellant referring to the Rio-declaration and Article-21 of the Constitution of India, submitted that a technical provision like limitation should not prevent a person from exercising his right as well as his duty to seek redressal when environment is adversely affected and or there is likely hood or damage being caused to the environment.

On the other hand, according to Ms. Rathore, Learned Counsel for MoEF, the provision of limitation under the NGT Act, 2010 having been couched in the negative form and no appeal can be entertained beyond the period described under the Act. However, it could be seen that MoEF has taken almost 20 days in communicating the EC to the appellant.

The question with regard to the period with in which appeal can be filed, was before this Tribunal in the case of A.S. Mani vs. State Level Environment Assessment Agency (disposed off on 27th March, 2012). In the said case this Tribunal held as follows:

“..... Be that as it may, the language of Section-16 of the NGT, Act is very explicit. It clearly stipulates the period of limitation for filing of an Appeal to be

thirty days and further mandates that the Tribunal may, on given circumstances, extend the time for filing for a further period not exceeding sixty days. The language used thus, makes the position very explicit to the extent that the legislature intended the Tribunal to entertain the Appeal by condoning the delay only upto sixty days after the expiry of thirty days, which is the normal period for preferring an Appeal. Therefore, there is complete exclusion of Section-5 of the Limitation Act. See: "Singh Enterprises Versus, Commissioner of Central Exercise, Jamshedpur and others, (2008) 3 SCC-70 and Ram Sunder Ram Versus Union of India and Others, (2007) 13 SCC-255".

"The proviso to Section-16 of the NGT Act unambiguously makes the position crystal clear that the Tribunal, has no power to allow the Appeal to be entertained beyond the period of thirty plus sixty i.e. ninety days on any account. In other words an Appeal before the Tribunal is required to be filed within thirty days from the date of the communication of the decision or order. If the Tribunal is satisfied that the Appellant was prevented by sufficient cause, it can allow the Appeal to be filed within a further period, not exceeding sixty days. The language used in the Section thus makes the position crystal clear

that the legislature intended the Tribunal to entertain the Appeal only by condoning the delay up to sixty days after expiry of thirty days and not thereafter. The said being the intention of the legislature, the Tribunal has no jurisdiction to condone the delay after ninety days.....”

9. Mr. Aagney Sail relying upon judgments of the Hon'ble Supreme Court in the cases of -

- *Hukumdev Narain Yadav Vs. Lalit Narain Mishra-(1974) 2 SCC 133. Mukri Gopalan Vs. Cheppilat Puthanpurayil – (1995) 5 SCC 5. Rani Kusum Vs. Kanchan Devi – (2005) 6 SCC 705. State of Madhya Pradesh Vs. Anshuman Shukla-(2008) 7 SCC 487. Commissioner of Customs & Central Excise Vs. Hongo India Pvt. Ltd. – (2009) 5 SCC 791 – 3 judges bench. Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission – (2010) 5 SCC 23, contended that the litigation under the NGT Act, 2010 being special of its character this Tribunal should take a liberal view and should not dismiss an appeal on technical ground of limitations.*

It is further submitted that the environmental issues are best handled with the participation of all concerned citizens therefore each individual should have an appropriate right to approach this Tribunal for safeguarding the environment. A

barrier cannot be created from participating in the decision making process and or protecting the environment on mere technical grounds.

It is well settled that a Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly, if there is a defect or an omission in the words made by the legislature, the Court would not go to its aid to correct or make up the deficiency. In other words, the Court would not add words to a Statute or read words into it which are not there, especially when the literally reading produces an intelligible result. **See Dadi Jagannadham Vs Jammulu Ramulu & Ors., (2001) 7 SCC 71.**

10. We have diligently considered the submissions advanced. The Tribunal being a creature under a Statute cannot act beyond the provisions contemplated in the Statute. We carefully went through each of the decisions referred to supra which deal with the powers of the Hon'ble Apex Court. We are conscious that this Tribunal does not pass the extra ordinary power vested under Article 34 of the Constitution nor it can exercise the powers under Article 226 or 227 of the Constitution. The language of Section-16 of the NGT Act, 2010 is very explicit and clearly stipulates the period of limitation for filing an appeal to be thirty days from the date of communication of the Order. The Act further empowers the Tribunal, on given circumstances, to entertain appeal filed

within a period **not exceeding sixty days** thereafter, the language used by the Statute is unambiguous and clear, and is binding.

11. The legislature in its wisdom having explicitly provided the period of limitation and a bar not to entertain any Appeal after (30+90 = 90) ninety days this Tribunal, constituted under the said Act, cannot expand the period of limitation any further. In other words, the Tribunal can condone delay only up to sixty days after expiry of thirty days, if it is satisfied with the reasons assigned. Thus, there is a complete exclusion of Section-5 of the Limitation Act. That apart, the period prescribed under the NGT Act, 2010, which is a special Statute, shall over ride normal acts.

12. Consequently, the delay of more than ninety days cannot be condoned under Section-16 of the NGT Act, 2010. Accordingly, this application for condonation of delay is dismissed, so also the Appeal.

Dr. G. K. Pandey
Expert Member

Justice A.S. Naidu
Acting Chairperson

Dharamvir
30th April, 2012

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

APPEAL No. 54/2012

22nd March, 2013

CORAM:

1. Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)
2. Hon'ble Shri Justice U.D. Salvi
(Judicial Member)
3. Hon'ble Shri P.S. Rao
(Expert Member)
4. Hon'ble Shri Ranjan Chatterjee
(Expert Member)
5. Hon'ble Shri Bikram Singh Sajwan
(Expert Member)

B E T W E E N:

Rana Sengupta

52/D/9/4, Babu Bagan, Dhakuria

Kolkata-700 031

West Bengal

....Appellant

AND

1. Union of India
Through the Secretary, Ministry of Environment and
Forests
Paryavaran Bhawan, CGO Complex
Lodhi Road
New Delhi 110003

2. State of West Bengal

Through its Secretary

Department of Environment

Block G, 2nd Floor, Writers Building

Kolkata

West Bengal

3. M/s Rashmi Metaliks Limited

Having its registered office at

Village Gokulpur

P.O. Shyamraipur, P.S. Kharagpur

District Paschim Mednipur

West Bengal

4. West Bengal Pollution Control Board

Through its Member Secretary

Paribesh Bhawan

10A, Block LA, Sector III, Bidhan Nagar

Kolkata-700098

West Bengal

.....Respondents

(Advocates appeared : Mr. M.P. Jha, Advocate for the Appellant. Mr. Vikramjeet, Advocate for Respondent No. 1, Mr. Bikas Kar Gupta, Advocate for Respondent No. 2, Mr. Pawan Upadhyay, Advocate for Respondent No. 3 and Mr. Amit Agrawal, Advocate along with Ms. Asha Nayar Basu, Advocate for Respondent No. 4)

J U D G M E N T

This Appeal is filed by one Rana Sen Gupta, who claims to be a public spirited citizen- working for welfare of people, particularly for those whose concerns might otherwise would remain un-represented. He challenges the order of Environmental Clearance (EC) granted by the Respondent No. 1 (MoEF) vide communication dated 01.06.2012 in favour of Respondent No. 3 (M/s. Rashmi Metaliks Ltd.). The EC is granted for expansion of existing Steel Plant by adding 1.5 million TPA Beneficiation cum Pellet Plant to produce 1.2 MTPA pellets with Producer Gas Plant by the Respondent No. 3 (M/s. Rashmi Metaliks Ltd.,) referred to hereinafter as "Project Proponent".

2. Admittedly, the Project Proponent was granted EC dated 12.06.2008 for its project of Steel Plant of 5 lakh T.P.A. capacity. The Project Proponent desired to manufacture steel billets etc. within the limit of 5 lakh TPA. So, the Project Proponent submitted a proposal to the W.B. Pollution Control Board (Respondent No. 4). The Respondent No. 4(W. P. C. B) granted consent to establish the project on 02.02.2009. Thereafter, the Project Proponent sought further consent of Respondent No. 4 to establish and operate a manufacturing plant of TMT Rods upto 9600 tons per month. The Respondent No. 4 granted consent to establish the said unit on 18.05.2009 and also granted consent on 15.7.2010 to operate the unit. So also, the Respondent No. 4 granted consent dtd. 23.12.2010 to manufacture of pellets as sought by the Project Proponent, to the extent of 15,500 tons per month.

3. Undisputedly, the Project Proponent again desired to manufacture Ductile Iron Pipes to the extent of 2 lakh T.P.A. The Project Proponent accordingly applied for necessary permission. The Respondent No. 4 (WB PCB) granted necessary permission to install Ductile Iron Pipe production unit vide permission letter dated 09.10.2009. The Respondent No. 4 granted consent to establish the project of Ductile Iron Pipe as per the proposal of the Project Proponent vide communication dated 11.11.2009. Subsequently, the Respondent No. 4 granted consent to operate the said production unit on 12.01.2011. Thus, the Project Proponent was manufacturing 1,86,000 Tonnes of pellets, 1,15,200 Tonnes of TMT Rods along with 1,41,996 Tonnes of Ductile Iron Pipes. Comprehensively considered, the total production capacity of all those products comes to 4,43,196 TPA. Obviously, it was below the permissible limit of 5,00,000 T.P.A. which was permissible in accordance with the EC that was originally granted by the Respondent No. 1 (MoEF) on 12.06.2008.

4. The Project Proponent desired to expand the industrial activity by adding 15,00,000 T.P.A. Beneficiation cum Pellet Plant with producer Gas Plant. The expansion could not be done without further EC of the Respondent No. 1. Therefore, the Project Proponent submitted a fresh proposal to the Respondent No. 1 for grant of EC to the proposed expansion. The proposal was considered by the Respondent No. 1. ToR was issued by the Respondent No. 1 on the basis of Environmental Impact Appraisal/Assessment (EIA). It was followed by public hearing held under Chairmanship of Additional District Magistrate, Paschim Medinipur (W.B.) on 11.11.2011. A representative of the Project Proponent narrated the draft

proposal and described the project details. The Respondent No. 1 considered the viability of the project after the public hearing, appraisal was done and thereafter the EC was granted to the Project Proponent vide the impugned communication dated 01.06.2012 for expansion of capacity to an additional 1.5 Million T.P.A. Beneficiation cum Pellet Plant. Feeling aggrieved, the Appellant has preferred the Appeal.

5. The Appellant has come out with a case that the Project Proponent concealed information regarding the Ductile Iron Pipe Plant that was being operated prior to the proposed expansion. The Respondent No. 1 (MoEF) failed to consider that the Project Proponent had omitted to include the pre-existing Ductile Iron Pipe Plant in the EIA Report which was presented before granting the impugned EC. The MoEF also failed to consider the fact that the Project Proponent did not submit Environmental Impact Assessment (EIA) report, taking into account the impact of pre-existing Ductile Iron Pipe Plant, and therefore, the proposal for the expansion of project in question, was improper. The information furnished by the Project Proponent was misleading and incorrect. The Appellant further alleges that the proposal should have been rejected in view of deliberate concealment by the Project Proponent of the information pertaining to existence of the previous Ductile Iron Pipe Plant. He seeks to rely upon Para 8(vi) of the Notification issued by the MoEF on 14.09.2006. Though, challenge of the EC granted to the earlier Ductile Iron Pipe Plant had failed due to dismissal of Appeal No. 32/2011 filed by the Appellant, yet comprehensive impact on environment ought to have been considered and particularly element of concealment of information by the Project Proponent ought to have been considered as substantial reason to

reject the proposal. The enhanced emission of carbon-di-oxide due to the proposed expansion of the industrial activity would cause irreparable damage to the eco-system and the environment of adjoining area and adversely affect the health of public. But these aspects are overlooked by the Respondent No.

1. The previous EC granted by the SEIAA to the Project Proponent also was illegal and improper. The Appellant further states that the Project Proponent has not provided for adequate green belt as per the conditions enumerated in the EC granted in the past and, therefore, the proposed expansion of the project should not have been allowed by the Respondent No. 1.

6. By filing separate counter affidavits, the Respondents resisted the Appeal. They submitted that the grant of EC for manufacturing project of 2 lakh T.P.A. capacity on 09.10.2009 cannot be challenged by the Appellant. They submitted that dismissal of Appeal No. 32/2011 filed by the Appellant has now sealed the issue regarding grant of said EC for the Ductile Iron Pipe Plant. They submitted that now the Appellant is trying to mix-up the issue pertaining to the earlier EC with that of the impugned EC for expansion of the project. They further submitted that there was no concealment of any fact by the Project Proponent. They submitted that the expansion of the industrial activity falls within the project/activity item 3(a) of the Schedule appended to the MoEF Notification dated 14.09.2006 and as such the assessment/appraisal was done as required under the relevant regulations. They further submitted that the expansion of the project is legal and proper. They denied truth into the allegation that the conditions of the previous EC were violated by the Project Proponent. Consequently, they sought dismissal of the Appeal.

7. In addition, the Project Proponent alleges that the Appellant has no *locus-standi* to file the present Appeal. It is alleged that the Appellant cannot be treated as “aggrieved person”. It is also submitted that the Appellant is unconcerned with the environmental impact of the project in question. It is pointed out that the Appellant is inhabitant of Dhakuria, Kolkata whereas the project is situated at village Gokulpur (District Paschim Mednipur). According to the Project Proponent, the Appellant is a busybody and has filed the Appeal without there being any element of so called public interest or alleged concern for environmental damage or public welfare. On these premises, the Project Proponent and other respondents sought dismissal of the Appeal.

8. We have heard Learned Counsel for the parties in *extenso*. We have carefully gone through the record.

9. Mr. M.P. Jha, Learned Counsel for the Appellant argued that the impugned grant of Environmental Clearance is bad in law for the reason that the Project Proponent concealed the fact that a Ductile Iron Pipe Plant was already being operated in the same premises. He argued that the Project Proponent obtained EC from the SEIAA of W.B. for expansion of the industrial activity, in the context of the Ductile Iron Pipe Plant (DIPP) which, in fact, could not have been granted because such project falls within category ‘A’ of Schedule appended to the Notification of MoEF issued on 14.09.2006. According to him, Para 8 (vi) of the Said Notification provides for cancellation of the previous EC or rejection of the proposed EC where there is deliberate concealment and / or false submission or misleading information. The Application of the Project Proponent was, therefore, liable for rejection. He

argued that the environmental impact ought to be comprehensively considered having regard to pre-existing industrial projects which were already made operational in the same area. He would submit, therefore, that the impugned grant of EC is invalid and is liable to be quashed.

10. Mr. Pawan Upadhyay, Learned Counsel for the Respondent No. 3 (Project Proponent) submitted that there is no concealment of any important information while seeking the EC for the expansion of the industrial activity by adding 1.5 million T.P.A. Beneficiation cum Pellet Plant including production of 1.2 million T.P.A. Pellets with Producer Gas Plant. He contended that there was no additional load, in any manner, on the environment because the expanded project was not likely to produce any obnoxious substance in as much as the quantity of effluent discharge was "NIL". He argued further that the Appellant purposefully attempted to mix-up the issue pertaining to grant of EC for setting up steel plant of 5 lakh TPA and the subsequent permission for expansion of the industrial activity by installation of Ductile Iron Pipe Plant for manufacturing 2 lakh TPA Ductile Iron Pipe Plant. He contended that the installation of Ductile Iron Pipe Plant falls in category 'B' under the project/activity 3(a) of Schedule of the Environment Clearance Regulations, 2006 and therefore, necessary clearance was sought from the SEIAA of W.B. He pointed out that the said EC is not the issue involved in the present appeal. For, it is no more *res-integra* in view of dismissal of previous Appeal No. 32/2011 by this Tribunal. He contended that the grounds shown in the Memorandum of Appeal are carved out only with a view to raise some kind of challenge to the EC granted for expansion of the project notwithstanding the

fact that the Appellant failed to raise any such issue during the course of public consultation process. It is argued that the Appellant has absolutely no concern with the environmental issues nor is he affected by the grant of EC in question. It is argued further that the Appellant cannot be termed as “aggrieved person” and as such has no *locus-standi* to prefer appeal under Section 16 of the National Green Tribunal Act, 2010 (for short, NGT Act). It is argued that the appeal is unfounded, filed with ulterior motive and deserves dismissal with exemplary costs.

11. Learned Counsel, Mr. Vikramjeet, Mr. Bikas Kar Gupta and Mr. Amit Agrawal appearing for Respondents No. 1, 3 and 4, respectively, adopted similar stance in keeping with the contentions of Mr. Pawan Upadhyay. They submitted that the Appellant is a busybody and has unnecessarily filed such a baseless litigation. So they too sought dismissal of the Appeal.

12. Having heard Learned Counsel for the parties, in our opinion, the following points arise for the purpose of deciding the appeal. They are:-

- (i). Whether the Appellant is “aggrieved person” and has *locus-standi* to prefer the appeal?
- (ii). Whether the Project Proponent concealed any material information or furnished false or misleading information deliberately, during the course of screening, scoping or appraisal of the expansion project which ought to have been considered as a reason for rejection of the application for EC to expand the project or cancellation of prior EC already granted for installation of Ductile Iron Pipe Plant?

(III). Whether the impugned grant of EC for expansion of the steel plant by adding 1.5 million TPA Beneficiation cum Pellet Plant and the Gas Plant is otherwise illegal as it would add more pollution burden and tantamounts to unsustainable development?

Re: Point No. (i)

13. So far as *locus-standi* of the Appellant is concerned, it would be appropriate to examine what he has pleaded in the Memorandum of Appeal. He alleged that although he has no personal interest in the matter, yet because he is working for the welfare of the people, particularly for those whose concern might have otherwise remained unrepresented, he is aggrieved. Secondly, he states that he has been raising the issue of non-compliance of environmental norms by the Project Proponent and had filed earlier Appeal No. 32/2011 with a view to stall installation of Ductile Iron Pipe Plant Project. He says that he is a public spirited citizen with working experience in steel and iron industry and has full knowledge of the impact of these industries on ecology, environment and human lives. These are the reasons given by him to demonstrate that he is competent to file the appeal.

Section 16 of the NGT Act, 2010 provides appellate jurisdiction to the Tribunal. The opening words of Section 16 go to show that “any person aggrieved” by order made granting EC can prefer appeal under Section 16(h) of the NGT Act, 2010. The expression “person aggrieved by” imply some or other reason which might have aggravated the person to undertake the legal remedy. Such a person must demonstrate that he is directly or indirectly concerned with the adverse environmental impact which is likely to be caused

due to granting of EC by the competent authority. The Appellant, admittedly, resides at Babu Bagan, Dhakuria area of Kolkata. The main project and expansion area of the subsequent project is situated at Shyamraipur (District Paschim Medinipur). It is not the case of the Appellant that he has any property in the adjoining area of village Shyamraipur. It is not his case that he is personally adversely affected due to the installation of the expansion project in question. He vaguely states that he is a public spirited citizen with experience of working with steel and iron industries and has full knowledge of the impact of these industries on ecology, environment and human lives. He vaguely proclaims that he is working for the welfare of the people and particularly who have remained unrepresented.

14. We do not find any tangible material which would plausibly show that the Appellant has credentials as expert in the field of steel and iron industries and we are at a loss to know in what manner he is working for the welfare of unrepresented members of the public. It is not his case that he represents any NGO. His self-proclaimed status as “public spirited citizen” is of no much avail. There is absolutely no record to show that he participated in the public consultation process and raised any issue regarding the environment or socio-economic adverse impact on account of establishment of the proposed project. The only reason that he has unsuccessfully preferred Appeal No. 32/2011 against granting of earlier EC for production of Ductile Iron Pipe Plant is of no much significance and is irrelevant. Moreover, that appeal came to be dismissed and there is no finding of this Tribunal that the Appellant is to be treated as “an aggrieved person”. Considering forgoing discussion, we have

come to the conclusion that the Appellant has no locus-standi to prefer the present appeal. He cannot be treated as an aggrieved person and the appeal filed by him cannot be entertained. This answers the point no. 1.

Re: Point No. (ii)

15. Now, it is to be borne in mind that the Project Proponent (R-3) was, admittedly, granted Environmental Clearance vide communication dated 12.06.2008 for installation and of operation of the steel plant for 5 lakh million TPA, MBF-SMS. The proposal for setting up of such steel plant was approved by the MoEF. The total land to be utilized for setting up of the steel plant is 188 acres. What appears from the record is that the Project Proponent did not fully utilize the production capacity of 5 lakh TPA when the plant was made operational at the initial stage. The Project Proponent expanded the industrial activity after submitting application dated 17.06.2009 to the Department of Environment, Government of W.B., Kolkata. The appraisal was done by the State Level Expert Appraisal Committee (SEAC). Thereafter, recommendation was made to the State Environmental Impact Assessment Authority (SEIAA). The SEIAA accorded Environmental Clearance to the expansion of the project in accordance with the MoEF Notification dated 14.09.2006. Copy of the communication dated 09.10.2009 (Annex-R-1) filed with affidavit of the Respondent No. 2 reveals that the Project Proponent categorically stated that the Environmental Clearance was needed for installation of Ductile Iron Pipe Plant for manufacturing of Ductile Iron Pipes to the extent of 2 lakh TPA at the existing unit (Kharagpur). Obviously, the expansion was within limit of the production capacity (5 lakh TPA) for which Environmental Clearance was accorded by the MoEF in 2008.

16. The contention of the Appellant that such expansion of the project activity ought to have been brought to the notice of the MoEF when the further expansion was sought vide communication dated 19.11.2011 and dated 12.03.2012 is untenable. Such omission cannot be treated as deliberate concealment of any material information which would necessarily entail cancellation of the prior Environmental Clearance granted to the Project Proponent or rejection of the subsequent application for expansion of the project in question. The Appellant seeks to rely on Regulation 8 (vi) of the Environmental Clearance Regulations, 2006. The relevant regulation may be re-produced for ready reference as shown below:-

“8.

(i). xxxxxxxxxxxxxxxx

(ii). Xxxxxxxxxxxxxx

(iii). Xxxxxxxxxxxxxx

(iv). Xxxxxxxxxxxxxx

(v). xxxxxxxxxxxxxxxx

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

Perusal of the above regulation goes to show that such drastic action will be called for only when it is noticed that there is deliberate concealment or submission of false or misleading information to the MoEF in the process of screening, scoping or appraisal or decision of an application. We do not find any such concealment made by the Project Proponent when the expansion of the project in question was sought. The earlier Environmental Clearance for installation of Ductile Iron Pipe Plant, approved by the competent authority of Department of Environment, W.B. was within approved capacity of 5 lakh TPA. That approved project was also to be established in the same campus of 188 acres. The Appellant could not pinpoint as to how it was necessary for the Project Proponent to give details of such earlier Environmental Clearance accorded after the Environmental Clearance dated 12.06.2008. There is no provision under the regulation which makes it incumbent on the Project Proponent to give details of the earlier approved expansions sought within the permitted limit of the project which was initially granted by the MoEF.

17. Another limb of the argument advanced by the Learned Counsel for the Appellant is that the production of the Ductile Iron Pipes vide the second expansion approved by the SEIAA on 09.10.2009 cannot be legal and proper. The Learned Counsel for the Appellant submits that the project for production of Ductile Iron Pipes falls in the category of Item 5(k) of the Schedule 2 appended to the Environmental Clearance Notification, 2006. He argued that such activity of Ductile Iron Pipes production commences with induction of furnace and also involves installation of magnesium convener belt, zinc coating machines, cement curing system so on and so forth. We do not

agree. On consideration of schedule appended to the Environmental Clearance Regulation 2006, it is amply clear that the said project falls in category B of item 3(a). It is difficult to say that it falls in the category of any other item shown under the Schedule appended to the Environmental Clearance Regulation, 2006. Needless to say that the Project Proponent did not conceal any material information nor gave any false information while seeking the Environmental Clearance for expansion of the project in question vide the application dated 19.11.2011 and communication dated 12.03.2012 submitted to the MoEF. This answers point no. (ii).

Re: Point No. (iii)

18. Coming to the third point involved in this Appeal, it is worthy to note that main argument of the Learned Counsel for the Appellant, Mr. M.P. Jha is that the Environmental Clearance granted on 01.06.2012 is bad in law in as much as it was granted without application of mind. He argued that the Project Proponent expanded the industrial activities during the period between the first Environmental Clearance granted in 2008 and the impugned Environmental Clearance granted on 01.06.2012 in piecemeal manner with a view to avoid the necessity of cumulative environmental appraisal. He argued that holistic environmental appraisal could not be done by the MoEF due to piecemeal expansion of the project by the Project Proponent. Chief bone of his contention is that comprehensive environmental impact was not considered by the MoEF while granting the Environmental Clearance dated 01.06.2012. He pointed out that the EIA report does not indicate the impact of expansion of the industrial activity due to installation of Ductile Iron Pipe Plant

prior to the impugned order dated 01.06.2012. It is on this basis that Mr. M.P. Jha urged to quash the impugned order of granting the Environmental Clearance.

19. As stated earlier, Environmental Clearance granted by the State Environmental Authority vide communication dated 09.10.2009 was challenged by the Appellant vide Appeal no. 32/2011. This Tribunal dismissed the said appeal. The obvious fall out of dismissal of the said appeal (Appeal No. 32/2011) is that the previous order dated 09.10.2009 cannot be now challenged and has become final. The Appeal Memo and rejoinder filed by the Appellant go to show that the Appellant has attempted to resurrect life into bygone litigation in respect of the Environmental Clearance order dated 09.10.2009. The allegation of the Appellant is that the said order dated 09.10.2009 is nullity, is without any merit and hence must be rejected. The Appellant cannot be allowed to challenge that order on the basis of so called newly invented fallacious grounds.

20. We cannot assume that the MoEF did not consider comprehensive environmental impact of the expansion project. The purpose of expansion of the project is amply clear from the application of the Appellant as well as the discussion which took place in the EAC meeting. The Project Proponent sought expansion of steel plant (05. Million TPA MBF-SMS) by adding 1.5 million TPA Beneficiation cum Pellet Plant to produce 1.2 million TPA pellets with producer Gas Plant. The additional industrial activity was to be carried out in the same land consisting of 188 acres. The steel plants unit is listed at serial no. 3(a) under Category 'A' of the Schedule of the MoEF Notification dated 14.09.2006. The impugned EC is granted by the MoEF subject to

outcome of Writ Petition no. 1587(W) of 2011 which is pending before the Hon'ble High Court of Kolkata. Needless to say the MoEF considered various aspects including the fact that no additional land was required, as well as Iron ore, coal, bentonite and limestone are the raw materials which would be used. It was also taken into account that such material would be transported by the Railways. The Railway Yard exists inside the complex of the industrial unit. The MoEF also considered the fact that dust generated during operation of the industrial activity will be controlled by installation of ESP and Bag Filters. The comprehensive consideration of the relevant aspects by the MoEF is manifested from the discussion which preceded the impugned EC.

21. We have gone through the reply filed by the Respondent No. 1 (MoEF). The Respondent No. 1 supports the impugned order. According to the MoEF, the Terms of Reference (TOR) includes the cumulative impact on the environment which may occur within the radius of 10 k.m. as well as the additional impact due to operation of the proposed expansion project. It is stated further that the EIA report and the Environment Management Plan (EMP) had been duly considered. It is further stated that the EIA report considers the installation of Ductile Iron Pipe production Plant. It need not be reiterated that the Ductile Iron Pipe production Plant was within the limit of 5 lakh TPA capacity for which the first Environmental Clearance was granted in 2008.

22. It appears from the record that the Appellant initiated the proceedings for the permission of the MoEF for the expansion of its project by addition 15 lakh TPA Beneficiation cum Pellet Plant with producer Gas Plant beyond the earlier Environmental Clearance granted for production capacity to the extent

of 5 lakh TPA. It appears that the Public Hearing was convened on 11.11.2011 under the Chairmanship of Additional District Magistrate, Pashchim Medinipur, (W.B.). The meeting was co-chaired by the Dr. Dipanjana Maulik, Environmental Engineer of WB Pollution Control Board. The meeting was attended by the villagers. The Appellant was not present in the said meeting, although, notice of the meeting was duly published. The local villagers have not raised any objection to the establishment of the industrial unit, particularly, the impugned expansion of the industrial activity as sought by the Project Proponent.

23. There cannot be two opinions about proposition that Section 20 of the National Green Tribunal Act, 2010 mandates the Tribunal, while passing any order or decision, to apply the principles of sustainable development, the precautionary principle and the polluters pay principle. In the context of the project in question, there is hardly any material to show that it would cause excessive emission from the plant which may cause pollution beyond tolerable degree. The concept of "sustainable development" implies development which would not severally degrade the environment. That does not mean absence of environmental impact but means a minimal impact which can be endured / tolerated by human beings. It also means that environment will not be degraded to such a degree that future generation will be deprived of a clean and healthy environment to a reasonable degree. It is common knowledge that everything is changing in this world. So also the environment. In "Lafarge Umiyam Mining Private Limited vs. Union of India" **(2011) 7 SCC 338** the Apex Court observed :-

“75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapable requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognized by the concept of “sustainable development”. It is equally well settled by the decision of this Court in Narmada Bachao Andolan v. Union of India that environment has different facets and care of the environment is an ongoing process. These concepts rule out the formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring “no go” areas (whose identification would again depend on undertaking of a due diligence exercise). In such cases, the margin of appreciation doctrine would apply.

76. Making these choices necessitates decision, not only about how risks should be regulated, how much protection is enough, and whether ends served by environmental protection could be pursued more effectively by diverting resources to other uses. Since the nature and degree of environmental risk posed by different activities varies, the implementation of environmental rights and duties requires proper decision-making based on informed reasons about the ends which may ultimately be pursued, as much as about the means for attaining them. Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life.”

24. It is necessary to strike a balance between development and environment protection to facilitate economic growth as well to secure

adequate adherence to the cause of environment. We mean to say, there cannot be any lop sided approach in environment related matters.

25. We have gone through the short affidavit filed by the Appellant on 19.03.2013. The affidavit does not give any new dimension to the issues under consideration. The Appellant, however, referred to certain allegations extracted from the pleadings in Writ Petition No. 1587(W) of 2011. That Writ Petition is filed by Sk. Sajad Ali, son of Oyahed. We are not directly concerned with the pleadings put forth in that Writ Petition filed by some other party. The Kolkata High Court has not granted any interim relief in that matter. We do not think that pleadings in that Writ Petition have any direct bearing on the issues raised in the present appeal.

26. We have perused copy of the minutes of proceedings of Public Hearing dated 11.11.2011. On perusal of the minutes of the proceedings, it is amply clear that members of the village locality had participated in the course of Public Hearing. It further appears that video recording of the Public Hearing was conducted and the text of the proceeding was made available in public domain. What appears from the record of the Public Hearing is that most of the issues raised by the villagers pertain to construction of metal road, provision for job opportunities and construction of a cement concrete bridge or improvement of road transport. It was also urged that the Project Proponent shall provide a children park. The authorized officer of the Project Proponent, namely, Shri S. Patwari assured that the existing road would be converted into a metal road. He also assured that the local school's improvement work

would be undertaken. He also assured that the local skilled job seekers may submit their applications to the Personnel Department of Factory Management for consideration. One cannot be oblivious of the fact that the area is affected by left wing extremists. Availability of employment is likely to partly help proper management of the left wing extremist activities. It appears that one, Shri Pradeep Behra is the only villager who requested to ensure proper emission control measures. The response of Shri S. Patwari was that the emission problem would not increase due to proposed expansion. It is explicit that the villagers were made aware of the nature of the proposed expansion and there was proper public consultation. The proceedings were signed by the seventy seven (77) villagers who attended the meeting. As pointed out before, the Appellant did not attend that meeting. The Appellant has not demonstrated as to how the expansion of the industrial unit is likely to substantially add pollution in the area. There cannot be duality of opinion that the expansion of the project will add some burden on the pollution in the area. Yet there is no tangible material to show that the pollution level will become intolerable on account of the expansion of the project. We mean to say, the Appellant has not placed on record any scientific data in support of the contention that the pollution level will be excessively increased due to the expansion of the industrial activities.

27. Considering totality of the foregoing discussion, we have no hesitation in holding that the Appellant failed to prove that the proposed expansion of the project is detrimental to the cause of environment. We hold that expansion of

the industrial activity as approved by the MoEF is within the permissible limits of sustainable development. This answers the point no. (iii).

28. The net result of the findings recorded on the points no. (i) to (iii) is that the Appeal is destitute of merits. Therefore, it fails. We have noticed that the Appellant indulged in the litigation without proper cause, though he is not an aggrieved party as such. It is high time to discourage such practice of fuelling the litigation without any substantial reason. Hence the Appeal is dismissed with direction that the Appellant shall deposit a cost of Rs. 15,000/- into the Legal Aid Fund of National Green Tribunal Bar Association. The Appeal is accordingly disposed of as dismissed. In case the cost is not deposited by the Appellant within a period of four (4) weeks, the Registrar to take proper action for recovery of the said amount as provided under Order XXI R 30 of the C.P. Code or any other provision envisaged under Order XXI or the provisions of the National Green Tribunal Act, 2010.

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

....., JM
(U. D. Salvi)

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

....., EM
(Ranjan Chatterjee)

....., EM
(B.S. Sajwan)

**BEFORE THE NATIONAL GREEN TRIBUNAL,
CENTRAL ZONAL BENCH,
BHOPAL**

Appeal No. 01/2013 (CZ) (P.B. 27/2013 THC)

In the matter of

Raza Ahmad
S/o (late) Ziauddin Ahmad,
R/o House No. 113A, Imam Bara Chowk,
Faridnagar, Supela, Bhilai,
Dist. Durg, Chhattisgarh

.....Applicant

Vs.

1. State of Chhattisgarh
Through Secretary,
Housing and Environment,
Mantralaya, DKS Bhawan,
Raipur, Chhattisgarh
2. Ministry of Environment & Forest,
Government of India, Through its Secretary,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi.
3. Chhattisgarh Environment Conservation Board,
Through Regional Officer,
5/32 Bangla, Bhilai Dist. Durg,
Chhattisgarh.
4. Collector, Dist. Durg, Chhattisgarh
5. Director, Town & Country Planning Bhilai,
District Durg, Chhattisgarh
6. Commissioner, Municipal Corporation of Bhilai,
Dist. Durg, Chhattisgarh
7. Steel Authority of India Ltd.,
Through its Company Secretary,
Ispat Bhawan, Lodhi Road,
New Delhi-110003.
8. Managing Director, Bhilai Steel Plant,
Ispat Bhawan, Bhilai,
Dist. Durg, Chhattisgarh
9. Executive Engineer,
Chhattisgarh State Power Transmission Co. Ltd.
Bhilai, Dist. Durg, Chhattisgarh
10. M/s Bhilai Jaypee Cement Ltd.,
Through its Managing Director,
Dist. Durg, Chhattisgarh.

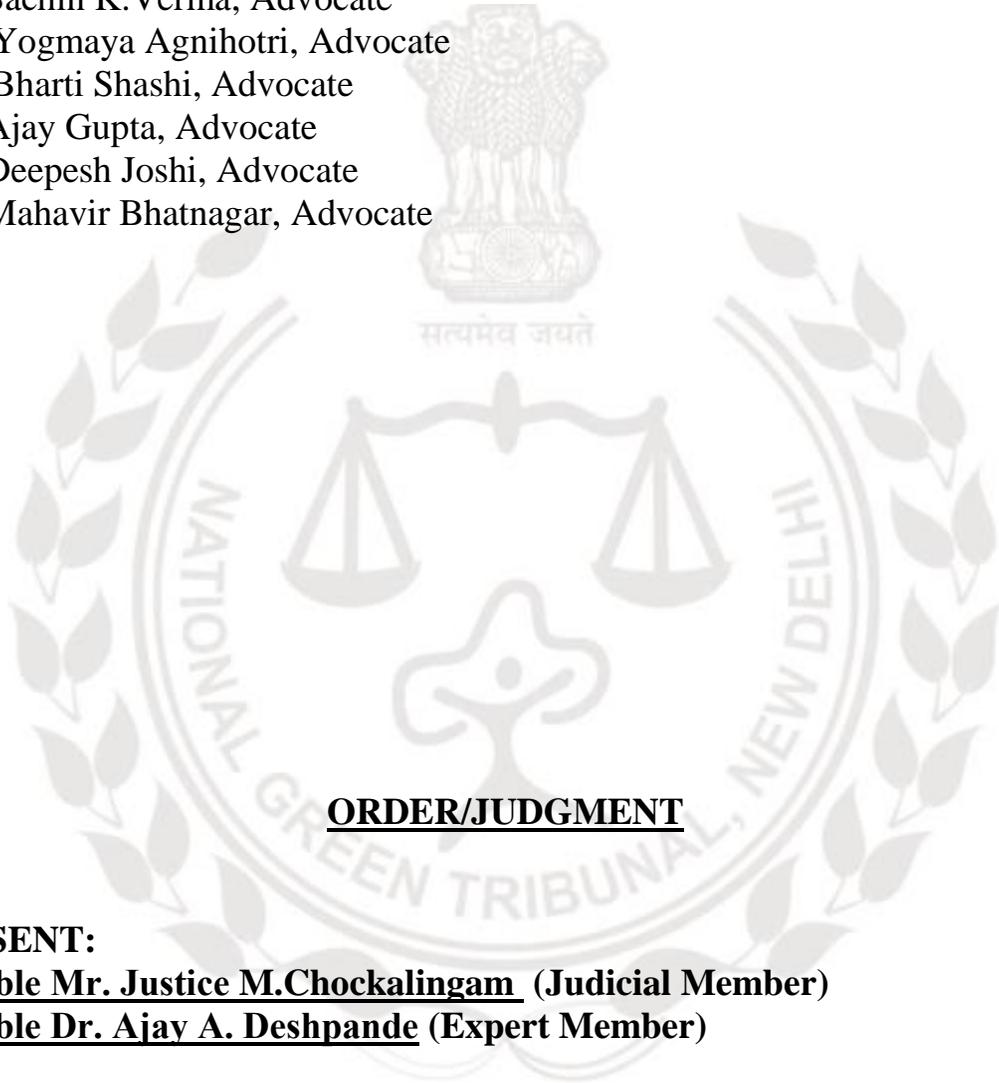
...Respondents

Counsel for Applicant :

Shri Shishir Dixit, Advocate

Counsel for Respondents :

Shri Apoorv Kurup, Advocate
Shri Sachin K.Verma, Advocate
Smt. Yogmaya Agnihotri, Advocate
Smt. Bharti Shashi, Advocate
Shri Ajay Gupta, Advocate
Shri Deepesh Joshi, Advocate
Shri Mahavir Bhatnagar, Advocate

**ORDER/JUDGMENT****PRESENT:**

Hon'ble Mr. Justice M.Chockalingam (Judicial Member)

Hon'ble Dr. Ajay A. Deshpande (Expert Member)

NGT

Delivered by Hon'ble Justice M.Chockalingam

1. In pursuance of the order of transfer made in Writ Petition (PIL) No. 5467/2011 by the High Court of Chhattisgarh, Bilaspur, the appeal was taken on file by the Principal Bench, National Green Tribunal, New Delhi and on transfer, this appeal is taken on file by this Bench.

2. The appellant, an active Member of Chhattisgarh Swabhiman Manch, a social and political organisation concerned with the equitable balance and sustainable development of Chhattisgarh, both industrial and agricultural and also the improvement of the living standards of its people, has brought forth this appeal challenging the impugned notification no. F/7-24/32/2010 dated 03.02.2011 issued by the respondent no. 1 whereby the land use of certain land reserved for green belt development plan of Bhilai was modified to industrial purpose to regularise the construction of respondent no. 10 Bhilai Jaypee Cement Ltd. (hereinafter referred to as BJCL) as also the Environmental Clearance dated 01.05.2008 granted to respondent no. 10 which has categorised the project wrongly as category B2 and thus, issued without a preparation of EIA report conducting of public hearing / consultation is otherwise totally illegal.

3. As could be seen from the averments made by the appellant, the case of the appellant in short is that the Steel Authority of India Ltd. (hereinafter referred to as SAIL), a Government Company registered under the Companies Act, entered into a Memorandum of Understanding with the Jayprakash Associates in April 2007 to establish a factory to manufacture cement and in pursuance of the same, M/s BJCL, respondent no. 10 herein, was established and registered under the Companies Act. An area of 34.59 acres of land

belonging to the Steel Authority of India Ltd. was transferred to respondent no. 10 on 15.06.2007. Respondent no. 10 applied for Environmental Clearance and the same was granted by the Central Government on 01.05.2008 on the basis of a wrong categorisation of the new unit for manufacture of 2.2 MTPA of cement as category B2 and thus exempting the project from mandatory procedure such as submission of EIA report and holding of public hearing / consultation. Whereas, the guidelines of respondent no. 2 clearly held that such a project would be category 'A'. Following the same, respondent no. 10 carried out the construction without obtaining building permission including permission for constructing high rise building from respondent no. 6 Municipal Corporation of Bhilai and made the first application for the same on 04.05.2009 after completion of the construction. Both respondent nos. 5 & 6 issued several notices to the respondent no. 10 to bring the land to the original situation or to face demolition of the structure. After several reminders, a high level committee was constituted by the respondent no. 6 which held that the permission could be granted after the land use was modified. Both respondent no. 10 BJCL and respondent no. 8 Bhilai Steel Plant (hereinafter referred to as BSP) were pressurising respondent no. 6 for conditional NOC stating that they have already approached respondent no.1, State for modification of land use and the same was under consideration in the Ministry and they were confident of a positive response. The respondent no.1 State *suomoto* considered the case of modification of land use under Section 23 (A) of Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam Act 1973. On 22.05.2010 on the basis that use of slag, production of cement, taxes so obtained and employment generated by the respondent no. 10 constituted 'urgent public purpose'. The said proposed modification in land use was published in two circulated evening news papers

without any modified development plan as stipulated. The objections were heard in Ministry office far away from the site of modification without assuring adequate participation and reasonable opportunity. Rejecting the objections regarding the issues and concerns on the environment the respondent no.2 has issued environmental clearance mechanically, relying on the basis of wrong categorisation of the project. Even the illegal construction completed prior to the modification was not considered in issuing the impugned notification. The appellant raised all his objections against the proposed modification of the land use and also attended the public hearing held in Mantralaya and made oral submissions. It is surprising to note that respondent no. 10 never made any effort to obtain necessary permissions prior to beginning its construction which was done immediately after the execution of the lease deed and the permission to divert the land use from green belt to industrial purpose or for construction of high rise building was also not obtained. It was strange that the respondent no. 10 adopted the strategy of erecting the construction first and then pressurised the authorities to regularise the illegal construction. This is a matter of shock that the Environmental Clearance granted to respondent no. 10 by respondent no. 2 on 01.05.2008 was, on the very face of it, based on incorrect presumptions. The project is referred to as cement grinding unit thereby giving an impression that it is a cement grinding unit. From the records available it would be clear that the proposed cement plant of 2.2 MTPA was not a standalone grinding unit nor an expansion of existing cement plant but was clearly a project of category 'A' and thus it could not be exempted from the preparation of EIA report and statutory public hearing / consultation and at no stretch of imagination it could never be categorised to category B2 project. All this would be indicative not only the Environmental Clearance granted by

respondent no. 2 to respondent no. 10 was on the face of it illegal but one without any application of mind. In the instant case, it was neither expansion nor modification nor change of product mix but it is infact a new unit for manufacture of 2.2 MTPA of cement. Respondent no.3, Chhattisgarh Environment Conservation Board (CECB) has also granted permission on the land of the green belt area without any application of mind. In so far as the modification of land use of the green belt for industrial purpose, respondent No. 5, Joint Director, Department of Town and Country Planning Bhilai issued a notice on 24.11.2009 to respondent No. 10 regarding modification of land use of the green belt area without permission and if the respondent No. 10 did not restore the land in question to its original situation within 30 days there from, action would be taken under the provisions of Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam and illegal development/construction would be removed and the cost of the same would be recovered as arrears of land revenue. The respondent No. 10 issued a reply stating that the land in question belongs to respondent no. 8 BSP and the site was covered with slag and other waste products of BSP and an application for modification of land use was pending and the respondent no. 10 has not violated any law. The respondent no. 8 sent a communication to the Chief Secretary of the respondent no. 1 State on 21.01.2010 regarding modification of land that the BSP was not at all aware that the area had been declared as green belt area and it was also not taken into confidence in preparation of the Bhilai Development Plan. Alternative sites could have been made available to the respondent no. 10 without building in the green belt area which would not have been in the vicinity of the residential area and zoological parks. As for all the above, the impugned notification was issued on 03.02.2011 which was published in Chhattisgarh Gazette on

18.02.2011. After making enquiries regarding the same the appellant needed to obtain large number of documents from respondent no. 2 authorities to substantiate his case for which he made an application under Right to Information Act and thus, there was no delay in filing the appeal. Hence, he has sought for the reliefs. The appellant, as a public spirited individual who is interested in clean environment, has a right to challenge the diversion of the green belt to an industrial purpose, environmental clearance and also for the restoration of the green belt area to its original situation prior to the construction of the respondent no. 10. Hence the appellant has sought for the necessary remedies.

4. At the outset, the Learned Counsel for the respondents, before refuting the above contentions put forth on the side of the appellants strongly challenged the very maintainability of the appeal on the ground of limitation and jurisdiction.

5. Advancing the arguments, the Learned Counsel for the respondent no. 10 would submit that the appellant has challenged the Environmental Clearance dated 01.05.2008 issued by the respondent no. 2 and the conversion of land use from green belt to industrial purpose. Both reliefs do not fall under the purview National Green Tribunal Act, 2010 or within the jurisdiction of the National Green Tribunal. It is the specific case of the appellant that the Environmental Clearance was granted by the respondent no.2 to respondent no. 10 on 01.05.2008. No appeal was filed before the NEAA under Section 11 of the NEAA Act on or before 17.10.2010 i.e. even after approximately 900 days. The NGT Act came into force on 18.10.2010. Though, the appellant has filed the Writ Petition (PIL) before the High Court of Chhattisgarh, Bilaspur only on

08.09.2011. Thus, the appellant has not availed the remedy under NEAA Act. The said Act stood repealed under the NGT Act w.e.f. 18.10.2010. The Tribunal is a creation of statute and the jurisdiction cannot be stretched beyond what is expressly conferred by the Act. No statutory authority, whether empowered by the Hon'ble Apex Court, can act dehoarse of the statute. Since, no appeal was filed under NEAA Act prior to 18.10.2010, it would be stated that there was no pending case to be adjudicated under Section 14 of the NGT Act, 2010, apart from that the appellant has filed PIL before the High Court of Chhattisgarh on 08.09.2011 i.e. long after the commencement of the NGT Act which came into force on 18.10.2010 and thus, it is quite clear that the appeal was barred by time and filed beyond the prescribed period of time envisaged under the NGT Act. The dispute of land use change carried out by the Government of Chhattisgarh as per the provisions Chhattisgarh Town and Country Planning Act, 1973 also do not fall under the enactments specified in the Schedule – I of the NGT Act. Under Section 14(1) of the NGT Act, the Tribunal has jurisdiction over all civil cases where a substantial question relating to environment including the enforcement of any legal right relating to environment is involved and such question arising out of the implementation of the enactment specified under the Schedule – I and thus, the above dispute as to the land use falling under the provisions of the Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 falls outside the jurisdiction of the Tribunal. The jurisdiction of the Tribunal cannot stretch the language of the statute and thus, the petitioner at no stretch of imagination can be allowed to plead that the limitation has to be reckoned from 03.02.2011 as per his own interpretation and convenience.

6. Advancing his further arguments, the Learned Counsel would submit that the environmental clearance issued by the respondent no. 2 to the respondent no. 10 on 01.05.2008 has become absolute since under Section 11 of the NEAA Act, 1997, the appeal should have been filed within 30 days of the date of the order and the authority can entertain the appeal if filed within the said period but not after 90 days from the date, if it was satisfied that the appeal was prevented by sufficient cause from filing the appeal in time. The date of communication of order or date of knowledge of order, therefore, was not relevant at all. Thus, the language of the said provision was very clear and unambiguous. In the present case, the appeal was preferred by the appellant on the ground that the date of knowledge was 03.02.2011 and thus, the appeal was within time. The same is not only misconceived but erroneous also. The NGT Act, 2010 came into force on 18.10.2010 and any order or environmental clearance granted / refused on or after coming into force of the NGT Act could be challenged before the NGT by way of an appeal under Section 16 of the NGT Act, 2010 and thus, no appeal is maintainable under Section 16 of the NGT Act also. The appellant originally filed the Writ Petition before the Hon'ble High Court of Chhattisgarh at Bilaspur wherein the respondent took a plea that the matter of change of environment is well within the domain of NGT. It is pertinent to point out that the respondent took the objection on the point of limitation in that Writ Petition before the High Court. Thus, the contention put forth by the appellant side that the respondents are taking inconsistent stand that the respondent contending before the High Court that the appellant had an effective and efficacious remedy by approaching the NGT for the purpose of challenging the ground for Environmental Clearance and on transfer to the NGT, the respondent has raised the objection that it was barred

by time. Since the appellant has chosen to file a Writ Petition before the High Court knowing fully well that his appeal was time barred and hence, he could not prefer an appeal before the Tribunal and hence, he filed a Writ Petition before the High Court and got an order of transfer of the same to the NGT. Thus, it would be clear that the Environmental Clearance challenged in the present case is without jurisdiction and also hopelessly barred by limitation.

7. The Learned Counsel would further add that the appellant has challenged the notification dated 03.02.2011 by which the land use was modified from green belt to industrial purpose. The said relief is outside the jurisdiction of the Tribunal as modification of the land use was done by State of Chhattisgarh, Housing and Environment Department in exercise of its powers under Section 33(A) of Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973. The said enactment is not specified in Schedule – I of NGT Act, 2010. The contentions put forth by the appellant side that he has also sought a relief for that the land should be restored to its original condition as it was prior to its construction, therefore, the limitation of 5 years shall be applicable as provided in Section 15 of the NGT Act, 2010. The said argument was devoid of merits. The said limitation of 5 years would apply if somebody, despite the area being marked as green, is using for some other purpose i.e. to say that avail relief of restoration or restitution of property is independent and not based on the change to any statutory action. In the instant case, the State Government has modified the land use from green belt to industrial use by exercising its statutory powers. It is also pertinent to note that the land notified as green belt area is used for industrial purpose. If the relief is to be granted for restoration, it would become necessary to examine the validity of action of the Government in modifying the land use under the provisions of Chhattisgarh Town and

Country Planning Act and the said enactment is also not included in the Schedule-I of the NGT Act, 2010. Thus, it would be quite clear that the change of use and the restitution of property would be consequential relief. When it is clear that the relief of land use cannot be granted to the appellant as it did not fall within the jurisdiction of the Tribunal then granting consequential relief would not arise. Thus, NGT would not have the jurisdiction to decide the basic question of limitation or to examine the consequential relief arising thereof. Mere transfer of the Writ Petition to the NGT, the question as to jurisdiction and limitation cannot be ignored or avoided and they have to be answered.

8. In order to support his contentions, the Learned Counsel relied upon the following decisions :

- (i) Union of India Vs. Popular Construction 2001 (8) SCC 470.
- (ii) Singh Enterprises CCE, 2008 (3) SCC 70.
- (iii) Bhopal Gas Peedith Mahila Sangathan & Ors. Vs. Union of India WP No. 50/1998.

9. The Learned Counsel for other respondents adopted the arguments of the respondent no. 10.

10. Countering the aforesaid arguments, the Learned Counsel for the appellant would submit that the present appeal has been transferred from the High Court of Chhattisgarh in view of the judgment of the Hon'ble Supreme Court in the matter of Bhopal Gas Peedith Mahila Udyog Sangathan and Others wherein the Hon'ble Supreme Court directed for the transfer of all cases pending before various Courts in view of the commencement of NGT. The present appeal related to the violation of the provisions of the NEAA, 2006 though it related to the legal right to healthy and cleaner environment and the

right of citizen to pollution free environment which is an integral part of Article 21 of the Constitution of India. The appellant has raised the issues in respect of blatant violation of law and of diversion of areas earmarked as green belt for industrial purpose and post facto change in the land use after presenting a fate accompli situation. The appellant has prayed for restoration of the area of green belt which is a principal prayer which is covered under Section 15 of the NGT Act, 2010. Respondent no. 10 has taken a diametrically opposite stand with regard to jurisdiction and limitation before the High Court and the Tribunal. The respondent, in para 27 of the reply filed before the High Court of Chhattisgarh, stated that the Writ Petition should be dismissed as the statutory and efficacious alternative remedy of filing appeal before the NGT was available to the appellant. Now, the very same respondent has taken the stand that the Tribunal has no jurisdiction to entertain the appeal and the appellant is also barred by limitation. The respondent has even put forth a submission that the matter could be transmitted back to the High Court and thus, it would be indicative of the sole confidence of the respondent to say that the matter was not to be heard on merits and the illegal activities continue unhindered. While transferring the Writ petition, the High Court observed that the basic challenge is the EC, notification regarding diversion of land for restoration of area and transferred it to the Tribunal to decide the same and the said transfer was made since the NGT has jurisdiction to decide the present issue that too in view of the judgement passed by the Hon'ble Apex Court in case of Bhopal Gas Peedith Mahila Udyog Sangathan and Others. The contention of the respondent side that the appeal was delayed and barred by time has no merits since the appeal was not an appeal directly filed under

Section 16 but an appeal seeking the relief under Section 15. The appellant had sought for three reliefs.

11. Firstly, to restore the leased out area of 34.59 acres to its original situation prior to the construction of the respondent no. 10. Section 15(3) of the NGT Act, 2010 provides that the limitation of filing an appeal for restitution of environment is 5 years from the date of which the cause of action first arose. The Principal Bench of the NGT has clarified the issue of limitation with respect to Section 15 of the NGT Act in *Nisarga Nature Club V/s Satyawan Prabhudesai* in Application No. 29/2012. The case relates to a challenge to a permission granted by the Government to change the use of land from agricultural to non-agricultural and the same was challenged by way of PIL in High Court of Bombay Goa and the same was withdrawn with liberty to file before the NGT. The said order of conversion was passed in 2009 and the primary objection was raised by the respondent with respect to limitation. After hearing both sides, the Principal Bench, NGT rejected the contentions put forth by the respondent side on the point of limitation and held that the prayer for restitution of land in question would have to be considered.

12. The Learned Counsel would further urge that the judgment of the NGT in *Thervoy Gramam Munnetra Nala Sangam V/s Union of India* relied upon by the respondents is not applicable to the present facts of the case. In that case, the applicant filed a petition before the High Court and subsequently withdrew the same to file before the NGT. The Principal Bench dismissed the same on the delay and laches but in the present case, the Writ Petition filed by the appellant was transferred by the High Court to the Tribunal. The subject matter in *Thervoy* case related to an appeal under Section 16 of the Act and did not pray for restoration as provided under Section 15 of the Act.

13. Further, the Learned Counsel with vigour and vehemence added that the present appeal relates not just to Environmental Clearance but also to the notifications dated 03.02.2011 modifying certain parcels of land designated as green belt to industrial purposes. The present appeal seeks restoration of the green belt which is covered under provisions of the NGT Act. The Schedule – II of the Act specifically states that the compensation and relief should be sought for any harm, damages or destruction to flora including aquatic flora, crops, vegetables, trees and orchards. Further Clause (k) deals with restoration on account of harm, damage to environment including pollution of soil, air, water, land or ecosystem. Thus, the principal prayer of appellant is restoration of the green belt so that legal and fundamental rights of the citizens to a clean and healthy environment under Section 21 of the Constitution is protected. The people residing in the vicinity of the plant are already impacted due to pollution. An area earmarked to reduce and absorb the pollution i.e. the green belt has now turned out to be the source of pollution due to the setting up the cement plant. The appellant should succeed in securing an order for restoration by proving that the conversion was illegal and improper and the environmental clearance is a key document to show the illegality as well as the process adopted in security approval for cement plant in violation of the law. Thus, the environmental clearance as well as the notification for change in land use has to be considered while deciding the issue of restoration of the green belt. Therefore, the contention put forth by the respondent are devoid of merit and have got to be rejected and the appeal has got to be heard on merits since it is within time and jurisdiction of the Tribunal.

14. In order to support his contentions, Learned Counsel relied on following cases :

- (i) Bhopal Gas Peedith Mahila Udyog Sangathan and Others
- (ii) Nisarga Nature Club v/s Satyavan Prabhudesai (Application No. 29/2012) [National Green Tribunal (PB), New Delhi].
- (iii) Collector, Land Acquisition V/s Katiji[1987 AIR 1353, 1987 SCR(a) 387].
- (iv) Improvement Trust Ludhiana V/s Ujagar Singh and Others [2010 (6) SCC 786].
- (v) N.Balakrishna V/s M.Krishnamurthy [2008 (228) ELT 162 (SC)].

15. The Tribunal paid its anxious consideration on the submissions made and looked into all the material available.

16. Admittedly, the appellant herein original filed Writ Petition (PIL 5467/2011 on the file of the High Court of Chhattisgarh, Bilaspur whereby an order of transfer dated 28.01.2013 was made pointing to the observations made by the Hon'ble Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India & Others (2012) 8 SCC 326 and also observing that the question of environmental clearance may be gone into by the National Green Tribunal. In pursuance of the said order of transfer, this appeal was taken on file.

17. In that writ petition, the reliefs sought for are as follows:

- (a) That the notification No. F/7-24/32/2010 dated 03.02.2011 modifying land use of certain parcels of land designated in the Development Plan of Bhilai as "green belt" to "industrial purpose" be quashed.
- (b) That the Environmental Clearance issued by the Respondent No. 2 Ministry of Environment and Forest on 01.05.2008 to the Respondent No. 10 BJCL be quashed as, on the very face of it, it has wrongly categorized the project as Category B2 instead of

Category A, and was therefore issued without following mandatory procedures. Concealment of material facts, use of fraud and fabricated documents, and causing environmental damage in violation of explicit conditions imposed, including initiating a review of environment clearance granted to the Company by the Respondent No. 3 CPCB.

- (c) That the 34.59 acres of land designated as “green belt” leased out to the Respondent No. 10 BJCL be restored to its original situation prior to the construction of the Respondent No. 10 BJCL.
- (d) That any other order may be deem fit under the facts and circumstances of the case also be granted by the Hon’ble Court.

18. As can be seen from the averments made in the original writ petition, the chronological list of events stood as follows :

Date	Particulars
April 2007	Memorandum of Understanding between SAIL and Jay Prakash Associates.
15.06.2007	Respondent No. 7 SAIL transferred 34.59 acres of land to Respondent No.10 M/s BJCL.
01.05.2008	Environmental Clearance was granted to Respondent No. 10 BJCL by Respondent No. 2 MoEF.
04.05.2009	Respondent No. 10 applied for building permission to the Municipal Corporation Respondent No. 6.
22.05.2009	Proposed modification was published in the local newspapers.
24.11.2009	Respondent No. 5 Jt. Director Town and Country Planning Bhilai issued notice to Respondent No.10 regarding land use modification without permission and restoration of the land.

21.01.2010	Respondent No. 8 wrote to State informing that they were not aware of green belt and regarding their non-participation in Bhilai Development Plan.
18.10.2010	NGT Act, 2010 came into effect.
03.02.2011	Impugned notification issued by the Respondent No. 1 State of Chhattisgarh.
18.02.2011	Gazette notification of impugned notification.
08.09.2011	Writ Petition (PIL) No. 5467/2011 was filed by the appellant before the High Court of Chhattisgarh at Bilaspur.
28.01.2013	The Writ Petition (PIL) 5467/2011 was transferred to the NGT (PB), New Delhi by the High Court of Chhattisgarh at Bilaspur.

19. The respondent, on the threshold, have raised their preliminary objections on the question of maintainability of the appeal on limitation and jurisdiction. They have raised all the contentions as narrated above.

20. Speaking on the jurisdiction powers and proceedings of the Tribunal, Section 14 of the NGT Act, 2010 reads as follows:

“14. Tribunal to settle disputes. – (1) The Tribunal shall have the jurisdiction over all civil cases where 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 on Schedule-I.

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

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six

months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the application 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.”

21. From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule – I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application.

22. Admittedly, in the instant case, the environmental clearance was granted to respondent no. 10 by respondent no. 2 MOEF on 01.05.2008. The same was also published in the newspapers on 08.05.2008. The appellant has clearly averred that he came to know about the environmental clearance from the newspaper dated 08.05.2008. Thus, it would be clearly indicative of the fact of the knowledge of the appellant on 08.05.2008. The NGT Act came into force only on 18.10.2010. The appellant has not preferred any appeal against the environmental clearance under Section 11 of the NEAA Act within the period of 90 days as stipulated under that Act including the condonement of delay period. But the appellant has chosen to file Writ Petition before the High Court

of Chhattisgarh at Bilaspur only on 08.09.2011 i.e. nearly about after lapse of 01 year from the commencement of NGT Act. Though, a remedy was available under Section 11 of the NEAA Act, the appellant has not availed that remedy. The NEAA stood repealed under the NGT Act, 2010 w.e.f. 18.10.2010. A party cannot rely upon the provisions of the repealed statute after it has been repealed. If a right has been accrued under the repealed enactment, it cannot be disturbed. Even then, if any new or further step was needed to be taken under the Act that cannot be taken even if the Act is repealed.

23. The Hon'ble Apex Court in 1980 1 SCC 149 has dealt as follows

“The distinction between what is and what is not a right preserved by the provision of Section 6 of the General Clauses Act is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere ‘hope or expectation of’, or liberty to apply for, acquiring a right. In Director of Public Works v. Ho Po Sang Lord Morris speaking for the Privy Council, observed:

“It may be, therefore, that under some repealed enactment, a right has been given but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should be or should not be given. On repeal, the former is preserved by the interpretation Act. The latter is not.”

24. A reading of the above would clearly indicate the right of appeal granted under the repealing Act as could be seen of the NGT Act, it was restricted only

to the orders that were passed on or after 18.10.2010 and also taking up for consideration the appeal which were filed before NEAA on or before 17.10.2010. As rightly pointed out by the Learned Counsel for the respondent, the Tribunal is only a creature of the statute and could not stretch its jurisdiction what is expressly conferred by the Act and no statutory authority whether empowered by the Hon'ble Supreme Court can act or otherwise dehoarse of the statute. In the instant case, the repealed act cannot be relied upon by the appellant. If the appellant has acquired anything under the repealed enactment, it cannot be disturbed but it is not so in the instant case. If the appellant has acquired any right, the same would be protected by applying the provision of Section 6(c) of the General Clauses Act but that is not so in the instant case. In the instant case, the environmental clearance was granted on 01.05.2008 but no appeal was preferred before 18.10.2010 under NEAA Act and hence, it cannot be stated as a pending case to be decided under Section 38(5) of the NGT Act. As seen above, the appellant cannot rely upon Section 16 of the NGT Act General Clause to expand the portion of Section 16 of 38(5) of the NGT Act beyond the plain language.

25. As in any civil case, to initiate proceedings and to seek relief before the Tribunal, as envisaged under the provisions of NGT Act, one should have the cause of action which consisting of bundle of facts which gives the affected party a right to claim relief. The expression generally means the situation or a set of acts that entitles a party to maintain an action in a Court or a Tribunal.

- (a) Black's Law Dictionary defines Cause of Action as : "Cause of action is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

- (b) In “Words and Phrases”, the meaning attributed to the phrase “cause of action” in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.
- (c) As per Halsbury Laws of England (Fourth Edition) “Cause of action” has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. “Cause of action” has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action.
- (d) It is judicially settled that the cause of action, in the restricted sense, means forming the infraction of the right or the immediate occasion for the action and in the wider sense, the necessary conditions for the maintenance of the proceedings not only the alleged infraction but also the infractions coupled with the right itself.

26. It would be apt and appropriate to reproduce the following observation made by the Principal Bench, NGT, New Delhi in Appeal No.01 of 2013 Ms. Medha Patkar & Others Vs. Ministry of Environment & Forest, Union of India & Others on the point of limitation :

“The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, the limitation would never begin to run and no act would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act. To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. Firstly, the completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of rupees on establishment and operation of the project, would be exposed to uncertainty, danger of unnecessary litigation and even the possibility of jeopardizing the interest of his project after years have lapsed. This cannot be the intent of law. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its

entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is place in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view.”

27. By employing these words the legislative intent indicating that the period of limitation would commence only from the date on which the first event constituting the cause of action for the dispute arose is explicit. This is not only an indication but also a caution that later dates on which the subsequent events arose should not be taken to account for computing the period of limitation.

28. The contention of the appellant side that the appeal was preferred only on 03.02.2011 i.e. from the date of the knowledge cannot be accepted since the words “the cause of action for such dispute first arose” employed in Section 14

of the NGT Act have there have their own legal import in view of the reasons stated above.

29. The environmental clearance was granted to the respondent no. 10 by the respondent no. 2 on 01.05.2008 and the appellant had the knowledge about the grant of environmental clearance on 08.05.2008 but filed the writ petition before the High Court of Chhattisgarh, Bilaspur on 08.09.2011 i.e. nearly after one year after commencement of NGT Act on 18.10.2010. As rightly pointed by the respondent that it caused a doubt whether the appellant would have preferred a writ petition before the High Court of Chhattisgarh, Bilaspur in order to circumvent the legal impediment on the point of limitation.

30. Pointing to the order of transfer made by the High Court of Chhattisgarh, Bilaspur, the Learned Counsel for the appellant would submit that while transferring the present appeal, the High Court has observed that the basic challenge is environmental clearance regarding diversion of land and restoration of area and to decide the present issue. But this contention has got to be rejected in view of the order of the High Court which reads as follows :

“The basis point of challenge is the environmental clearance dated 01.05.2008. The notification for the diversion of the land as well as the order approving the construction are subsequent to it and are based on it.”

31. From the reading of the order of the High Court it would be abundantly clear that the environmental clearance was sought to be quashed and to be set aside and the notification regarding the diversion of land and restoration of area are only based on it. The contentions put forth by the appellant side that the appellant has sought for three reliefs and the main relief is restoration of the

leased out area of 34.59 acres of land to the original situation prior to the construction by the respondent no. 10. Thus, it is not directly an appeal under Section 16 but only an appeal seeking a relief under Section 15 though attractive at the first instance, do not stand the scrutiny of law. Pointing to Section 15(3) of the NGT Act, the Learned Counsel would submit that limitation for filing the appeal for restitution of the environment is 5 years from the date of which the cause of action first arose and the restoration of the green belt is covered under the provisions of the NGT Act. Apart from that Schedule – II specially states that the compensation relief could be claimed on account of any harm, damages, destruction to flora including aquatic flora, crops, vegetable, trees and orchards and Clause (K) deals with restoration on account of harm, damage of environment including pollution to soil, air, water, land or ecosystem. In the instant case, the case of the appellant is the issue of conversion of green belt for industrial purpose and the grant of environmental clearance would arise for consideration in view of the consideration of the relief and thus, the appeal is within time. This contention has got to be negated for more reasons than one. The main subject matter of challenge is the grant of environmental clearance to the respondent no. 10 by the respondent no. 2 which was done on 01.05.2008 i.e. the date when the first cause of action arose. The appellant has not availed the remedy available under the provisions of NEAA Act. Even as per the averments made by the appellant, the Director Town & country Planning, Bhilai respondent no. 5 has issued notice to respondent no. 10 regarding the land use modification without the permission, in its original condition. It is highly doubtful whether the appellant can apply and ask for restoration of land in question. The limitation of 5 years, as provided under Section 15 of the NGT Act, 2010 cannot at all

applied to the present of the case since someone should use an area earmarked as green for any other purpose. In the instant case, the State Government has modified the land use from green belt to industrial by exercise of statutory powers conferred on it. In other words, the land notified as industrial area by the State Government is being used by the respondent no. 10 for industrial purpose. If the relief of restoration as asked for by appellant is to be considered and granted, necessarily the validity of the act of modification of land use by the State Government of Chhattisgarh has to be gone into and examine and if to be done so, it has to be done under the provisions of Chhattisgarh Town and Country Planning Act and the said enactment is outside the seven enactments of the Schedule – I of NGT Act, 2010 and hence no doubt it would fall outside the jurisdiction of the NGT. As could be seen above, the primary question in the appeal, as pointed out by the Hon'ble High Court in its order of transfer has a legality or otherwise of the grant of the EC dated 01.05.2008 in respect of which the appellant did not avail the remedy within the stipulated time under the provisions of NEAA Act and has filed the writ petition long after the lapse of one year and the other two questions namely the conversion of the use of land and also the restoration of land to its original condition are the questions based on it and would arise consequently to the first one.

32. Apart from that the appellant has also challenged the notification dated 03.02.2011 where by the modification from the green belt to industrial purpose was made and sought to quash the same. The relief sought for by the appellant would not fall within the jurisdiction of the Tribunal since the said conversion of the land use was in exercise of the powers under Section 23(A) Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam Act, 1973. Needless to say that the

Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam Act, 1973 is not included in the seven enactments specified in the Schedule – I of the NGT Act.

33. The contention put forth by the Learned Counsel for the appellant that the respondents are taking diametrically opposite stand that when the writ petition was pending before the Hon'ble High Court of Chhattisgarh, it was submitted that the appellant had an efficacious and alternative remedy before the NGT and on transfer to the Tribunal they are putting forth an exactly opposite stand that the Tribunal has no jurisdiction to trial and since it is a matter of transfer by the constitutional Court, the Tribunal has to make an enquiry on the merit of the matter rejecting the contentions now put forth by the respondent side. This contention cannot be countenanced. When the writ petition was pending was pending before the Hon'ble High Court of Chhattisgarh, the respondent in the reply has not only stated that the appellant has an efficacious and alternative remedy before the NGT but has also specifically averred that a challenge before the Tribunal was barred by limitation and the appellant has avoided that by filing the writ petition. The Hon'ble High Court, in view of the judgment of the Hon'ble Supreme Court in Writ Petition No. 50/98 Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India has passed an order of transfer. By the said judgment in Writ Petition No. 50/98 Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India, the Hon'ble Supreme Court issued a direction that all the matters instituted after the NGT Act coming into force and which were covered under and / or in NGT Act should stand transferred and could be only instituted before the NGT. Thus, it would be quite clear that the question as to maintainability on the jurisdiction and limitation were kept open to be decided by the Tribunal. Thus, the contentions put forth by the Learned

Counsel for the appellant that since, the Writ Petition was transferred to the Tribunal question of maintainability does not arise for consideration cannot be countenanced.

34. It is not that the Tribunal is unmindful of the fact that the subject matter in question related to environment which is of serious concern and the Tribunal is specially constituted to deal with all environment disputes and dismissing the appeal as not maintainable would appear to be unreasonable. But the Tribunal is helpless, being a statutory body, the Tribunal is bound by the language of the statute. Hence, in view of the discussions made above, the Tribunal has no option than to dismiss the appeal not maintainable as barred by time and one outside the jurisdiction of the Tribunal. Hence, the appeal is dismissed accordingly. No order as to cost.

(Mr. Justice M.Chockalingam)
Judicial Member

(Dr. Ajay A. Deshpande)
Expert Member

Central Zonal Bench, Bhopal
2nd August, 2013

NGT

**BEFORE THE NATIONAL GREEN TRIBUNAL,
CENTRAL ZONAL BENCH,
BHOPAL**

Application No. 11/2013 (P.B.46/2013 THC)

In the matter of

1. Aradhana Bhargav,
W/o Shri Premnarayan
R/o Purana Chapakhana Road,
Chhindwara, Madhya Pradesh.

2. Medha Patkar,
D/o Vasant Khanolkar,
R/o Narmada Ashish,
Navalpura, Off Kasrawat Road,
Badwani, Madhya Pradesh.

3. Kunj Bihari Patel,
S/o Lakhn Lal,
R/o Bhovana Khairi,
Chhindwara, Madhya Pradesh.

4. Patiram Verma,
S/o Murtu Verma,
R/o Bhamanwara,
Chhindwara, Madhya Pradesh.

5. Seela M. Mahapatra,
D/o Sailabala Mahapatra,
R/o D-52, Second Floor,
Sector – 10, Vasundhara,
Gaziabad, Uttar Pradesh.

.....Applicants

Versus

1. Ministry of Environment and Forest,
Government of India,
Through Secretary
Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi.

2. Central Water Commission,
Through Chairman,
Sewa Bhawan, R.K.Puram,
New Delhi – 110066.

3. State of Madhya Pradesh
Through Chief Secretary,
Vallabh Bhawan,
Bhopal – 462003
Madhya Pradesh.

4. Water Resource Department,
Government of Madhya Pradesh,
Through the Engineer-in-Chief,
Narmada Bhawan, Tulsi Nagar,
Bhopal, Madhya Pradesh.

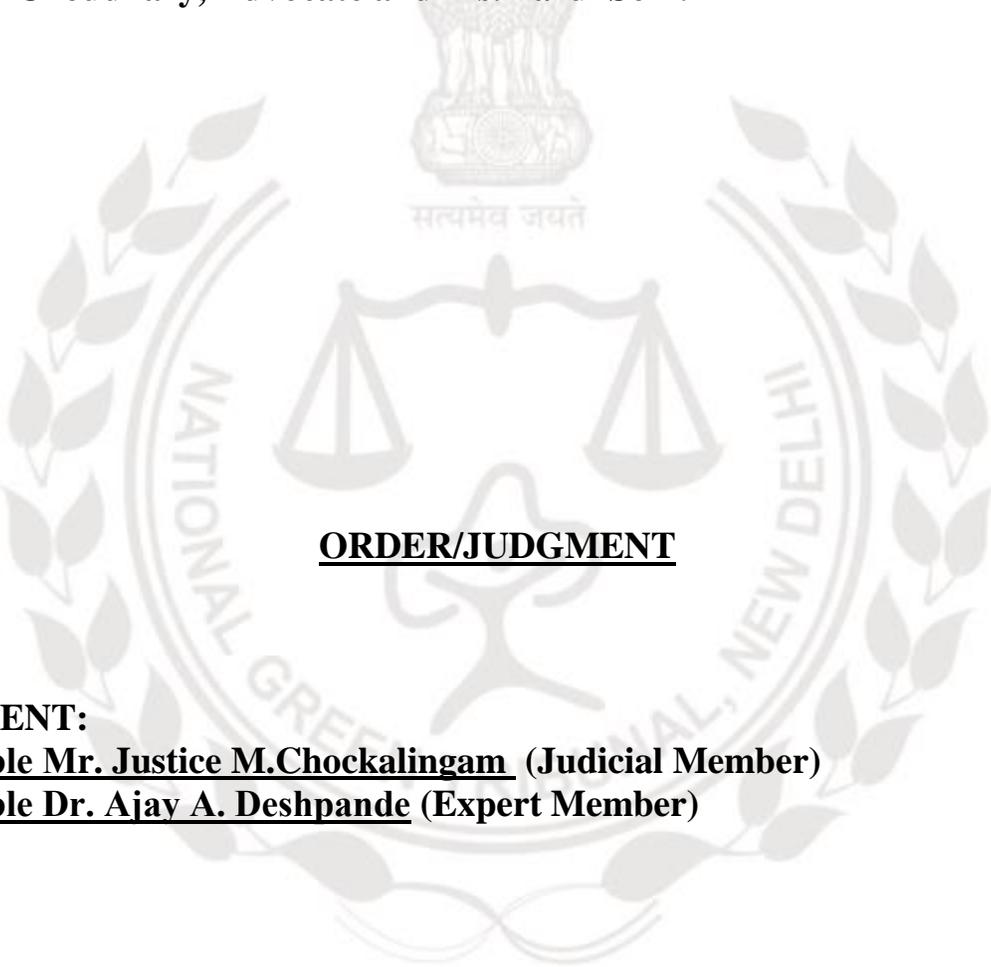
.....Respondents

Counsel for Applicant :

Shri Sanjay Parikh, Sr. Advocate, Shri Abhimanue Shreshtha, Advocate, Ms. Sridevi Panikkar, Advocate and Ms.Sadhana Pathak, Advocate

Counsel for Respondents :

Shri Ravindra Shrivastava, Sr. Advocate, Shri C.D.Singh, Advocate, Shri Sachin K.Verma, Advocate, Shri Om Shankar Shrivastava, Advocate, Shri Sunny Choudhary, Advocate and Ms. Parul Soni.



ORDER/JUDGMENT

PRESENT:

Hon'ble Mr. Justice M.Chockalingam (Judicial Member)

Hon'ble Dr. Ajay A. Deshpande (Expert Member)

NGT

Delivered by the Hon'ble Shri Justice M.Chockalingam, JM

1. In pursuance of an order made by the Principal Bench, National Green Tribunal (NGT), New Delhi, this application was taken on file as Application No. 11/2013 (CZ) by this Bench.

2. The applicants, claiming as persons interested in the protection of environment and ecology and also the persons personally being affected have filed this application under the provisions of the NGT Act, 2010 whereby they have challenged the validity of the environment approval made in communication No. 12/6/81/-ENV-5/IA dated 21.04.1986 and the communication J-12011/23/2002-IA-I dated 30.11.2005 along with a direction that they are invalid and also a declaration that the commencement of the Pench diversion project without prior environmental clearance under the EIA notification, 2006, was totally illegal and also for a direction to the MoEF that no construction or other activity related to the said project should be done without prior environmental clearance, to restore the ecology and for awarding proper damage compensation to all the affected persons.

3. The case of the applicants, as could be seen from the averments made by the application can be stated thus. The proposed project envisaged construction of earthen dam on river Pench, a tributary of river Kanha in Godavari basin in village Machagora in Chourai Tehsil of Chhindwara District, Madhya Pradesh. It was intended to provide irrigation in net CCA 70,918 hectares with annual irrigation of 96,519 hectares which would increase the level of ground water and hence, it is a major irrigation project listed in Schedule of both EIA notification 1994 and 2006. Thus, requiring prior environmental clearance from the Central Government. In April 1986 i.e. prior to the enactment of Environmental Protection Act, the then project proposed by

the Central Water Commission was accorded environmental approval by the Environment Appraisal Committee, Department of Environment & Forest and Wild Life Impact Division, Government of India. But the construction of the project was not commenced. The estimated cost of project was 184 crores in 1987 increased to 543.20 crores in 2003. Since the construction work was started only in November 2012, the cost of the project had gone up further. From the year 1988 to 2005, approximately 12.56 crores were spent on development of approach road, residential quarters, office, rest house building and hutment at site survey work of dam, drilling of dam site and establishment and miscellaneous work. About 5607.28 hectare private land and 895.40 hectare government land would go into submergence by which 31 villages would be affected. An area of 10.58 hectares land was acquired for approach road to dam site and payment thereof was made on 31.03.1988. An area of 16.98 hectares was acquired for RBC upto 3 Kms in March and May, 1993. The land acquisition for dam site RBC and HBC and rehabilitation sites are yet to be completed since they were undertaken only in the year 2005. No environment management plan was prepared. The project was monitored last in the month of August 1997 and no progress was made since at the time the site inspection was done by the Additional Director, Regional Office, MoEF on 26th-27th.08.1997. In the meanwhile, EIA notification 2006 came into effect where 29 projects were asked to take environmental clearance which also included the project in question. By a clarification that the environmental clearance for the project which was cleared by the MoEF before EIA notification 1994 and where no construction/other operations were commenced till 01.08.1998 will be invalid. In all such cases, fresh environmental clearance was to be obtained if those projects came into 29 categories listed within the

EIA notification 1994. It is pertinent to point out that the environmental clearance granted to the proposed project was revoked by a communication dated 22.10.2001 by a communication addressed by the Regional Office, MoEF to the Central Water Commission. In the meanwhile, the project was transferred to Water Resource Department, Madhya Pradesh. Surprisingly, on a letter written by the Chief Engineer, Wiaganga Basin Water Resource Development MP the MoEF directed the Regional Office, MoEF, Bhopal to conduct a site inspection which was carried on by the Additional Director, Bhopal in the presence of the five officers of the project proponent. The site inspection report revealed that the salient features of the project had changed and estimated cost had also increased and the plant needed revision and also the plants for catchment area, treatment and command area development which were vital for the project were still to be prepared. No environmental management plan prepared and there was no major progress at the dam site and thus, in short, the environmental conditions were not complied. Apart from that there were other illegalities and violations. From the said report, it was quite evident that the environmental clearance granted in 1986 was revoked, even otherwise, the project required fresh clearance in view of the communication dated 23.07.1998 issued by MoEF. But for the reasons best known to MoEF, vide a letter dated 30.11.2005 it was informed to the Chief Engineer, Wiaganga Basin Water Resource Development, MP that in view of the inspection report, a project do not require fresh environmental clearance. Pursuant to the same, in April 2006, the Water Resource Division of the Water Commission accorded investment clearance for the project at the cost of Rs. 583.50 crores and the project was included in the accelerated irrigation programme in the year 2007-08. Various notices were issued for the supply of

materials for construction by the project proponent and other related activities had been undertaken only in November, 2012.

4. It is also the pleaded case of the applicants that the approval granted in 1986 was granted by Environment Protection Act, 1986 which came into force when there was no procedure or parameter as existed under the present scheme for grant of environmental clearance. With the issuance of the EIA notification 1994, the procedure for grant of environmental clearance was already done by the MoEF and the same was replaced by EIA notification 2006. A perusal of both the notifications would clearly indicate that the major irrigation projects such as the project in question required environmental clearance from the Central Government / MoEF under both the notifications. On 4th-5th November, 2012, the second applicant joined the agitation for forceful and legal rehabilitation for the purpose of taking over their lands for the proposed project. At that time, a letter was handed over by the Collector, Chhindwara informing her that the construction work of the proposed project started on 04.11.2012 and all the requisite permission was obtained from the Water Resource Department, MP. True copies of certain documents related to the proposed projects were handed over to her wherefrom she came to know all the above facts about the proposed project, the environmental approval granted by the Environment Appraisal Committee in the year 1986, subsequent revocation in the year 2001 and also the further communication that fresh approval was not necessary. It is also specifically pleaded that since the environmental approval in the present project was granted in the year 1986, it cannot be said to be valid for more than the prescribed period either under the EIA notification 1994 or under the EIA notification 2006. It is pertinent to point out that the original environmental approval granted was also revoked.

Thereafter, no question of any inspection of the said project would arise. Equally the opinion given by the Additional Director, MoEF dated 30.11.2005 was also bereft of any support from law and was bad for more reasons. At no stretch of imagination and no reasons, the MoEF can come forward that no new environmental approval is necessary for proposed project and thus, the construction and related activities started by the project proponent from 04.11.2012 were thoroughly illegal. The proposed project has not been granted approval under the Water or the Air Pollution Control Act. The proposed project is closely situated to PENCH National Park which is situated in Seoni District of Madhya Pradesh. The PENCH National Park has been included in the umbrella of Project Tiger and the 19th Project Tiger Reserve in the year 1992. The original environmental approval was granted in the year 1986 and the question whether such a project in the vicinity of Tiger Project could be given do not arise but the proposed project required the environmental clearance under the EIA Notification 2006 and thus, it would be quite clear that the project undertaken by the project proponent is in violation under the Environment Protection Act, 1986 and also other acts enumerated under Schedule-I of the NGT Act, 2010. Apart from that, the environmental approval granted on 21.04.1986 do not contemplate and cater to all conditions and parameters under which the river PENCH project need to be evaluated in view of the sustainable development and hence, in view of the changed circumstances also, the project required environmental clearance under EIA notification 2006. The project proponent has illegally commenced the construction on 04.11.2012 without valid prior environmental clearance thus, is continuously violating the provisions of the Environment Protection Act, 1986 and other Acts enumerated under the Schedule-I of the NGT Act, 2010. Since, the construction and other

related activities are going on and thus, the cause of action is continuing cause of action and is applicant is well within limitation. Since, in view of the averments above, the applicants have sought for reliefs as shown above.

5. On service of notice, the respondents appeared through their Counsels and filed their replies putting forth their defence to the main application.

6. The respondent no. 3 and 4 made application No. 447/2013 seeking dismissal of the main application on the ground of delay alleging that the application has not been preferred within the period prescribed by the provisions of NGT Act. The respondent therein, who are the applicants in the main petition filed their reply.

7. Hence, the preliminary objection raised by the respondents on the question of limitation was first taken up for consideration.

8. Advancing arguments on behalf of the respondent no.3 and 4, the Learned Counsel would submit that the main application filed under Section 14 and 15 of the NGT Act was hopelessly barred by limitation. The Department of Environment, Forest and Wild Life, Government of India granted environmental approval to the Pench Diversion Project on 21.04.1986 subject to certain safeguards to be implemented during the execution of the project. The MoEF in order to ascertain as to whether the project related work was commenced prior to 1994, made an inspection by the dam site. The report dated 30.09.2005 pursuant to the inspection made it clear that the project related activities such as preconstruction infrastructure work pertaining to development of approach road, residential quarter, office, rest house building at the site, drilling dam site were already initiated in the year 1987-88 and six bridges alongwith approach roads were constructed upto 1992-93. On the

strength of the inspection report, MoEF conveyed to the Water Resources Department, Govt. of MP vide letter dated 30.11.2005 that the project do not require fresh environmental clearance and the conditions stipulated in the environmental clearance dated 21.04.1986 should be strictly complied with. While, the matter stood thus, the applicants have brought forth this application *inter alia* initially seeking a direction that the communication of the environmental clearance dated 21.04.1986 and a subsequent communication dated 30.11.2005 whereby it was ordered that the project did not require fresh environmental clearance and the stipulated condition in the environmental clearance dated 21.04.1986 should be strictly complied with, were invalid. The other reliefs are in the nature of consequential reliefs which may or may not flow, if the declaration asked for above was not granted. Thus, for all legal and practical purposes, the need for declaration on the environmental approval of the year 1986 and subsequent communication of the reiteration in 2005 are the main reliefs and subject matter of adjudication. The grounds as set out by the applicant would clearly indicate that they have tried to impugn the subsequent communication dated 30.11.2005 on the ground that the environmental approval of 1986 had lapses and the project required fresh clearance. This issue, in so far as the records stand today and as far as the respondents are concerned seeking a common ground is concluded by the stand that no fresh clearance is required and subsequently, the activity of execution and development of project is not illegal. In order to adjudicate upon the first and foremost area of adjudication would centre around the validity of the environmental approval of 1986 and it is reiteration in 2005. Thus, for the purpose of the substantial relief, the existence of these two letters would substituted the cause of action in as much as the question would be as to

whether the jurisdiction of the Tribunal to adjudicate upon the validity of the above two documents, by virtue of the statute of limitation was barred or not.

9. Pointing to Section 14(3) and 15(3) of the NGT Act, 2010, the Learned Counsel would submit that an analysis of the statute providing the period of limitation, it would be quite clear that the application filed by the applicant was barred by time. The close reading of the above provisions would make it abundantly clear that there is a bar, if it is not within limitation and the special period of limitation for application falling under Section 14(1) is a period of six months which is further extendable for a period not exceeding 60 days and also the starting point for the period of limitation is on the date of which such cause of action first arose. It is well known that the expression 'cause of action' means all such bundles of facts which a suitor is required to prove in court of law in order to succeed in getting a particular relief. In that view of the matter, so long as the applicants do not prove that environmental approval dated 21.04.1986 and the subsequent communication dated 30.11.2005 are not valid, they cannot maintain the application. Therefore, the cause of action is strictly relatable to the existence of these two letters. The use of the words 'first arose' in the said provisions are of immense significance. These words, not only are the indicators of the unambiguous legislative intent and scheme expressed in plain words, but statutorily fix the starting point of the period of limitation. These words, no doubt, relate to the earliest point of time of inception of the cause of action. The plain and unambiguous words of statute scheme and intention should be given effect to. This is further re-enforced by the use of the words "from the date" which again would imply that there is a definite occurrence of the cause of action. It is pertinent to point that similar language is used for the Section 15(3) of the Act also. The contention put forth by the

applicant side that there is a continuing cause of action is thoroughly misplaced and untenable in law. The applicants are well aware that the application in the present form is not within the period of limitation. In respect of the aspect of limitation, the applicants have tried to explain the same by averring that the project proponent had illegally commenced the construction on 04.11.2012 without valid prior environmental clearance and thus, was continuously violating the provisions of the Environmental (Protection) Act, 1986 and other Acts enumerated under Schedule-I of the NGT Act and since, the construction and other related activities were going on, the cause of action was continuing and the application is well within limitation. For the purpose of reckoning the limitation of Section 14(3) and 15(3) of the Act, the averments made by the applicant as above were wholly irrelevant and of no consequence since the concept of continuing cause of action is foreign to the expressed provisions of the statute of limitation engrafted under Section 14(3) and 15(3) of the Act. The NGT Act is a special enactment and hence, there is statutory prescription of the special period of limitation under Section 14(3) and 15(3) of the Act which will certainly exclude the general law of limitation. The assumption that the project proponent has illegally commenced the construction on 04.11.2012 was factually incorrect and misleading. The plain and simple language of Section 14(3) i.e. unless it is made within the period of six months from the date on which the cause of action / dispute first arose negates the principles of continuing cause of action. If the plea of continuing cause of action is accepted within the limitation, the statute would be eschewed of the important and vital words namely "first arose". On the facts of the present case, Section 22 of the Limitation Act will have no effect. Though, the same being a part of the general law of limitation since it would stand excluded by the special provision

of limitation. In the special law, under Section 14(3) and 15(3) of the Act. The NGT Act is a special law enacted for the effective and expeditious disposal of cases related of Environment (Protection) Act and conservation of forest and other natural resource. Hence, the law provides the period of limitation which would be have overriding effect over the Limitation Act which is general law. If the plea of the applicants of principles of continuing cause of action for the purpose of brining a dispute under Section 14(1) within the limitation or reliefs under Section 15(1) within the limitations of 15(3) is to be accepted, then it would lead to the serious, anomalous and undesirable consequences. Apart from that it would be contrary to the express prescription of the statutory limitation under the NGT Act. If the theory of continuing cause of action is to be accepted, any action or application or proceeding may be instituted at any point of time on an occurrence of a small fact which may be construed as part of cause of action. This would mean even if the project which nearing completion with investment of huge public expenses can be called into question. But this is not the intent of the NGT Act. Thus, it can be well stated that the limitation stand concluded by any circumstance at the earliest in point of time would have to be considered as relevant dated for computation of limitation. The averment made in the application that the construction has commenced on 04.11.2012 was contrary to the pleadings made by the application and the documents relied on by them. The applicants have specifically averred about environmental approval for the project in April 1986 and that the construction of the project was estimated at the cost of 184.04 crores in 1987 which increased to 543.20 crores in 2003, etc., the environmental clearance granted to the project was revoked by a communication dated 22.10.2001 by the Regional Office, MoEF, Bhopal to the

Central Water Commission. From the averments of those facts pleaded by the applicants, it is highly apparent that the construction commenced in 1988 and the inspection report made by the committee clearly shows that the commencement of the project in the 1987-1988 what was started in on 04.11.2012 was only spillway work. It is also clearly averred in the reply affidavit and thus, this date 04.11.2012 cannot said to be date of commencement of work and thus viewed from any angle, the delay was enormous and application is liable to be rejected. The applicants, for the reasons well known to them, preferred not to challenge the environmental clearance dated 21.04.1986 though their lands were being acquired in the year 1992 for the construction neither of the project nor even after 30.11.2005 when the environmental clearance granted in the year 1986 was reaffirmed by the Government of India. Under the circumstances they should not be allowed to challenge the environmental clearance granted at this belated stage and thus, the application made by the applicants is barred by limitation. In support of his contention, the Learned Counsel relied on the following decisions:

- (i) S.S Rathore Vs. State of MP, (1989) 4 SCC 582.
- (ii) General Manager, Telecom Vs. M.Krishnan & Anr., (2009) 8 SCC 481.
- (iii) Jesurethinam & others Vs. Ministry of Environment & Forest, Union of India &ors, 2012(2) FLT 811 (NGT).
- (iv) Sanskar Dastidar Vs. Shrimati Banjula Dastidar & Anr. (2006) 13 SCC 470.
- (v) Ms .Medha Patkar vs. MoEF & ors. Appeal no. 01 of 2013 (PB, NGT).

- (vi) Narmada Bachao Andolan Vs. Union of India &Ors. (2000) 10 SCC 664.
- (vii) Consumer Federation Tamil Nadu Vs. Union of India & 5 others, Appeal No. 33 of 2011 (PB NGT).
- (viii) State of Madhya Pradesh vs. Narmada Bachao Andolan & Anr. (2011) 7 SCC 639.

10. Answering to the above contentions and also in support of the case of the applicants that the application is well within time, the Learned Senior Advocate, Shri Sanjay Parish would submit that the application by the respondents seeking rejection of the main application as barred by limitation is misconceived in law. The applicants, *inter alia* in Para 9 of the application has averred that the project proponent has illegally commenced construction on 04.11.2012, without valid prior environmental clearance, thus is continuously violating the provisions of Environmental (Protection) Act, 1986 and other Acts enumerated in the Schedule-I of the NGT Act. Since the construction and other related activities were going on, the violation continued. Thus, the cause of action was continuing cause of action and the application was well within limitation. Thus, it would be quite clear that the applicants have contended that there was a continuing wrong and the project proponent, without environmental clearance had commenced and were continuing with the construction activity on the impugned project. The applicants came to know about the commenced of the civil work for construction of the project in question only from the letter dated 05.11.2012 given by the Collector, Chhattisgarh, to the applicant no. 2 alongwith the letter true copies of certain documents relating to the project were also provided. Those documents consists of the letter dated 21.04.1986, from MoEF letter dated 22.11.1990 and

a letter 30.11.2005, from the Ministry of Tribal Affairs and MoEF's letter dated 30.11.2005. Only thereafter, the applicants filed the RTI application on 05.12.2012 seeking other documents. A reply was received on 22.12.2012 stating that as per the RTI Act, 2005 under sub Section (1) of Section 8 would cease to be exempted, if 20 years have lapsed, the incident to which information relates and the file records were not available. However, a copy of environmental clearance dated 21.04.1986 was enclosed free of cost. Subsequently, the Regional Office, MoEF, Bhopal by its reply dated 14.01.2013 sent a copy of site inspection report dated 30.09.2005. Only from the same applications, came to know about the revocation of the environmental clearance dated 21.04.1986. The said application under RTI and replies are filed by the applicants. The applicants thus, came to know about the civil work having started at the project site from the letter dated 05.11.2012 by the Collector and the documents given alongwith the said letter. The applicants gathered knowledge of the revocation of the environmental clearance about the site inspection report from the letter dated 30.09.2005 received in reply dated 13.01.2012 in the RTI application dated 05.12.2012 and it was on that basis the instant application was filed on 15.02.2013. It is pertinent to point out that at the outset, the applicants got necessary knowledge by which their right to file the present application accrued before this Tribunal only on 05.11.2012 and subsequently on 14.01.2013. The Tribunal passed orders dated 12.03.2013, 10.04.2013, 01.05.2013 and 29.05.2013 for production of documents related to revocation of environmental clearance. Thereafter, the Tribunal directed the Director to appear on the next hearing date. The documents were not produced.

11. On 10.06.2013 and 13.06.2013, the said documents were submitted by MoEF without supporting affidavit. The MoEF submitted only three documents, letter dated 30.03.2001, 22.10.2001 and 06.09.2001. The documents dated 19.06.2001 which mentioned that the environmental clearance had lapsed was not produced. When the attention of the Tribunal was drawn to this fact, the direction was issued for production of said documents on the next hearing on 30.07.2013. The respondents had not only concealed the fact of lapsing of environmental clearance dated 21.06.1986 but also the respondent no. 3 and 4 filed contrary in the affidavit. The applicant side mentioned specifically about the revocation of the environmental clearance dated 21.04.1986. The respondent MoEF in its reply filed in May 2013 had stated that it is a matter of record and not disputed. The respondent no. 2 also handed over the reply to the applicants dated 30.07.2013 in which it has been stated that it was again a matter of record related to respondent no.1 and replying respondent had not required any comments. Apart from that, the respondent no. 3 and 4 in their affidavit dated 21.04.2013 has specifically stated that the environmental clearance dated 21.04.1986 was never revoked and the State Government of Madhya Pradesh had never received any letter or order or communication from the MoEF revoking the environmental clearance and the applicants have made the bald statement. Thus, from the said reply, it would be clear that the respondent no. 3 and 4, categorically made a statement that they did not receive any letter from the MoEF revoking the environmental clearance dated 21.04.1986. On the contrary, the said letter dated 22.10.2001 produced subsequently in June, 2013 clearly showed that on 21.03.2013, the status report was submitted by Water Resource Department of Madhya Pradesh to MoEF and the letter dated 19.06.2001 regarding lapse of environmental

clearance was subsequently addressed to the Secretary, Water Resource Department. All the above clearly show that respondent no.1 initially concealed the relevant documents while respondent no. 3 and 4 made misleading and false statement on oath before the Tribunal. The concealment of relevant documents from the Tribunal and making false statement amounts to playing fraud on the Tribunal. This is so deliberately done to avoid correct and proper adjudication of the Tribunal regarding environmental clearance on the question of limitation. Thus, the applicants submits that the cause of action in the instant case was continuing wrong and which further arose when MoEF filed its affidavit in May 2013 and also in June, 2013 when documents were filed and on 30.07.2013 when document dated 19.06.2001 was given to the Tribunal containing the fact that the environmental clearance had lapsed. Thus, the application filed by respondent no. 3 and 4 that the present application is barred by limitation is devoid of merits.

12. The Learned Counsel would further contend that in our country, the rural and other area where projects were implemented, the people are largely unaware of the legal complications. They become aware of the problem when the activities start at the site. Even in that situation they had no means to know whether it is legal or otherwise. It is pertinent to point out that damage to environment is a continuing wrong and constitute public injury. Hence, it should not be forgotten that broadly, the Tribunal has to act within the parameters of Article 21 of the Constitution as well as the precautionary principle, polluter pay principle and doctrine of sustainable development as provided under Section 20 of the NGT Act.

13. Arguing on the concept of continuing cause of action, the Learned Counsel would submit that a wrongful act is of such a character that the injury

caused by it continues and then the act constitutes a continuing wrong. If once a cause of action arises and the acts complained of continuously repeated, the cause of action continues and goes on de die in diem. In support of the contentions, the Learned Counsel relied on the judgments :

- (i) Balakrishna Salvaram Pujari Waghmare & Ors.V s. Shree Dhyaneshwar Maharaj Sansthan & Ors. AIR 1959 SC 798.
- (ii) State of Bihar Vs. Deokaran Nenshi & Anr. AIR 1973 SC 908.
- (iii) Commissioner of Wealth Tax Vs. Suresh Seth AIR 1981 SC 1106.
- (iv) Bhagirath Kanoria & Ors. Vs. State of MP (1984) 4 SCC 222.
- (v) Firm Ganpat Ram Rajkumar Vs. Kalu Ram &Ors. (1989) Suppl 2 SCC 418.
- (vi) Gokak Patel Volkart Ltd. Vs. Dundayya Gurushiddaiah Hiremath & Ors (1991) 2 SCC 141.
- (vii) Union of India &Ors. Vs. Tarsem Singh (2008) 8 SCC 648.
- (viii) State of Madhya Pradesh &Ors. Vs. Yogendra Shrivastava (2010) 12 SCC 538.
- (ix) Goa Foundation & Anr. Vs. Union of India & Ors (MA No. 49/2013 in Application No. 26/2012; dated 18.06.2013).
- (x) S P Gupta Vs. Union of India 1981 Supp SCC 87 213.
- (xi) Olga Telis 1985 (3) SCC 545.
- (xii) Ram Chandra Shankar Deodhar Vs. State of Maharashtra, 1974 (1) SCC 317.

- (xiii) Pallav Seth Vs. Custodian and Ors. (2001) 7 SCC 549 at 572.
- (xiv) Ashok Leyland Limited 2004 (3) SCC 1.
- (xv) Lala Balmukund 1975 (1) SCC 725.
- (xvi) Bailamma & Ors Vs. Poonaprajana House Building Cooperative
2006 (2) SCC 416.
- (xvii) Yusufbhai Vs. State of Gujarat (1191) 4 SCC 531.
- (xviii) Re: Sinclair (Deceased) Loyda Bank Plc Vs. Imperial Cancer
Research Fund and Anr, (1984) 3 All ER 362.

14. The Learned Counsel would further submit that the applicants are aggrieved persons and concept of aggrieved persons has been enlarged in the NGT Act, 2010. Now the injury which is being caused and brought to the notice of the Tribunal in the application is a public injury as it could be distinguished from private injury. The right to environment under Article 21 of the Constitution and any damage to environment constituted violation of Article 21 of Constitution. It is well settled that the fundamental right cannot be waived or given up. Any damage to the environment is violation of Article 21 of the constitution construed as only public injury. So long as damage to the environment continues, the public injury also continues alongwith cause of action. Locus of public in general (as against individuals) also continues. If there is continues injury affecting the fundamental right continuously, it cannot be said that cause of action would seize as it would amount to waiver or giving up of the fundamental right under Article 21 of the Constitution. The relief for enforcement of fundamental right cannot be refused solely on the ground of laches, delay or the alike. The Supreme Court of India, in Lala Balmukund 1975 (1) SCC 725 has held that only such construction of limitation should be

preferred which preserves the remedy than the one which bars or defeats the remedy. It is true that the letter dated 19.06.2001 and 22.10.2001 have used the term 'lapsed' which means 'come to an end' of the environmental clearance dated 21.04.1986. The project proponent was also required to take environmental clearance under EIA Notification 1994 by way of direction in the said letter. The letter dated 30.11.2005 has no validity sanctity after environmental clearance dated 21.04.1986 lapsed and both in the notifications dated 23.07.1998 as well as in the MoEF letter dated 19.06.2001 and 22.10.2001 it was directed that the project proponent should take a fresh environmental clearance under the EIA notification 1994 and its amendment. Therefore, the letter dated 30.11.2005 was void ab initio and thus, the application made by the applicants seeking the reliefs was well within time.

15. As could be seen above from the contentions put forth on both sides, the Tribunal has to answer the question of limitation.

16. Admittedly, the environmental approval to the PENCH Diversion Project for construction of earthen dam across the river PENCH near village Machagora in Chourai Tehsil of Chhindwara District, Madhya Pradesh at a cost of Rs. 1788.72 Crores was granted by the Department of Environment Forest and Wild Life on 21.04.1986 subject to certain conditions in respect of safeguards to be implemented during the inspection of the project. The Tribal Development Division, Ministry of Welfare accorded approval on 22.11.1990 for the proposed rehabilitation plan for the Scheduled Tribes bring displaced due to the construction of the project in question. The EIA notification 1994 was issued by MoEF. A communication was issued by MoEF on 23.07.1998 wherein it was stated that the environmental clearance granted to the project enlisted in Schedule-I prior to the EIA Notification 1994, above referred to

wherein construction and other operations had started till 01.08.1998 to be invalid and also made it clear that it was mandatory for such projects to obtain fresh environmental clearance. Pursuant to the said communication, the Regional Office of MoEF, Bhopal by a communication dated 22.10.2001 informed that the environmental clearance granted in the year 1986 for the project remained lapsed. Following the letter by the Chief Engineer, Wiaganga Basin, Water Resource Department, MP to the MoEF, a site inspection was conducted by the Regional Office and the report dated 30.09.2005 was submitted. After receipt of the report, the Additional Director, MoEF sent a communication dated 30.11.2005 that the proposed project did not require fresh environmental clearance. The Planning Commission, Water Resource Division has also accorded investment clearance for the project at the rate of RS. 583.40 Crores by a communication dated 10.04.2005.

17. It is also not a matter in controversy that the activities such as pre construction infrastructure and survey and investigation work pertaining to the work such as development of approach road, residential quarters, office, rest house building at the site, drilling at the dam site were already initiated and moreover number of bridges and asphalted approach road was also constructed and the said fact could be noticed in the inspection report dated 30.09.2005 referred to above from which it would be clear that all those activities had taken place prior to the date of inspection. While the matter stood thus, the applicants five in number claiming to be the persons personally aggrieved on their behalf and on behalf of the other villagers filed this application on 15.02.2013 seeking for the reliefs.

18. On the point of limitation, Para 9 of the main application specifically avers as follows :

“9.1 That the project proponent has illegally commenced the construction on 04.11.2012, without valid prior environment clearance, thus is continuously violating the provisions of Environment (Protection) Act, 1986 and other Acts enumerated in the Schedule-I of the NGT Act. Since, the construction and other related activities are going on, the violation continues, thus, the cause of action is continuing cause of action and the application is well within limitation.

19. The applicants have sought for :

- (i) A declaration that no construction or other related activities of the Pench Diversion Project could commence without the prior environmental clearance under EIA Notification 2006 and the commencement of the project was illegal alongwith a direction to MoEF to ensure that without prior environmental clearance, no activities continued.
- (ii) A declaration that the environmental clearance dated 21.04.1986 and the communication dated 30.11.2005, were not valid.
- (iii) A direction to the concerned person or authorities responsible for the alleged illegal commencement of construction to restore ecology alongwith other consequential reliefs like stay on construction, appropriate damage compensation, etc.

20. It is the specifically pleaded case of the applicants that the project proponent has illegally commenced the work only on 04.11.2012 without valid prior environmental clearance, that there is continuing wrong as the project proponent without environmental clearance has commenced and are continuing with the construction activity of the impugned project, that the applicants came

to know about the commencement of the spillway construction in respect of the project only from the letter dated 05.11.2012 given by the Collector, Chhindwara, MP to the applicant no. 2 and only from the documents provided, the applicants came to know about the approval granted in the year 1986 and also that no fresh environmental clearance was required from the letter dated 30.11.2005 and in so far as the remaining facts, the applicant came to know through their Right to Information Application and thus, the applicants have rested their case in so far as the question of limitation is concerned on the expression “continuing cause of action”.

21. On the contrary, it is contended by the respondent side that the applicants have sought for a declaration that the environmental approval dated 21.04.1986 and subsequent communication dated 30.11.2005 are invalid and also declaration that the activities without a prior environmental clearance under EIA notification 2006 is invalid alongwith other consequential reliefs and hence, the applicant must be able to show that the reliefs sought for were within the prescribed period of limitation as envisaged by the NGT Act a special enactment. The concept of continuing cause of action put forth by the applicant side was foreign to the plain and expressed provisions on limitation engrafted under Section 14(3) and 15(3) of the NGT Act, 2010.

22. From the above contentions, it would be quite clear that the main controversy between the parties centres around the expression ‘cause of action’, as engrafted under the relevant provisions of the NGT Act.

23. Speaking on the jurisdiction powers and proceedings of the Tribunal, Section 14 of the NGT Act, 2010 reads as follows:

“14. Tribunal to settle disputes. – (1) The Tribunal shall have the jurisdiction over all civil cases where 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 on Schedule-I.

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

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the application 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.”

24. From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule – I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application.

25. Under Section 15 of the Act, an application for relief and compensation to the victims of pollution and other environmental damage under the enactments specified in Schedule-I or for restitution of the property damage or for restitution of environment for such area or areas, the applicant could be filed within a period of five years from the date of which the cause of action for such compensation or reliefs first arose. Also, if sufficient cause was shown, the Tribunal is empowered to condone the delay for a period not exceeding 60 days. Significant it is to note that the expression “cause of action for such dispute first arose” is employed. By employing the above expression, the

legislative intent indicating that the period of limitation would commence only from the date on which the first event constituting the dispute arose, is explicit. This is not only an indication but also the caution that the later dates on which subsequent events arose should not be taken into account for computing the period of limitation.

26. As in any civil case, to initiate proceedings and to seek relief before the Tribunal, as envisaged under the provisions of NGT Act, one should have the cause of action which consisting of bundle of facts which gives the affected party a right to claim relief. The expression generally means the situation or a set of acts that entitles a party to maintain an action in a Court or a Tribunal.

- (i) Black's Law Dictionary defines Cause of Action as : "Cause of action is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.
- (ii) In "Words and Phrases", the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.
- (iii) As per Halsbury Laws of England (Fourth Edition) "Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff

his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action.

- (iv) It is judicially settled that the cause of action, in the restricted sense, means forming the infraction of the right or the immediate occasion for the action and in the wider sense, the necessary conditions for the maintenance of the proceedings not only the alleged infraction but also the infractions coupled with the right itself.

27. It would be apt and appropriate to reproduce the following observation made by the Principal Bench, NGT presided over by the Hon'ble Justice Shri Swatanter Kumar, Chairperson, NGT, New Delhi in Appeal No.01 of 2013 Ms. Medha Patkar & Others Vs. Ministry of Environment & Forest, Union of India & Others on the point of limitation :

“The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, the limitation would never begin to run and no act would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act. To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. Firstly, the completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of

rupees on establishment and operation of the project, would be exposed to uncertainty, danger of unnecessary litigation and even the possibility of jeopardizing the interest of his project after years have lapsed. This cannot be the intent of law. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is placed in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or

language that could be the precept for the Tribunal to take any other view.”

28. The contentions put forth by the applicants that the construction activities of the project commenced on 04.11.2012 has to be rejected since subsequent to the grant of environmental approval by the Department of Environment Forest and Wild Life by the Government of India in the 1986. As could be seen from the inspection report of the year 2005, as referred to the above, that the project a related activities such as pre construction infrastructure and survey and investigation work pertaining to the work such as development of approach road, residential quarter, official rest house building at dam site, drilling work at dam site and also six bridges alongwith asphalted approach road was constructed. Even both the letters written by the Chief Engineer to MoEF dated 25.07.2001 and 30.04.2001 would make it evident that the project work commenced in the year 1986-87. The communication of the Executive Engineer dated 01.09.2001 would also indicate that the project work commenced in 1987 and was continuing. Needless to say again, the above activities were part and parcel of the Pench Diversion Project in question. Under such circumstances, the contention put forth by the appellant side that the construction work did not commence earlier but only on 04.11.2012 has to be got rejected.

29. Trait law it is that the special law of limitation, in any given enactment, will always exclude the general law of limitation. The NGT Act, 2010, a special enactment specifically provides period of limitation under Section 14(2) and 15(3), as stated supra. The Principal Bench, NGT has already held in *Jesurethinam & Ors Vs. Ministry of Environment, Union of India & Ors*, reported in 2012 (2) FLT 811 NGT that, when a specific provision for

limitation is provided under the special statute, the general provisions of the Limitation Act, 1963 are inapplicable. Hence, the Tribunal is afraid whether the theory of continuing cause of action can be made applicable to the present factual position of the case for which the specific period of limitation is available under the NGT Act, 2010.

30. Equally so is the contention put forth by the applicants that the cause of action arose only on 04.11.2012, the date on which the applicants came to know about their right. Even assuming to be so, it cannot be countenanced in law. The application proceeds on the footing as if the applicants came to know about the project activities on 04.11.2012 when the applicant no. 2 was served with a letter on 05.11.2012. The above plea has to be negated for more than one reason. The said letter dated 05.11.2012 by the Collector, Chhindwara to the applicant no. 2 marked as Exhibit A-1 reads as follows:

“Yesterday on 4th November, 2012, the Civil Work for the construction of the Dam in Bahnwada area of Chaurai Division. I received your letter dated 4th November, 2012 at the construction site. On points mentioned in the letter, I request that the construction of the dam in the Chhindwara District is being done by the State Administration for the benefit of the farmers. Water Resource Department has taken all the requisite permission for the implementation of the ambitious project. For your easy reference and perusal the copies of the letters received from the department is being made available with this letter.....”

Nowhere it is stated in the letter that construction work commenced on 4th-5th November, 2012. From the reading of the letter, it would be quite clear

that it was a reply to a letter given by the applicant no. 2 to the Collector, Chhindwara at the dam site. On query as to the non production of the letter of applicant no. 2, a copy of the letter was produced at the time of arguments. The letter of applicant no. 2 would clearly indicate that the agitation in respect of the dam project was going on for a period of more than seven years. Admittedly, out of 5 applicants, a few are the residents of that area where the project was undertaken and the lands of a few of the applicants were also acquired by the State for the said purpose and proceedings in respect of the acquisition was pending from the time of acquisition in 1990. Under such circumstances, it would be futile on the part of the applicants to say that they came to know about the project and all necessary particulars thereon only from 05.11.2012, the date of reply by the Collector, Chhindwara.

31. In his sincere attempt of supporting his case, the Learned Counsel for the applicants would urge that though, the environmental clearance for the project in question was granted on 21.04.1986, the MoEF Regional Office, Bhopal revoked the environmental clearance on 22.10.2001 though the word 'lapsed' at one state on the revocation at the other stage was employed by the MoEF by two different communications. The effect of the same was to put an end to environmental clearance originally granted in the year 1986. If so, the same could not be revoked by any action or letter as done in the present case on 30.11.2005 and hence, the only way known to law by which the construction of the project in question would have commenced under the EIA Notification 2006. Hence, the applicants asked for a declaration that the said Pench Diversion Project should not commence without the prior environmental clearance under the EIA Notification 2006 and the commencement of the project was totally illegal. Thus, the reliefs asked for was within the prescribed

period of limitation since the illegal activities which were injurious to the environmental and ecology was continuing. The applicants have also sought for awarding appropriate damage compensation to all persons who have suffered physically, mentally and financially due to the illegal construction undertaken by the project proponent. Much reliance was placed by the Learned Counsel on the judgment of Goa Foundation Vs. Union of India MA No. 49/2013 in Application No. 26/2013 rendered by the Principal Bench, NGT, New Delhi. The Learned Counsel also took this Bench to different parts of the judgment. There cannot be any quarrel on proposition of law settled in that judgement. To examine what is cause of action, the Tribunal must read the entire petition as a whole and the material facts are thus pleaded and provided for the purpose of obtaining the reliefs and if the applicants disclose even a small cause of action that the claim cannot be rejected. The said judgement of the Principal Bench cannot be applied with the present facts of the case for two reasons. The question that arose before the Hon'ble Principal was on the maintainability of the application and not on the question of limitation. Secondly, the application therein sought reliefs that the respondent authorities should discharge their duties by way of exercise of power given under enactments stated in the Schedule-I of the NGT Act, 2010 for preservation and protection, etc. In the instant case, the applicants have asked for declaration in respect of environmental clearance dated 21.04.1986, communication dated 30.11.2005 and also a declaration on the strength that there was no environmental clearance and declaration that the activities of Pench Diversion Project could not commence without prior environmental clearance under EIA Notification 2006 and all other reliefs were only consequential. Thus, without going into the legality or otherwise, by environmental approval dated

21.04.1986, communication dated 30.11.2005, the question in respect of their declaration referred to above cannot be investigated or considered or a decision arrived at. Thus, the cause of action, as could be seen from the averments in the applications was directly relatable to the existence of the letters dated 21.04.1986, environmental clearance and letter dated 30.11.2005. In the considered opinion of the Tribunal, the concept of continuing cause of action cannot be made applicable to the present factual position that too when there is a specific bar against the entertaining the application, if it is not within a period of limitation prescribed under Section 14(1) and 15(3) of NGT Act. At no stretch of imagination, neither the environmental approval dated 21.04.1986 nor the subsequent communication dated 30.11.2005 can be assailed after long lapse of years. The words “first arose” in Section 14(1) and 15(3) which are indicators of the unambiguous legislative intent. While the expressed provisions of the statute of provision under Section 14(1) and 15(3) of the NGT Act is so clear, the concept of continuing cause of action as put forth by the applicants has not application. The statutory prescription of the special period of limitation under the said provisions would not only stand indicative but also exclude the said concept of continuing cause of action. If the theory of continuing cause of action is to be accepted, the words “first arose” in the above provisions will lose its import and significance. Having sought for a declaration that environmental approval dated 21.04.1986 and also the communication dated 30.11.2005 were invalid, now the applicants cannot be permitted to say that the environmental clearance dated 21.04.1986 was put an end by the subsequent communication in the year 2001 and thus, there was no environmental approval existed, cannot be countenanced. So long as the applicants have sought for a declaration as stated above, no doubt, the

application is barred by time. As stated above, the applicants who are living nearby and whose lands have also been taken for the purpose of the project in question cannot now be permitted to say, after long lapse of a decade, that they came to know, that too the existence of their right only in November, 2012. A person who wishes to invoke the jurisdiction of the Tribunal or Court has to be vigilant and conscious of his rights and should not let the time to go by not taking appropriate steps. It is true that the provisions of law of limitation has to be construed liberally but the same cannot be applied to the present facts of the case for the reasons stated above. It is true that the Tribunal must adopt a practical approach which is in consonance with the provisions of the Act providing limitation. In the instant case, the period of limitation has begun to run long back. The period of limitation once commences operating, it does not stop but continues to operate with its rigour. An interpretation accepting the continuing cause of action would frustrate the very object of the Act and the purpose of prescription of limitation. In the instant case, it is contended by the respondent project proponent that nearly 600 crores have been spent and more than 50% of the work is over, hence, the project proponent who obtained the environmental clearance in the year 1986 and has completed not less than 50% of the work by spending hundreds crores of rupees would be thrown to jeopardising his project at the long lapse of years. Needless to say, if it is allowed, it would be against the very intent of the law. Even it may be true that the applicants are aggrieved persons and it may even be true that there was violations of provisions of law but action should have been initiated within the prescribed period of limitation. In view of all the above, it can be well stated that the contentions put forth by the Learned Counsel for the applicants that the application was within time have to be rejected.

32. True it is that the application in the present form has to be rejected for the above reasons as one not within the period of limitation. It is not that the applicants are helpless or remediless. Apart from questioning the very grant of environmental approval in the year 1986, the communication dated 30.11.2005 whereby it was stated that no fresh environmental clearance was required, the applicants, in extenso, have averred that the construction and also the related activities by the project proponent was violative of not only the provisions of the Environment (Protection) Act, 1986 and other Acts enumerated in Schedule-I of NGT Act, 2010. Specific allegations have been made by them stating that they are aggrieved individually and collectively, directly and indirectly by the loss of ecology and by environmental degradation and that injury, harm and damage were caused to them and all whom they represent in view of the violations of all environmental law and for which they are also entitled for damages and compensations. Hence, there cannot be any impediment for the applicants to bring to the notice of the legal forum the activities which are violative of the provision of the said enactments apart from seeking direction in respect of the discharge of the obligations and duties by exercise of powers vested on the authorities under the said enactments. They can seek the enforcement of all the rights relating to environment. The Tribunal is vested with the original and appellate jurisdiction which is wide. Speaking on the wide jurisdiction of the Tribunal, both original and appellate, Hon'ble Justice Shri Swatanter Kumar, Chairperson, (Principal Bench), NGT, New Delhi had an occasion to consider the power and jurisdiction of the Tribunal in Application No. 26/2012 referred to above, has held as follows:

“22. The contents of the application and the prayer thus should firstly satisfy the ingredients of it being in the nature of a civil case

and secondly, it must relate to a substantial question of environment. It could even be an anticipated action substantially relating to environment. Such cases would squarely fall within the ambit of Section 14(1). Next, in the light of the language of Section 14(1), now we have to examine what is the substantial question relating to 'environment'. Section 2(1)(c) of the NGT Act explains the word 'environment' as follows:

“'environment' includes water, air and land and the interrelationship, which exists among and between water, air and land and human being, other living creatures, plants, micro-organism and property.”

Section 2(m) defines the term 'substantial question' relating to environment as follows:

“It shall include an instance where –

(i) there is a direct violation of a specific statutory environmental obligation by a person by which, -

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial

(C) the damage to public health is broadly measurable;

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

23. the legislature, in its wisdom, has defined the word 'environment' in very wide terms. It is inclusive of water, air, land,

*plants, micro-organisms and the inter-relationship between them, living and non-living creatures and property. Similarly, 'substantial question relating to environment' also in an inclusive definition and besides what it means, it also includes what has been specified under Section 2(m) of the NGT Act. Inclusive definitions are not exhaustive. One has to, therefore, give them a very wide meaning to make them as comprehensive as the statute permits on the principle of liberal interpretation. This is the very basis of an inclusive definition. Substantial, in terms of the Oxford Dictionary of English, is of considerable importance, strongly built or made large, real and tangible, rather than imaginary. Substantial is actual or real as opposed to trivial, not serious, unimportant, imaginary or something. Substantial is not the same as unsubstantial i.e. just enough to avoid the deminimis principle. In *Inre Net Books Agreement (1962)* 1 WLR 1347, it was explained that, the term 'substantial' is not a term that demands a strictly quantitative or proportional assessment. Substantial can also mean more than reasonable. To put it aptly, a substantial question relating to environment must, therefore, be a question which is debatable, not previously settled and must have a material bearing on the cause and its issues relating to environment.*

24. The essence of legislation, like the NGT Act, is to attain the object of prevention and protection of environmental pollution and to provide administration of environmental justice and make it easily accessible within the framework of the statute. The objects and reasons of the schedule Acts would have to be read as an integral part of the object, reason and purposes of enacting the NGT

Act. It is imperative for the Tribunal to provide an interpretation to Sections 14 to 16 read with Section 2(m) of the NGT Act which would disentitle an aggrieved person from raising a substantial question of environment from the jurisdiction of the Tribunal.

33. Thus, the Tribunal is of the considered opinion that it is a fit case where liberty has to be given to the applicants to file a fresh application, if so advised, for necessary reliefs within the framework of NGT Act, 2010.

34. Accordingly, the application is dismissed as not maintainable since it is barred by limitation. No cost.

35. Liberty is given to the applicants to file a fresh application for necessary reliefs within the framework of NGT Act, 2010.

(Mr. Justice M.Chockalingam)
Judicial Member

(Dr. Ajay A. Deshpande)
Expert Member

Central Zonal Bench, Bhopal
12th August, 2013

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
MISC APPLICATION NO.118/2014**

In

APPLICATION NO.63 OF 2014

CORAM :

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A. DESHPANDE
(EXPERT MEMBER)**

B E T W E E N:

Ms. GEETA BHADRASEN VADHAI,

Age 42 years, Occupation- Farmer and Potter,

Adult, Indian inhabitant,

Residing at Post: Dighi, Village, Nandwali,

Taluka Shriwardhan,

District: Raigad, Maharashtra.

....**APPLICANT**

A N D

1. MINISTRY OF ENVIRONMENT AND FOREST,

Paryavaran Bhavan,

CGO Complex, Lodhi road,

New Delhi-110 003.

2. MAHARASHTRA MARITIME BOARD,

Having its office at Indian Mercantile Chambers

3rd Floor, Ramjibhai Kamani Marg,

Ballard Pier, Mumbai.

3. THE COLLECTOR OF RAIGAD,

At Alibag,

District : Raigad, Maharashtra.

4. MAHARASHTRA POLLUTION CONTROL BOARD

Through its Chairman,

Kalpataru Point, 3 and 4th Floor,

Sion Matunga Scheme Road No.8,

Opp. Cine Planet Cinema,

Near Sion Circle, Sion (East),

Mumbai-400 22.

**5. THE MAHARASHTRA COASTAL ZONE
MANAGEMENT AUTHORITY,**

Environment Department,

Room No.217, (Annex),

Mantralaya, Mumbai 400 032.

6. ARCHEOLOGICAL SURVEY OF INDIA

Mumbai Circle,

Sion Fort, Sion.

Mumbai-400 022.

7. DIGHI FORT LIMITED,

Through its Chairman,

having its office at New

Excelsior Building, 6th Floor,

A.K.Nayak, Marg, Fort,

Mumbai 400 001.

.....**RESPONDENTS**

Counsel for Applicant(s):

Mr.Ahmad Abdi Advocate a/w Sangramsingh R. Bhonsle Adv

Counsel for Respondent(s):

Mr. Yogesh Hatagade Advocate, Legasis Partners for Respondent No.2.

Mr. Saurabh Kulkarni Advocate a/w Supriya Dangare Advocate for Respondent No.4.

Mr.Saket Mone Advocate i/b Vidhi Partners, Mr. D.D.Pawar i/by Little & Co., for Respondent No.7.

Date: November 13th, 2014

J U D G M E N T

1. By filing this Miscellaneous Application, Original Respondent No.7, raised objection to maintainability of Main Application No.63 of 2014, on the ground that it is barred by the principle of '*Res-judicata*' as well as on account of bar of limitation. Thus, two objections raised by the Original Respondent No.7, are as follows:

i) the Main Application is barred by principle of constructive *Res-judicata* in view of two Judgments rendered by Hon'ble High Court of Bombay in the earlier Public Interest Litigation (PIL), and the Writ Petitions, in which similar issues are decided,

ii) Challenge to Environmental Clearances (EC) dated 30th September, 2005, as well as subsequent communications as prayed in the Original

Application, cannot be challenged being barred by limitation prescribed under the Law.

2. For sake of convenience, Original Respondent No.7 – (Project Proponent), may be referred to hereinafter, as “P.P.” and Original Application, namely, M/s Geeta Vadhai, as “the Applicant”. The Respondent No.1, is Ministry of Environment and Forests (MoEF), the Respondent No.2, is the Maharashtra Maritime Board (MMB), the Respondent No.3, is Collector of Raigad, the Respondent No.4, is Maharashtra Coastal Zone Management Authority (MCZMA) and the Respondent No.6 is Archeological Survey of India (ASI), as arrayed in the Original Application.

3. The prayers in the Original Application, may be reproduced in order to understand the nature of objections raised in the Misc Application. They are as follows:

- (a) That this Hon'ble Tribunal may be pleased to pass an order 'Cumulative Impact Assessment Study' of the project of Respondent No.7 to be conducted by an independent agency and after examining the illegality, be pleased to set aside the Environmental Clearance granted by Respondent No.1 vide Letter dated 30th September 2005, Corrigendum dated 30th December 2005 being Exhibit "8" and "C" hereto, SCZ Approval dated 23rd October 2006 Exhibit "E-1" hereto and Letter dated 25th October 2007 at Exhibit "E-2" hereto and Letter dated 9th June, 2008 at Exhibit 'E-3' hereto;
- (b) That this Hon'ble Tribunal may be pleased to declare that: (i) the quarrying and excavation work undertaken by Respondent No.7,

- their servants, agents, employees, officers, contractors or any person or persons claiming through or under it, is unauthorized and illegal;
- (ii) the Reclamation undertaken by Respondent No.7, their servants, agents, employees, officers, contractors or any person or persons claiming through or under it, is unauthorized and illegal;
- (iii) the blasting and construction work undertaken by Respondent No.7, their servants, agents, employees, officers, contractors or any person or persons claiming through or under it, is unauthorized and illegal;
- (c) That this Hon'ble Tribunal may be pleased to create 'Environmental Restoration Fund' to the tune of Rs 400 Crores to be funded by Respondent No.7 for undertaking work of restoration of the environment in the project area;
- (d) That this Hon'ble Tribunal may be pleased to direct Authorities to take appropriate legal action against Respondent No.7 for violation of various provisions of Wetlands (Conservation & Management) Rules 2010, Forest Conservation Act, Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974, Coastal Zone Regulation Act;
- (e) That pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to :- (i) stay the effect, implementation, execution and operation of the Environmental Clearance granted by Respondent No.1 vide Letter dated 30th September 2005, Corrigendum dated 26th December 2005 being Exhibits "B" and "C" hereto, SCZ Approval dated 23rd October 2006 Exhibit "E- 1" hereto and Letter dated 25th October 2007 at Exhibit "E-2" hereto and Letter dated 9th June 2008 at Exhibit "E-3" hereto;
- (ii) In the alternative to prayer clause (e)(i) above, this Hon'ble Tribunal be pleased to restrain the Respondent No.7, its servants, agents, contractors, officers, employees or any person or persons claiming through or under it from in any manner carrying out

the work of construction, quarrying, blasting and reclamation pursuant to the Environmental Clearance granted by Respondent No.1 vide Letter dated so" September 2005, Corrigendum dated 26th December 2005 being Exhibits "B" and "C" hereto, SCZ Approval dated 23rd October 2007 at Exhibit "E-2" hereto and Letter dated 9th June 2008 at Exhibit "E-3" hereto, in any manner whatsoever;

(iii) To appoint a fit and proper person as an Commissioner / Officer of this Hon'ble Tribunal to visit the site / project commenced by Respondent No.7 and submits his report about the actual and factual position on the project site;

4. The P.P. has come out with a case that the Main Application is filed almost after nine (9) years from the date of Environmental Clearance (EC) and therefore, it is barred by limitation. The EC cannot be challenged either under Section 14 or Section 15 of the NGT Act, 2010. The EC was granted on 30th September, 2005, by the MoEF, in favour of the P.P. and thereafter, it was examined by the Hon'ble High Court in Public Interest Litigation (PIL) No.42 of 2009, ('Dighi Koli Samaj Mumbai Rahivasi Sangh (Regd) through its Secretary Vs. Union of India'). The PIL was disposed of by Hon'ble High Court of Bombay with certain directions. The limitation period cannot be extended under the special enactment, i.e. the National Green Tribunal Act, 2010, in absence of any discretionary powers to grant extension of limitation. The concept of 'continuous cause of action' is ill-founded and wrongly interpreted by the Applicant. The interpretation put forth by the Applicant, will make the words – 'first cause of

action' meaningless and otiose and therefore should not be accepted. The Hon'ble Principal Bench of NGT in '*Aradhana Bhargva & anr vs MoAEF & Ors*' (Application No.11 of 2013), held that "*if such Application is not filed within prescribed period of limitation, after following of 'first cause of action' then it will have to be dismissed*".

5. According to P.P. the Judgment in PIL NO.42 of 2009, is the '*judgment in rem*' and as such, it operates as '*Res-judicata*'. It is contended that judicial decision of the Hon'ble High Court declares, determines and deal with all the relevant issues, which are brought up through the present Application by Geeta Vadhai. The principles of constructive Res-judicata are, therefore, applicable to the present proceedings and hence, the Main Application is barred in view of applicability of principle of '*constructive Res-judicata*'. It is for such reason that the P.P. (Respondent No.7), sought dismissal of the Main Application.

6. By filing reply to the Misc. Application of P.P. it is averred by the Applicant that EC conditions are still being violated by the P.P. though Dighi Port undertook to provide drinking water to the villagers yet nothing was done in this behalf. It is further contended that Dighi Port is still going ahead with the project in violation of various Environmental norms, like destruction of mangroves, cutting of hill, removal of earth, and various other such

defaults. The complaints made about them, are not being addressed by the Authorities, under the influence of P.P. It is contended that mining activities are being carried out by the P.P. without NOC from the concerned Authorities. It is also contended that the P.P. is carrying out reclamation and blasting activities with a view to demolish hilly areas in Agardanda and Dighi Port. It is contended that all such activities are likely to cause serious damage to Sindhudurg Fort, which is of immense archeological importance. It is, therefore, contended that the Application may be considered in view of the present information collected by the Applicant in reply to the R.T.I. Applications. It is further contended that wrong committed by the P.P. is being continuously done, day in and day out and as such, the Application cannot be said to be barred by limitation. It is further contended that 'cause of action' arose on March 1st, 2014, and therefore, the Application is within limitation. It is denied that the Application is barred by the principle of '*Res-judicata*'. According to the Applicant, NGT, is not required to follow the Civil Procedure Code and therefore, the principle of '*Res-judicata*' need not be followed.

7. We have heard learned Advocates for the parties. We have gone through the relevant documents on record. According to the Applicant, the port activities have been undertaken without permission of CRZ. The Applicant has

filed certain photographs, in order to show that reclamation is being undertaken at Agardanda. It is contended that these are new developments, which give 'cause of action' for the purpose of present Application. Before we proceed further to discuss merits of the matter, it is important to note that in the Main Application, Limitation Clause, did not show any reason as to why the date of 'cause of action' is indicated as 1st March, 2014. Paragraph 34 of the Application, in fact, shows that there is vague statement in the Application, that there is no delay in filing of the present Application. It appears that sentence 'cause of action arose on 1st March, 2014' is handwritten subsequently because, learned Counsel for the P.P., MPCB and others showed their copies of the Application and pointed out that their copies do not show such handwritten part in paragraph 34. We only say that this is not fair and proper. Even otherwise, such a vague statement does not make any head or tail in the context of the issue.

8. So far as challenge to the EC is concerned, in our opinion, it is bygone issue, inasmuch as EC was issued on 30th September, 2005, whereas the Application is filed on 27th May, 2014. At any rate, whether it is treated as an Appeal or Application under Section 14, read with Section 18 of the NGT Act, the Application is hopelessly barred by limitation. In case of '**Aradhana Bhargava & Anr Vs MoEF**'

(Application No.11 of 2013), Bhopal Bench of NGT, observed that :

“23. *From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule-I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application.*

24. *Under Section 15 of the Act, an application for relief and compensation to the victims of pollution and other environmental damage under the enactments specified in Schedule-I, or for restitution of the property damage or for restitution of environment for such area or areas, the application could be filed within a period of five years from the date of which the cause of action*

for such compensation or reliefs first arose. Also, if sufficient cause was shown, the Tribunal is empowered to condone the delay for a period not exceeding 60 days. Significant it is to note that the expression "cause of action for such dispute first arose" is employed. By employing the above expression, the legislative intent indicating that the period of limitation would commence only from the date on which the first event constituting the dispute arose, is explicit. This is not only an indication but also the caution that the later dates on which subsequent events arose should not be taken into account for computing the period of limitation.

- 28.** *Trait law it is that the special law of limitation, in any given enactment, will always exclude the general law of limitation. The NGT Act, 2010, a special enactment specifically provides period of limitation under Section 14(2) and 15(3), as stated supra. The Principal Bench, NGT has already held in *Jesurethinam & Ors Vs. Ministry of Environment, Union of India & Ors*, reported in 2012 (2) FLT 811 NGT that, when a specific provision for limitation is provided under the special statute, the general provisions of the Limitation Act, 1963 are inapplicable. Hence, the*

Tribunal is afraid whether the theory of continuing cause of action can be made applicable to the present factual position of the case for which the specific period of limitation is available under the NGT Act, 2010.

- 30.** *A person who wishes to invoke the jurisdiction of the Tribunal or Court has to be vigilant and conscious of his rights and should not let the time to go by not taking appropriate steps. It is true that the provisions of law of limitation has to be construed liberally but the same cannot be applied to the present facts of the case for the reasons stated above. It is true that the Tribunal must adopt a practical approach which is in consonance with the provisions of the Act providing limitation. In the instant case, the period of limitation has begun to run long back. The period of limitation once commences operating, it does not stop but continues to operate with its rigour. An interpretation accepting the continuing cause of action would frustrate the very object of the Act and the purpose of prescription of limitation. In the instant case, it is contended by the respondent project proponent that nearly 600 crores have been spent and more than 50% of the work is over, hence, the project proponent who obtained*

the environmental clearance in the year 1986 and has completed not less than 50% of the work by spending hundreds crores of rupees would be thrown to jeopardising his project at the long lapse of years. Needless to say, if it is allowed, it would be against the very intent of the law. Even it may be true that the applicants are aggrieved persons and it may even be true that there was violations of provisions of law but action should have been initiated within the prescribed period of limitation. In view of all the above, it can be well stated that the contentions put forth by the Learned Counsel for the applicants that the application was within time have to be rejected.

(Emphasis supplied)

9. We have gone through the Judgment of PIL No.42 of 2009, delivered by the Hon'ble High Court of Judicature at Bombay. The main challenge in the said PIL was to the EC Notification dated 30th September, 2005, along with other issues raised. We may reproduce the grounds which were put forth by the petitioner in that case are as follows;

- (a) Clearance for development has been granted contrary to law. The affected villagers/persons were not granted public hearing as required under the law. Non-compliance to this statutory

aspect would violate the Notification dated 30th September, 2005;

- (b) Various conditions for granting of sanction accorded are otherwise not in public interest and have been permitted in favour of Respondent No.6 at the cost of large number of villagers, who are personally affected;
- (c) And in the alternative, even if the permission is held to be valid, still the concerned Respondents have violated the conditions with impunity with particular reference to damaging the sand and reclaiming the land from the sea;
- (d) The environment and ecology of the area have been destroyed to the disadvantage of the people of the area at large; and
- (e) Lastly, despite there being a specific stipulation in regard to putting in place of proper system of water supply, the Respondents, particularly Respondent No.6, has failed to provide/install proper water supply from time to time in the villages. They have not even made proper arrangement for temporary supply of water. This was an essential condition and in fact the essence for grant of permission, and therefore, the violation thereof would be fatal.

10. Perusal of the Judgment in PIL No.42 of 2009, reveals that the P.P. was allowed to commission the project at Port Dighi by complying certain conditions. It appears that the Authorities, including MPCB, were directed to ensure that the conditions were duly complied with before commissioning of the Port. The order was further modified by subsequent order dated 21st January, 2011, in PIL No.42 of 2009, in Civil Application No.1 of 2011. Thus, Dighi Port was allowed to commence activities by the High Court. The issues raised in the PIL, including validity of the EC, were considered by the Hon'ble High Court of Judicature at Bombay and were decided by its Judgment in the said PIL No.42 of 2009. Therefore, the Judgment is to be considered as '*Judgment in rem*'. Thus, it was not only filed by the persons, who are the parties to the Petition/Application, but all concerned/connected persons concerned with the issues or having rights.

11. In "**State of Karnataka & Anr vs Indian Manufacturers Organization and Ors.**" (2006) 4 SCC 683, the Apex Court held that "*such a Judgment in rem, amounts to constructive res-judicata under Section 11, Explanation III, IV of the C.P.Code.*" It is observed that:

"The principle and philosophy behind Explanation IV, namely, to prevent the "the abuse of the process of the court" (as stated in Greenhalgh) through re-agitation of settled issues, provides yet

another ground to reject the appellants' contentions. In the face of such a finding by the High Court, Explanation IV to Section 11 squarely applies as, admittedly, the litigation in the earlier cases exhausted all possible challenges. Merely because the present petitioners draw semantic distinctions, the issue does not cease to be res-judicata or covered by principles analogous thereto. If the issues that had been raised/ought to have been raised in the previous case were to be re-examined by the Supreme Court, it would simply be an abuse of the process of the court, which cannot be allowed. Therefore, the previous writ petition operated as res judicata for the questions raised in the present petition."

12. In the matter of **Karam Chand Vs. Union of India and Ors**, (Appeal No.68 of 2013), the Hon'ble Principle Bench of NGT, also dealt with similar issue. The Hon'ble Principle Bench of NGT, observed that:

"28. The law in regard to res judicata and constructive res judicata has been the subject of judicial scrutiny now for long. With the passage of time, various principles have been enunciated in regard to the application of these doctrines. The Indian Law codifies both these doctrines where they do form part of the procedural law while in

other countries it is covered even under the common law. To aptly apply the various principles that have emerged with the passage of time, it is necessary for us to recapitulate the stated principles, which are as follows:

- (i)** *Constructive res judicata is a special, technical and artificial form of res judicata enacted by Section 11.*
- (ii)** *Explanation IV to Section 11 obliges the plaintiff or the defendant to take all the grounds of attack or defence by putting forward his whole case in the former suit.*
- (iii)** *No distinction can be made between the claim that was actually made and the claim that might and ought to have been made a ground of attack or defence.*
- (iv)** *A matter which “might and ought” to have been made a ground of attack or defence shall be deemed to be a matter directly and substantially in issue constructively.*
- (v)** *The words “directly and substantially in issue” apply to both the “suit” as well as the “issue”.*
- (vi)** *The terms “might” and “ought” are of wide amplitude and hence all the grounds of attack or defence even if they could be taken in alternative, should be taken in the former suit.*

(vii) *A plea which was not in existence, or was not within the knowledge of the party or could not be raised or was so dissimilar which might lead to confusion, cannot be said to be one which “might and ought” to have been raised.*

(viii) *The word “and” between the words “might” and “ought” must be read as conjunctive and not disjunctive.*

(ix) *The word “might” conveys knowledge on the part of the party affected about the existence of ground of attack or defence. Whether or not the party has such knowledge is a question of fact.*

(x) *Whether a particular might “ought” to have been made a ground of attack or defence depends upon the facts and circumstances of each case.*

(xi) *The doctrine of constructive res judicata applies to writ petitions filed under Article 32 or Article 226 of the Constitution. It, however, does not apply to a writ of habeas corpus.*

(Ref: Thakker C.K., Code of Civil Procedure, Vol.I, Pg 168)

29. *From the analysis of the above principles, it is clear that the rule of res judicata is mandatory in its application and should be invoked in the interest of public policy and finality. The matter which have actually been decided would also*

apply to the matters which have been impliedly and constructively decided by the Court. These principles are to be applied to preserve the doctrine of finality rather than frustrate the same. The doctrine of res judicata is the combined result of public policy so as to prevent repeated taxing of a person to litigation. It is primarily founded on the following three maxims:

- (1) Nemo debet bis vexari pro una et eadem causa :** *no man should be vexed twice for the same cause.*
- (2) Interest publicae ut sit finis litium :** *it is in the interest of the State that there should be an end to a litigation; and*
- (3) Res judicata pro veritate occipitur:** *a judicial decision must be accepted as correct.*

30. *As discussed, the principle of res judicata or constructive res judicata found in Section 11 and Explanation IV to Section 11 of the Code of Civil Procedure is applicable to judgment in rem. The principle of res judicata applies even to public interest litigation initiated under Article 226 of the Constitution of India even though such proceedings are not governed by the Code of Civil Procedure. If a specific question was not raised and ought not to have been decided in an earlier*

proceedings by the Court in given circumstances, it may not debar a party to agitate the same at an appropriate stage but certainly subject to the applicability of the principles of res judicata or constructive res judicata (Refer: State of Haryana and Ors, v. M.P. Mohla, (2007) 1 SCC 457). The doctrine of res judicata is conceived not only in the larger public interest which requires that all litigation must sooner than later come to an end but is also founded on equity, justice and good conscience. The rule of conclusiveness of judgments equally supports application of the principle of res judicata. Once its ingredients are satisfied, then it must apply with its rigour, object being that a litigation must come to an end (Refer: Swami Atmandanda v. Sri Ramakrishna Tapovanam (2005) 10 SCC 51). In Daryao v. State of Uttar Pradesh AIR 1961 SC 1457, the Supreme Court while placing the doctrine of res judicata on a high pedestal, treating it as a part of the rule of law, held:

“The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis.”

31. *In terms of the provisions of Section 19 of the NGT, Act, the Tribunal is not bound by the procedure of Civil Procedure Code but shall be guided by the principles of natural justice. The restriction further contemplated under Section 19(2) is that subject to the provisions of the Act, the Tribunal shall have power to regulate its own procedure. The application of the Civil Procedure Code in its definite terms is controlled by Section 19(4). The Tribunal, thus, has to regulate its own procedure and the same has to be in consonance with the principles of natural justice. Another obvious precept to regulation of procedure by the Tribunal is that it should not be opposed to the basic rule of law and public policy, res judicata or constructive res judicata.*

32. *In light of the above principles and the afore-stated maxims, we shall now revert to the facts of the present case. As already noticed, the petitioners before the High Court had challenged all aspects including the environmental clearance and the recommendations in relation to the establishment and operationalization of the Bajoli Hali Hydro Project at River Ravi in district Chamba. They had taken up various grounds*

including location of the project and its change from right bank to left bank of River Ravi.

33. *The High Court had dealt with all the issues and found that such change was appropriate and did not call for any interference. The questions in relation to the public hearing, ecological impacts, the NOCs issued by the Gram Panchayat, rights of the local people and rehabilitation and resettlement scheme were discussed in great elaboration by the High Court. Despite such detailed discussions, the appellants have filed the present appeal on the ground that there are certain factual errors in the judgment of the High Court, complete documents had not been placed before the Court and there was suppression of relevant material by the project proponent. We have already referred to the relevant portion of the order dated 13th November, 2013 vide which the application for review was dismissed as untenable, flimsy and without any substance. These judgments, as already held by us above, are the judgments in rem and would apply to the public at large and would not be restricted to the specific petitioners named in the Writ Petitions. On that analogy, the appellants in the present appeal would also be covered; would be debarred from*

*re-agitating the issue directly and substantially raised before the High Court or even which ought to have been raised and deemed to be impliedly and constructively decided by the High Court. So, the appeal would be hardly lie before the Tribunal. Therefore, the contention that they were not party to the Writ Petition before the High Court and that the letter dated 28th January, 2013 gives the appellants an entirely fresh cause of action **de hors** the issue raised in the Writ Petition, does not appeal to the Tribunal and is liable to be rejected”.*

13. We gave liberty to the Applicant/Appellant to file an additional affidavit. We have perused additional affidavit of the Applicant. It appears that she herself had not filed any complaint as such to the Authorities. However, she claims that her friend by name Mr. Nevrum Modi, on behalf of Bombay Environment Action Group, had filed communication dated 23rd March, 2011. She alleges that she made a complaint to MCZMA on 13th March, 2014 about the same issue. The question is whether the EC dated 30th September, 2005, was impugned by the Appellant, in any manner. A copy of complaint filed by Applicant – Geeta, is annexed to the additional affidavit and appears to be addressed to the Chairperson of the MCZMA. The date of said complaint appears to be typed as August 14th, 2011. But the date of receipt in the office of

MCZMA, appears to be 7-10-2001 and the last page of that complaint shows that it is dated 12.3.2001 or 2011. There appears something amiss about date of complaint. In any case, the complaints were not made within six (6) months period before commencement of 'cause of action'. These complaints may be investigated by the Authorities for examining violations of the terms of EC/CRZ orders, or cancellation of EC/CRZ or taking suitable action against the Project Proponent (PP), as may be required under the Law, in view of Section 5 of the Environment (Protection) Act, 1986.

14. Considering legal position discussed above, we are of the opinion that the legal issues raised by the Project Proponent are valid and will have to be accepted. Needless to say, that the Miscellaneous Application must be allowed. It follows, therefore, that the Main Application, will have to be dismissed. For, it is *fate-accompli* of the Misc Application.

15. Though, we have found that the Application is barred by the principles of '*constructive Res-Judicata*' and that the same is barred by limitation, yet, we have noticed that there are various violations, which the Project Proponent, has done so far. They are duly brought to the notice of the Authorities, including CRZ Authority, the Collector and Archeological Department by Geeta Vadhai etc. We are also of the opinion that violations of the EC conditions, if

are found by the Authorities, then strict action is warranted, whosoever the Project Proponent, may be. Consequently, we direct the Authorities to take action in case such violations, if are brought to their notice or observed by them, then they shall issue appropriate order/s under the Environment (Protection) Act, 1986, or under the CRZ Regulations, as the case may be. The Applicant is at liberty to bring such facts to the notice of the concerned Regulatory Authority against such activities, in case of particular violation of the provisions of concerned enactments, apart from seeking directions in respect of discharge of obligations and duties by exercise of powers vested in the authorities under the said enactment. She can also seek enforcement of all rights relating to environment.

16. With these observations, we allow the Miscellaneous Application and dismiss the Main Application. We grant liberty to Original Applicant (Geeta) to approach this Tribunal, if any new cause of action arises within the framework of NGT Act, 2010. Applications are accordingly disposed of.

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

....., EM
(Dr.Ajay A. Deshpande)

Date: November 13th, 2014



NGT



NGT

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
Application No.154 of 2014 (SZ)
AND
M.A. No. 284 of 2014 (SZ)**

In the matter of:

1. D.V. Girish
Kalleshwara Estate
Kaimara P.O.,
Chikmagalur
Karnataka
 2. Shreedev Huilkere
Woodway Estate
Jakkanahalli Post
Chikmagalur
Karnataka
 3. S. Girijashankar
Sai Madhuvana Layout
Chikmagalur
Karnataka
- ... Applicants

AND

1. The Secretary to Government
(Environment and Ecology)
Department of Forest Environment and Ecology
Room No. 708, Gate 2, Multi Storied Building
Dr. Ambedkar Veedhi,
Bangalore – 560 001
2. The Principal Chief Conservator of Forests (Wildlife)
Aranya Bhavan, 2nd floor, Malleswaram
Bangalore – 560 003

3. The Additional Principal Chief Conservator of Forests
Field Director – Project Tiger – Shimoga Circle
Shimoga
4. The Deputy Conservator of Forests
Territorial Forest Division
Chikmagalur
Karnataka – 577101
5. The Conservator of Forests
Bhadra Wildlife Division
Chikmagalur, Karnataka – 577101
6. KSS Hotels and Resorts Pvt Ltd
Trivik Chikamagalur
Chinnabi Khan Estate
Channagondanahalli Village
Vasatre hobli, Chikamagalur District
Karnataka
7. Prim Rose
Bagneheddal
Bayaravalli hobli
Chikmagalur District
Karnataka
8. Green Woods
Rashi Eco Tourism
Attigundi
ID Peeta Village
Jagara Hobli
Chikmagalur, Karnataka
9. Jhari Eco Stay
Rashi Eco Tourism
Attigundi
ID Peeta Village

Jagara Hobli
Chikmagalur, Karnataka

... Respondents

Counsel for Appearing:

Applicant: M/s. K. Thilageswaran, G. Balamanikandan,
P. Sundararajan, and M. Subha, Advocates

Respondents: Shri Devaraj Ashok, Advocate for respondent
Nos. 1 to 5; Shri Sanjay Upadhya for M/s. A.
Thayaparan, L.G. Sahadevan, Shri P.
Rajendrakumar, Advocates for respondent No. 6;
Shri Paul, Hudson Samuel, Advocate for
respondent No. 7; M/s. Thomas V. Peter and R.
Manohar, Advocates for respondent No. 8; M/s
Pitty Parthasarthy and S. Kolandasamy, Advocates
for respondent No. 9.

Appeal No. 5 of 2015(SZ)

In the matter of:

D.V. Girish
Kalleshwara Estate
Kaimara P.O.,
Chikmagalur
Karnataka

... Applicant

AND

1. The Member Secretary
National Tiger Conservation Authority
Ministry of Environment and Forests
Government of India
Annexe No. V, Bikaner House
Shajahan Road, New Delhi 110 011
2. The Principal Secretary to Government
Forest, Ecology & Environment Department

Room No. 448, 4th floor
M.S. Building, Bangalore - 560 001

3. The Secretary
Revenue Department
Government of Karnataka
Multistoreyed building
Ambedkar Veedhi
Bangalore
4. The Principal Chief Conservator of Forest
Aranya Bhavan
Malleswaram, Bangalore
5. The Deputy Commissioner
Chikamagalur District
Chikamagalur – 577 101
Karnataka
6. The Conservator of Forests
Bhadra Wildlife Division
Chikmagalur, Karnataka – 577101
7. The Member Secretary
Karnataka Pollution Control Board
“Parisara Bhavan”
49, Church Street
Bangalore – 560 001
Karnataka
8. KSS Hotels and Resorts Pvt Ltd
Trivik Chikamagalur
Chinnabi Khan Estate
Channagondanahalli Village
Vasatre hobli, Chikamagalur District
Karnataka

... Respondents

Counsel Appearing:

Applicant: M/s. M. Radhakrishnan, P. Sundararajan and
Vetri Selan, Advocates.

Respondents:

Smt. C. Sangamithirai, Advocate for respondent
No. 1; Shri Devaraj Ashok, Advocate for
respondent Nos. 2 and 6; Shri Thirunavukarsu,
Advocate for respondent No. 7; Mr. Sanjay
Upadhaya for M/s. A. Thayaparan, L.G.
Sahadevan, Shri P. Rajendrakumar, Advocates

R.A. No. 1 of 2015 in Appeal No. 5 of 2015 (SZ)

In the matter of:

KSS Hotels and Resorts Pvt Ltd
Trivik Chikamagalur
Chinnabi Khan Estate
Channagondanahalli Village
Vasatre hobli, Chikamagalur District
Karnataka

.... Appellant/Respondent No. 8

AND

1. D.V. Girish
Kalleshwara Estate
Kaimara P.O.,
Chikmagalur, Karnataka ... Respondent No. 1/Appellant
2. The Member Secretary
National Tiger Conservation Authority
Ministry of Environment and Forests
Government of India
Annexe No. V, Bikaner House
Shajahan Road, New Delhi 110 011

3. The Principal Secretary to Government
Forest, Ecology & Environment Department
Room No. 448, 4th floor
M.S. Building, Bangalore - 560 001
 4. The Secretary
Revenue Department
Government of Karnataka
Ambedkar Veedhi, Bangalore
 5. The Principal Chief Conservator of Forest
Aranya Bhavan
Malleswaram, Bangalore
 6. The Deputy Commissioner
Chikamagalur District
Karnataka – 577 101
 7. The Conservator of Forests
Bhadra Wildlife Division
Chikmagalur, Karnataka – 577101
 8. The Member Secretary
Karnataka Pollution Control Board
“Parisara Bhavan”
49, Church Street
Bangalore – 560 001
- ... Respondent Nos. 2 to 8/
Respondent Nos. 1 to 7

Counsel for Appearing:

Review Applicant : M/s. Thayaparan and P. Rajendrakumar,
Advocates.

Respondents : M/s. M. Radhakrishnan, P. Sundararajan and
M. Vetriselvan, Advocates for respondent
No. 1(Appellant in Appeal No. 5 of 2015

(SZ); Smt. C. Sangamithirai, Advocate for respondent No. 2; Shri Devaraj Ashok, Advocate for respondent Nos. 3 to 7; Shri Thirunavukkarasu, Advocate for respondent No. 8

JUDGMENT

Present:

1. Hon'ble Shri Justice M. Chockalingam
Judicial Member
2. Hon'ble Prof. Dr. R. Nagendran
Expert Member

Dated, 09th April, 2015

(Hon'ble Shri Justice M. Chockalingam, Judicial Member)

Application No. 154 of 2014 (SZ):

This Application has been filed by the applicants who claim to be environmental activists residing in Chikmagalur, State of Karnataka seeking direction against the respondents/administrative authorities to take appropriate action with regard to the encroachment and illegal constructions being made in Bababudangiri and Mullayanagiri hill areas in the State of Karnataka. The facts in brief as found in the Application are summarised below:

2. Bababudangiri and Mullayanagiri are hill areas in the State of Karnataka which are located within 10 km from the boundary of Bhadra

Tiger Reserve (Tiger Reserve) in Chikmaagalur district. These mountain ranges are the offshoot and integral part of the Western Ghats, which is a global biodiversity hotspot and are located within Ecologically Sensitive Zone of Tiger Reserve and it is one among the 25 bio-hotspots in the World.

3. These mountains are vital part of the active wildlife corridor that connects the Tiger Reserve with other reserve forests such as Masagali, Udev, Churche Gudda, Gangooru, Thimmapura, Yemme Dhoddi etc. There has been scientific documentation on regular movement of endangered animals such as tiger, leopard, porcupine, sambar and so on in this area and it is a habitat for several rare species of birds such as Rufous Bellied Eagle, Falcons, Blue Rock Thrush etc. According to Birdlife International UK, Lesser Kestrel, White Bellied Short Wing categorized as one of the threatened bird species is found in this area. This landscape is also an important catchment area for several perennial streams which flow through the Tiger Reserve and are the tributaries of River Bhadra feeding water to thousands of people downstream.

4. However, a number of unauthorized and illegal constructions are being carried out in these hill areas affecting the biological nature and the environment. A number of resorts are under construction and these constructions either block or divert the fresh water streams which flow through the Tiger Reserve on the higher reaches of the mountains.

These hill areas are also the water catchment areas of the habitations situated in the foot of the hills but the constructions are affecting the fresh water ecosystem in the entire catchment area by reducing the water flow, altering the vegetation downstream and reducing the water availability for agriculture and basic sustenance of people's livelihood. These resorts also alter the land use pattern by taking up large scale land excavation and construction, destabilizing the fragile slope in the 'shola' grassland ecosystem over the mountains.

5. The applicants sent various representations to the respondents who are having statutory duty to curtail those encroachment and illegal constructions which have neither been considered nor replied with.

6. **Appeal No: 5 of 2015:** This Appeal is converted from Application No.53 of 2015 filed by the first applicant herein who filed the Application No.154 of 2014 above by the Orders of this Tribunal dated 20.02.2015. The facts of the case adduced from the averments made in the Appeal Memorandum are as follows:

7. The appellant who is one of the applicants in Application No. 154 of 2014 (SZ) an environmental activist having come to know about the construction of a large scale commercial resort with an investment of over Rs.45 Crore by respondent No.7 at the base of Mullayangiri hill (the highest peak in Karnataka) in survey No.344 (3.25 acres) and survey No.216 (3.25 acres) of Channagondanahalli village of Vasatre

hobli in Chikmangalur district, Karnataka, made an appeal along with one Shreedev Hulikere and one Girijashankar made an appeal on 21.02.2013 to respondent No.4 and other authorities of the State of Karnataka to cancel the permit granted to respondent No.8. In the said appeal, the appellant *inter alia* stated as follows:

“In addition to large scale excavations and erection of huge concrete structures, the perennial streams flowing through the ever green shola forest (which are common property resources) leading to Bhadra Tiger Reserve have been diverted to meet the unsustainable demands of the resort. The wildlife movements in the area including that of tiger are being disturbed due to the usage of heavy machinery and movement of heavy motor vehicle supplying raw materials to the site and expansion of road leading to the resort. More than 100 resident labourers employed in the construction work at this site have been repeatedly illegally entering the nearby evergreen shola forests and over extracting wood from the deemed forest. The Mullayangiri hill range is part of the Western Ghats and is located within three kilometers from the Bhadra Tiger Reserve. The resort construction site falls well within the Buffer Zone of Bhadra Tiger Reserve and the landscape around harbors a variety of rare, endangered and endemic wildlife including species like Tiger, leopard, white bellied short wing (bird), Nyctilbatrachus dattatreiyensis (frog) etc. This range is also of great religious significance to the local people. In addition, several perennial streams also take birth in this high altitude shola grassland forest which feed river Bhadra supporting innumerable life systems

dependent on these fresh water streams down the valley”.

8. A copy of the said appeal appears to have been forwarded to respondent No.1, National Tiger Conservation Authority (NTCA), New Delhi. Respondent No.1 *vide* its letter dated 01.04.2013 addressed to the Chief Wildlife Warden, Government of Karnataka, Bengaluru requested a factual status report on the subject matter of the appeal of the appellant dated 21.02.2013 before the respondent authorities for further processing in the matter. No action whatsoever was taken by the respondent No.2 on the request of the respondent No.1. Respondent No.2 ought to have sent a factual status report regarding the proposed construction of resorts by the respondent No.8 to the respondent No.1. The appeal of the applicant appears to have been forwarded to the respondent No.6 by the respondent No.4 instead of the respondent No.2. Respondent No.6 who is not competent to decide the question of grant or cancellation of permit for construction of the resorts in the aforesaid survey nos. by the respondent No.8 passed an order dated 07.06.2013 addressed to the applicant and two others, who made the aforesaid appeal to the respondent No.4. The said order was served on the applicant through his counsel during the course of hearing of Application No.154 of 2014 (SZ) by the Tribunal on 11.02.2015. Immediately on receipt of the said order dated 07.06.2013 passed by the

respondent No.6 on the appeal of the applicant dated 21.02.2013 made to the respondent No.4 as well as the respondents 2 and 5, the appellant filed this appeal against the order dated 07.06.2013 served on the applicant on 11.02.2015.

9. M.A. No. 284 of 2014 in Application No. 154 of 2014 (SZ):

The Applicants in Application No. 154 of 2014 have filed this M.A. No. 284 of 2014 seeking an amendment to the prayer clause in Application No. 154 of 2014 by substituting the expression **“therefore the applicants pray that the Hon’ble Tribunal be pleased to restrain respondents 6 to 9 from further proceedings with the construction of resorts in Bababudangiri and Mullayangiri hill ranges adjacent to Bhadra Tiger Reserve in Chickmagalur District, State of Karnataka”**, for the expression **“Therefore, the applicants pray that this Hon’ble Tribunal may be pleased to direct the respondents to take appropriate action on the representation made by the applicants dated 16.02.2012 with regard to the encroachment and illegal constructions being made in Bababudangiri and Mullayangiri hill areas in the State of Karnataka within the time frame that may be fixed by this Hon’ble Tribunal and thus render justice”**.

10. R.A.No.1 of 2015 (SZ) in Appeal No.5 of 2015 (SZ):

This is a review Application filed by the respondent No.8 in Appeal No.5 of 2015 on conversion of the Application No.53 of 2015 by an order dated 20.02.2015 passed by this Tribunal to review *ibid* orders.

11. As seen above, the applicants who claim to be environmental activists in Chickmagalur District in the State of Karnataka have filed the Application No. 154 of 2014 seeking a direction against the respondents to take appropriate action on their representation made on 16.02.2012 alleging encroachment and illegal constructions made in Bababudangiri and Mullayangiri hill areas in the State of Karnataka. On entering appearance, the respondents have filed their replies. Pending enquiry of the said Application, the applicants filed M.A.No. 284 of 2014 seeking an amendment of the relief clause in Application No. 154 of 2014. Aggrieved over an order made by the Conservator of Forest (CoF) and Director, Bhadra Wild CAT C, Chickmagalur Division, Chickmagalur dated 07.06.2013, the 1st applicant in Application No. 154 of 2014 filed an application which was converted into Appeal No. 5 of 2015.

12. On admission, the 8th respondent in Appeal No. 5 of 2015 (SZ) therein and 6th respondent in Application No. 154 of 2014 (SZ) filed a Review Application which was taken on file as R.A. No. 1 of 2015. Since the questions that arose in all the above proceedings are inter-

connected and also on the same subject matter, all were taken up for joint enquiry. On the pleadings placed by the parties, the following questions were formulated:

13. Application No. 154 of 2014:

(i) Whether the applicants are entitled for a direction to the 1st to 5th respondents to consider their representation dated 16.02.2012 with regard to the encroachment and illegal constructions made in Bababudangiri and Mullayanagiri hill areas in the State of Karnataka within a time frame.

14. M.A. No. 285 of 2014 in Application No. 154 of 2014:

(i) Whether the application seeking an amendment of prayer in Application No. 154 of 2014 filed by the applicants has to be ordered.

15. Appeal No. 5 of 2015:

(i) Whether the appeal is maintainable on the question of jurisdiction for all or any of the reasons putforth by the appellant.

16. R.A. No. 1 of 2015 in Appeal No. 5 of 2015:

(i) Whether the Review Application is maintainable and has to be allowed.

17. The arguments advanced by the learned counsel for the applicants, the appellant and also the respondents are heard. All the

materials made available were looked into. The Tribunal paid its anxious consideration on the same.

Application No. 154 of 2014:

18. The only grievance ventilated by the applicants in this Application is the non-consideration of their representation dated 16.02.2012 with regard to the encroachment and illegal constructions being made in the hill areas of Bababudangiri and Mullayanagiri in the State of Karnataka and hence they have sought for a direction to the respondents to take appropriate action. A perusal of the representation dated 16.02.2012 as found in Sl. No. 9 (Page No.37) in the typeset of papers filed by the applicant would indicate that the same was addressed by the applicant to the Chief Conservator of Forests (CCF), Field Director, Project Tiger, Shimoga Circle, Shimoga who is shown as 3rd respondent in Application No. 154 of 2014. There is nothing to indicate that any copy of the same was addressed to the other respondents therein.

19. Pointing to the representation made by the applicants, the learned counsel for the applicant would submit that after giving full description of the location of the said hill area within 10 km of the boundary of Bhadra Tiger Reserve (Tiger Reserve), ecological sensitivity, native bio-diversity, fresh water eco-system in a catchment area, by the said representation the applicants have made a request for

immediate action to halt the construction in Bababudangiri and Mullayanagiri hill range adjacent to the Tiger Reserve. It was specifically stated therein that the construction of numerous resorts would involve opening of new area, cutting of trees, construction of roads, power lines, pipelines etc., which would lead to destruction, fragmentation and alteration of natural habitat in the area violating the Forest Act and Wildlife Act and in view of ecological importance of the said hill range which is located next to the Tiger Reserve and its significance from larger social welfare perspective it becomes necessary to protect the sensitive and fragile Western Ghat ecosystem. But the authorities have not exercised any care to consider the representation and take any appropriate action on that regard and hence it becomes necessary to issue a direction to the respondent/authorities to initiate action against the other respondents who have been carrying on the construction activities in violation of law and without obtaining any permits and licenses from the authorities concerned.

20. Countering the above contention, the learned counsel for the 1st to 5th respondents who are the authorities would submit that the application has got to be dismissed since it is much beyond the period of limitation under the National Green Tribunal (NGT) Act, 2010 and the relief sought for is beyond the scope of Sections 14, 15 and 18 of the NGT Act, 2010. The application is not maintainable in facts and law and

apart from that the application has got to be dismissed for the suppression of the material fact, namely, the subsequent representations made by the same applicants to the respondent authorities and appropriate order made thereon.

21. Vehemently opposing the application, the learned counsel for other respondents who are appearing for the resorts against whom allegations of encroachment and illegal constructions are made would submit that the allegations of encroachment on an ecologically sensitive area of the Western Ghat of Tiger Reserve and illegal constructions are thoroughly baseless and unfounded. The constructions are neither unauthorized nor irregular in any manner since they are not made within the legally protective areas or the buffer zone or ecologically sensitive areas, reserve forests or even on a deemed forest land. Pointing to the documents placed, the learned counsel would submit that the land in Survey Nos. 216 and 344 in which the said resort was originally built was a coffee plantation which was purchased on 18.06.2010 shown under Annexure I. The conversion of 3.25 acres of the said land was sought for from the Deputy Commissioner, Chickmagalur District before starting the construction work in the year 2011. Another permission was sought for on 08.09.2011 for the land in second Survey No. 344. The Karnataka State Pollution Control Board (KSPCB) has duly granted Consent for Establishment (CFE) on 27.02.2013. The office of the

Executive Engineer has given the sanction order for electric power connection on 28.12.2012 shown under Annexure 14. The KSPCB has also given the consent to expand by an order dated 21.08.2013 and the concerned *Panchayat* Development Officer has granted business license on 02.06.2014 which was made based on an approved plan sanctioned by the village *panchayat*. It is pertinent to point out that the said ecotourism facility/resort also conformed to the EIA Notification, 2006 particularly under Entry 8 (a) of Schedule I of the above Notification. The ecotourism facility/resort is located on the private land and situate at about 5.8 km away from the boundary of the Tiger Reserve which is confirmed by the State regulatory and competent authorities as per the forest records. Even as per the affidavit of the 1st to 5th respondents, the facility is more than 4 km from the Tiger Reserve, 2.8 km from the ecologically sensitive area which is excluded from Kasturi Rangan Report which formed basis of the Ministry of Environment and Forests Notification dated 14.03.2014 declaring ecologically sensitive zones in the Western Ghat outside the buffer zone and more importantly the said activity is a regulated activity and not a prohibited one. When a detailed consultative process was adopted by the State Government in declaring the buffer zone/area of the Tiger Reserve, all the applicants have been parties to the process of identifying the villages that should fall within the ecologically sensitive

areas and the same is evidenced by the proceedings of the meeting dated 20.09.2011 shown under Annexure 9. The applicants have concealed the facts and thus they have not come before the Tribunal with clean hands. The eco-tourism facility is not only a legal activity but it is even permissible inside a protected area subject to sections 28 and 33 of the Wildlife Protection Act, 1972. No guidelines, notifications or court orders are currently applicable prohibiting eco-tourism or its facilities if carried out in accordance with law. While the respondents have fully complied with all statutory requirements and undertake to adhere to all conditions imposed hitherto by regulatory and statutory authorities, the applicants cannot have any grievance to ventilate and thus all the allegations are unfounded. Added further the learned counsel that the applicants have failed to raise any substantial question on environment much less any specific violation of any environmental law or norm by the respondents. Though the applicants have pleaded that the construction made by the respondents are unauthorized, illegal and by encroachment within the Tiger Reserve and eco-sensitive zone of the Western Ghats, they have not placed a single evidence to prove the same. On the contrary, the respondents have placed all the materials for undertaking the construction which the respondents obtained from various departments which were granted after spot inspections and physical verification carried out by the officials of the Forest Department. All these

would be indicative of the fact that the respondents have not violated any provision of law as contended by the applications and hence the application has got to be dismissed.

22. Admittedly, the applicants made the representation on 16.02.2012 to the 3rd respondent, Deputy Conservator of Forests alleging that construction of numerous resorts if allowed would lead to ecological degradation. The averments there were as generic as they could be. They did not make any specific complaint or indicate any violation of law against the construction activities of any specific resort in particular or any one of the respondents shown in the application. However, it cannot be disputed that the cause of action for the application first arose on 16.02.2012, the date of representation made to the Deputy Conservator of Forest. Invoking the original jurisdiction of the Tribunal, the applicants have filed this application. Hence, the applicants must plead and raise the following: - (a) it should be a civil case, (b) various substantial questions relating to environment or enforcement of any legal right relating to environmental issues and (3) such questions arise out of implementation of the enactments specified in Schedule I of the NGT Act, 2010. Section 18(2) of the NGT Act, 2010 provides the details in regard to locus and character of an applicant who is entitled to move the Tribunal by filing an application for the grant of relief or compensation or settlement of dispute. Section 18 (2) is worded by the

Legislature with wide amplitude besides covering any person aggrieved and the legal representatives of the various categories. The expression 'substantial question relating to environment' or 'enforcement of any legal right to environment' cannot be interpreted so generically that it would even include a direction to the respondent authorities to take action against other respondents when there are no specific allegations or violations are made.

23. Speaking on the period of limitation for filing an application before the NGT, section 14 of the NGT Act, 2010 reads as follows:

“14. Tribunal to settle disputes.- (1) The Tribunal shall have the jurisdiction over all civil cases where 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 enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle 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 disputes first arose;

Provided that the Tribunal may, if 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”.

24. The instant application was filed on 30.05.2014 long beyond the limitation period as stated above. What is all stated in the application is that the application is being filed within the period of limitation and no more averments are made and no explanation is forthcoming. The only explanation tendered by the learned counsel for the applicants is that though the representation was made on 16.02.2012, the authorities have not taken any action and so long no action is taken, the application can be well maintained since the cause of action would continue. Even if his contention has got to be accepted, the applicants are not entitled for the relief for more reasons than one.

25. From the documents made available, it could be seen that the 1st representation on the strength of which the instant application was filed was made by the applicants on 16.02.2012. On 21.02.2012, all the three applicants sent a letter addressed to the PCCF, Karnataka, the 2nd respondent herein appealing to cancel the permit for construction of the resorts by the 6th respondent in Survey Nos. 344 (3.25 acres) and 216 (3.25 acres) in Channagondanahalli village of Vasatre hobli in Chickmagalur District. Equally, the applicants sent a communication dated 25.02.2013 to the PCCF, Forest, Ecology and Environment Department, Karnataka making a request to refrain from permitting the resorts in Bababudangiri and Mullayanagiri hill range. A perusal of these two communications made by the applicants to the authorities would clearly

indicate that they have reiterated the very same grievance which they originally made in the representation dated 16.02.2012. It is pertinent to point out that the applicants have not revealed anything about those communications which were made after the 1st representation dated 16.02.2012 and before filing the instant application, but on the very same subject matter. The Deputy Inspector General, National Tiger Conservation Authority (NTCA) of the MoEF, on receipt of a copy of the representation dated 21.02.2013 stated *supra* has sent a communication dated 01.04.2013 to the Chief Wildlife Warden, Government of Karnataka, Bangalore to furnish factual status for further process in the matter. The Principal Secretary to Government, Forest, Ecology and Environment Department, Government of Karnataka, Bangalore, applicants issued a direction to the PCCF, the 2nd respondent herein to take suitable action by considering the same in accordance with rules in that regard. Pursuant to the above direction, an order came to be passed by the Conservator of Forest and Director, Bhadra Wild CAT C, Chickmagalur, the 5th respondent herein as seen in Annexure 5 filed by the 1st to 4th respondents. It would be more apt and appropriate to reproduce the order which will suffice to answer the allegations levelled against the respondents which reads verbatim as follows:

“In the letter vide Ref.(1) above, as you have been informed that M/s. K.S.S. Hotel & Resorts Company have constructing the resorts in the

land in Sy.No.216 and 344 situated at Channagndanahalli village, Vasthere Hobli, Chickmagalore Taluk ; and due to this, causing problem to wild lives; and hence in this regard it was notified to submit a report to the Asst. Conservator of Forests, Bhadra Wild life Sub-Dvn., Lakkavalli/ Chickmagalore, by making spot inspection of the above said place, in this regard.

Accordingly as per his report in the letters vide Ref.(2) & (3) above, as per order of Buffer Project reserved area of Bhadra life CAT C, vide No. FEE/122/ FWL/2009 dated :29-01-2010; and corrigendum order dated : 24-02-2011 in No: FEE/122/ FWL/2009; the date : 29-10-2010 is amended as 29-01-2011; the said village is not coming within the jurisdiction of Buffer Zone; and the proposal of Eco Sensitive Zone by preparing the same and submitted to the Government for its approval; and even the village of Channagondanahalli village did not mention there itself also. This village is coming in the jurisdiction of Chickmagalore Regional Division.

In continuation of the same, in respect of the matter as you have been informed, the Asst. Conservator of Forests, Bhadra Wild Life Sub-Dvn, Chickmagalore, has made spot inspection and inspected the area by visit to it, where construction work of the said resorts made by M/s. KSS Hotels & Resorts Company; and accordingly the construction work is already completed at 75% and when enquired the manager, who doing construction work, it is stated that the land in Sy.No.216 and 344 of Channagodanahalli, is being Hiduvali land; and M/s. KSS Hotels & Resorts have purchased it and registered the same in its name; and they had

submitted an application to the Hon'ble Deputy Commissioner for land conversion of the above said land; and they got land conversion of the said land etc. As informed by him. (for the construction of resorts in the concerned area, got attested by preparing sketch map of the said spot from Tahsildar, Chickmagalore; and also for commercial purpose by preparing above said sketch map got a report in this regard from Asst. Director of City planning, Chickmagalore; and Karnataka State Pollution Control board, Chickmagalore; and also from Hon'ble Deputy Commissioner, Chickmagalore, respectively and they have issued conditional permit in this regard, etc. as stated by himself).

In continuation of the same Range Forest Officer, Muttodi Divisional range, Muttodi, he informed that due to the construction of resort made by them, it will cause problem to the wild lives and effected on the environment etc. stated in the notice dated 6-8-2012 issued and informed to M/s. KSS Hotels and Resorts in this regard. Even the said resort company that they have stated to take suitable action in this regard by putting Sewage Plant in not causing any harm to the environment, not giving chance to the sound pollution and not in causing water pollution and also not causing any problem to the wild lives due to their resort.

The area constructing the above said resorts is of GPS reading as N: 13 23' 32.2" E:-75 41' 23.4'; and Bhadra Wild CAT C preserved area is with a distance of 5.8 km from D line of Seegekan. It is found that there are constructing very big buildings in more quantity in the said area constructed by the above said K.S.S. Hotel and Resorts in the said area and hence for that reason

there is a possibility of creating hurdle to the walking of wild animals in the said area. This area is a reservoir of streams water flowing in the said Bhadra Wild CAT C protected area; and the garbage and water if leaved to flow without refining the same, which are using in the said resort, all these made effect directly and there is a chance to be flow such dirty water in the said Bhadra Wild CAT C prohibited area. Therefore it is hereby informed that it will be taken care in not causing any problem in such above manner from this Resort in this regard". जयते

26. A reading of the above order would clearly indicate that the said village in which the project is undertaken is not coming within the jurisdiction of Buffer Zone but under the jurisdiction of Chickmagalur Division. On inspection, it was found that the construction work was already completed by 75%. A part of the land was purchased and registered in the name of the respondent/resorts and the remaining land was got by the 6th respondent on conversion on an application made to the Deputy Commissioner for Land Conversion. The 6th respondent had obtained other necessary permits from the concerned authorities. The resort company has also undertaken to take suitable action by putting up the Sewage Treatment Plant (STP) and also measures to prevent noise and water pollution and any problem to the wildlife. It is pertinent to point out that the authorities while concluding the order stated that it would take care to ensure that no problems are created in any manner. In the

face of the above detailed order, it would be futile to contend that no action was taken on the representation of the applicants.

28. The learned counsel for the applicants would submit that the original representation made on 16.02.2012 was not acted upon and not even been referred to in the above order and hence a direction has got to be issued to take necessary action on the representation dated 16.02.2012. The Tribunal is unable to notice any substance in the above contention. It is true that in the above said order there is no reference in respect of the 1st representation dated 16.02.2012, but as pointed out earlier, the representation made to both the authorities on 21.02.2013 and 25.02.2013 were made by the very same applicants and in respect of the complaints on the same subject matter. Hence, the applicants cannot have any grievance to state the 1st representation dated 16.02.2013 was not acted upon since it merged with other two representations dated 21.02.2013 and 25.02.2013. Again, it has to be pointed out that having suppressed the later representations which were actually acted upon, the applicants cannot be permitted to state that the original representation was not acted upon. Equally, the contention of the applicants that the copy of the order dated 07.06.2013 made by the Conservator of Forest and Director, Bhadra Wild CAT C, Chickmagalur was not served upon the applicants has to be rejected in view of the fact that it is indicated in that order that it was addressed to all the three

applicants and was also despatched on 17.06.2013. The suppression of the later representations dated 21.02.2013 and 25.02.2013 and order made thereon by the applicants in the application would cast a doubt that they were purposefully made so and if made it would be against them. The applicants have chosen to file the application on the strength of the 1st representation dated 16.02.2012 taking advantage of the fact that the same was not referred to in the order dated 07.06.2013. Hence, it has got to be concluded that the 1st representation was merged with the other representations dated 21.02.2013 and 25.02.2013 which were considered and after passing the order, they were served upon the applicants. Thus the case of the applicants that their representation dated 16.02.2012 was not acted upon is baseless, unfounded and worth to be ignored.

29. The learned counsel appearing for the resorts pointed to necessary documents to show that the lands in question do not come under the Buffer Zone of the Tiger Reserve as could be seen under Annexure 12 and 13. The KSPCB has granted the CFE as found in Annexure 10. The electrical power supply was granted as shown in Annexure 14. The KSPCB granted the consent for expansion shown under Annexure 16. The Panchayat Development Officer has given business license shown under Annexure 21. The same was based on the approval plan sanctioned by the Panchayat shown in Annexure 22.

Equally, the 7th respondent has also filed his documentary evidences such as permissions and licenses obtained. In view of the permissions, licenses, CFE etc., granted by the respective authorities, it cannot be stated that the respondents are carrying on illegal construction or violating any of the provisions of law. If the applicants were really aggrieved by the grant of those permissions, licenses, CFE and other approvals, they could have questioned the same, if so advised, in accordance with law. But, the applicants have not challenged any of those permissions, licences, CFE etc., in this proceedings.

30. Pending the Main Application No. 154 of 2014, the applicants have filed M.A. No.284 of 2014 under rule 16(7) of the NGT (Practices and Procedure) Rules, 2011 to amend the prayer in Application No. 154 of 2014. By the said amendment the applicants intend to substitute the following expression in the relief clause:

“Therefore, the applicants pray that the Hon’ble Tribunal may be pleased to restrain respondents 6 to 9 from further proceeding with the construction of resorts in Bababudangiri and Mullayangiri hill ranges adjacent to Bhadra Tiger Reserve in Chickmagalur District, State of Karnataka and thus render justice”.

in place of:

“Therefore, the applicants pray that this Hon’ble Tribunal may be pleased to direct the respondents to take appropriate action on the representation made by the applicants dated

16.02.2012 with regard to the encroachment and illegal constructions being made in Bababudangiri and Mullayangiri, the hill areas in the State of Karnataka within the time frame that may be fixed by this Hon'ble Tribunal and thus render justice”.

31. It was submitted by the learned counsel for the applicant that originally the applicants sought for a direction to the respondents to take appropriate action on the representation made by the applicants on 16.02.2012 with regard to the encroachment and illegal construction being made in Bababudangiri and Mullayangiri hill areas within a time frame. The representation was to the immediate and effective action that was needed to protect the Western Ghat ecosystem from the eco-tourism by halting the construction of resorts in the hill ranges. Since the 1st to 5th respondents have taken the stand that they have already taken steps to verify the allegations contained in the said representation dated 16.02.2012 and found them incorrect it became necessary for the applicants to seek an amendment to the prayer clause in the main application to restrain the 6th to 9th respondents from proceeding further with the construction of resorts. The counsel for the respondents vehemently opposed the application. After hearing both sides, the Tribunal is of the considered opinion that this application is got to be dismissed for many reasons. In the original application no specific allegation was made against the 6th to 9th respondents. But, it was

generic in nature stating that there were encroachment and illegal constructions are made in Bababudangiri and Mullayangiri hill areas. It was also not pleaded with any specific violation of law. It was only on the specific cause of action that a representation was made on 16.02.2012 and in view of the inaction on the part of the 1st to 5th respondents, direction were sought to be issued. The amendment which is for a substitution of relief clause in entirety, if allowed it would be without any corresponding pleading or evidence and apart from that on altogether a different cause of action. In the instant case, both the parties were given opportunity to putforth their pleadings. The amendment sought for to substitute the relief clause if permitted would alter the very original and fundamental character of the original application. It is a settled law that the amendment shall not be allowed if the amendment would change the character of the application and that too by a different cause of action.

32. It is true that an amendment under rule 16 (7) of the NGT (Practices and Procedure) Rule, 2011 can be ordered. But, an application or appeal can be maintained on only one cause of action. Rule 14 of the *ibid* Rule, 2011 reads as follows:

“14. Plural remedies. - An application or appeal, as the case may be, shall be based upon single cause of action and may seek one or more reliefs provided that they are consequential to one another”.

33. The Hon'ble Western Zone Bench of the NGT at Pune had an occasion to consider the question of maintainability of an application in a composite form of application-cum-appeal filed in view of the availability of the plural remedies in accordance with rule 14 of NGT Rules, 2011 in *Vikas K. Tripathi Mumbai Vs. The Secretary, MoEF reported in 2014 ALL (I) NGT Reporter (3) (Pune) 95* and has held as follows:

“ 21..... We shall deal with his contention in order to set right issue once for all, in as much as it is likely to be raised in many such cases on similar ground. Rule 14 of the NGT (Practices and Procedure) Rules, 2011 reads as follows:

“Rule14. Plural remedies. - An application or appeal, as the case may be, shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another”.

22. Perusal of Rule 14, without any prejudicial notions in the mind, will make it amply clear that any Application or Appeal, as the opening words imply are distinct remedies under which the particular relief may be sought on single cause of action. Thus, if properly read the rule provide as follows:

i) There may be either single Application or Appeal. In other words, it cannot be a comprehensive or hybrid type of pleadings like Appeal-cum-

Application, as captioned by the Appellant-cum-Applicant (Vikas Tripathy) as in the present Application/Appeals.

ii) The Appeal or Application, whatsoever it may be must be filed on single cause of action. Thus, it cannot be filed on several causes of action. In other words, an Appeal cannot be filed with combined causes challenging different ECs or orders, nor an Application can be filed challenging different orders or different violations under the different laws.

iii) Still, however, choice given to the Appellant/Applicant is to ask for grant of more than one relief in case such reliefs are of consequential character. In other words, if a relief depends upon grant of another relief, then grant of more than one relief is permissible.

22. ***

23. *We cannot overlook and brush aside main provisions of the NGT Act, which do not provide for any kind of permission to allow filing of two Appeals, one against the time barred EC, coupled with another EC for revised construction plan along with an Application under Sections 14,15 and 18 of the NGT Act, 2010. In case, Vikas Tripathi is genuinely interested in the cause of environment and feels that the project in question has caused violations of EC conditions/*

deterioration of the environment, then he is at liberty to file a separate Application under Section 14 (1) (2) read with Sections 15 and 18 of the NGT Act, 2010 if so advised and if it is permissible under law. He cannot, however, club all such Appeals and Applications together and explore to examine whether one cap fits on another”.

34. In view of the same, the request of the applicants seeking amendment to the prayer clause in the Application No. 154 of 2014 (SZ) has got to be negated. Hence, the M.A. No. 284 of 2014 (SZ) is dismissed.

35. In the result, the Application No. 154 of 2014 (SZ) and the M.A. No.284 of 2014(SZ) are dismissed.

36. APPEAL No. 5 of 2015 (SZ)

The appellant herein originally made an application and at the time of admission a direction was issued to the Registry of the Tribunal to convert the application into an appeal. The respondents have filed R.A. No. 1 of 2015 questioning the maintainability of the appeal on different grounds *inter alia* on limitation and jurisdiction.

37. The Tribunal heard the learned counsel for the appellant and also for the respondents and paid its anxious consideration on the submissions made.

37. This appeal is brought forth seeking to set aside an order dated 07.06.2013 made by the Conservator of Forest and Director, Bhadra Wild CAT C, Chickmagalur shown as 6th respondent and also for a direction to the 4th and 5th respondents to decide the representation dated 27.02.2013 on merits and in accordance with the law.

38. The order under challenge was made on 07.06.2013 by the 6th respondent Conservator of Forest and Director, Bhadra Wild CAT C, Chickmagalur. Admittedly, it was in response to a communication dated 21.02.2103 made by the appellant appealing to cancel the permit given for construction of the resort by the 6th respondent. The entire complaint was that the permission was granted for construction activities for the resort by the 6th respondent. Speaking on the appellate jurisdiction, section 16 of the NGT Act, 2010 makes it clear that any person aggrieved by any order or decision made on or after the commencement of the NGT Act, 2010 can challenge the same provided if the impugned order or decision falls with those order/decision enumerated therein within the stipulated period. But the said order challenged is not from an order or decision enumerated under section 16 of the NGT Act, 2010. On the applicability of the section 16 of the NGT Act, 2010, the Hon'ble Principal Bench of NGT in M.A. No. 894 of 2014 in O.A. No. 26 of 2012 dated 24.12.2014 has held that section 16 provides for appeals to the

Tribunal from clauses (a) to (j) and prescribes the order against which appeal would lie before the Tribunal. The intent of the Legislature in excluding other orders being appealed before the Tribunal is implicit in section 16 of the NGT Act, 2010. Thus, it is quite evident that the appeal is beyond scope, powers and jurisdiction of the Tribunal and hence the appellant cannot maintain the appeal. Therefore, the appeal has to be dismissed as not maintainable.

39. One more contention raised by the learned counsel for the appellant is that the representation by way of an appeal made by the appellant was decided by the authority who was not competent to decide the same and hence on that ground the impugned order has to be set aside. This contention does not merit consideration in view of the aforesaid finding that the appeal itself lies outside the jurisdiction and power of the Tribunal. However, in view of the facts and circumstances of the case, the Tribunal feels it fit that liberty has to be given to the appellant to approach the appropriate authorities for necessary reliefs, if so advised.

40. Once an appeal does not lie before the Tribunal against a given order, it will not be appropriate for the Tribunal to exercise judicial jurisdiction under section 14 or any other provisions of the NGT Act, 2010.

41. In view of the dismissal of the appeal, the Review Application is disposed of accordingly.

42. In the result, the Application No. 154 of 2014 (SZ) and M.A. No.284 of 2014 (SZ) are dismissed.

No cost.

43. The Appeal No. 5 of 2015 (SZ) is dismissed with liberty to the appellant to approach the appropriate authorities for necessary relief, if so advised.

No cost

44. The R.A. No. 1 of 2015 (SZ) in Appeal No. 5 of 2015 (SZ) is disposed of.

No cost.

45. All other connected Miscellaneous Applications pending, if any, are closed.

No cost.

(Justice M. Chockalingam)
Judicial Member

(Prof. Dr. R. Nagendran)
Expert Member

Chennai
Dated, 09th April, 2015

BEFORE THE NATIONAL GREEN TRIBUNAL**SOUTHERN ZONE, CHENNAI**

M.A Nos. 7 of 2017 (SZ)
In un-numbered Appeal Diary No.20 of 2017
And
M.A.No.8 of 2017
In un-numbered Appeal Diary No.22 of 2017

Applicant(s) Respondent(s)

1.Souhardha Charitable Club
 Rep. by its Treasurer Mr.Prasanth
 Malayattoor, Ernakulam Dist

1. The State Environment Impact Assessment
 Authority, rep. by it Chairman,
 Thiruvananthapuram,Kerala

2. Rajendran, Malayattoor

2. The State Expert Appraisal Committee
 Rep. by its Chairman,
 Thiruvananthapuram,Kerala

(Both MAs)

3. The District Collector, Kakkanadu
 Ernakulam

4. Geologist, Kakkanadu, Ernakulam
 (both M.As)

5. Manoj Antony (M.A.No.7/2017)

5. Ashique Ali (M.A.No.8/2017)

Legal Practitioners for Applicant(s)

Legal Practitioners for Respondents

M/s. K. Abdul Jawad
 Grady Jose. A
 Prasanth Kumar M.K

Mrs. Vidhya Lakshmi for R1 & R2
 Mrs. Suvitha A.S. for R3 & R4
 M/s. M.A. Abdul Hakhim &
 Kamalesh Kannan for R5 in
 M.A.No.8 of 2017

Note of the Registry	Orders of the Tribunal
	<p>Date: 4.7.2017</p> <p>These Miscellaneous Applications are to condone the delay of 15 days in filing appeals against the order of</p>

the 1st respondent – the State Environment Impact Assessment Authority (SEIAA) dated 1.6.2016 granting Environmental Clearance (EC) to the 5th respondent for the quarry project in Survey Nos.97/1(p), 97/2(p) and 97/4(p) at Malayattoor Village, Aluva Taluk, Ernakulam District.

2. The reason assigned for condoning the delay is that the EC was unable to be traced by the appellants in the website and it was not in the public domain and not properly published. However, the appellants were able to obtain copy of the EC under the Right to Information Act stated to have been received by them on 24.11.2016 and according to the appellants the period of limitation starts from 24.11.2016. The appeal papers have been filed before this Tribunal on 9.1.2017.

3. The proposed appellant is a Charitable Club stated to have been formed in the year 2013 for the welfare of the general public and registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. Even though the affidavit filed in support of the applications state that the 5th respondent's

illegal, unscientific and unauthorised mining operation creates cosmic impact on the environment, apart from creation of noise pollution, in the Miscellaneous Application, as we are concerned about the reason in filing of the appeals beyond the period of limitation, we do not think it proper to refer the same.

4. According to the appellant, after the copy of EC was received on 24.11.2016 the appeals ought to have been filed on 24.12.2016. The inability was due to the reason of want of funds in filing of the appeals.

5. The 5th respondent/project proponent, while denying the reason assigned by the appellants for condoning the delay as not correct, has stated that knowledge of the date of issuance of EC cannot be taken for calculating the delay. The EC was granted on 1.6.2016 and therefore as per Section 16 of the National Green Tribunal Act, 2010 (NGT Act) the appeals ought to have been filed on 30.6.2016 and in any event the condonable limit of another 30 days has expired on 30.6.2016. However, the appeal was filed on 15.1.2017.

6. It is stated that the writ petition filed on behalf of the

applicant is pending in the High Court of Kerala in W.P.(C).No.34210 of 2016. It is further stated that the applicant has purposefully avoided another quarry working within a radius of 100 M.

7. The 5th respondent/project proponent in M.A.No.8 of 2017 while stating that the delay as stated is incorrect, submits that the EC was granted on 1.6.2016 after the 52nd meeting of the 1st respondent held on 29.4.2016. The EC was handed over by the 1st respondent on 7.7.2016 and immediately thereafter the 5th respondent has taken steps, as required under Clause 10 of the EIA Notification, 2006 to communicate the same to public. It is stated that the 5th respondent put on the notice board on the site the details of EC granted on 15.7.2016. It is also stated that the 5th respondent has uploaded a copy of EC in its website on 30.7.2016. Further, the 5th respondent has also served a copy of EC to the local authority viz., Malayattoor – Neeleeswaram Grama Panchayat on 27.7.2016 and it was acknowledged by the 1st respondent on the same date. That apart, the 5th respondent has prominently advertised the information about the grant of EC in two newspapers

viz., Malayala Manorama and Deccan Chronicle on 13.8.2016 and 1.9.2016 respectively. Further, the copy of the EC was available with the 1st respondent and therefore the 5th respondent has complied with all the requirements of the EIA Notification, 2006. The EC was available in the public domain even on 30.7.2016 and the filing of the appeal in January, 2017 is beyond the period of condonable limit.

8. It is further stated that in W.P.(C).No.34210 of 2016 filed by the applicant before the High Court of Kerala there was clear admission of grant of EC to the 5th respondent. The said writ petition was filed before the High Court on 24.10.2016 with several prayers, including declaration that the quarries conducted by the 5th respondent are illegal and the High Court has admitted the writ petition and not granted any interim order and it is in those circumstances the applicant has chosen to file the present application with condone delay petition and therefore the application is liable to be rejected.

9. The learned counsel appearing for the applicant would vehemently contend that when the basic issue

regarding illegal mining which relates to the issue of environment and the Tribunal is constituted for that purpose, the delay should be taken only as a technical ground and the same should not stand in the way of granting substantial environmental justice. It is also the submission of the learned counsel that the applicant being a third party to the EC, cannot be expected to look into the website of the 5th respondent at every time and it was only after the applicant came to know about the issuance of EC, they have applied to the 1st respondent immediately and the copy of EC was received on 24.11.2016 and the appeal came to be filed on 9.1.2017 and therefore according to the learned counsel the question of delay must be considered on the point of a third party application and therefore a liberal interpretation must be given.

10. Per contra, it is the contention of the learned counsel appearing for the 5th respondent in both these applications that it is not the knowledge of EC but it is the EC being kept in public domain and that is the starting point of limitation under Section 16 of the National Green Tribunal Act, 2010 subject to the condition that 30 days

from the date of order communicated and another 60 days time is given for the purpose of condoning the delay and beyond the period of 60 days, the Tribunal itself has no power to condone delay. The learned counsel has also referred to the established decisions of this Tribunal that keeping up of the EC in public domain is the triggering point of limitation and the limitation starts from that day onwards. Based on the said legal dictum laid down, the applications are beyond the condonable limit prescribed under the NGT Act and the Tribunal itself has no jurisdiction to condone the delay.

11. After hearing the learned counsel appearing on both sides and considering the factual issues involved in this case, there are certain dates which are relevant in both the cases. The 1st respondent has granted EC in favour of the 5th respondent for quarrying operation on 1.6.2016. It is the specific case of the 5th respondent that the EC was uploaded in its website on 30.7.2016 and that has not been denied by the applicant. But the applicant has stated in the rejoinder that the private website has not been produced as proof and that itself is not sufficient

compliance of Clause 10 of the EIA Notification, 2006.

12. The filing of the writ petition, as stated by the 5th respondent, is also not denied by the applicant. Clause 10 of the EIA Notification, 2006 which speaks about the post EC monitoring, explains the compliances to be made by various stakeholders, including the project proponent, local authority and also the obligation of the project proponent to submit a copy of the EC to the local bodies, Panchayats and municipal bodies so as to display the same for 30 days from the date of receipt. Clause 10 of the EIA Notification, 2006 reads as follows:

10. Post Environmental Clearance Monitoring:

(i)(a) In respect of Category 'A' projects, it shall be mandatory for the project proponent to make public the environmental clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it at least in two local newspapers of the district or State where the project is located and in addition, this shall also be displayed in the project proponent's website permanently.

(b) In respect of Category 'B' projects, irrespective of its clearance by MoEF / SEIAA, the project proponent shall prominently advertise in the newspapers indicating that the project has been accorded environment clearance and the details of MoEF website where it is displayed.

(c) The Ministry of Environment and Forests and the State / Union Territory Level Environmental Impact Assessment Authorities (SEIAAs), as the case may be, shall also place the environmental clearance in the public domain on Government portal.

(d) The copies of the environmental clearance shall be

submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.

(ii) It shall be mandatory for the project management to submit half-yearly compliance reports in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year.

(iii) All such compliance reports submitted by the project management shall be public documents. Copies of the same shall be given to any person on application to the concerned regulatory authority. The latest such compliance report shall also be displayed on the web site of the concerned regulatory authority.'

13. It is a fact that the 5th respondent has advertised in two newspapers on 13.8.2016 and 1.9.2016 in Malayala Manorama and Deccan Chronicle which is not denied. The 5th respondent has specifically stated that he has also put the EC in the website on 30.7.2016.

14. On the factual matrix, admittedly the applicant had been approaching the High court against the quarrying operations of the 5th respondent and in such circumstances we cannot conclude that applicant was not aware of the EC granted to the 5th respondent in these cases on 1.6.2016 .

15. Law is well settled that if the obligation of any one

of the stakeholders in keeping the EC in its website available in public domain, the limitation starts from the date of first of such website information being made available to the public.

16. In the present case, the project proponent's website was stated to be on 30.7.2016 while the 1st respondent - SEIAA's website was on 29.8.2016 as it is seen in the proof filed before us. In these circumstances, it cannot be construed that the delay in filing the appeals was only 15 days when appeals were filed only on 9.1.2017. The delay is more than condonable limit in both these cases. Therefore, the contention raised by the learned counsel for the applicant as if the 5th respondent has not published EC, in our view, has no meaning. The website of SEIAA, proof of which has been filed before this Tribunal shows that the EC granted to the 5th respondent was available in its website on 29.8.2016 and therefore, the starting point of limitation is to be construed from the said date and while considering the same and looking into any angle, we are unable to come to a conclusion that the condonable limit is within the permissible limit of 60 days.

It cannot also be said the paper publication was not made.

17. Law is equally well settled that beyond the period of condonable limit prescribed under Section 16 of the NGT Act, the Tribunal has no jurisdiction to condone the delay.

18. It is relevant to extract Section 16 of the NGT Act which is as follows:

“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 33A 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);*
- 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);*
- 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);*
- 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);

- 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),

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' .

19. The established decision of the Tribunal in respect of the communication and the period of limitation has been dealt with by the Principal Bench of the Tribunal in SAVE MON REGION FEDERATION & ANOTHER V. UNION OF INDIA & OTHERS (M.A.No.104 of 2012 dated 14.3.2013) reported in 2013(1) All India NGT Reporter page 1) wherein the relevant portion relating to the above said aspect has been discussed as follows:

“19. The limitation as prescribed under Section 16 of the NGT Act, shall commence from the date the order is communicated. As already noticed, communication of the order has to be by putting it in the public domain for the benefit of the public at large. The day the MoEF shall put the complete order of Environmental Clearance on its website and when the same can be downloaded without any hindrance or impediments and also put the order on its public notice board, the limitation be reckoned from that date. The limitation may also trigger from the date when the Project Proponent uploads the Environmental

Clearance order with its environmental conditions and safeguards upon its website as well as publishes the same in the newspapers as prescribed under Regulation 10 of the Environmental Clearance Regulations, 2006. It is made clear that such obligation of uploading the order on the website by the Project Proponent shall be complete only when it can simultaneously be downloaded without delay and impediments.

The limitation could also commence when the Environmental Clearance order is displayed by the local bodies, Panchayats and Municipal Bodies along with the concerned departments of the State Government displaying the same in the manner afore-indicated. Out of the three points, from which the limitation could commence and be computed, the earliest in point of time shall be the relevant date and it will have to be determined with reference to the facts of each case. The applicant must be able to download or know from the public notice the factum of the order as well as its content in regard to environmental conditions and safeguards imposed in the order of Environmental Clearance. Mere knowledge or deemed knowledge of order cannot form the basis for reckoning the period of limitation.

40. Once we examine the provision of Section 16 of the NGT Act in light of the above principle, it is clear that the provision is neither ambiguous nor indefinite. The expressions used by legislature are clear and convey the legislative intent. The communication of an order granting the Environmental Clearance has to be made by the MoEF as well as the Project Proponent in adherence to law. The communication would be complete when it is undisputedly put in the public domain by the recognised modes, in accordance with the said provision. The limitation of 30 days would commence from that date. If the appeal is presented beyond the period of 30 days, in that event, it becomes obligatory upon the applicant to show sufficient cause explaining the delay. The delay must be bonafide and not a result of negligence or intentional inaction or malafide and must not result in the abuse of process of law. Once these ingredients are satisfied the Tribunal shall adopt a balanced approach in light of the facts and circumstances of a given case.”

20. That was also the view of the Principal Bench in

MS. MEDHA PATKAR AND OTHER V. MINISTRY OF ENVIRONMENT AND FORESTS AND OTHER (Appeal No.1 of 2013 dated 117.2013) where also the ruling relating to communication has been dealt with as follows:

“15. XXX Communication shall be complete in law upon fulfilment of complete set of obligations by any of the stakeholders. Once the period of limitation is prescribed under the provisions of the Act, then it has to be enforced with all its rigour. Commencement of limitation and its reckoning cannot be frustrated by communication to any one of the stakeholders. Such an approach would be opposed to the basic principle of limitation.

16. XXXX To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. XXXX Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but it is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is placed in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view.

18. Another factor that would support such a view is that a person who wishes to invoke jurisdiction of the Tribunal or a court has to be vigilant and of his rights. An applicant cannot let the time go by without taking appropriate steps. Being vigilant and to his rights and alive and conscious to the remedy provided (under the

law) are the twin basis for claiming a relief under limitation. Vigilantibus non dormantibus jura subvenient.”

21. The above said rulings have been followed in many proceedings of this Tribunal, including the decision of the NGT, Southern Zone Bench in P.N ANOOP VS. UNION OF INDIA AND OTHERS (M.A.No.216 of 2015 dated 6.1.2016)

22. In view of the above said decision, and looking into any angle, the applications are devoid of merit and the same are dismissed. There shall be no order as to cost.

....., JM

(Justice Dr. P. Jyothimani)

.....EM

(Shri P.S. Rao)

NGT

- (i)** “Having regard to the findings at (a), (b) and (c) above, we direct the State to undertake further exercise for preparation of a fresh DSR for the Banka district.
- (ii)** As the DEIAA is not functioning as a consequence of the decision of the Tribunal in *Satendra Pandey* (supra), the DSR shall be prepared through a consultant(s) accredited by the National Accreditation Board of Education and Training/Quality Control Council of India in terms of O.M. of MoEF & CC dated 16.03.2010.
- (iii)** The DSR so prepared shall be submitted to the District Magistrate who shall verify the DSR only in respect of the relevant facts pertaining to the physical and geographical features of the district which shall be distinct from the scientific findings based on the parameters

prescribed in the SSMMG- 2016. After such verification, the District Magistrate shall forward the DSR for examination and evaluation by the State Expert Appraisal Committee (SEAC) having regard to the fact that the SEIAA comprises of technical/scientific experts. The SEAC after appraisal of the report shall forward it to the SEIAA for consideration and approval if it meets all scientific/technical requirements.

- (iv)** While preparing the DSR, the MoEF & CC Accredited Agency/Consultant shall scrupulously follow the procedure and the parameters laid down under the SSMMG-2016 and EMGSM-2020 read in sync with each other.”

2. The appellant-State of Bihar has assailed the said judgment and order dated 14th October 2020, on various grounds.

3. Shri Atmaram Nadkarni, learned Senior Counsel appearing on behalf of the State of Bihar submitted that the Tribunal has grossly erred in holding that unless the State Expert Appraisal Committee (hereinafter referred to as “SEAC”) and the State Environment Impact Assessment Authority (hereinafter referred to as “SEIAA”) grants approval to the District Survey Report (hereinafter referred to as “DSR”) for the purpose of mining of sand, the same cannot be carried out. He submitted that the Tribunal has further held that the very invitation of the tenders without preparing the DSR in accordance with the judgment of the Tribunal in the case of **Satendra Pandey v. Ministry of Environment, Forest and Climate Change and Another**¹ could not have been done. He submitted that after the tenders are invited in accordance with the DSR prepared by the District Level Committee, the

1 O.A. No. 186 of 2016 (M.A. No. 350/2016)

successful bidder will be required to prepare a mining plan and unless such a mining plan is approved by SEAC and SEIAA, the Environmental Clearance would not be granted and in turn, mining activities cannot be carried out. He submitted that the finding of the Tribunal is like putting the cart before the horse. He further submitted that the Tribunal has also grossly erred in holding that the DSRs prepared by the State were without following the requisite procedure and without considering the relevant factors. He submitted that not only the procedure as prescribed under the relevant rules and regulations was complied with, but the voluminous material in support of the same was also placed on record before the Tribunal. He submitted that the Tribunal has not taken into consideration the said material. He therefore submitted that the judgment and order passed by the Tribunal dated 14th October 2020, needs to be set aside and the State needs to be permitted to finalize the tenders received by it.

4. Shri Nadkarni further submitted that on account of the orders passed by the Tribunal, the old lessees are continuing

with the mining activities by paying a meagre amount to the State Government. He therefore submitted that on account of this, a huge loss would be caused to the public exchequer. In the alternative, he submitted that the State, at least, needs to be permitted to undertake mining activities through Bihar State Mining Corporation until the DSRs are finalized in accordance with the judgment of the Tribunal.

5. Shri P.S. Patwalia, learned Senior Counsel appearing on behalf of the original applicant vehemently opposed the appeals. He submitted that the Tribunal has rightly held that the DSRs are not prepared in accordance with the relevant rules as well as policy guidelines. He submitted that it is apparently clear that the State has taken into consideration only financial enrichment without considering the environmental aspects.

6. Though, we have heard the learned counsel for both the parties at length on merits, we find that it will be appropriate

that the appeals are kept pending for further consideration and till then, certain interim orders are passed.

7. It cannot be in dispute that though the developmental activities are not stalled, the environmental issues are also required to be addressed. A balanced approach of sustainable development ensuring environmental safeguards, needs to be resorted to. At the same time, it also cannot be ignored that when legal mining is banned, it gives rise to mushroom growth of illegal mining, resulting into clashes between sand mafias, criminalization and at times, loss of human lives. It also cannot be disputed that sand is required for construction of public infrastructural projects as well as public and private construction activities. A total ban on legal mining, apart from giving rise to illegal mining, also causes huge loss to the public exchequer.

8. Taking into consideration these aspects of the matter, we propose to issue certain interim directions.

9. The Tribunal, in the case of **Satendra Pandey** (supra), has found that the notification dated 15th January 2016, which provided Environmental Clearance to be given by the District Environment Impact Assessment Authority (hereinafter referred to as the “DEIAA”) was not in consonance with the judgment of this Court in the case of **Deepak Kumar v. State of Haryana and Others**². The Tribunal therefore in **Satendra Pandey** (supra), had directed Ministry of Environment, Forest and Climate Change (hereinafter referred to as “MoEF and CC) to take steps to revise the procedure laid down in the notification dated 15th January 2016. It is to be noted that MoEF and CC, in accordance with the directions of the Tribunal, had issued Enforcement and Monitoring Guidelines for Sand Mining (hereinafter to referred to as “the 2020 guidelines”) in the month of January 2020. Chapter 4 of the 2020 guidelines deals with identification of possible sand mining sources and preparation of DSR. It will be relevant to refer to Clause 4.1.1 (a), (o) and (p) of the 2020 guidelines:-

2 (2012) 4 SCC 629

“4.1 Identification of possible sand mining sources and preparation of District Survey Report (DSR)

4.1.1 Preparation of District Survey Report.

a) District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (Loi) by Mining department or department dealing the mining activity in respective states.

o) Potential site for mining having its impact on the forest, protected area, habitation, bridges etc, shall be avoided. For this, a sub-divisional committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as **Annexure-II**. The Sub-Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in **Annexure-III**. The details of the transportation need to be provided as in **Annexure IV**.

p) **Public consultation**-The Comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general

public on the list of mining' lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the sub-divisional committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & Patta land/Khatedari land, de-siltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per **Annexure-V**. The details regarding cluster and contiguous cluster needs to be provided in **Annexure-VI**. The details of the transportation need to be provided in **Annexure-VII**.”

10. It could thus be seen that in accordance with the 2020 guidelines, the DSR is required to be prepared before the auction/e-auction/grant of mining lease by Mining Department or Department dealing with mining activity in the respective States. It is further provided that the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a sub-divisional committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. The

sub-divisional committee is further required to record its reasons for selecting the mining lease in the patta land. Various details are required to be given in the annexures appended to the said policy.

11. It is further to be noted that Appendix-X of the notification dated 15th January 2016, issued by MoEF and CC also provides for composition of the sub-divisional committee:-

“A Sub-Divisional Committee comprising of Sub-Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof.”

12. It is to be noted that with the advent of modern technology, various technological gadgets like Drones and satellite imaging etc. can be used for identification of the potential sites and preparation of the DSR and also to check misuse and unauthorized mining.

13. We further find that when the 2020 guidelines as well as the notification issued by MoEF and CC of 2016 itself provide for constitution of sub-divisional committees comprising of the officers of the State Government from various Departments for identification of the potential sites for mining, there would be no necessity of the DSRs being prepared through private consultants as directed by the Tribunal in the impugned order. The sub-divisional committee consists of various officers from Revenue Department, Irrigation Department, State Pollution Control Board, Forest Department and Geology Mining Department of the State Government. They are better equipped to visit the sites and prepare the draft DSR for the concerned district. Apart from that, preparation of DSR through private consultants would also unnecessarily burden the public exchequer. We are therefore of the view that the direction in that regard issued by the Tribunal requires to be modified. We are further of the considered view that until the DSRs are finalized and granted approval by SEAC and SEIAA, it is appropriate that certain necessary arrangements are permitted

so that the State can continue with legal mining activities. This apart from preventing illegal mining activities, would also ensure that the public exchequer is not deprived of its share in legalized mining.

14. We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14th October 2020, with the following directions:-

- (i) The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh. The draft DSRs shall be prepared by the sub-divisional committees consisting of the Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geological or mining officer. The same shall be prepared by undertaking site visits and also by using modern technology. The said draft DSRs shall be prepared within a

period of 6 weeks from the date of this order. After the draft DSRs are prepared, the District Magistrate of the concerned District shall forward the same for examination and evaluation by the SEAC. The same shall be examined by the SEAC within a period of 6 weeks and its report shall be forwarded to the SEIAA within the aforesaid period of 6 weeks from the receipt of it. The SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon;

- (ii) Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed;
- (iii) Until further orders, we permit the State Government to carry on mining activities

through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.

15. List the matter after 20 weeks.

.....**J.**
[L. NAGESWARA RAO]

.....**J.**
[SANJIV KHANNA]

.....**J.**
[B.R. GAVAI]

NEW DELHI;
NOVEMBER 10, 2021.

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No 2804 of 2014

Raza Ahmad

.... Appellant(s)

Versus

State of Chhattisgarh & Ors

....Respondent(s)

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 This appeal under Section 22 of the National Green Tribunal Act 2010¹ arises from a judgment dated 2 August 2013 of the National Green Tribunal², at its Central Zone Bench in Bhopal.

2 In April 2007, the seventh respondent, Steel Authority of India³, and Jayprakash Associates entered into a Memorandum of Association to establish a cement grinding unit of 2.2 MTPA capacity at Bhilai, Chhattisgarh. In pursuance of this goal, they set up the tenth respondent, Bhilai Jaypee Cement Limited. A parcel of land admeasuring 34.59 acres belonging to SAIL, falling in the villages of Hingna and Maroda at Bhilai in District Durg, was leased out to the tenth respondent for thirty years, based on a long-term lease dated 16 June 2007. The land use of this

1 “NGT Act”

2 “NGT”

3 “SAIL”

parcel of land had been designated as “green belt” in the 1991 Development Plan of Bhilai. On the tenth respondent’s application, an Environmental Clearance⁴ was granted to their project of the cement grinding unit on 1 May 2008⁵ by the second respondent, the then Ministry of Environment and Forests. It was subsequently published in newspapers on 8 May 2008.

- 3 It is alleged by the appellant that since the EC was incorrectly issued, the tenth respondent’s constructions on the parcel of land were illegal. In this regard, several notices were issued to them by the fifth respondent, Director, Town and Country Planning, Bhilai and the sixth respondent, Commissioner, Municipal Corporation of Bhilai to revert the land to its original condition or face demolition of the structure. The tenth respondent then applied for the modification of the land use of the parcel of land admeasuring 34.59 acres.
- 4 The first respondent, the State of Chhattisgarh, considered their case under Section 23-A of Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam 1973. On 22 May 2010, the State government made a proposal to change the land use from “green belt” to “industrial purpose” on the basis that the setting up of the cement grinding unit by the tenth respondent constituted an “urgent public purpose”. Between 13 July 2010 and 15 July 2010, the State government published circulars in two evening newspapers highlighting the proposed modification in land use and inviting objections/suggestions from the general public. The appellant allegedly raised objections against the proposed modification. However, relying on the EC granted on 1 May 2008, the State government issued a notification⁶ dated 3 February 2011 modifying the land use of the parcel of land from “green belt” to “industrial purpose”. The notification was published in the Chhattisgarh Gazette on 18 February 2011.

4 “EC”

5 Letter No J-1101111000112007-IA-II(I)

6 Notification No F/7-24/32/2010

5 The appellant then instituted a public interest petition⁷ under Article 226 of the Constitution before the High Court of Chhattisgarh on 8 September 2011. The reliefs which were sought by the appellant were:

- (i) Quashing of the notification dated 3 February 2011 of the State government modifying the land use of the parcels of land designated in the 1991 Development Plan of Bhilai as a “green belt” to “industrial purpose”;
- (ii) Quashing of the EC issued on 1 May 2008 to the tenth respondent for its cement grinding unit (the ground of challenge being that the project had been erroneously categorized in Category B2 instead of Category A, and hence the mandatory procedures of conducting an Environmental Impact Study and public hearing/consultation were not followed); and
- (iii) The restoration of 34.59 acres of land designated as a “green belt”, which was leased out to the tenth respondent, to its original condition prior to the construction which was carried out on the land.

6 An objection was raised in regard to the maintainability of the petition before the High Court by the tenth respondent.

7 By an order dated 28 January 2013, the High Court transferred the petition to the NGT in view of the decision of this Court in **Bhopal Gas Peedith Mahila Udyog Sangathan v Union of India**⁸. The NGT, by its impugned judgment dated 2 August 2013, dismissed the appeal⁹ on the ground that:

- (i) The appeal is barred by limitation; and

⁷ Writ Petition (PIL) No 5467 of 2011

⁸ (2012) 8 SCC 326

⁹ Appeal No 1 of 2013

- (ii) The NGT is constituted by the NGT Act, and does not have jurisdiction to entertain a challenge to the notification dated 3 February 2011 of the State government altering the land use.
- 8 We have heard Dr Surender Singh Hooda, counsel appearing on behalf of the appellant, Mr Yashraj Singh Deora, counsel appearing on behalf of the seventh respondent and Mr Sumeer Sodhi, counsel appearing on behalf of the State of Chhattisgarh.
- 9 The NGT Act came into force on 18 October 2010, after it was published in the Gazette of India in pursuance of the provisions of Section 1(2). The NGT has original jurisdiction, conferred by Section 14 and appellate jurisdiction, which is conferred by Section 16. Further, Section 15 empowers the NGT to grant relief to remedy environmental damage, including compensation and restitution.
- 10 Section 14 empowers the NGT to exercise jurisdiction over all civil cases where a substantial question relating to the environment (including enforcement of any legal right relating to the environment) is involved and such a question arises out of the implementation of the enactments specified in Schedule I. Sub-Section (3) of Section 14 provides that no application for adjudication of a dispute under the provision shall be entertained unless it is made within a period of six months from the date on which the cause of action for such dispute first arose. Under the proviso, the NGT is empowered to entertain an appeal beyond the prescribed period for sufficient cause, subject to a limit of sixty days.
- 11 Section 16, which confers appellate jurisdiction on the NGT, contemplates in Clause (h) that an appeal can lie against an order made, on or after the commencement of the NGT Act, granting an EC. Such an appeal has to be filed within thirty days from the date of the communication of the order, decision, direction or determination. The NGT is entrusted with the power to condone a

delay of a period not exceeding sixty days, for sufficient cause.

12 In the present case, the relevant dates which would have a bearing on the subject matter of the controversy are as follows:

- (i) 1 May 2008 - EC was granted to the tenth respondent's project (subsequently published in the newspapers on 8 May 2008);
- (ii) 18 February 2011 - publication of the notification dated 3 February 2011 by the State government proposing a modification of land use for 34.59 acres of land from "green belt" to "industrial purpose";
- (iii) 8 September 2011 - institution of the writ petition before the High Court by the appellant; and
- (iv) 28 January 2013 - transfer of the proceedings to the NGT by the High Court.

13 Section 38(1) of the NGT Act stipulates that the National Environment Tribunal Act 1995 and the National Environment Appellate Authority Act 1997¹⁰ would stand repealed. Section 38(2) protects anything done or any action taken under the repealed enactments. Section 38(3) dissolved the National Environment Appellate Authority established under the above 1997 Act. Section 38(5), however, makes a provision for the transfer of all cases pending before the National Environment Appellate Authority to the NGT.

14 In the present case, the EC was issued on 1 May 2008, prior to the enforcement of the NGT Act. No steps were taken by the appellant to pursue a challenge to the EC under the provisions of the 1997 Act. No challenge was pending on the date of the enforcement of the NGT Act and hence, there was no question of

10 "1997 Act"

transfer of any proceedings to the NGT. The challenge before the High Court to the EC was raised on 8 September 2011, well beyond three years of the date of the publication of the EC in the newspapers on 8 May 2008. Consequently, the challenge to the EC was barred by limitation. As a matter of fact, Dr Surender Singh Hooda has fairly accepted the said position.

- 15 However, the submission which has been urged on behalf of the appellant is that besides challenging the EC, the appellant had also placed in issue the validity of the notification of the State government dated 3 February 2011 (published on 18 February 2011), by which the use of the land was sought to be altered to “industrial purpose”. The NGT came to the conclusion that this part of the notification was beyond its jurisdiction since the Town and Country Planning Act 1973 of the State of Chhattisgarh is not one of the notified statutes in relation to which it has jurisdiction. To challenge this finding, it has been urged on behalf of the appellant that the appellant, for the purpose of the said relief, does not challenge the EC, but asserts that the conditions of the EC would stand violated by the change of land use. In this context, reliance has been placed on the following conditions of the EC:

- “ix. As proposed, green belt shall be developed in 4.62 ha (33 %) out of total 14 ha area to reduce impact of fugitive emissions. Central Pollution Control Board guidelines shall be followed in planning and developing green belt and selection of species etc.
- x. Other necessary statutory clearances from the concerned Departments including ‘No Objection Certificate’ from the Chhattisgarh Environment Conservation Board (CECB) shall be obtained prior to commencement of construction and/or operation.”

- 16 The submission is that the EC has been issued in pursuance of the EIA notification, which in turn traces its source of power to the Environment

(Protection) Act 1986¹¹. The 1986 Act is a statute which is listed at Entry 5 of Schedule I of the NGT Act. Thus, it has been submitted that any breach of the EC by a proposed change of land use can be made the foundation for invoking the remedy before the NGT. Moreover, it has been urged that it was open to the appellant to invoke the jurisdiction under Section 14 of the NGT Act for contending that the change of land use notification dated 18 February 2011 would result in a violation of the EC conditions noted above and this could be remedied before the NGT in the exercise of its original jurisdiction under Section 14. It has been urged that Parliament has given overriding force to the NGT Act by Section 33.

- 17 The notification in question by which the change of land use was proposed was published on 18 February 2011. The writ petition before the High Court was instituted on 8 September 2011. In terms of Section 14 of the NGT Act, any recourse to the original jurisdiction of the NGT has to be taken within a period of six months from the date on which the cause of action of such dispute first arose. The NGT has the power to condone a delay of a further period not exceeding sixty days. Between 8 September 2011, when the writ petition was instituted, and 28 January 2013, when the High Court transferred the proceedings, the appellant was agitating the issue before the High Court. In the event that the NGT considers that the appellant has shown sufficient cause within the meaning of the proviso to sub-Section (3) of Section 14, the institution of the proceedings on 8 September 2011 would fall within the period of limitation as specified in sub-Section (3) of Section 14 read with its proviso.
- 18 Mr Sumeer Sodhi, counsel appearing on behalf of the State of Chhattisgarh, submitted that, in the present case, the appellant had invoked the appellate jurisdiction of the NGT under Section 16, which is why the proceedings were not

11 “1986 Act”

numbered as an OA, but as an appeal.

19 What seems to have transpired is that the appellant had instituted a writ petition in the High Court under Article 226 of the Constitution, which was transferred to the NGT and upon transfer, the proceedings were numbered as an appeal. The reliefs which were claimed, as already noted earlier, involved a challenge to the EC as well as a challenge to the notification dated 3 February 2011, by which the use of the land was proposed to be changed to “industrial purpose”. The challenge to the EC, as we have already noted above, is barred by limitation. However, the challenge to the change of land use, on the ground that such a change would violate a condition of the EC, is something which in the submission of the appellant would fall within the jurisdiction of the NGT provided the NGT decides to exercise its discretion to condone the delay within the meaning of Section 14(3) read with its proviso. Whether the delay should be condoned is entirely a matter for the NGT to decide.

20 We accordingly issue the following directions:

- (i) The challenge to the EC dated 1 May 2008 is barred by limitation;
- (ii) The proceedings are remitted back to the NGT for determining as to whether the challenge to the proposed modification of the land use to “industrial purpose” through the notification dated 3 February 2011 can be entertained within the extended period as prescribed by the proviso to Section 14(3) of the NGT Act;
- (iii) The NGT, in considering the aspect which is referred to in (ii) above, shall be at liberty to determine whether sufficient cause has been shown by the appellant for condoning the delay; and

- (iv) We clarify that we have not expressed any opinion on the merits of the rival contentions. Should the delay be condoned, the NGT would be at liberty to take a decision on all the issues and contentions raised by the rival parties.
- 21 The appeal shall stand partly allowed in the above terms with no orders as to costs.
- 22 Pending application(s), if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Surya Kant]

New Delhi;
March 07, 2022
-S-

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THE STATE OF UTTAR PRADESH & ORS. ETC. ETC A

v.

UDAY EDUCATION AND WELFARE TRUST AND ANR. ETC.
ETC.

(Civil Appeal Nos.2407–2412 of 2021) B

OCTOBER 21, 2022

[B. R. GAVAI AND B. V. NAGARATHNA, JJ.]

National Green Tribunal Act, 2010: ss. 19(1), 20, 22 – Wood Based Industries [Establishment and Regulation] Guidelines 2016 – Need for sustainable development – Provisional license – Issuance of, for establishment of Wood based industries-WBIs – Timber assessment for Trees Outside Forest-TOF in the State of U.P. for WBIs by the Forest Survey of India-FSI – E-lottery held for grant of licenses to various WBIs and issuance of provisional licenses to 1215 successful applicants in the 8 categories to set up their WBIs – Subsequently, issuance of notice by the Government of UP communicating the same to WBIs – Challenged to, by the respondent – Direction by the National Green Tribunal to the U.P. State to submit a report and to review its notice with regard to the establishment of new WBIs –NGT then quashed and set aside the notice issued by the State Government for establishing new WBIs and all the provisional licenses given – NGT held that WBIs can be allowed to operate only after ensuring timber and raw material availability to sustain such industries and this was to be determined in actual terms and not on mere assumptions – On appeal, held: Estimation arrived at by the FSI was by applying a proper and adequate scientific method – Courts should not enter into an area that is the domain of the experts – Duty of the State as well as its citizens to safeguard the forest of the country – Principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens – Furthermore, before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons stopping investment in the State, prejudicing the interests of the farmers; the credentials of the applicants must be tested – While protecting the environment, the need for sustainable development has also to be taken into consideration and a proper C
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A *balance between the two has to be struck – For the sustainable development of the State and on account of the availability of the timber, sanction of granting licenses can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to – Thus, the State Government directed*

B *to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied – Impugned orders of the NGT are not sustainable in law and thus, are quashed and set aside.*

C **Allowing the appeals, the Court**

D **HELD: 1.1 This Court had accepted the recommendations of the CEC wherein the CEC had computed the total availability of timber and had also taken into consideration the availability of timber from the prohibited category. Even as per the assessment of the IPIRTI, the timber requirement of a plywood unit is required to be taken as ‘NIL’ on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as raw material. [Para 49 & 59][797-D; 801-D-E]**

E **1.2 As per the 2016 Guidelines, the SLC was reconstituted in the State of U.P. The SLC was to assess the availability of timber by commissioning studies, preferably in collaboration with institutes/universities of repute, once in five years. In accordance with the 2016 Guidelines, the FSI conducted the survey and submitted its report in March 2018. For conducting the survey,**

F **the FSI acquired satellite data for the inventoried districts of Uttar Pradesh from National Remote Sensing Centre, Hyderabad. The entire gambit of scientific methodology was applied. FSI had also divided the State of Uttar Pradesh into 9 Agro-climatic zones to generate the estimate of growing stock and annual potential production. The contention of the respondents that the rotation method was not applied is totally incorrect. [Para 64-67][803-G-**

G **H; 804-A, F; 805-B-C]**

H **1.3 Estimation arrived at by the FSI was by applying a proper and adequate scientific method. However, it is surprising that the learned NGT has brushed aside such a scientific exercise. A**

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body having expertise in the field, i.e. the FSI, upon a scientific study, has concluded that there is sufficient timber available in the State of Uttar Pradesh. [Para 70, 71 & 89][806-B-C; 812-F-G] A

1.4 FSI has also emphasized the need of promoting TOF. It has been observed that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economy of the rural area, and environmental amelioration in the urban area and feed WBIs with raw material and thus generate significant employment. [Para 74][808-B-C] B

2.1 Prohibited trees cannot be felled unless permission to fell such tree has been obtained in writing from the competent authority. The tree owners are also required to maintain 10 trees in place of each tree felled. It is thus clear that there is no absolute prohibition for felling the trees which are in the prohibited category. However, the same can be done only in exceptional circumstances [Para 76][808-E-F] C D

2.2 It is settled that the Courts should not enter into an area that is the domain of the experts. FSI, which is undisputedly an expert body, had arrived at its estimation based on the scientific method. NGT has failed to take into consideration the stand of the MOEFCC, which also supported the stand of the State that sufficient timber was available legally to run the new WBIs. [Para 79, 81][809-D-E; 810-A] E

2.3 Decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. The scope of judicial review has been succinctly explained by this court in the case of *Tata Cellular vs. Union of India* [1994] 6 SCC 651.[Para 83][810-F-G] F

3.1 It is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other. While protecting the environment, the need for sustainable G

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A development has also to be taken into consideration and a proper balance between the two has to be struck. [Para 87 & 88][812-E-F]

3.2 It is also emphasized that if the new WBIs are permitted, it will reduce the import of WBIs produce. However, all these aspects have not been taken into consideration by the learned NGT. Court is of the view that the NGT has taken a lopsided view. It has failed to take into consideration the concerns expressed by the State. NGT has committed patent error in ignoring the expert's report and sitting in appeal over the same. NGT has also failed to take into consideration the stand taken by the MOEFCC, which supported the stand of the State. Impugned orders of the learned NGT are not sustainable in law. [Para 91 & 94][813-F; 814-E-G]

3.3 On the date on which the review applications were rejected, 1215 provisional licenses were already granted and 633 units had already been established and commenced production, NGT has passed the impugned order which adversely affects their interest. It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens. When the learned NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19[1] of the NGT Act, it is bound to follow. [Para 95][815-A-C]

3.4 This court finds that before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and *bonafides* of the applicants must be tested. [Para 99][816-C]

4.1 Though this court is allowing the appeals, setting aside the orders of the learned NGT, and upholding the action of the State Government in granting licenses, the court would like to remind the State and its authorities that it is their duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The court directs the State Government to

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ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied. [Para 100 & 102][816-F; 819-E] A

4.2 The impugned orders passed by the learned National Green Tribunal, Principal Bench, New Delhi as well as in the Review Applications are quashed and set aside. [Para 103][819-F-G] B

Common Cause vs. Union of India and others (2017) 9 SCC 499; [2017] 13 SCR 361; *Mantri Techzone Private Limited vs. Forword Foundation and others* [2019] 18 SCC 494; *Municipal Corporation of Greater Mumbai vs. Ankita Sinha and Ors.*(2021) SCC OnLine SC 897; *Pragnesh Shah vs. Dr. Arun Kumar Sharma and others* [2022] SCC OnLine SC 79; *T ata Cellular vs. Union of India* (1994) 6 SCC 651 : [1994] 2 Suppl. SCR 122 Para 83; *Samatha vs. State of A.P. and Ors.*(1997) 8 SCC 191 : [1997] Suppl. SCR 305; *State of H.P. and others vs. Ganesh Wood Products and others* (1995) 6 SCC 363 : [1995] 3 Suppl. SCR 477; *Essar Oil Ltd. vs. Halar Utkarsh Samiti and others* (2004) 2 SCC 392 : [2004] 1 SCR 808; *Indian Council for Enviro–Legal Action vs. Union of India and others* (1996) 5 SCC 281 : [1996] 1 Suppl. SCR 507; *Maharashtra Land Development Corporation and others vs. State of Maharashtra and another* (2011) 15 SCC 616 : [2010] 15 SCR 37; *Glanrock Estate Private Limited vs. State of Tamil Nadu* (2010) 10 SCC 96 : [2010] 12 SCR 597; *T.N. Godavarman Thirumulkpad vs. Union of India and others* AIR 1997 SC 1228 : [1996] 9 Suppl. SCR 982 – referred to. C D E F

Case Law Reference G

[2017] 13 SCR 361	referred to	Para 36	
[1994] 2 Suppl. SCR 122	referred to	Para 83	
[1997] Suppl. SCR 305	referred to	Para 101	
[1995] 3 Suppl. SCR 477	referred to	Para 101	
[2004] 1 SCR 808	referred to	Para 101	H

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SUPREME COURT REPORTS

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- A [1996] 1 Suppl. SCR 507 referred to Para 101
 [2010] 15 SCR 37 referred to Para 101
 [2010] 12 SCR 597 referred to Para 101
- B [1996] 9 Suppl. SCR 982 referred to Para 101

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.2407-2412 of 2021.

- C From the Judgment and Order dated 02.12.2020 of the National Green Tribunal, Principal Bench, New Delhi in Review Application Nos.40 and 41 of 2020 and dated 21.12.2020 in Review Application No.42 of 2020 and dated 18.02.2020 in Original Application Nos.313, 335 and 396 of 2019.

With

- D Civil Appeal Nos.3144-3146, 3132-3134, 3135-3137, 3138, 4061-4062, 3141, 2547-2548, 3142-3143, 3147-3149 Of 2022

- E Ms. Aishwarya Bhati, ASG, Vikas Singh, P.S. Patwalia, Rana Mukherjee, V. Giri, Syed Waseem Qadri, Sr. Adv., V. K. Uniyal, Vinay Navare, V.K. Shukla, Dhruv Mehta, Brijender Chahar, Sr. Advs., Kamendra Mishra, Ms. Prerna Singh, Guntur Pramod Kumar, Rajeev Kumar Dubey, Saurabh Singh Chauhan, Ms. Saroj Tripathi, Md. Rashid Saeed, Saeed Quadri, Dinesh Kumar Garg, Abhishek Garg, Dhananjay Garg, Ishaan Tiwari, Satyajeet Kumar, Rajesh Srivastava, Gaurav Verma, Neeraj Datt Gaur, Lokesh Kumar Choudhary, A. Lakshminarayanan, Rudraksh Gupta, A. Velan, Akhil P. Philip, Vishwadeep Chauhan, Vikalp
- F Sharma, Ankolekar Gurudatta, Ajay Singh, Ram Kumar, Debasis Mukherjee, Lokesh Kumar Choudhary, Vivek Gupta, Mrinmay Bhattmewara, Rajvir Singh Bhati, Shyam R. Agarwal, Namit Saxena, Ms. Suhashini Sen, Ms. Archana Pathak Dave, Ms. Chinmayee Chandra, Varun Chugh, Gurmeet Singh Makker, Ansar Ahmad Chaudhary, Rashid
- G Hasan, Ms. Shehla Chaudhary, Md. Anas Chaudhary, Dr. Vinod Kumar Tewari, Alok Kumar, Nihal Ahmad, Arvind Kumar Shukla, Amit Kumar, Ms. Prachi Goyal, Ms. Anu Singla, Tushar Swahi, Vasu, Arvind Kumar Shukla, Vasu Chaudhar, Ms. Prachi, S. K. Verma, Zulfiker Ali P. S, Advs. for the appearing parties.

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THE STATE OF U.P. & ORS. ETC. ETC v. UDAY EDUCATION AND WELFARE TRUST AND ANR. ETC. ETC. 787

The Judgment of the Court was delivered by A

B. R. GAVAI, J.

1. For the reasons stated in the applications for impleadment/intervention, the same are allowed.

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

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

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

FACTUAL BACKGROUND

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

6. There are series of orders passed by this Court and the Central Empowered Committee (hereinafter referred to as “CEC”) appointed by this Court, issuing various directions for prohibiting/regulating the felling of trees as well as the establishment of WBIs. We will refer to them extensively in the subsequent paragraphs. F

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

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

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

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

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

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

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(Forest), U.P. and the Principal Chief Conservator of Forest, U.P. to examine the issues. A

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

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

15. The State of Uttar Pradesh filed an Interlocutory Application No.732 of 2019 in O.A. Nos. 313, 335 and 396 of 2019, seeking modification of the order dated 6th August 2019 and the order dated 1st October 2019. Vide order dated 18th December 2019, the learned NGT issued directions to the State Government to provide certain data. Subsequently, vide the impugned order dated 18th February 2020, the learned NGT allowed the said Original Applications and quashed and set aside the notice dated 1st March 2019 issued by the State Government for establishing new WBIs and all the provisional licenses given. D
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16. Being aggrieved thereby, Civil Appeal (Diary) No.12004 of 2020 was filed before this Court. Vide order dated 26th October 2020, this Court dismissed the said appeals as withdrawn with a liberty to file review application before the learned NGT. Vide orders dated 18th March 2020, 2nd December 2020, and 21st December 2020, the learned NGT rejected the Review Applications. F

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

SUBMISSIONS

18. We have heard Shri Vikas Singh, Shri P.S. Patwalia and Mr. Rana Mukherjee, learned Senior Counsel appearing on behalf of the H

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

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

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

F 21. Shri P.S. Patwalia, learned Senior Counsel also submitted that the decision of the State Government was in tune with the decision of this Court dated 18th May 2007 and 5th October 2015 passed in Writ Petition (Civil) No.202 of 1995 (*T.N. Godavarman Thirumulpad vs. Union of India*). It is submitted that when an expert body like the FSI had done an elaborate study, there was no reason for the learned NGT to have sat in appeal over the same. He further submits that though a detailed affidavit has been filed on behalf of the State of Uttar Pradesh in compliance with the order of the learned NGT dated 18th December 2019, regarding the availability of timber, the learned NGT has totally ignored the same.

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

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

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

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

26. Ms. Prerna Singh, learned counsel appears for the appellants, who have been granted provisional licenses for plywood (press only) H

A category. She submits that for plywood (press only) industries, there is no requirement of consumption of timber directly. It is submitted that initially veneer is manufactured out of round/fresh timber. Veneer then so manufactured is glued and pressed together to manufacture plywood. It is submitted that the learned NGT has considered the requirement of timber as twice the actual requirement. She submits that in the State of B Uttar Pradesh, veneer is manufactured in surplus, which is exported to the State of Haryana.

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

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

29. Shri Dhruv Mehta, learned Senior Counsel appearing on behalf of the respondent No.1, on the contrary, submits that this Court has repeatedly held that the principles of sustainable development, the precautionary principle and the polluter pays principle are to be followed E consistently. He raised a preliminary objection on the ground that in view of Section 22 of the NGT Act, the scope of an appeal before this Court could be limited to that of Section 100 of the Code of Civil Procedure, 1908. It is, therefore, submitted that unless a substantial question of law F is raised, the appeal could not be tenable.

30. Shri Dhruv Mehta submits that this Court vide order dated 12th December 1996 has specifically prohibited the felling of trees in any forest, public or private. He further relies on the report of CEC dated 15th March 2005 to buttress his submission that WBIs can be permitted G only if they exclusively use timber derived from poplar and eucalyptus species or agriculture waste products. It is submitted that the said guidelines also specifically provided that if the unit is found to have used any timber other than poplar and eucalyptus whether from a legal source or otherwise, the license granted to the unit shall be liable to be cancelled. He further relies on the report of CEC dated 12th October 2006. He H submits that an assessment has to be done on the basis of the district-

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wise survey about timber availability from the TOF category. He submits that the said report of CEC itself would reveal that the assessment of the State is much less than what was initially projected by the State Government. He submits that unless the timber availability for the new WBIs is assessed and the SLC examines and recommends its approval, it is not permissible to establish new WBIs. A

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

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

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

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

A that if 20.75 lakh cubic meters is deducted from the availability of the timber, then the timber available in the State would be much less.

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

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

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

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

G Learned Senior Counsel, therefore, submits that the impugned orders deserve to be quashed and set aside.

¹(2017) 9 SCC 499

²(2019) 18 SCC 494

³2021 SCC OnLine SC 897

⁴2022 SCC OnLine SC 79

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EARLIER ORDERS OF THIS COURT A

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

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

“6. Each State Government should within two months, file a report regarding –

- (i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership; C
- (ii) the licenced and actual capacity of these mills for stock and sawing;
- (iii) their proximity to the nearest forest;
- (iv) their source of timber. D

7. Each State Government should constitute within one month, an Expert Committee to assess:

- (i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;
- (ii) The number of existing saw mills which can safely be sustained in the State; E
- (iii) The optimum distance from the forest, qua that State, at which the saw mill should be located.”

41. Vide subsequent order dated 4th March 1997⁵, this Court directed thus: F

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

⁵(1997) 3 SCC 312

H

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

43. Vide order dated 29th October 2002⁶, this Court further directed thus:

B “44. No State or Union Territory shall permit any unlicensed sawmills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any sawmills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance with this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee.

C
D 45. It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licences.”

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

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

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

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

H 48. It is to be seen that in its report itself, the CEC included 17.77 lakh cubic meters of timber from the prohibited species. This Court

⁶(2008) 16 SCC 337

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considered the report of CEC and passed the following order on 18th May 2007: A

“The matters relate to Saw Mills, Plywood and Veneer Units.

The CEC has considered the availability of wood for the industries, which was assessed as 43.70 lakh cu. mt from trees outside forests and 02.00 lakh cu. mt from Government Forests. B

It has also assessed the units into four categories.

We accept the CEC’s recommendations. The Saw Mills, Plywood and Veneer Units may be permitted, on the basis of the recommendations made by the CEC. Licences may be given by the State Level Committees. C

If there are any objections regarding grant of Licences, the parties would be at liberty to submit their applications before the CEC for consideration.”

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

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

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

51. In view of the permissions granted by this Court, the licenses were granted to the unlicensed sawmills which were closed on account of the orders passed by this Court taking into consideration the availability H

A of timber between 2007 and 2010. However, it is to be noted that the said licenses were granted only to the units which were closed and not to the new units.

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

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

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

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

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

**“CATEGORY I - MATTERS RELATING TO WOOD
BASED INDUSTRIES:**

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

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

(ii) In each State/UT for which the SLC has so far not been constituted, the SLC under the Chairmanship of the Principal Chief Conservator of Forests with a representative of the Ministry of Environment and Forest and Climate Change (“MoEFCC”) and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/ equivalent rank will immediately be constituted; C

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

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

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

56. It is thus seen that vide the said order, SLCs were authorized to take decisions regarding the grant of license/permission to the WBIs. Vide the said order, it was also directed to constitute SLC under the Chairmanship of the Principal Chief Conservator of Forest with a representative of MOEFCC and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank. This Court further directed the G H

- A SLCs to be constituted in each State/Union Territory for which the SLC was not yet constituted. The MOEF was also authorized to issue appropriate guidelines in conformity with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to the assessment of timber availability for WBIs. Appeals could be filed before MOEFCC against the decision of the SLC.

B

MOEFCC GUIDELINES

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

D

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

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

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The timber requirement of a plywood unit may be taken as 'nil' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as the raw material produced by the veneer units. The plywood units use presses of various sizes such as 8x4x6, 8x4x12, 8x4x15, 4x4x7, 4x4x10. A 8x4x10 capacity press can produce upto 10 plywood pieces of 8'x4' size per hour whereas a 8x4x15 capacity press can produce upto 15 plywood pieces of 8'x4' size per hour and so on. The normative installed capacity of the plywood units will accordingly depend upon the number and the type of presses. This number and type of presses installed in each of the plywood unit may be assessed and thereafter equivalent number or presses of 8x4x10 capacity may be calculated. The normative annual timber requirement for a integrated plywood unit having a 8x4x10 capacity press may be taken as 2000 cu.mt. per annum, and accordingly the total requirement of timber for the plywood units should be calculated."

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

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

61. Subsequently, in accordance with the 2016 Guidelines, the SLC assessed the availability of timber for WBIs in the State of Uttar Pradesh, through the FSI. For assessing the availability of timber, the FSI conducted a survey and arrived at the annual potential production of timber from TOF in rural areas of all the districts of the State. FSI assessed the annual potential production from TOF at 77.74 lakh cubic meters. Subsequent to the survey and assessment, the SLC in its meeting dated 4th May 2018 considered the matter for grant of license to various WBIs. The SLC decided to get the reassessment done by IPIRTI to determine the correct number of new licenses to be issued to WBIs

A under different categories against the available timber. However, subsequently, the SLC, in its meeting dated 7th September 2018, found that IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was also found that the State of Haryana had adopted the timber consumption figures based on the CEC figures of 2007. It was therefore unanimously
 B resolved by the SLC that there was no need for any fresh study/assessment for the consumption of timber by WBIs to be conducted by IPIRTI and to adopt the figures for WBIs as were referred to in the 2016 Guidelines. It further found that the CEC in its meeting dated 26th
 C May 2010 had reduced the annual consumption of timber of sawmills upto 10 Horse Power or less HP to 270 cubic meters from 540 cubic meters.

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

CONSIDERATIONS

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

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

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

(3) that it is the stand of the State of Uttar Pradesh that the
 H total potential availability of timber per year in the State of

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Uttar Pradesh is 80.30 lakh cubic meters, which includes 2.56 lakh cubic meters from the Government forests and 77.74 lakh cubic meters from TOF. Out of 80.30 lakh cubic meters, 71.8 lakh cubic meters were stated to be available from 22 species and 8.50 lakh cubic meters from the other species. Out of 22 species, there are 10 species that are prohibited from felling and as such, 20.75 lakh cubic meters from these 10 species are liable to be excluded;

- (4) that the major contribution is from Eucalyptus (28 lakh cubic meters) and Poplar species (15 lakh cubic meters), a total of which is 43 lakh cubic meters. Thus, the figure is not actual but presumptive;
- (5) that the standard error percentage adopted by the FSI is not correct and is much higher;
- (6) that the total availability of timber for consumption including that from the government forests would not be more than 40-45 lakh cubic meters per year;
- (7) that the potential availability of 77.74 lakh cubic meters from TOF as given in the affidavit has been overestimated.

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

65. One of the duties which was cast upon the SLC was to assess the availability of timber for wood based industrial units in the State. The SLC was to assess the availability of timber by commissioning studies, preferably in collaboration with institutes/universities of repute, once in

A five years. In accordance with the 2016 Guidelines, the FSI conducted the survey and submitted its report in March 2018. It will be relevant to refer to the relevant part of the Foreword of the said report of the FSI.

B “In the recent past, a number of requests were received for establishment of wood based industries in the state for which the raw material would come from outside the forest areas. Since accurate assessment of TOF is needed for effective planning & management, Uttar Pradesh Forest Department requested FSI to make Agro-Climatic zone wise assessment on the basis of inventory already done during its regular course of inventory conducted in the State. As per the final report, the total stems as estimated from the study is 299.43 million with a volume of 79.40 m. cum. The total yield in the Uttar Pradesh is estimated 7.8 million cum.

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

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

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

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and volumes under block, linear and scattered stratum. By aggregating the estimates of stems and volume of all the three strata, the estimates of stems and volumes according to species and diameter class has been prepared for Rural area separately.” A

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

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

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

$$\text{Yield} = 2\text{GS}/\text{R}$$

Where GS: Growing Stock

R: rotation period E

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

[emphasis supplied] H

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

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

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

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

C 72. The FSI has published a paper on “Trees Outside Forest Resources in India”. The contributors to the said paper are (1) Dr. Subhash Ashutosh, DG, FSI; (2) Prakash Lakhchaura, DDG, FI, (3) Kamal Pandey, DD, FI; (4) Dr. Sourav Ghose, Proj. Scientist D; (5) Sushila Tripathi; and (6) H.K. Tripathi. The paper shows that the timber and panel products of TOF origin have emerged as the major alternative to

D timber from forests and thus TOF have significantly obviated pressure from forests. The report shows that, the extent of TOF in the country has been assessed at 29.38 m hectare, which is around 8.94% of the total geographical area of the country. The report further shows that based on the recommendations of the National Commission on Agriculture (NCA, 1976), the Government of India launched a social forestry program in the late seventies on a large scale. The paper further shows that, these days satellite data in a wide range of spectral, spatial, radiometric and temporal resolutions are available from various Remote Sensing Agencies of several countries. It further shows that there has been a rapid advancement in the development of digital image processing software. It, therefore, observes that the desired mapping of natural resources with reasonable accuracy is possible. The report refers to the methodology of assessment of TOF in different countries of the world and refers to various authorities. It refers to different types of methodologies used for different periods; the first one being from 1991 to 2001; the second period being from 2001 to 2016; and the third period being from 2016 onwards. The report shows that the State of Maharashtra has the highest potential annual yield of timber in India followed by the States of Uttar Pradesh and Karnataka.

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

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

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

Occupying nearly 9% of the geographical area of the country, TOF are significant natural, renewable resource which make vital contribution to the agro-ecology, socio-economy of the rural areas, environmental amelioration in the urban areas and feed wood based industries with the raw material and thus generate significant employment. TOF form a nearly 38% of the carbon sink in forest & tree cover of the country. TOF offers the path for achieving the national policy goal of 33% of forest & tree cover in the country.

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A Through expansion of TOF, particularly in agro-forestry and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030.”

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

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

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

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

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78. It is further to be noted that in pursuance of the order of the learned NGT dated 28th March 2019, a Committee of Experts [Joint Committee comprising of representative of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P.] had submitted its report on 3rd August 2019. Not only this, but in pursuance of the directions issued by the learned NGT on 18th December 2019, another detailed affidavit was filed on behalf of the State Government on 21st January 2020, giving therein the details about the availability of timber. It was specifically stated in the said affidavit that eucalyptus and poplar are the main species of TOF and 80% of the wood is derived therefrom. It was further pointed out that the farmers in the State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen. It was also pointed out that there would be an expected investment of about Rs.3000 crore in the State with the establishment of new WBIs. The same would employ more than 80000 people, mostly in the rural areas of the State. However, all these factors have been ignored by the learned NGT.

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

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

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

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

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

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

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

1. Whether a decision-making authority exceeded its powers?

H ⁷(1994) 6 SCC 651

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2. Committed an error of law, A
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers. B

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

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

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

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

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

85. With regard to the contention of Shri Dhruv Mehta, learned Senior Counsel, that Annexure I to the 2016 Guidelines providing the timber requirement of a plywood unit to be taken as “NIL” is contrary to the CEC recommendations is concerned, we do not find any substance in the said submission. Firstly, 2016 Guidelines have been issued by the MOEFCC in pursuance of the directions issued by this Court dated 5th October 2015. In any case, the raw material for plywood industries is H

A ‘Veneer’ and the raw material for veneer is ‘timber’. We find substance in the contention of the appellants that, if timber is to be considered again as a raw material for plywood, then it will amount to showing the consumption of the same timber more than once, which is, in fact, not consumed. It is not in dispute that veneer is a raw material for plywood, which is derived from timber. The same timber is used for deriving veneer and such veneer, which is used for manufacturing plywood, cannot be counted twice. In any case, as long as the 2016 Guidelines which are issued in pursuance of the directions issued by this Court are not set aside, the contention in that regard is without substance.

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

CONCLUSION

87. It cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other.

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

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

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against the process of issuing new licenses to the WBIs by the State Government. A

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

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

92. It will be relevant to note that the Forest Research Institute, Dehradun, Uttarakhand has published 'Country Report of Poplars and Willows Period : 2012-2015'. The report states that the timber from poplar and willow is the backbone of vibrant plywood, board, match, paper and sports goods industries. The report further states that in tune with Indian Agroforestry Policy 2014, the plantation of poplar has been promoted. It further states that the Planning Commission of India has G H

A given special grants to certain States for the diversification of agriculture where farmers are advised to move away from paddy cultivation to sustain agricultural production. Poplar and eucalyptus are among the few trees promoted under this diversification plan. The report states that Poplar plays a significant role in rural development by generating employment for many categories of skilled, semi-skilled and unskilled workers.

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D 93. The paper on “Trees Outside Forest Resources in India” published by the FSI, cited supra, also emphasizes that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economic improvement of the rural areas, environmental amelioration in the urban areas and feed WBIs with raw material and thus generate significant employment. TOF form nearly 38% of the carbon sink in the forest and tree cover of the country. It states that TOF offers the path for achieving the national policy goal of 33% of forest and tree cover in the country. It states that through the expansion of TOF, particularly in agro-forestry and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030.

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

H 95. There is another reason, in our view, why the order of the learned NGT would not be sustainable. Though, on the date on which

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

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

97. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants, i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.

98. Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in the case of *Ankita Sinha and Others*

A (*supra*) to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take *suo motu* cognizance. However, when the credentials and *bonafides* of a litigant approaching the learned NGT are seriously raised, the same cannot be
B ignored.

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

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

101. The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. In this regard, it will be apposite to refer to
G certain earlier pronouncements of this Court.
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(a) In the case of *Samatha vs. State of A.P. and Ors.*⁸, a three-Judge Bench of this Court after referring to the earlier judgment in the case of *State of H.P. and others vs. Ganesh Wood Products and others*⁹ observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

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

“While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not

⁸ AIR 1997 SC 3297 = (1997) 8 SCC 191

⁹ (1995) 6 SCC 363

¹⁰ (2004) 2 SCC 392

¹¹ (1996) 5 SCC 281

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A hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment.”

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

C “27. Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in *T.N. Godavarman Thirumulpad v. Union of India* (Writ Petition No. 202 of 1995), it has been held that ‘intergenerational equity’ is part of Article 21 of the Constitution.

D 28. What is intergenerational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then intergenerational equity would stand violated.

E 29. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The ‘precautionary principle’ and the ‘polluter pays principle’ flow from the core value in Article 21.

F 30. The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about intergenerational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle.”

G (d) Of course, one cannot ignore one of the several dicta of this Court in *T.N. Godavarman Thirumulpad vs. Union of India and others*¹⁴ wherein this Court enunciated the definition of “forest” in the following words:

“4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological

¹²(2011) 15 SCC 616

¹³(2010) 10 SCC 96

H ¹⁴AIR 1997 SC 1228

THE STATE OF U.P. & ORS. ETC. ETC v. UDAY EDUCATION AND WELFARE TRUST AND ANR. ETC. ETC. [B. R. GAVAI, J.] 819

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

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

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

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

Nidhi Jain and Anurag Bhaskar
(Assisted by : Rahul Kumar, LCRA)

Appeals allowed.

Item No.04

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Appeal No.05/2021/EZ
(I.A. No.78/2021/EZ)

IN THE MATTER OF:

Anand Kumar Jha

Son of Shri Bhalchandra Jha,
Resident of Type-B, Dakra,
Dakra Colliery,
Ranchi

.....Appellant(s)

Versus

1. Union of India,

Through its Secretary,
Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhawan, Jor Bagh Road,
New Delhi-11003;

2. Jharkhand State Pollution Control Board,

Through its Member Secretary,
H.E.C., Dhurwa,
Ranchi-834004;

3. State of Jharkhand,

Through Chief Secretary,
Project Bhawan, Doranda,
Ranchi-834002;

4. Damodar Valley Corporation (DVC),

Through its Chairman-cum-Managing Director DVC Towers,
VIP Road, Kolkata-700054

.....Respondent(s)

Date of hearing: 15.05.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Appellant(s) : Mr. Kaustav Dhar, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Apurba Ghosh, Advocate for R-1,
Mr. Ashok Prasad, Advocate for R-2 (in Virtual Mode),
Ms. Aishwarya Rajyashree, Adv. for R-3 (in Virtual Mode),
Mr. Sanjay Upadhyay, Advocate a/w
Mr. Prasun Mukherjee, Advocate and
Mr. Deepak Agarwal, Advocate for R-4

ORDER

1. This Appeal has been filed by the Appellant seeking quashing of the Environmental Clearance dated 28.04.2021 granted to the Respondent No.4, Damodar Valley Corporation (DVC), for Tubed Coalmine Project of 6 MTPA in the District of Latehar, Jharkhand.
2. The contention of the Appellant is that the said mining block is located in an area of 460 ha; the EIA report of the project does not estimate the background concentration of Mercury (Hg) and Chromium (Cr) in Particulate Matter as required by Standard ToR No.15; there is no detailed timeline, maps etc. provided in the EIA report with respect to Additional ToR No.15; no details have been given in the EIA report regarding ecological restoration and mine reclamation plan prepared with local/native species found in the area as was required by Additional ToR No.3; the Palamau Tiger Reserve and other Protected areas are in close proximity to the site of the Tubed Coalmine Project and there is no presence of Schedule-I species which appears to be unlikely.
3. In the present Appeal the Environmental Clearance dated 28.04.2020 is under challenge, as such the Tribunal raised a preliminary objection regarding limitation.
4. Learned Counsel for the Appellant has relied upon the judgment of the Hon'ble Supreme Court dated 23.09.2021 in *Miscellaneous Application No. 665 of 2021 in SMW(C) No. 03 of 2021; Re: Cognizance for Extension of Limitation*. It is mentioned therein that the limitation period has itself been extended by the Hon'ble Supreme Court by the said judgment in cases where limitation would have expired during the period from 15.03.2020 till 02.10.2021.

5. The Respondent No.4, Damodar Valley Corporation, has filed counter-affidavit dated 26.04.2022 wherein a preliminary objection of limitation has been taken. The second ground of objection is whether the Appellant can be permitted to maintain the present Appeal as an 'aggrieved person'.
6. We will first take up the second issue namely as to whether the Appellant can be said to be an aggrieved person within the meaning of Section 16 and 18 of the National Green Tribunal Act, 2010 to entitle him to maintain the present Appeal. Section 16 of National Green Tribunal Act, 2010, reads as under: -

"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 33A 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);

(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);

(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);

(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);

(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),

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.

7. Section 18 of the National Green Tribunal Act, 2010 reads as under: -

18. Application or appeal to Tribunal-

(1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by--

(a) the person, who has sustained the injury; or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organization.”

8. In the paragraph-1 under the heading ‘Facts’ in the Memo of Appeal the Appellant has described himself as a resident of Village Dakra in Ranchi District of Jharkhand and he *“is stated to be concerned by the environmental impact of the mining activities of the Respondent No.4 in the State of Jharkhand”*. It is stated that the Appellant has been observing for the past several years that the air quality in various parts of the State of Jharkhand especially in the region around the coal mines has severely deteriorated due to large number of coal mines in Jharkhand. The Appellant is stated to have observed that due to pollution being caused, there is an

increase in the respiratory illness in the persons residing in the region and he has been raising the issue of pollution and other environmental issues due to coal mines in electronic and other media. It is also stated that the Appellant being a resident of Jharkhand is concerned by the grant of Environmental Clearance to Tubed Coal Mines Project of Respondent No.4 and hence has filed the present Appeal.

9. In our opinion, merely saying that he is concerned with pollution in Jharkhand, the Appellant cannot be said to be a 'person aggrieved' within the meaning of Section 16 and Section 18 of the National Green Tribunal Act, 2010. The Tubed Coal Mines Project of the Respondent No.4 is located in Latehar District of Jharkhand. The Appellant is not a resident of Latehar District nor has he stated that he is a resident of any of the villages which may fall within the area of operation of the Tubed Coal Mines Project of the Respondent No.4. The Project Proponent in its counter-affidavit has stated that the place of residence of the Appellant is about 200 km from the Project site.
10. Among the various issues raised for assailing the grant of Environmental Clearance to the Respondent No.4 one of the grounds taken by him is that 'Public Consultation' was not conducted as per the EIA Notification, 2006 and that the process of 'public consultation' has not been done in the present case while granting Environmental Clearance to the Project of Respondent No.4.
11. Nowhere in the body of the Appeal has the Appellant claimed that he had sought hearing during public consultation as a matter of right but was not given such opportunity. None of the persons who

live in the vicinity of the villages covered by the Tubed Coal Mines Project of the Respondent No.4 are present before this Tribunal to complain that they were not provided opportunity of public hearing and that public consultation was not held as per the EIA Notification, 2006.

12. In this view of the matter, we hold that the Appellant is not a person aggrieved within the meaning word “any person aggrieved” under Section 16 and Section 18 of the National Green Tribunal Act, 2010.
13. Mr. Sanjay Upadhyay, learned Counsel for the Project Proponent submitted that it is also not disclosed in the body of the Appeal other than what has been reproduced hereinabove and which is based upon the Appellant’s own disclosure, to show what are his credentials and *bonafides* in approaching the Tribunal. Reliance has been placed on the judgment of the Hon’ble Supreme Court in *Civil Appeal No.2407-2421 of 2021, State of Uttar Pradesh & Ors. vs. Uday Education and Welfare Trust & Anr.*
14. The Hon’ble Supreme Court in *Civil Appeal No.2407-2412 of 2021, The State of Uttar Pradesh & Ors. Etc. Etc. vs. Uday Education and Welfare Trust & Anr. Etc. Etc.* and connected cases, has held that when issues and objections to the credentials and *bonafides* of litigants approaching the National Green Tribunal are seriously raised, the same cannot be ignored. Before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and *bonafides* of the Applicants must be tested. The Hon’ble Supreme Court, therefore, laid stress

that when credentials and *bonafides* of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to affect the rights of many, the National Green Tribunal should ensure the *bonafides* and credentials of such litigants. The Hon'ble Supreme Court also observed that the Tribunal must examine questions as to what were the aims and objectives of the Applicants and what are their sources of funding etc. Merely filing some Public Interest Litigations in the past would not suffice. Paragraphs-96 to 99 of the said judgment read as under: -

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

97. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants, i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.

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

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

15. In the present case, nothing has been indicated by the Appellant as to why he is **only** concerned by the environmental impact of the mining activities of the 'Respondent No.4' in the State of Jharkhand as stated by him in paragraph-1 of the **“FACTS”**. What is his source of funding to maintain the Appeal or to take up such

environmental issues has not been disclosed. Assailing the Environmental Clearance, several scientific and technical facts and documents have been referred to by the Appellant; what is his source of funding and source of obtaining such documents, has not been disclosed. Not a single person who may be said to be a resident of any village affected by the mining operation of the Tubed Coal Mines Project of the Respondent No.4 is before us. Therefore, a serious shadow of doubt is cast upon the credentials and *bonafides* of the Appellant to maintain the present Appeal and in our considered view he cannot be said to be a 'person aggrieved' within the meaning of Section 16 and Section 18 of the National Green Tribunal Act, 2010 and, therefore, this Appeal is not maintainable at the behest of the Appellant.

16. The next preliminary issue raised by the Respondent No.4 is with regard to limitation. The Tribunal even on the first date while entertaining the Appeal had raised the issue of limitation and the same had been kept open for decision.
17. Mr. Sanjay Upadhyay, learned Counsel for the Respondent No.4, Damodar Valley Corporation, submitted that though the Environmental Clearance was granted to the Respondent No.4 on 28.04.2020 for 06 million tonnes per annum of the Tubed Coal Mines Project and uploaded on the Website of DVC (www.dvc.gov.in) under the head 'Business' sub-heading 'mining', the recommendations for grant of Environmental Clearance was made in the 51st Meeting of Expert Appraisal Committee on 05.12.2019, the Minutes of which were uploaded on the portal and, therefore, the decision of the Expert Appraisal Committee was already in public domain and, therefore, in the knowledge of the

Appellant whereas the present Appeal has been filed after a delay of almost one and half years challenging the Environmental Clearance granted to Respondent No.4.

18. The learned Counsel has also referred to the provisions of Paragraph-8 of the MoEF&CC Notification dated 14.09.2006 also known as 'EIA Notification, 2006' and submitted that Paragraph-8 provides that the regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the Applicant within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environmental Impact Assessment Report, and where Environmental Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents.
19. Reference has also been made to Paragraph-8 (ii) which provides that the regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement and intimation of this decision shall be simultaneously conveyed to the Applicant.
20. Paragraph-8 (i) & (ii) of the EIA Notification, 2006, read as under: -

“8. Grant or Rejection of Prior Environmental Clearance (EC)-

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days.”

21. According to the Respondent No.4, the recommendations for Environmental Clearance was made in the 51st Meeting of the Expert Appraisal Committee on 05.12.2019, Minutes of which were uploaded on the website/portal on 13.12.2019. Under sub

paragraph-(i) of paragraph-8 of the EIA Notification, 2006, the period of hundred and five days (105) would end on 28.03.2020. The period of limitation has been extended by the Hon'ble Supreme Court in view of the outbreak of COVID-19 pandemic in *Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020, Re: Cognizance for Extension of Limitation* and connected cases, and on 23.03.2020 the Hon'ble Supreme Court directed extension of the period of limitation in all proceedings pending before the Courts and Tribunals with effect from 15.03.2020 till further orders and which has been further extended till 28.02.2022. The present Appeal was filed on 08.10.2021 i.e. within the extended period of limitation and, therefore, the same cannot be said to be barred by limitation.

22. However, since we have already held the Appeal to be not maintainable considering the *bonafides* and credentials of the Appellant we dismiss this Appeal as not maintainable.
23. In view of the above, the Appeal No.05/2021/EZ is dismissed.
24. Interlocutory Applications, if any stand disposed of accordingly.
25. There shall be no order as to costs.

.....
B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

May 15, 2023
 Appeal No.05/2021/EZ
 (I.A. No.78/2021/EZ)
 MN

Item No.03

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Original Application No.53/2023/EZ
(I.A. No.28/2023/EZ)

Satyabrata Sanjeev Kumar Mohanta

Applicant(s)

Versus

MoEF&CC & Ors.

Respondent(s)

Date of hearing: 18.07.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s) : Mr. Md. Akram, Advocate (in Virtual Mode)

For Respondent(s) : Ms. Anamika Pandey, Adv. for R-1 (in Virtual Mode),
Mr. Ashok Kumar Parija, Advocate General a/w
Mr. Tarun Patnaik, ASC for R-2 to 6,
Mr. Dipanjan Ghosh, Advocate for R-7,
Mr. Sanjay Upadhyay, Advocate a/w
Mr. Dhananjaya Mishra, Mr. Biswaranjan Sahoo, and
Ms. Mansi Bachani, Advocates for R-8,

ORDER

1. Mr. Md. Akram, learned Counsel holding brief of Ms. Soumya Mishra, learned Counsel is present (in Virtual Mode) for the Applicant.
2. Affidavit dated 15.07.2023 has been filed by Respondent No.8, Private Respondent; the same is taken on record.
3. Counter-affidavit dated 15.07.2023 has been filed by the Divisional Forest Officer, Keonjhar; the same is taken on record.
4. Mr. Dipanjan Ghosh, learned Counsel files Vakalatnama on behalf of the Respondent No.7, Odisha Power Transmission Corporation Limited (OPTCL); the same is taken on record.

5. We have heard the learned Counsel for the parties and perused the documents on record.
6. Final order of the said case will be uploaded in the website by separate sheets of paper.

.....
B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

July 18, 2023,
Original Application No.53/2023/EZ
(I.A. No.28/2023/EZ)
MN

Item No.03

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

**ORIGINAL APPLICATION NO.53/2023/EZ
(I.A. NO.28/2023/EZ)**

IN THE MATTER OF:

Satyabrata Sanjeev Kumar Mohanta,

Aged about 35 years,
S/o – Dambarudhara Mohanta,
At- Karadia, P.O. /P.S.- Karanjia,
Dist. –Mayurbhanj,

.... Applicant(s)

Versus

- 1. Ministry of Environment, Forest & Climate Change (MoEF&CC),**
Represented through its Secretary,
At- 2nd Floor, Agni Block,
Indira Paryavaran Bhawan,
Jorbagh Road,
New Delhi – 110003
- 2. Forest, Environment and Climate Change Department,**
Represented through its Secretary,
Government of Odisha,
Kharavel Bhavan,
Bhubaneswar,
Odisha
- 3. Divisional Forest Officer (D.F.O.), Keonjhar,**
At- Kamapala Street,
Keonjhar Town, Keonjhar,
Odisha – 758001
- 4. Collector & District Magistrate,**
At- Office of the Collector cum District Magistrate,
Collectorate, Keonjhar,
P.O./Dist. – Keonjhar,
Odisha
- 5. Divisional Forest Officer (D.F.O.), Bonai,**
At/P.O. - Bonaigarh,
Dist. – Sundergarh,
Odisha - 770038
- 6. Collector & District Magistrate, Sundergarh,**
At- District Collectorate, Sundergarh,
Office of the Collector-cum-District Magistrate,
Collectorate Sundergarh,
At/P.O. – Sundergarh,

Dist. – Sundergarh,
Odisha – 770001

7. Odisha Power Transmission Corporation Limited (OPTCL),

Represented through Managing Director,
At – Janpath Road, Gridco Colony,
Industrial Area, Satya Nagar, Bhubaneswar,
Odisha – 751022

8. M/s. Rungta Mines Ltd.

Represented through its Managing Director,
At- Rungta House, Chaibasa,
Dist. – West Singhbhum,
Jharkhand – 833201

And

At – Rungta Mines Ltd.
Main Road, Barbil HO,
Barbil, Dist. – Keonjhar,
Odisha – 758035

And

At- 8A Express Tower,
42A, Shakespeare Sarani,
Kolkata – 700017
West Bengal

.... Respondent(s)

Date of hearing: 18.07.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s) : Mr. Md. Akram, Advocate (in Virtual Mode)

For Respondent(s) : Ms. Anamika Pandey, Adv. for R-1 (in Virtual Mode),
Mr. Ashok Kumar Parija, Advocate General a/w
Mr. Tarun Patnaik, ASC for R-2 to 6,
Mr. Dipanjan Ghosh, Advocate for R-7,
Mr. Sanjay Upadhyay, Advocate a/w
Mr. Dhananjaya Mishra, Mr. Biswaranjan Sahoo, and
Ms. Mansi Bachani, Advocates for R-8,

ORDER

1. The Applicant in the present Original Application is, *inter-alia*, seeking a direction to the Respondent No.8, M/s Rungta Mines Ltd., to comply with the conditions stipulated in Stage-I and Stage-II of the Forest Clearance granted to it and also to pay Environmental Compensation for causing damage to forest land to the Project of 132 KV Transmission Line.

2. The allegation of the Applicant is that the Respondent No.8, M/s Rungta Mines Ltd. was granted Stage-I Approval letter from the Ministry of Environment, Forests and Climate Change, Eastern Regional Office, Bhubaneswar, on 25.06.2020 for diversion of 35.507 hectares of forest land (31.806 hectares of forest land under Keonjhar Division and 3.701 hectares of forest land under Bonai Division) for construction of 132 KV Transmission Line from 132/33KV OPTCL Grid Station, Barbil, Keonjhar to Kamanda Steel Plant of M/s Rungta Mines Ltd. at Village-Kamanda in Sundergarh, Odisha. It is stated that the route alignment for construction of 132 KV Transmission Line from 132/33 KV OPTCL Grid Station, Barbil, Keonjhar to Kamanda Steel Plant of M/s Rungta Mines Ltd. at Village-Kamanda in Sundergarh, Odisha, has been diverted without prior sanction of the Central Government.
3. It is alleged that the User Agency has also changed the layout plan of the proposal without prior approval of the MoEF&CC at Latitude: 22°5'18"N Longitude 85°22'38"E on 28.06.2021 and thus obstructing the elephant movement in violation of the conditions stipulated in Stage-I and Stage-II Forest Clearance. It is also stated that the Elephant Corridor, namely, Karpada, is situated 7.5 KM from the proposed forest area but the site falls under Elephant Habitat Zone – 2.
4. It is further alleged that as per Condition No. viii of Stage-I Clearance dated 25.06.2020, the base of electric transmission towers in the forest area must be fenced with barbed wire, in addition to installation of spike on the legs of the towers in order to avoid elephant and other wildlife getting electrocuted but the

Project Proponent has not installed spikes and barbed wire on the electric towers in the forest area.

5. It is also alleged that the Project Proponent, Respondent No.8, has resorted to felling of trees, although they were only permitted felling to a minimum number in the diverted forest land and that too after depositing the cost of felling of the trees with the Forest Department.
6. It is also alleged that Condition No. xviii of the Stage-I Clearance also provides that the layout plan of the proposed forest land shall not be changed by the Project Proponent without the approval of the Central Government but the Respondent No.8 in gross defiance of the said conditions has diverted the sanctioned latitude plan without prior sanction of the Central Government for which the State Forest Department, Keonjhar Division, has also lodged an FIR being FIR No. 10 BL of 21/22 on 28.06.2021. The said FIR records that the incident occurred at Sunderabasti, Barbil near Jagada Sahi near Ward No.15 and one Bijay Kumar Pandey and Avimanyu Das have been arrayed as accused persons who happened to be the contractor of the Respondent No.8 and five felled Sal logs were also seized from their possession and also two quintals of fire wood, which have been kept in the custody of Forest Guard, Mr. Malaya Kumar Jena.
7. It is further alleged that though the Forest Department has not handed over its forest land to the Project Proponent, Respondent No.8, to execute its project work but unauthorisedly 133 KV electricity has been supplied by the OPTCL Grid Station, Barbil, Keonjhar to Kamanda Steel Plant of M/s Rungta Mines Ltd.,

Respondent No.8, at Village-Kamanda in Sundergarh, Odisha, on 01.12.2022.

8. The allegation further is that though Condition No.ii of the Stage-I Clearance provides that Compensatory Afforestation shall be raised over 37.281 hectares of non-forest land identified in Plot Nos. 232 (P), 233(P) and 234(P), Khata No. 67 (AAA), Kisam-Parbat of Village-Lungajhar under Banspal Tahasil of Keonjhar District, (32.261 hectare) and Plot No. 1263(P), Khata No. 77, Kissam-Patita of Village-Badabanga under Lephiapara Tahasil of Sundergarh District (5.02 hectares), but so far the User Agency, Respondent No.8, has only deposited the money for Compensatory Afforestation but the State Forest Department has failed to supply plant saplings to the User Agency.
9. It is also alleged that the User Agency, Respondent No.8, was allowed to fell 1359 trees (795 Sound and 564 unsound), 1230 Poles below 30 cm girth as per the letter of the Divisional Forest Officer, Keonjhar, 16.03.2021 but the Respondent No.8 has failed to execute the work process and before Government orders could be passed, the execution of the work has already been started by the Respondent No.8. It is also stated that despite non-compliances of the conditions of the Stage-I clearance, the MoEF&CC has illegally granted Stage-II Approval to the Respondent No.8 on 31.03.2021.
10. The Applicant has sought the following reliefs in the Original Application:-

- a. Admit this original application, Issue Notice; and*
- b. Direct the Opp. Party No.8 to immediately comply the non-complied conditions stipulated under Stage-I & II of the forest*

clearance granted to the user agency/project proponent i.e., M/s Rungta Mines Ltd.

c. Direct the Opp. Party No.8 to give environmental compensation for damaging the forest land due to the abovementioned project of 132 KV transmission line.

d. Direct the Opp. Party No.8 to give environmental compensation for damaging the forest land due to violation of the conditions stipulated under Stage-I & II of the forest clearance.

e. Direct the Opp. Party No.8 to restore the forest land degraded due to the aforesaid project.

f. Direct the Opp. Party No.1 to 7 to conduct a joint inspection in all respect to ensure the compliance of conditions stipulated under Stage-I & II of the forest clearance to avoid further damage to the environment.

g. To take action against the errant Opp. Party No.1 to 7 and to impose heavy penalty on the errant user agency/O.P. No.8 i.e., M/s Rungta Mines Ltd. for violation of Forest (Conservation) Act, and also for violation of para 1.21 of Chapter-1 of Handbook of Guidelines issued under F.C. Act, 1980 vide Ministry's letter No.5-2/2017-FC dated 28.03.2019."

11. The Applicant has also filed **I.A. No.28/2023/EZ**, *inter-alia*, seeking the following interim reliefs:-

"a) Stay/stoppage of the supply of Electricity from OPTCL Power grid Barbil to Kamanda Steel Plant of Rungta Mines Ltd. as the Forest Land has been handed over fraudulently during the pendency of a case for changing the lay out plan without prior sanction of Central Government."

b) Direct stay operation of Kamanda Steel Plant till environmental compensation is adequately paid by the Applicant would suffer irreparable loss and injury, which cannot be compensated otherwise.

c) And pass such any other order as this Hon'ble Court may deem fit and proper."

12. A preliminary objection has been raised by Mr. Sanjay Upadhyay, learned Counsel appearing for Respondent No.8, Project Proponent,

that the present Original Application is not maintainable in view of the provisions of Section 16(e) of the National Green Tribunal Act, 2010 (hereinafter referred to as 'Act, 2010')under which only an appeal could be filed if the Applicant was aggrieved by any order or decision made by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980.

13. Section 16(e) of the Act, 2010, reads as under:-

“16. Tribunal to have appellate jurisdiction.-

.....xxx.....xxx.....xxx.....xxx.....

(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;”

14. We find that although the Applicant has not challenged any order as such or decision made by the State Government under Section 2 of the Forest (Conservation) Act, 1980, but the sum and substance of the reliefs claimed is a challenge to Stage-I Clearance granted by the Ministry of Environment, Forests and Climate Change, Regional Office, Bhubaneswar, on 25.06.2020 as would be clear from para 7 of the Original Application and also Stage-II Clearance approved by the Ministry of Environment, Forests and Climate Change on 31.03.2021 as stated in para 17 of the Original Application. Paras 7 and 17 of the Original Application read as under:-

“7. That, as per condition no. viii of the Stage - 1 approval letter of MOEF & CC, Eastern Regional Office, Bhubaneswar vide F.No.5 ORC418/2020-BHU, Dated 25.06.2020, the base of electric transmission towers in the forest area must be fenced with barbed wire in addition to installation of spike on the legs of the towers in order to avoid elephant and other wildlife electrocution. But, no electric tower of the said project of Rungta

Mines Ltd. has been installed with spikes and barbed wire in the said forest area and such gross irregularity and violation of the aforesaid condition no. viii of the Stage - 1 approval letter can be verified and inspected by appropriate authority.”

“17. That, on 31.03.2021, the user agency fraudulently managed to get the stage-2 approval of MOEF & CC even though the industry is non-compliant of stage-1 approval of forest clearance.”

15. Learned Counsel for the Applicant submitted that the Applicant was not challenging any order of the State Government under Section 2 of the Forest (Conservation) Act, 1980, and, therefore, the present Original Application is maintainable.
16. However, from the allegations made in the present Original Application, particularly in para 7 and para 17 thereof, we find that under the garb of the reliefs claimed in the Original Application without challenging the order dated 25.06.2020 granting Stage-I Clearance and the order dated 31.03.2021 granting Stage-II Clearance for the Project in question, the Applicant is, in fact, assailing the grant of Stage-I and Stage-II Clearances granted by the Ministry of Environment, Forests and Climate Change and, therefore, in our view, the present Original Application is not maintainable.
17. There is another aspect of the matter which needs to be examined by this Tribunal, particularly in view of the serious objections raised by Mr. Ashok Kumar Parija, learned Advocate General of Odisha assisted by Mr. Tarun Patnaik, learned Additional Standing Counsel appearing for State Respondents, Government of Odisha.
18. Mr. Parija has drawn attention of this Court to para 4 of the affidavit of the Divisional Forest Officer, Keonjhar, dated 15.07.2023, and submitted that the Applicant has not approached

this Tribunal with clean hands. He submitted that in 2021 a PIL being W.P. (C) No.33158 of 2021 had been filed before the Hon'ble High Court of Orissa at Cuttack with the cause title "*Ashirbad Pattnaik & Ors. Vs. State of Odisha & Ors.*", wherein the State Government and certain other private respondents were impleaded as parties. The allegations raised in the said PIL were similar to those raised in another petition, namely, "*Ranjan Panda & Ors. Vs. State of Odisha & Ors.*". Para 7 of that petition has been quoted in para 4 of the affidavit of the Divisional Forest Officer, Keonjhar, to show that what was alleged in the said Writ Petition, which is also extracted herein below:-

"4.XXX.....XXX.....XXX.....XXX....."

"7. That it is also pertinent to mention here that, as per the news reported by the Indian Express dated 03.07.2021 and Oriya Weekly Newspaper, Bartta corroborating their statements with certain live photographs stated therein, that the Rungta Mining Company has cut down numerous amount of trees of the reserve forest area for its personal gain without obtaining the prior permission from the forest department near Jagadasahi Village under Joda Block of Keonjhar district. The aforesaid firm needs power supply of 132 KB electricity line for its proposed project at Kamanda Village under Bonai tehsil of Sundergarh district by utilizing 31 Hectares of forest land and such deforestation is largely affecting the environment of the said mining areas for which the presence of trees is utmost essential. Further, the forest range officer of Barbil enquired about the said activity of the said mining firm, lodged a case against the said mining firm for blatant violation of the forest laws. The above said violation is against the provision of Sec. 2 of the Forest Conservation Act, 1980 which clearly states that for any non-forest activity within forest land, needs prior approval from the Ministry of Environment and Forest and Climate Change (MOEF & CC). But at the instant case the said erring mining

firm not felt necessary to obtain the said permission before the illegal deforestation activity.”

19. It is further stated that the W.P. (C) No. 33158 of 2021 was duly considered by a Division Bench of the Hon’ble High Court and the same was dismissed by the Hon’ble High Court vide judgment and order dated 02.12.2021 with a cost of Rs. 5,000/- (Rupees Five Thousand only) against each of the petitioners (10 in number) totaling Rs. 50,000/- (Rupees Fifty Thousand only). Paras 9, 10 and 11 of the judgment read as under:-

“9. With the above observations, the present writ petition stands dismissed.

10. We would have ordinarily observed something against the counsel appearing in the case. However, keeping in view the early stages of his career, we refrain from commenting upon his conduct except to advise him to be careful in future and not be a party to such a litigation initiated by unscrupulous litigants.

The Registry is also directed to stringently comply with the rules as indicated hereinabove while dealing with Public Interest Litigations so as to prevent valuable judicial time from being wasted and prevent certain unscrupulous elements from weaponizing petitions in courts of law.

11. We feel constrained to direct the petitioners (10 in number) to deposit cost of Rs. 5,000/- each (totalling Rs.50,000/-) before the Orissa High Court Bar Association Advocates Welfare positively within four weeks from today, failing which Collector, Keonjhar shall proceed to recover the same as arrears of land revenue and ensure the deposit of the recovered amount as stated hereinabove.”

20. Thereafter, I.As. were filed by the petitioners therein (in the High Court) seeking expunging of certain portions of the judgment of the Hon’ble High Court dated 02.12.2021 wherein negative connotation had been made against Mr. Sambit Samal, Counsel who was

appearing on behalf of the petitioners in W.P. (C) No. 33158 of 2021 and the said I.As. were also dismissed by a Division Bench of the Hon'ble High Court vide order dated 10.03.2021. Paras 13, 14, 15 & 16 of the order read as under:-

“13. The observations made in Paragraph 3 and 10 of the judgment dated 02.12.2021 in no way affects the image of the arguing counsel. It was only a note of caution sounded to the counsel so that he may not get involved with unscrupulous litigants. It was merely a reminder on the duty of the counsel to the court and to his profession. The court has, in fact, restrained itself from passing any adverse order considering the petitioner's lesser length of practice at the Bar.

14. This court makes it clear that in the absence of any disparaging remark made against the counsel for the petitioners, he should take the observations of this Court in the manner in which it was intended, i.e. as a fillip to mould his legal career in a better way in future.

15. In view of the above, this Court is not inclined to accept the prayer of the petitioners made in the I.As. to effect any change in the judgment dated 02.12.2021 passed by this Court in W.P.(C) No.33158 of 2021.

16. Accordingly, both the I.As. are dismissed.”

21. Learned Advocate General also submitted that the judgment of the Hon'ble High Court was challenged by the petitioners before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.8637/2022 and the said SLP was dismissed by the Hon'ble Supreme Court vide its order dated 09.09.2022 and the judgment of the Hon'ble High Court was upheld and the Hon'ble Supreme Court observed that the Special Leave Petitions are an abuse of process of Court and the said Special Leave Petitions were

dismissed with cost of Rs. 25,000/- (Rupees Twenty Five Thousand only). The order of the Hon'ble Supreme Court reads as under:-

“UPON hearing the counsel the court made the following

ORDER

Permission to file the Special Leave Petition granted.

- 2. Delay in refiling the Special Leave Petition is condoned.*
- 3. Application for permission to implead the High Court of Orissa is dismissed.*
- 4. Having heard senior counsel appearing on behalf of the petitioners, we see no reason to entertain the Special Leave Petitions. The High Court was entirely justified in coming to the conclusion that the petition was filed after suppressing the fact that an earlier petition filed by the same advocate had been dismissed as withdrawn. The subsequent petition contains substantially the same averments. The Special Leave Petitions are an abuse of process. We accordingly dismiss the Special Leave Petitions with costs quantified at Rs.25,000, which shall be paid to the Supreme Court Bar Association within four weeks.*
- 5. Pending application, if any, stands disposed of.”*

22. Learned Advocate General further submitted that the address given by the Counsel for the present Applicant Ms. Soumya Mishra, has upon verification been found to be the same as that of Mr. Sambit Samal, the Counsel who had filed the PIL being W.P. (C) No. 33158 of 2021 before the Hon'ble High Court of Orissa, as being 552/t/13, Friends Colony, B.K. Road, P.O.-Buxi Bazar, P.S.-Mangalabag, District-Cuttack, Odisha, Pin – 753001, as stated in the affidavit of the Divisional Forest Officer, Keonjhar, dated 15.07.2023.

23. This fact has not been disputed by Mr. Md. Akram, Counsel holding brief of Ms. Soumya Mishra. Even the photocopy of the

registered post on record, filed with the affidavit of service, mentions the address of Ms. Soumya Mishra as 'Friends Colony.'

24. In this view of the matter, the submission of Ashok Kumar Parija, learned Advocate General as well as Mr. Sanjay Upadhyay, learned Counsel appearing for Respondent No.8, is that the present Original Application has been originated in the same chamber as that of Mr. Sambit Sambal, though under the name of different parties and in the name of a different Counsel which amounts to a fraud upon the Court and also amounts to abuse of process of Court.
25. Ms. Soumya Mishra, learned Counsel who has filed the present Original Application is not present today. Mr. Md. Akram's Vakalatnama is on record and he is present today and has been heard. As we have already noted hereinabove Mr. Akram could not dispute either the legal position as to the non-maintainability of the present Original Application or the fact of dismissal of the PIL WP (C) No.33158 of 2021 and allied cases by the Hon'ble High Court of Orissa as well as dismissal of SLP (C) No. 8637 of 2022 by the Hon'ble Supreme Court.
26. We are, therefore, satisfied that not only is the Original Application not maintainable but the same is an abuse of process of Court in view of the order passed by the Hon'ble High Court of Orissa at Cuttack and the Hon'ble Supreme Court.
27. In view of above, the Original Application No.53/2023/EZ is accordingly dismissed with a cost of Rs. 10,000/- (Rupees Ten Thousand only) against the Applicant, Satyabrata Sanjeeb Kumar. The amount of cost shall be deposited by the Applicant with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata,

within one week from the date of this order. In case the Applicant fails to deposit the amount of cost with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata, the same shall be recovered from him by the Collector & District Magistrate, Keonjhar, in accordance with law and the same shall be deposited with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata.

28. Let a copy of this order be also forwarded to the Collector & District Magistrate, Keonjhar, for due compliance.
29. I.As. if any, stand disposed of accordingly.

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

July 18, 2023,
Original Application No.53/2023/EZ
(I.A. No.28/2023/EZ)
AK