

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

Appeal No 18 / 2022 [WZ]

Pravir Prabhakar Fadte & Ors

**.. APPELLANTS**

v/s

MoEF & Ors

**..RESPONDENTS**

**Compilation of judgements submitted on behalf of the Appellants**

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15th April 2023

Mapusa, Goa



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HANUMAN LAXMAN AROSKAR v. UNION OF INDIA

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**(2019) 15 Supreme Court Cases 401**

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

a

Civil Appeal No. 12251 of 2018<sup>†</sup>

HANUMAN LAXMAN AROSKAR .. Appellant;  
*Versus*

UNION OF INDIA .. Respondent.

b

*With*

Civil Appeal No. 1053 of 2019

FEDERATION OF RAINBOW WARRIORS .. Appellant;  
*Versus*

UNION OF INDIA AND OTHERS .. Respondents.

c

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

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

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

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— Concerns highlighted in judgment:

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

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

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

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

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

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

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

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

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

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

a

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

b

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

c

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

d

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

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

e

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

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

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

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

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

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

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

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

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

**e** Held :

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

**C.1. EIA Process**

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

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

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

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

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

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

c

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

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### ***C.2. Guidance Manual for Airports***

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

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

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

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

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

**D. Forests**

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

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

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

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

**Alternative submission that disclosure about forests was made not tenable**

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

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

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

**E. Ecologically Sensitive Zones (ESZs)**

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

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

**F. Sampling points**

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

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

**F.5. Felling of trees**

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

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

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

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

**G. Public consultation**

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

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

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

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

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

#### H. Appraisal by EAC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**e J. Environmental rule of law**

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

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

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

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

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

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

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

SS-D/62216/S

Advocates who appeared in this case :

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The Judgment of the Court was delivered by

**DR D.Y. CHANDRACHUD, J.—**

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**A. Introduction**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. The grant of EC was challenged before the Western Zonal Bench of NGT (Appeal No. 61 of 2015) by the Federation of Rainbow Warriors. Hanuman Laxman Aroskar also filed an appeal (Appeal No. 1 of 2016) before the Western Zonal Bench of NGT. These appeals were subsequently renumbered (Appeals Nos. 5 and 6 of 2018) before the Principal Bench of NGT at New Delhi. On 7-11-2017<sup>2</sup>, NGT issued an ad interim order restraining the cutting or felling of trees in the area designated as the site of the proposed airport. On 22-11-2017<sup>3</sup>, the order of restraint was modified on the statement of the Advocate General of Goa that the State shall not cut or fell any trees, nor allow it to take place without valid permission from the lawful authority for a fortnight thereafter in order to enable the appellants to pursue their remedies. On 6-2-2018, the Deputy Conservator of Forests granted permission for felling 21,703 trees at the airport site. The appellate authority under the Goa, Daman and Diu Preservation of Trees Act, 1984 (6 of 1984) dismissed the appeal on 7-3-2018.

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

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

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

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

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

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

c **13.** On 18-1-2019<sup>5</sup>, notice was issued in the appeals and an order of status quo was passed by this Court. The appeals were admitted for hearing and final disposal.

d **B. Submissions**

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

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

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

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

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

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

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

“2.1.5. Biological environment a

Construction phase

*Impacts (Significance-Medium)*

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

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

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

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

**16.2.** There was a concealment of Ecologically Sensitive Zones (ESZs) in the State of Maharashtra. In terms of the Guidance Manual, primary data through measures and full surveys; and secondary data from secondary sources have to be collected. Primary data includes the study area within 10 km radius from the Aerodrome Reference Point (ARP) and covers one season other than the monsoon. Secondary data includes data collected within an aerial distance of 15 km for the parameters which are specifically mentioned in Column 9(III) of Form 1 of the 2006 Notification and covers one full year. In the present case, while furnishing details of ESZs falling within an aerial distance of 15 km, the EIA report stipulates that there were none in the State of Maharashtra. The State of Goa has also averred in its counter that there are no ESZs within a radius of 15 km from ARP and that there are no reserve forests in that radius. After hearings had begun before NGT, a letter was addressed by the Principal Chief Conservator of Forests on 12-2-2018 to the Director of Civil Aviation stating that a list of reserved forests had been notified under Section 20 of the Forest Act, 1927 in Sawantwadi Forest Division of Sindhudurg District in Maharashtra which was obtained from the working plan of Sawantwadi Forest Division e  
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(2014-15 to 2023-24). The letter stated that there was no reserved forest notified under Section 20 of the Forest Act, 1927 in the Sawantwadi Forest Division, within a radius of 15 km from the ARP. On this aspect, it was urged on behalf of the appellants that restrictions come into force as soon as a notification under Section 4 of the Forest Act, 1927 is issued. Under the Forest Conservation Act, 1980, any use of forest land for non-forest purposes requires prior permission of the Union Government, as elaborated in the judgment of this Court in *T.N. Godavarman Thirumulpad v. Union of India*<sup>6</sup> (*Godavarman*). The purpose of elucidating forest areas which fall within an aerial distance of 15 km from the project site is to enable an assessment to be made of the impact of the project on forested areas. Failure to mention forests in the State of Maharashtra was a significant omission in the EIA report.

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

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

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

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

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the course of the public consultation covered a variety of environmental issues. Amongst them was the presence of perennial springs, the porous nature of the laterite plateau where permeation is a source of drainage for water collection and the existence of cashew plantations on which the livelihood of the local residents depends. Under the 2006 Notification, the State Pollution Control Board (SPCB) was required to collate the issues raised and the response of the project proponent, before submitting required documents to EAC. Before EAC, the project proponent in its presentation, indicated that the objections were only about employment opportunities. The project proponent clearly failed in its duty to appraise EAC about serious environmental concerns which were raised during the course of the public consultation. a  
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**18.** On the aspect of appraisal, it has been urged that the minutes of EAC meeting recommending the grant of an EC contain, as the learned counsel for the appellants submitted, “not a line on the EIA report”. EAC was required to state its reasons for recommending the grant of an EC in terms of the 2006 Notification. The reasons must indicate that there was an appraisal by EAC. In the present case, the recommendations of EAC are based on vague considerations such as: (i) larger public interest; (ii) non-concealment of the facts by the project proponent; and (iii) the delay which had occurred in the process. The submission urged is that EAC, as an expert body, has failed to furnish reasons; acted on the basis of considerations which are not germane to the exercise of its functions and failed to apply its mind to relevant considerations including the environmental consequences of the project. c  
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**19.** Finally, it has been submitted that under Section 16(h) of the National Green Tribunal Act, 2010 (the NGT Act, 2010) an appellate remedy is provided against the order granting EC. By virtue of the provisions of Section 20, NGT is under a mandate to apply the principles of sustainable development, the precautionary principle and the polluter pays principle while passing any order, decision or making the award. An appeal lies before this Court under Section 22 from an order, decision or award of the Tribunal on a substantial question of law as specified in Section 100 of the Code of Civil Procedure, 1908. NGT, by virtue of its adjudicatory authority under Section 16(h), is entrusted with a duty to conduct a merits review. The failure to consider materials on a vital issue constitutes a substantial question of law as does the failure to consider vital issues in the proceedings before it. In the present case, the Tribunal has merely relied on the process conducted by EAC and its recommendations, abdicating its own jurisdiction to conduct a merits review. e  
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**20.** Mr A.N.S. Nadkarni, learned Additional Solicitor General appearing on behalf of MoEFCC, urged that the EIA report, besides dealing with environmental concerns, addresses the impact of the project during both the phases of construction and operation. EAC is sourced from experts from outside the Government. The airport project was conceived in 1996; consultants were appointed and three sites were initially shortlisted. It was in 2011 that ToR were sought by and given to the project proponent by EAC. The draft EIA g  
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a was placed for public consultation in 2014 and the final EIA report came to be submitted in 2015. EAC deferred consideration of the EIA report on three occasions, including among them to consider the representation filed by the Federation of Rainbow Warriors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thereafter, when the High Court was moved in a PIL, an order was passed on 13-6-2018 that the grant of permission for felling trees and the actual felling of trees will be carried out only after NGT granted permission in the pending proceedings. A miscellaneous application seeking permission for the felling of trees was instituted before NGT. In its final order dated 21-8-2018<sup>1</sup>, NGT disposed of both the appeals as well as the miscellaneous application. Moreover, NGT has specifically dealt with the felling of trees in the course of its distinction. f

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

<sup>1</sup> *Federation of Rainbow Warriors v. Union of India*, 2018 SCC OnLine NGT 831 h

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

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

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

(ii) PTB-foundations and column works; and

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

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

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

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

#### ***C. 1. EIA Process***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

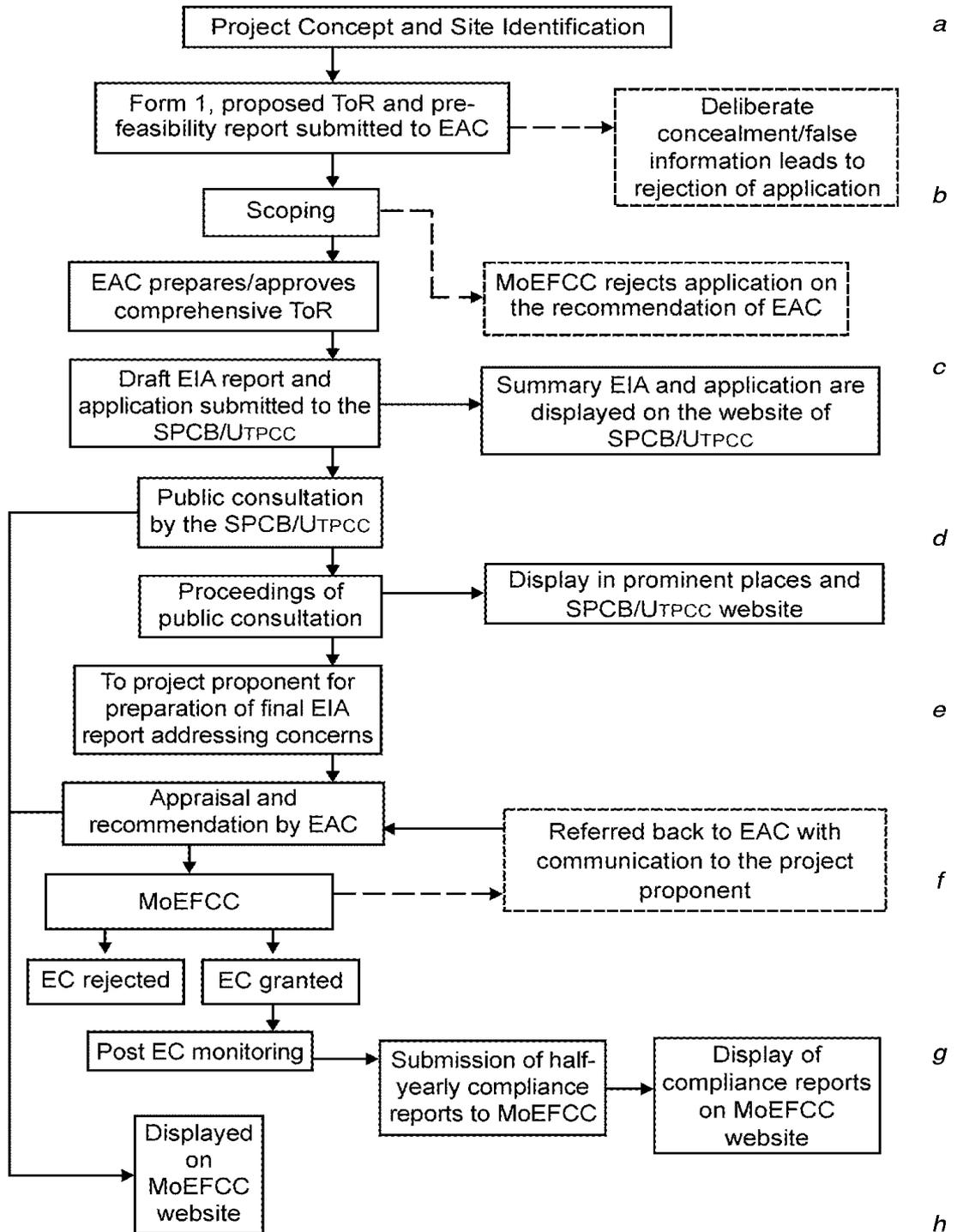
**41.6.** Under the 2006 Notification, the application can be rejected by the regulatory authority on the basis of the recommendation of EAC or SEAC, as the case may be, at the preliminary stage itself, prior to public consultation.

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

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

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*EIA Process for Category 'A' projects*



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

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

**45.** The process to obtain environmental clearance as stipulated by the notification for *new* projects<sup>9</sup> comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the notification:

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

#### *Screening*

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

<sup>8</sup> Only for construction projects listed under Item 8 of the Schedule.

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

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**Scoping**

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

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

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

49. The State Pollution Control Board (SPCB) or the Union Territory Pollution Control Committee (UTPCC) is charged with conducting the public hearing in the manner stipulated in Appendix IV and forwarding the proceedings to the regulatory authority within 45 days of a request from the applicant. The regulatory authority is empowered to engage another public agency or authority to carry out the process within a further period of forty-five days in case SPCB or UTPCC does not adhere to the prescribed time period stipulated in the notification. The public hearing should be arranged in a “systematic, time-bound and transparent manner” to ensure the “widest possible public participation at the project site(s) or in its close proximity district-wise”. The public hearing proceeding is filmed and a copy of the video is submitted to the regulatory authority concerned. f  
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50. Within seven days of receiving a written request to initiate the public consultation process, SPCB or UTPCC shall place the summary EIA and the application on their website and invite responses. The authority concerned may also make use of other appropriate media in addition to publication on their website to ensure wide publicity of the project. On a written request from any person concerned, the authority will make available a hard copy of the draft h

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

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

*Appraisal*

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

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

e **53.** The regulatory authority must examine the documents “strictly with reference to ToR” and communicate any inadequacy to EAC or SEAC, as the case may be, within 30 days of receipt of the documents. Within sixty days of the receipt of all the documents, EAC or SEAC, as the case may be, shall complete the appraisal process as prescribed in Appendix V. Within the next fifteen days, EAC or SEAC shall make categorical recommendations to the regulatory authority concerned to either grant EC on the stipulated terms and conditions or reject the application, together with reasons. The appraisal of projects which are not required to undergo the public consultation process or  
f the submission of an EIA is to be carried out on the basis of the prescribed application Form 1 or Form 1-A, as applicable.

g **54.** MoEFCC or SEIAA shall thereafter consider the recommendations of EAC or SEAC and convey its decision to the applicant within 45 days of receipt of the recommendations. The regulatory authorities shall *normally* accept the recommendations of EAC or SEAC, as the case may be. Where there is a disagreement, the regulatory authority shall ask for a reconsideration of the recommendation within 45 days of the receipt of the recommendations. This decision shall be conveyed to the applicant. EAC or SEAC shall then reconsider its recommendation within a further period of 60 days and make its recommendations to the regulatory authority. The regulatory authorities shall then take a decision after considering the views communicated to it and convey  
h the decision to the applicant within the next 30 days.

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

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

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

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

f

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

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

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

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

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

b

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

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

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**C.2. Guidance Manual for Airports**

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

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

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

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

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

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

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

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

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

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

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

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Local emissions attributed to aircraft operations at airports include oxides of nitrogen (NO<sub>x</sub>), carbon monoxide (CO), hydrocarbons (HC), sulphur dioxide (SO<sub>2</sub>), and particulate matter (PM 10 and PM 2.5).

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

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

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

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

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

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

e **D. Forests**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h

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

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

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

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

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

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

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

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

**E. Ecologically Sensitive Zones (ESZs)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Mining, quarrying and sand mining;
- (b) Thermal power plants;
- (c) Building and construction projects of 20,000 sq m area and above;
- (d) Township and area development projects with an area of 50 ha and above and/or with a built-up area of 1,50,000 sq m and above; and
- (e) "Red category" industries.

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

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

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

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

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**F. Sampling points**

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

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**F.1. Air quality**

**94.** In order to study the ambient air quality in terms of suspended particulate matter, respirable particulate matter, SO<sub>2</sub>, NO<sub>x</sub>, CO and HC, ambient air quality monitoring stations were set up at six locations. They are at Sinechaadvin, Katwal, Mopa Village, Pernem, Nagzor and Patradevi. All are in Goa. The location at Patradevi was on the border shared by Goa with Maharashtra. The study area extended to a radial distance of 10 km from the ARP. We accept the submission of the ASG that they would hence cover areas falling within both Goa and Maharashtra. Para 4.1.2 of Chapter IV of the EIA

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

**F.2. Water quality**

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

**F.3. Noise quality**

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

**F.4. Flora and fauna**

d **97.** The EIA report indicates that the area surrounding the site for the proposed airport has dense forests<sup>10</sup>. These total up to nearly 6634.19 hectares<sup>11</sup>. Ms Shenoy has urged that it is impossible that the fauna found by the project proponent through both primary sampling and secondary sources was only limited to animals such as: domestic dog, cat and cattle, common house mouse, rat and mongoose, jackal and the three striped palm squirrel. This, in her submission, is a clear indication that the EIA report is faulty and clearly incorrect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **F.5. Felling of trees**

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

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

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

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

**104.1.** The enumeration of all trees. a

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

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

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

**105.** On 6-2-2018, the Deputy Conservator of Forests had granted permission for felling of 21,703 trees. Following the dismissal of an appeal under Section 15 of the Goa, Daman and Diu Preservation of Trees Act, 1984 filed by the Federation of Rainbow Warriors, a writ petition was filed before the Bombay High Court (WP No. 1 of 2018). The High Court set aside<sup>4</sup> the order of the Deputy Conservator of Forests and remanded the proceedings to the Principal Chief Conservator who passed the order which has been noted above. Following the order of the Principal Chief Conservator, 54,676 trees were enumerated. The competent authority granted permission for the felling of trees thereafter on the following dates: c

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

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

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

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

“E. *Biological environment* f

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

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

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

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

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

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

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

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

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

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

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

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

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

**G. Public consultation**

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

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

**112.** The 2006 Notification postulates:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**114.8.** Local plantations would be affected.

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

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

**114.11.** Forest clearance had not been obtained.

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

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

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

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

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

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

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

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

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

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

d **H. Appraisal by EAC**

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

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

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

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

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

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

a

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

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

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

b

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

c

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

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

d

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

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

e

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

f

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

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

g

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

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

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

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

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

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

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

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

122.3. The “larger public interest” involved.

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

e 122.5. The project is in the public interest.

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

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

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

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

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

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

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

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

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

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

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**128.** Mr A.N.S. Nadkarni, learned ASG, urged that EAC had, in its 149th meeting, sought additional information on six issues. Subsequently, at its  
 a 151st meeting, it deferred consideration upon the representation filed by the Federation of Rainbow Warriors and at its 152nd meeting, it analysed the response of the project proponent to the representation. Hence, EAC must be deemed to have applied its mind. This approach is completely flawed. At its 149th meeting, EAC specifically called for a clarification on six issues. The next meeting was deferred. The minutes of the 152nd meeting contain  
 b no assessment of whether the clarifications which were sought by EAC had been replied to its satisfaction by the project proponent. The objection to the modalities adopted by EAC, however, are more fundamental. The minutes of the 152nd meeting indicate that EAC primarily, if not exclusively, dealt with the “pointwise clarifications” of the project proponent to the representation by the Federation of Rainbow Warriors. Dealing with a representation is not  
 c exhaustive of the function of EAC. Arguably, if no representation was received, or if a representation submitted by an individual objector is found to be incorrect, that by itself is no ground to recommend an EC.

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

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

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

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

\* \* \*

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

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**131.** Section 20 mandates that the Tribunal shall, while passing any order, decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Several decisions of this Court have given meaning to these principles<sup>13</sup>.

**132.** The decision of NGT indicates that several significant submissions were urged before it. The entire analysis by NGT is contained in one paragraph of its judgment dated 21-8-2018<sup>1</sup> which is extracted below: (*Federation of Rainbow Warriors case*<sup>1</sup>, SCC OnLine NGT para 27)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\* \* \*

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

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

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

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

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

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

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

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

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

138.6. The 2006 Notification was not applicable.

16 (2011) 7 SCC 338

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

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

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

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

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

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

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

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

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

<sup>17</sup> (2019) 18 SCC 494 : 2019 SCC OnLine SC 322

<sup>18</sup> 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

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

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

**J. Environmental Rule of Law**

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

**143.** Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement — both in developed and developing countries alike<sup>19</sup>. The environmental rule of law seeks to address this gap.

**144.** The environmental rule of law provides an essential platform underpinning the four pillars of sustainable development — economic, social, environmental and peace<sup>19</sup>. It imbues environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance<sup>19</sup>. The environmental rule of law becomes a priority particularly when we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, supports sustainable economic and social development, protects public health,

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

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a contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights<sup>19</sup>. Similarly, the rule of law in environmental matters is indispensable “for equity in terms of the advancement of the Sustainable Development Goals (SDGs), the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socioeconomic rights<sup>20</sup>.”

b **145.** Amartya Sen argues for a broadening of the notion of sustainable development which is the most dominant theme of environmental literature, from a need-based standard<sup>21</sup> to a standard based on freedoms<sup>22</sup>. Thus recharacterised, it encompasses the preservation, and when possible even the expansion of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar — or more — freedoms. The intertwined concepts of environmental rule of law thus further intragenerational as well as intergenerational equity.

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

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

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

h <sup>21</sup> Brundtland definition of Sustainable Development

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

**147.** In 2016, the First World Environmental Law Congress, co-sponsored by the International Union for Conservation of Nature and UN Environment, adopted the IUCN World Declaration on the Environmental Rule of Law<sup>23</sup> which outlines 13 principles for developing and implementing solutions for ecologically sustainable development:

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

**148.** Dhvani Mehta's doctoral thesis<sup>24</sup> explores this idea of environmental rule of law in the Indian context by analysing the functioning of the three institutions of the Government with regard to environmental law. It develops a framework to assess whether the environmental rule of law in India is being strengthened or weakened, through an analysis of the legal instruments of each of the institutions of Government—statutes, executive orders and judicial decisions. The indicators on the basis of which this is done are:

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

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

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

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

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

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

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

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

**152.** The statistics on climate change indicate that:

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

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

**152.3.** Since 1990, global emissions of CO<sub>2</sub> increased by almost 50%.

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

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

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

**154.** On 2-10-2016, India ratified the Paris Agreement<sup>25</sup> on climate change which reaffirmed the goal of “limiting global temperature increase to well below 2°C, while pursuing efforts to limit the increase to 1.5 degrees above pre-industrial levels”. Article 5 of the Agreement encourages parties to conserve and enhance sinks and reservoirs of greenhouse gases, which include forests. Under its Nationally Determined Contributions under the Paris Agreement, India made the following three commitments<sup>26</sup>:

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

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

(iii) An additional “carbon sink” of 2.5 to 3 billion tonnes of CO<sub>2</sub> equivalent through additional forest and tree cover will be created by 2030.

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

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

25 Entered into force on 4-11-2016.

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

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

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

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

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

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

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

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

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

**163.** We accordingly issue the following directions:

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

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

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

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

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

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

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

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

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

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

**Civil Appeal No. 1053 of 2019**

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

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**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE**

**APPEAL No.17/2016 (WZ)**

**CORAM:**

**Hon'ble Mr. Justice U.D. Salvi  
(Judicial Member)**

**Hon'ble Mr. Bikram Singh Sajwan  
(Expert Member)**

**In the matter of:**

**1. Gujarat Khedut Samaj**

A Regd. Public Charitable Trust under  
The Bombay Public Trust Act, 1950  
Through its authorized person  
Mr Ramesh Ishwarbhai Patel  
Having address at:  
At-Po Orma, Taluka Olpad,  
Surat-394540.

**2. Krishnakant Chauhan**

214, R.D. Complex, Navagam-  
Dindoli Road,  
Udhna, Surat-394 210. Gujarat.

**3. MSH Sheikh**

Brackish Water Research Centre  
Kasba Mohalla, Mougul Street,  
At & Po Olpad-394540,  
Dist. Surat, Gujarat.

... **Appellants**

**Versus**

**1. The Secretary,**

Ministry of Environment, Forests and  
Climate Change,  
Government of India  
Indian Paryavaran Bhavan,  
Jor Bagh Road, New Delhi-110 003.

**2. The Member Secretary**

Gujarat Pollution Control Board,  
Paryavaran Bhavan, Sector 10A,  
Gandhinagar-382 010, Gujarat.

**3. The State of Gujarat,**

Through The Concerned Department/  
Chief Secretary,  
Having address at:  
New Sachivalaya, Gandhinagar  
Gujarat.

**4. Hindustan Chemicals Company**

Having its factory at:  
GIDC Industrial Estate, Olpad  
Surat-394540.

... Respondents

**Counsel for Appellant (s):**

**Mr. Asim Sarode a/w Mr. Mihir Desai, Ms. Lara Jesani,**

**Counsel for Respondent(s):**

**Ms. Supriya Dangare, Mr. Anrudha Tapkire, Mr. Amit Karkhanis for Respondent No. 1.**

**Mr. Viral K. Shah for Respondent No.2.**

**Mr. Parth H. Bhatt for Respondent No.3.**

**Mr. Gaurav Joshi Sr. Adv.a/w Mr. Kaushik A. Kulkarni, Mr Raheel S. Patel, for Respondent No. 4.**

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**Date: 7<sup>th</sup> December, 2017**  
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**Judgment/Order**

**1.** Gujarat Khedut Samaj, a registered body of farmers of State of Gujarat through this Appeal have challenged impugned Environment Clearance - File No.J-11011/466/2011-IA II(I), dated 22<sup>nd</sup> January, 2016 granted by Respondent No.1 - The Ministry of Environment and Forest for proposed expansion of manufacturing unit of Respondent No.4- Hindustan Chemicals Company (HCC) at GIDC, Olpad, District Surat.

**2.** Respondent No.4-HCC is engaged in manufacturing of Sodium Cyanide and other Cyanide based products at Plot Nos. 26 to 37, 444 to 57, 122,143 at GIDC, village Hasnanbad, Taluka Olpad, District Surat since 1982. EC dated 23<sup>rd</sup> July, 2017 was granted for its first expansion of manufacturing activity permitting 25 MTM of Sodium Cyanide and 45 MTM and Mandalo Nitride more than its initial capacity, whether EC was ever procured under the Environment Impact Assessment (EIA) Notification, 1994 is not known to the Appellants and EC dated 23<sup>rd</sup> July, 2007 makes no mention of any prior EC being obtained by Respondent No.4-HCC.

**3.** According to the Appellants, manufacturing unit of Respondent No.4-HCC is not located in the notified industrial area – GIDC, Olpad and the product activity of the Respondent No.4 being classified as ‘A’ category project requires to go through the stages of EIA and public hearing and consultation before EC could be granted as per the EIA Notification,2006. Respondent No.4-HCC applied for grant of EC for further expansion of its manufacturing activity with proposed increase in manufacturing of Sodium Cyanide, belong to Cyanide Groups of chemical compounds namely

1. Cyclo Pentanone Cyanohydrin,

2. 2-Chloro Benzaldehyde Cyanohydrin (2-Chloro Mandelonitrile) belonging to Cyanohydrines Group of chemical compounds,
3. Methylene Amino Aceto Nitrile (MAAN) belonging to Nitriles Group and;
4. Zinc Cyanide and Isophoron Diamine based on Cyanide products,

vide proposal dated 29<sup>th</sup> January, 2013 and MoEF granted Terms of Reference (ToR) dated 17<sup>th</sup> February, 2012 for expansion of project sought further clarification vide letter dated 22<sup>nd</sup> August, 2012 and granted EC dated 22<sup>nd</sup> January, 2016 on the basis of Expert Appraisal Committee (EAC) recommendations, which had apprised the project only on the EIA Report without any public hearing and consultation.

**4.** Parties to the Appeal were duly served. Respondent No.1-MoEF, Respondent No.2-Gujarat Pollution Control Board (GPCB) and Respondent No.4 – Hindustan Chemicals Company joined the issues with their replies dated 6<sup>th</sup> December, 2016, 8<sup>th</sup> January, 2017 and 7<sup>th</sup> February, 2017 respectively.

**5.** Learned Counsel on behalf of the Appellants invited our attention to the impugned EC dated 22<sup>nd</sup> January, 2016, particularly, Paragraph Nos. 1 and 6 therein and pointed out that EAC (Industry) had taken decision to recommend the proposal of EC upon considering EIA/EMP report, and as such other additional

information in its Meetings held between 16<sup>th</sup> – 17<sup>th</sup> February, 2012, 16<sup>th</sup>-17<sup>th</sup> May, 2013 and 19<sup>th</sup>-20<sup>th</sup> December, 2013, obviously, before the public hearing Report dated 24<sup>th</sup> December, 2013 and subsequent submission of additional information dated 17<sup>th</sup> December, 2014 in gross violation of the provisions of EIA Notification, 2006. He argued that, Respondent No.4-HCC knew very well from the correspondence made with GIDC, Surat (their letter dated 20<sup>th</sup> August, 2012 addressed to the Regional Office, GIDC, Surat, requesting for a copy of Notification declaring GIDC, Olpad as notified industrial area, Annexure-11 and reply to the said letter from GIDC on 30<sup>th</sup> August, 2012, Annexure-12, informing them that Olpad industrial area is not declared as notified industrial area) that their manufacturing unit was falling in non-notified industrial area and was not eligible for exemption from public hearing; and yet glossed over the said and managed to get recommendations of EIA without EAC applying its mind to the public concerns recorded during public hearing.

**6.** Letter dated 28<sup>th</sup> August, 2012 from Respondent No.4 to GIDC clearly reveal that the Olpad Industrial Estate where the Respondent No.4 Industry is situate is not declared as notified industrial area. Paragraph 6.0 of the impugned EC dated 22<sup>nd</sup> January, 2016 quoted

herein below clearly reveals that all the public concerns as expressed in the public hearing conducted on 14<sup>th</sup> November, 2014 were not considered while recommending the grant of EC.

“6.0 The proposal was considered by the Expert Appraisal Committee (Industry) in its meetings held during 16<sup>th</sup> – 17<sup>th</sup> February, 2012, 16<sup>th</sup> – 17<sup>th</sup> May, 2013 and 19<sup>th</sup> – 20<sup>th</sup> December, 2013 respectively. Project Proponent and the EIA Consultant namely M/s Eco-Chem Sales & Services, have presented EIA / EMP report as per the TOR. EAC has found the EIA / EMP Report and additional information to be satisfactory and in full consonance with the presented TORs. The Committee recommended the proposal for environmental clearance.”

**7.** As regards this public hearing, learned Counsel appearing on behalf of the Appellants has no grievance. He submits that the EAC recommendations fall on account of non-consideration of the public concerns expressed in public hearing by the EAC. He submits that justice would be done if the impugned EC is set aside and the case is remanded back to the Expert Appraisal Committee for reconsideration in order to consider the public concerns as expressed in public hearing dated 14<sup>th</sup> November, 2014 along with the representations/objections/documents raised/ submitted by the parties to the present appeal.

**8.** As per MoEF O.M. No.J-11013/36/2014-IA-I dated 16<sup>th</sup> May, 2014 read with Entry 5(b) the public hearing is necessary for proposed expansion project of

manufacturing Sodium Cyanide and other Cyanide based products for grant of EC. Hence Order:

- (I) The Environmental Clearance dated 22<sup>nd</sup> January, 2016 granted to the expansion project of Respondent No.4 – Hindustan Chemical Company is set aside.
- (II) The Expert Appraisal Committee of MoEF shall consider the outcome of the public consultation including public hearing dated 14<sup>th</sup> November, 2014 along with suggestions/ objections/documents made/raised/submitted by the stakeholders including the parties to the Appeal, and the Expert Appraisal Committee shall take appropriate decision in the matter within sixty days and make recommendations accordingly to the Respondent No.1 – MoEF in accordance with law.
- (III) Liberty granted to the parties to make representations to the Expert Appraisal Committee along with all the relevant material in their possession or control within two weeks.
- (IV) Respondent No.1 – MoEF is directed to take decision in light of the recommendations made by EAC in accordance with law.

**Appeal No.17/2016 stands disposed of with no order as to cost.**

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

....., **EM**  
**(Bikram Singh Sajwan)**

**Date: 7<sup>th</sup> December, 2017**

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NGT

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

**APPEAL NO. 39 OF 2012**

**CORUM:**

**Hon'ble Mr. Justice U.D.Salvi (Judicial Member)  
Hon'ble Prof. A.R. Yousuf (Expert Member)**

**IN THE MATTER OF:**

**1. SAVE MON REGION FEDERATION**

Through its General Secretary,  
Lobsang Gyatso, Near High Secondary  
School Tawang, P.O. Tawang,  
District Tawang, Pin Code-790 104.

**2. LOBSANG CHOEDAR**

Khet Village, P.O. Mukto, P.S. Jang,  
District Tawang, Pin Code 790 104  
Arunachal Pradesh.

**APPELLANTS**

**Versus**

**1. UNION OF INDIA**

Through its Secretary  
Ministry of Environment and Forests  
Paryavaran Bhawan, CGO Complex  
Lodhi Road, New Delhi-110 003.

**2. ARUNACHAL PRADESH STATE POLLUTION CONTROL  
BOARD, (APSPCB)**

Through its Member Secretary,  
Arunachal Pradesh State Pollution  
Control Board, Department of Forest,  
Environment and Wildlife Management,  
Itanagar-791111.

**3. NJC HYDRO POWER LIMITED**

Through its Vice President and CFO  
With its registered office at  
A-12, Bhilwara Towers, Sector-1,

Noida-201301.  
Uttar Pradesh

#### 4. State of Arunachal Pradesh

#### Respondents

#### Counsel for Appellant(s):

Mr. Ritwick Dutta, Mr. Rahul Choudhary, and  
Ms. Parul Gupta, Advocates.

#### Counsel for Respondent(s) :

Ms. Divya Prakash Pande, for Respondent No.1  
Mr. Anil Shrivastav, Adv for Respondent No. 2  
Mr. Raj Panjwani, Sr. Advocate Mr. Sanjay Upadhyay and  
Mr. Saliq Shafique, Advocates for Respondent No.3.  
Mr. Anil Srivastava and Mr. Pranav Rishi Advocate for  
Respondent No. 4

**Per U.D. Salvi J. (Judicial Member)**

### **J U D G M E N T**

**Reserved on: 29<sup>th</sup> January, 2016**

**Pronounced on: 7<sup>th</sup> April, 2016**

1. In the present Appeal, Save Mon Region Federation – an organization consisting of citizens of Monpa indigenous community in Tawang district of Arunachal Pradesh and Mr. Lobsang Choedar a Social Activist, Senior Buddhist Lama and Chief Advisor of the said Federation, have assailed grant of Environmental Clearance (EC) dated 19.4.2012 to the construction of 780 Mega Watts (MW) Nyam Jang Chhu Hydroelectric Project (NJC-HEP) in Tawang district of Arunachal Pradesh.

2. Admittedly, 780 MW HEP envisages construction of 10.2m high and 15m long barrage on eco-sensitive stretch of Naymjang Chhu River basin near Zemithangin district

Tawang of Arunachal Pradesh. The project involves 23.45km long and 6.2m. diameter Head Race Tunnel (HRT) requiring extensive tunneling in geologically fragile landscape and comprises of eight (8) de-silting chambers and with underground Powerhouse having 6x130MW Pelton Turbines. The HRT bypasses around 35kms stretch of river between barrage and the powerhouse. The Appellant adds that the project also involves construction of captive hydropower project of 7.5MW, Khangteng HEP to provide power during construction of 780MW Nyamjang Chhu project.

**3.** It is also not disputed that total land proposed to be acquired for the project is around 254.55ha, out of which 10.08ha is private land and 244.46ha is community land with total submergence area of 39.34ha, and 89.5271ha of forest land has been considered for diversion proposal under the Forest (Conservation) Act, 1980.

**4.** Following submission of proposal for grant of EC to the said project in Form-I and the public hearing prescribed under the Environment Clearance Regulations, 2006, the Expert Appraisal Committee (EAC) for river/valley and hydroelectric projects constituted by the Ministry of Environment and Forests (MoEF), considered the project proposal and prescribed Terms of Reference (ToR) for preparation of Environment Impact Assessment (EIA)

Report on 29.12.2009. The Central Electricity Authority (CEA) assessed capacity of the project based on hydrology and discharge data approved by the Central Water Commission (CWC) and thereupon capacity of the project was reduced to 780 MW from 900MW, changing the feasibility location of the project components, land requirement and thereby environmental parameters. The public hearing was conducted at New Lumla, District Tawang on 8.2.2011. Respondent No.2- Arunachal Pradesh State Pollution Control Board (APSPCB), submitted report of public hearing to MoEF on 22.2.2011. The EAC in the Meeting held on 26<sup>th</sup> March 2011 (48<sup>th</sup> Meeting) and on 16-17<sup>th</sup> September, 2011 (52<sup>nd</sup> Meeting), considered project proposal and recommended grant of EC, whereupon the MoEF granted EC to the project on 19.4.2012.

**5.** The Appellants have challenged the grant of EC, mainly on the following grounds:

**(1) Faulty Scoping Process:**

- a) Concealment of information, submission of false and misleading data in Form-I,
- b) Lack of application of mind by the EAC at scoping stage, inasmuch as it overlooked inappropriateness for siting barrage at the place used by Black necked Crane for wintering, non-inclusion of ToR for impact assessment of captive small hydel power

7.5MW Khangteng HEP and ancillary infrastructures, unjustified exclusion of important ToRs from Model ToR for North-Eastern projects, absence of prescription for cumulative impact assessment and riverine basin studies in Tawang River Basin, and absence of ToRs relating to impacts of Catchment Area Treatment (CAT) and Compensatory Afforestation (CA).

- (2) Faulty public consultation process, inasmuch as the EIA report was not as per ToR, poor quality of EIA Report, farcical hearing.
- (3) Lack of application of mind by the EAC and MoEF during appraisal of project and thereafter by MoEF.

6. Respondent No.1– Ministry of Environment, Forest and Climate Change, Government of India joined issues with replies dated 26.7.2013 and dated 11.1.2016. Lastly, MoEF relied upon the record and contended that the EAC had thoroughly scrutinized the proposal for grant of EC in question and upon examination recommended the project for scoping clearance, and public hearing for the project was conducted as per provisions of the EIA Notification, 2006 and thereupon EAC thoroughly examined the environmental issues before recommending the project for grant of EC and, thereafter, the Ministry duly granted EC to

the project after following due procedure as per provisions of the EIA Notification, 2006. Respondent No.1 MoEF, placed before us copies of the Minutes of EAC Meetings held on 20-21 July, 2015 and 24-25 August, 2015, wherein the report on “carrying capacity study of Tawang River basin” through North-Eastern Hill University received in June, 2015, was considered vide affidavit dated 11.1.2016.

**7.** Respondent No.2- APSPCB denied Appellant’s contentions and specifically contended that the public hearing was arranged by the Respondent No.2 in systematic, time bound and transparent manner ensuring widest possibility of public participation at or about the project site as per Appendix (IV) of the EIA Notification, 2006. The Respondent No.2 revealed that date, time and venue for conduct of public hearing were finalized in consultation with the Deputy Commissioner, Tawang district and Notices for public hearing were issued, both in English and in local Mompá dialect in the English script and published in two (2) local newspapers “Arunachal Times” and “Arunachal Front” both editions dated 6.1.2011 for widest publicity, and the names of designated officers where the public could access the draft EIA Report and the Executive Summary of EIA Report before the public hearing were clearly mentioned in the public hearing Notices advertised in newspapers; and these documents were made

available in such offices and were accessible to the public for inspection as mandated in the EIA Notification, 2006. The Respondent No.2 revealed that executive summary of EIA Report and other details of the project were uploaded on the Website of the Board and Notice of public hearing inviting suggestions, views, comments and objections from public was given thirty (30) days' in advance of the scheduled date of public consultation. The Respondent No.2 further revealed that as many as 457 persons a large scale public participation in sparsely populated State of Arunachal Pradesh, attended public hearing at Multi-Purpose Hall, New Lumla, Tawang district on 8.2.2011; and entire proceedings of public hearing was Video graphed duly recorded and dispatched to the Regulatory Authority as per provisions contained in the EIA Notification, 2006. Copies of record of the public hearing were placed before us by Respondent No.2- APSPCB along with its reply dated 13<sup>th</sup> May, 2013.

**8.** Respondent No.3 NJC Hydro Power Limited –Project Proponent (PP), resisted Appeal with reply dated 17.7.2013 and Sur-rejoinder dated 24.9.2013 to the rejoinder filed by the Appellants. According to Respondent No.3, HEPs are most eco-friendly project, generating hydropower, a benign renewable source of energy, needed for developing infrastructures in remote areas and the State Govt. has

signed Memorandum of Understanding (MoU) for developing several such projects in State of Arunachal Pradesh in pursuance to its policy- 'Arunachal Pradesh Hydro Power Policy, 2008' for development of hydropower potentials. A Memorandum of Agreement (MoA) was signed between Respondent No.4- Govt. of Arunachal Pradesh and Bhilwara Enginery (BEL) on 28.5.2009 to develop Nyamjang Chhu HEP and a Special Purpose Vehicle (SPV) in the name of NJC Hydro Power Ltd was formed by BEL for execution of Nyamjang Chhu HEP with consent given by the Respondent No.4 on 10.6.2010 in terms of said agreement. The Respondent No.3 further revealed that the project is run of the river type scheme with peaking poundage to harness the hydropower potential of River Nyamjang Chhu with its diversion barrage near Zemithang village with powerhouse in village Kharteng about 4km upstream of the confluence of Nyamjang Chhu with Tawang Chhu. According to the Respondent No.3, majority of catchments, upstream of diversion structure lies in Tibet, and the catchment within Indian Territory downstream of diversion structure shall remain largely undisturbed due to several tributaries joining the river system. Initially, the Respondent No.3, revealed that the project was allotted in three stages, but on basis of pre- feasibility report to which the Respondent No.4 accorded its consent the project was found to be more viable and environmentally less demanding in single stage,

and Memorandum of Agreement amongst other things including provisions for the following developmental and welfare activities for benefit of local areas was signed on 28.5.2009:

- a.** Development of two small HEP's viz Khangteng HEP (7.5MW and Shyaro Nallah HEP (3MW),
  - b.** From the date of commercial operation the State shall be given free power @12%.
  - c.** Additional 1% free power from the project for Local Area Development Fund.
  - d.** Hundred (100) Units of electricity per month to each Project Affected Family (PAF) for a period of ten years.
  - e.** The Company shall also bear the State Government's share of 10% of the project cost of Rajiv Gandhi Vidyutikaran Yojna (RGGVY) within a radius/surface distance from the powerhouse/dam site of 10 kms.
  - f.** Recruitment of project personnel and award of work, where preference to local contractors and project affected eligible candidates in the matter of recruitment of project personnel and award of work apart from reservation of posts in the project.
  - g.** Provision of institutional mechanism, the Project Monitoring Committee under the Chairmanship of Secretary, Power or any other State Govt. Authority for the purpose of overseeing progress of the project and address issues arising out of its implementation.
- 9.** According to the Respondent No.3, the EAC raised several issues and approved ToR with various additional

conditions and accordingly two Agencies WAPCOS Limited (A Central Govt. of India Organization) and R.S Enviro-link Technologies (RSET) for due collection of environmental data and its study were appointed and the EIA as well as EMP report was prepared by WAPCOS as per approved ToRs and the EIA study included submergence of area i.e. area within 10km of submergence area, area to be acquired for various project components and area within 10km of project components, namely barrage and powerhouse; and the Central Inland Fishery Research Institute, Kolkata (CIFRI) was appointed to conduct the study for estimation of environmental flow required to maintain aquatic life in the river and migration of fishes. According to the Respondent No.3, requisite environmental data was duly collected, detailed filed/studies were carried out, environmental impacts were examined in detail and thereupon Environmental Management Plan was developed by the consultants.

**10.** According to the Respondent No.3, four different alternatives for project layout were examined in detail and detailed comparison of alternatives was made, and finally fourth alternative – present barrage located in Zemithang with powerhouse proposed to be located on the left bank of NJC river in Kharteng village was selected, based on suitability of geological consideration and minimum

submergence area required, easy accessibility and other positive construction benefits with minimal environmental impact, minimum tree cutting and minimum disturbance to the local population during construction, minimum height of the diversion structure due to flat grade and sufficient width of the river and no impact on religious monuments such as Gorsan Stupa. A detailed project report in respect of fourth alternative was placed before the CEA for Techno Economic Concurrence; and the CEA finalized project capacity at 780MW during Techno Economic discussion and same was accepted by the Respondent No.3 and approved by Respondent No.4- Govt. of Arunachal Pradesh as well as MoEF for revision of project capacity from 900MW to 780 MW on 2.8.2010. After completion of studies by CIFRI, WAPCOS and RSET, the Respondent No.3 added, the draft Environmental Impact Assessment Report, including detail Environment Management Plan (EMP) was submitted to Respondent No.2- APSPCB on 10.12.2010 with a request to conduct public hearing for the project; and public hearing for the project was duly conducted by Respondent No.2- Board on 8.2.2011 under the Chairmanship of Deputy Commissioner, Tawang. According to the Respondent No.3, the EIA study was finalized and submitted in 2011 in pursuance to the proceedings of said public hearing and the same were submitted to MoEF, New Delhi for consideration; and the project was duly considered

by the EAC on 26<sup>th</sup> March, 2011; and several observations were made by the EAC with respect to various EMPs; and the MoEF sought clarifications of the observations made by the Committee from the Respondent No.3, which were replied by the Respondent No.3 in August, 2011. The Respondent No.3 added that based on replies submitted by them the project was again considered by the EAC on 17.9.2011 and the Committee recommended the project for EC.

**11.** Adverting to Memorandum of Appeal, the Respondent No.3, denied specific contentions raised by the Appellants. According to the Respondent No.3, Khangteng HEP is separate, independent and small Hydropower project located about 30 km from the project in question and is part of MoA on a Built, Operate and Transfer basis for supply of power to the project in question during construction phase, which has been envisaged primarily on environmental grounds to do away with diesel generators having adverse environmental impacts. This being a project on single river system, it will not have any cumulative impact with any other existing or planned activities in the locality, though several HEPs may have been proposed in Tawang region in general. According to the Respondent No.3, cumulative effect of the project is considered when project shares same catchment.

**12.** Main thrust of submission made on behalf of the Appellants in the present case is on faulty project scoping, which has multiple cascading effects on various stages of process of grant of EC and its final outcome. Perusal of the Environment Clearance Regulations, 2006, reveals that prior EC process for new project has four stages namely, (1) Screening (2) Scoping, (3) Public Consultation and (4) Appraisal, though all of which may not apply to set of particular cases. However, the project in question being River Valley project of 780MW HEP generation, is category 'A' Project listed at serial No.1-(c) of the Schedule of Environment Clearance Regulations, 2006, warranting scoping, public consultation and appraisal under the said Regulations. 'Scoping' refers to process by which the EAC determines detailed and comprehensive ToR addressing relevant environmental concerns for preparation of EIA Report in respect of the project for which prior EC is sought. The EAC determines ToR on the basis of information furnished in the prescribed Application Form-I, including ToR proposed by the Applicant, site visit by Sub-group of EAC concerned, only if considered necessary by the EAC. In 'public consultation' the concerns of local affected persons (PAP) and others having plausible stake in environmental impacts of the project or activity, are ascertained with a view to take into account all material concerns in the project or activity designed; and 'public

consultation' comprises of 'public hearing' at the site or in its close proximity and obtaining responses in writing from other concerned persons, having plausible stake in environmental aspects of the project/ activity. For obtaining responses in writing from other concerned persons, having plausible stake in environment aspects of the project or activity, the concerned Regulatory Authority invites responses from such concerned persons by placing on their Website Summary of the EIA Report prepared in the format given in Appendix 3-A, along with a copy of the Application in the prescribed Format within seven (7) days of receipt of written request for arranging 'public hearing'. The Regulatory Authority concerned, is under obligation to make available on written request from any concerned person the draft of EIA Report for inspection at invited place during normal office hours. Procedure for conduct of 'public hearing' given under Appendix IV of the Environment Clearance Regulations, 2006, prescribes arrangement of 'public hearing' in a systematic, time-bound and transparent manner, ensuring widest possible public participation at the project site(s) or its close proximity and requires draft EIA Report, including Summary EIA Report in English and in the official language of the State/local language prepared directly in accordance with ToR available for inspection, electronically or otherwise to the public providing thirty (30) clear days to the public for furnishing

their responses. All the responses received, as part of such public consultation process, are forwarded to the Applicant and the Applicant is obliged to address all material environmental issues, concerns, costs during such process and make appropriate change in the draft EIA and EMP and prepare a final EIA Report. The EAC is then obliged to carry out an appraisal meaning thereby carries detailed scrutiny of the Application and other documents like final EIA Report, outcome of public consultation, including 'public hearing' proceedings submitted by the Applicant for grant of EC. The Applicant is invited to furnish necessary clarifications in course of the process of appraisal carried out by the EAC. On conclusion of this proceeding, the EAC makes recommendations to the Regulatory Authority either for grant of prior EC on stipulated terms and conditions or rejection of Application for prior EC, together with reasons for the same. Thereafter, the Regulatory Authority considers recommendations of the EAC and normally accepts the recommendations. However, in cases where it disagrees with recommendations of the EAC, the Regulatory Authority makes request for re-consideration by the EAC, while stating reasons for disagreement and the EAC has to consider observations of the Regulatory Authority, distinguish its views and thereupon after considering the views of EAC the decision is finally taken by the Regulatory Authority. Pertinently, the Application for grant of EC is

liable for rejection in case of deliberate concealment and/or submission of false or misleading information or data, which is material to screening, scoping, appraisal or decision on the Application vide para 7,8 of the Environment Clearance Regulations of 2006.

**13.** Thus, it can very well be seen from the procedure laid down in the Environment Clearance Regulations of 2006 for grant of prior EC that the information or data furnished by the Applicant in its Application forms basis of entire process stipulated for grant of prior EC, as information/data supplied begets ToR leading to preparation of EIA Report which is indispensable for process of public consultation rendered obligatory by law to understand public concerns in relation to environmental impacts of the project; and which in turn are responsible for generating the EAC recommendations. Thus, the information/data supplied by the Applicant has cascading effect on the final outcome of process of EC. ToRs, a product of scoping process are material to EIA studies, which leads to the EIA Report and thereafter the final EIA Report as aforesaid necessary for forming objective opinion by the EAC in the process of appraisal for making recommendations to the Regulatory Authority. Material issue, therefore, needs to be answered in the present Appeal is as to whether process of grant of

prior EC to the project in question suffers from vice of faulty scoping process or not.

**14.** Learned counsel appearing on behalf of the appellants, with reference to a copy of the Form-I Application submitted by the PP, particularly, as regards part II- Activity Sr. no. 9.4 and III environmental sensitivity, submitted that the PP deliberately concealed material facts and this vitiates the entire process of scoping and consequently, the process of grant of EC. According to learned Counsel for the Appellants, the PP gave negative answers to the query at 9.4 regarding cumulative effect to proximity of other existing or planned projects with similar effects, when 13-HEPs particularly, 800MW Tawang II project were proposed in Tawang River basin. This is obvious, learned Counsel on behalf of the Appellants, argued from the techno economic clearances granted by the CEA to Nyam Jang Chhu project on 24<sup>th</sup> March 2011:

*“ The issue of likely interference of one adit of Nyam Jang Chhu HEP with works/adit of Tawang HEP Stage-II of M/s NHPC Limited was resolved in the meeting convened by Chief Engineer (HPA),CEA....*

*...4(viii) M/s NJCHPL, shall co-operate with M/s NHPC limited who are developing Tawang HE Project Stage-II and other developers in the vicinity to facilitate to carry out their works during construction and O&M stages of the projects.*

*ix) M/s NHPC Limited shall adjust location of their (Tawang HEP Stage-II) muck dumping yard and construction facility areas to avoid any relocation of the TRT outfall of Nyam Jang Chhu HEP. During construction of TRT of Nyamjang Chhu HEP, M/s NHPC Limited shall allow M/s NJCHPL the right of way/access to construct their TRT and outfall structure after mutual discussions. M/s NHPC Limited shall also extend this facility to M/s NJHPCL during O&M, whenever necessitated.*

*x) M/s NJCHPL shall maintain clear lateral distance of not less than 140m between the TRT of Nyamjang Chhu HEP and construction adit of Tawang HEP Stage-II.”*

**15.** Learned Counsel appearing on behalf of the Appellants further pointed out, from negative answers to the queries at serial Nos. 1,2, 3 regarding III Environmental sensitivity in Form I- Whether the area is protected under international conventions, or is important or sensitive for ecological reasons, or used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting or wintering migration, the insensitiveness of the PP when it is a wintering site for endangered vulnerable and threatened to species of birds- Black necked Crane and (Grus Nigricollis) and wintering site for this endangered species. He submitted that the project in question is located at the very much identified wintering site of the Black necked Crane- Zemithang Nylah, an important Schedule I-

Bird area. He submits that the Black necked Crane is the Schedule-I species under the Wild Life (Protection) Act, 1972 (Entry-1(a), part-III Birds). To answer the counter contention that there was no scientifically validated and legally recognized material to support existence and sighting of this endangered species at Zemithang, he invited our attention to the Scientific Report and studies “Critics of Wildlife Sections of the EIA Report” published by the Senior Scientist of the Nature Conservation Foundation – Annexure A-29. The Relevant text of the Critique reads as under:

“In addition, the Nyamjang Chhu River valley is one of the few wintering sites in the world visited by the black-necked crane (about 7 birds) listed as vulnerable by IUCN and Bird Life International (2001). The valley suitable for the Black-necked crane is from Broken thang (27°43'38.47"N, 91°43'39.69" E), a 3km stretch at an average altitude of 2000msl (Dutta 2010, Rahmani 2010). The average width of the valley is 030 and water flow in this stretch of the river is gentle with small seasonal islands and grasslands on both sides. Locals who call the bird ‘Thung-Thung Karmo’ revere the bird and report that the cranes have visited the valley since time immemorial. **This crucial wintering area overlaps with the project site (see Fig.1).**

Apart from the black-necked cranes, the valley is also home to other Schedule-I species such as

red panda (*Ailurus Fulgens*) in the Zemithang-Lumpo area, and the snow leopard (*Panthera Taxi color*) in the higher reaches and the Arunachal macaque *Macacamunzala*, a newly described primate species in the area (Sinha et al.2005). There are several troops of the Arunachal macaque in the Zemithang Valley and is one of the primary habitats for this species (Kumar et al.2007, Mendiratta et al. 2009).

The EIA report does not record any of these facts nor does it refer to any of this extensive literature in its report. This is a serious omission and it incorrectly states that the area and its surrounding areas harbor no rare or endangered wildlife”.

**16.** It is also brought to our notice that the Black necked Crane– is revered by the local Monpa Community in Zemithang and is locally called “*Thung Thung Karmo*” incarnation of VI Dalai Lama. According to learned Advocate for the Appellants, Zemithang Nylah IBA, is one of the two wintering sites for the Black necked Crane in Arunachal Pradesh, other being syank valley.

**17.** It is true that these material facts were not before the EAC when scoping was done. Naturally, ToRs prescribing EIA study as regards these material facts were not prescribed thereby resulting in vacuum in the EIA Report on this material aspect. Consequently, inevitable aberration

creeps in the appraisal done by the EAC for recommending grant of EC in question.

**18.** Learned Counsel appearing on behalf of the PP submits that this Tribunal has authority to take an appropriate decision on the facts placed before it and has multiple options either to set aside or suspend the EC and remand the case for reconsideration to EAC on limited issue, or upheld the EC with suggested safeguards. He pointed out from the record that the project in question is pursuant to HEP Policy-2008, and is most environment- eco friendly operation for generation of energy much needed for development and environmental impacts are minimal as compared to economic gains. He submitted that initially the project was in three phases and was given up and a single phase project was considered in order to minimize environmental impacts. He further submitted that two reputed consultants have carried out EIA study and where was need for them to suppress or not to mention anything about the Black necked Crane, particularly, when they referred to Schedule-I species bird pheasant in the EIA Report. He further submits that none of the Members of Public made any utterance about the Black necked Crane and out of 700 households 300 attended 'public hearing', out of them 41 were from Zemithang. He further submits that Nyam Jang Chhu River is Perennial River, having eight

tributaries between barrage and tunnel outlet and minimum flow is ensured without there being occasion of drying of the river. Referring to description of the habitat of the Black necked Crane as spelt out in the literature produced "Threatened Birds of India" by the Appellants at Annexure A-8, to the Application, he further submits that the Black necked Crane breeds in Alpine meadows and riverine marshes, favouring lacustrine marshes from 2600-4900 MSL and winters in river valleys and along riverine shoreline in the vicinity of Barley and spring wheat fields; and such habitat would continue to remain available to the Black necked Crane, even after the project in question takes shape, particularly, on account of pond of water upstream and rice fields along Nyam Jang Chhu River and other Tributaries downstream barrage.

**19.** All said and done, there has to be application of mind by the EAC in prescribing ToRs and in the appraisal process to the material facts. Even at scoping stage the EAC can take decision and recommend rejection of Application for prior EC, on which the Regulatory Authority is obliged to act in terms of provisions of the Environment Clearance Regulations, 2006- (VII (2) stage-2, Scoping Part-III). The issue raised earlier therefore, needs to be answered affirmatively. The facts, however, reveal that this has not happened. Pertinently, it is revealed by Respondent No.1

MoEF that in the 86<sup>th</sup> Meeting of EAC (Annexure-2), the EAC took cognizance of Tawang River Basin Study Report conducted by the North-Eastern Hill University (NEHU) and that the Department of Power, Govt. of Arunachal Pradesh has made carrying capacity study of Tawang River basin through NEHU, Shillong; and carrying capacity Study and cumulative impact assessment for river and river basin has been mandatory requirement to consider environment and forest clearance of individual HEPs. The EAC has acknowledged that basin study serves as an important decision-making tool for the Ministry insofar as considerations and grant of EC and FC for HEPs are concerned. The EAC has taken into consideration submissions of NEHU on the issue of conservation of the Black necked Crane and destructing wintering habitat by Nyam Jang Chhu project and concluded that E-flow data computed for Nyam Jang Chhu project, in NEHU draft report (September 2014 version) should be included along with migration measures suggested and separate study on E-flow requirement for protection of habitat and conservation of the Black necked Crane would be commissioned by the MoEF&CC through the Wildlife Institute of India, Dehradun for taking a final decision on Nyam Jang Chhu project.

**20.** The record also reveals that the CIFRI had carried out field study, collected samples and carried out analysis based on commonly used environment stop methodology for estimation of environment flow required for maintaining aquatic life in the river and migration of fishes, and has made following recommendations in its final report dated July, 2011:

- a)** The minimum environmental release of 3.5cumecs from the barrage during lean period is recommended for maintaining the aquatic life in the river
- b)** The recommended discharge of 3.5cumecs will maintain flow depth and flow velocity of 0.55m and 0.36 m/s respectively.
- c)** A suitably designed fish ladder should be provided in the barrage to facilitate fish migration for sustenance of the native fish population.
- d)** Hatchery unit for indigenous species, nursery ponds, rearing ponds, stocking ponds must be created prior to storage of water in the barrage. Regular ranching of seeds of this species would be an alternative to natural recruitment.

**21.** However, this report has surfaced only after public consultation held in February, 2011. Respondent No.1-MoEF submits that Tawang basin study is already a cumulative impact study carried out and takes care of alleged concerns and Nyam Jang Chhu being the only project in the entire catchment of Nyam Jang Chhu River,

and no more study is required as regards micro-hydel power project of Khangtang and Shyrao as necessary clearances have been obtained and they are 32-40 km away from the project and are being used primarily to displace use of diesel as a fuel during construction of the project. Learned Counsel appearing on behalf of MoEF further submits that it needs to be left to the discretion of EAC and MoEF to decide whether fresh 'public hearing' or consultation are required on account of changes in scope alignment/project features/operation regime and fresh studies commissioned for project.

**22.** It is true that hydel power project provides eco friendly renewable source of energy and its development is necessary, however, we are of the considered view that such development should be 'sustainable development' without there being any irretrievable loss to environment. We are also of the view that studies done should be open for public consultation in order to offer an opportunity to affected persons having plausible stake in environment to express their concerns following such studies. This would facilitate objective decision by the EAC on all environmental issues and open a way for sustainable development of the region. In order to do justice in the matter, therefore, we pass the following directions:

- i)** The EC dated 19.4.2011, is suspended till the time the studies as directed are carried out, public consultation thereon done, the EAC considers outcome of such public consultation, carries out a fresh appraisal of proposal for grant of EC, makes recommendation to the MoEF&CC, and the MoEF&CC acts upon such recommendations in accordance with law.
- ii)** The MoEF&CC shall cause to be made a separate study of E-flow requirement for protection of habitat of the Black necked Crane and for conservation of the Black necked Crane through the Wildlife Institute of India, Dehradun, as expeditiously as possible and make such study report along with Tawang River Basin study available for 'public consultation' and shall hold 'public consultation' in compliance of the aforesaid direction in accordance with law.
- iii)** The EAC shall thereupon, make fresh appraisal of the proposal for grant of EC and take appropriate decision for making recommendations to the MoEF&CC, who shall take decision thereupon in accordance with law.
- iv)** The Appeal stands disposed of with no order as to costs.

**Justice U.D.Salvi**  
**Judicial Member**

**Prof. A.R. Yousuf**  
**Expert Member**

Item Nos.01 -04

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, FINANCE CENTRE  
KOLKATA**

**(By Hybrid Mode)**

Appeal Nos. 29 to 31/2022/EZ

Conservation Action Trust &amp; Anr.

Appellants

Versus

The Ministry of Environment Forest  
& Climate Change & Ors.

Respondent(s)

**WITH**

Appeal No. 32/2022/EZ

Ashis Kothari

Appellant

Versus

The Ministry of Environment Forest  
& Climate Change & Ors.

Respondent(s)

Date of hearing: 03.04.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Appellant(s): Mr. Kaustav Dhar, Advocate a/w Ms. Ajeeya Choudhury, Advocate for the Appellant (in Appeal Nos. 29 to 31/2022/EZ)

Mr. A. Yogeshwaran, Advocate a/w Ms. Poongkhulali B., Advocate, Mr. Santanu Chakraborty, Advocate for the Appellant (in Appeal No. 32/2022/EZ)

Respondent(s): Ms. Aishwarya Bhati, ASG a/w Ms. Suhasini Sen, Advocate, Mr. Aman Jha, Advocate (in Virtual Mode), Mr. Apurba Ghosh, Advocate and Ms. Manisha Chava, Advocate for R-1

Mr. Vikramjit Banerjee, ASG a/w Mr. Shatadru Chakraborty, Advocate, Mr. Ramendu Agarwal, Advocate (in Virtual Mode), Mr. Dibesh Dwivedi, Advocate for R-2 & 3

Ms. Dhriti Banerjee, Director, ZSI (in Virtual Mode)

**ORDER****Preliminary – subject matter of appeals**

1. This order will deal with Appeal Nos. 29 to 32/2022/EZ as all the four Appeals pertain to Forest/Environmental Clearance (FC/EC) in respect of integrated **project (the project) by Andaman and Nicobar Islands Integrated Development Corporation (ANIDCO) in Great Nicobar Island**, the project proponent (PP), involving the following:-

- a. International Container Transshipment Terminal (ICTT)-14.2 Million TEU
- b. Greenfield International Airport (4000 Peak Hour Passengers-PHP)
- c. Township & Area development
- d. 450 MVA Gas and Solar based power plant over an extent of 16610 hectares (Ha) in the Great Nicobar Islands.

2. (a) is the main project of which (b) to (d) are integral parts.

3. Appeal No. 29/2022 is against Stage-I Clearance dated 27.10.2022 under the Forest (Conservation) Act, 1980 by MoEF&CC for diversion of 130.75 Sq. Km of forest land in the Great Nicobar Island. Appeal Nos. 30 to 32/2022, are against EC dated 04.11.2022 for the project by the MoEF&CC. **Appeal No. 29 to 31/2022 have been filed by Conservation Action Trust trust located at Bombay while Appeal No. 32/2022/EZ has been filed by one Mr. Ashis Kothari of Pune.** All the appeals came up for hearing on 11.01.2023 when notice was issued to the respondents including the MoEF&CC and the PP.

4. Challenge to the FC is inter-alia on the ground that impact of diversion of 130.75 Sq Km of pristine tropical rainforests on biodiversity, wildlife habitats and Tribals has not been considered. Crucial information

was withheld from Form-A. Forest land cannot be diverted for township and non-site specific projects. Mandatory process under the Forest Rights Rules has not been followed. PP being part of Andaman Administration could not have been associated with the impugned clearance. Forest dwelling community - Shompen (PVTG) and Coastal dwelling community Nicobarese (ST) have settlements in the area to be diverted and de-notified.

5. Challenge to the EC is inter-alia on the ground that appraisal conducted by the EAC is not in accordance with the EAC Notification dated 14.09.2006, EIA report has not been prepared as per ToRs, public hearing is vitiated, impact of the project on tribal population has not been considered, cumulative impact assessment has not been conducted. and ICRZ Notifications, 2019 have been violated. The project will result in destruction of forests, turtle nesting grounds, habitat of endangered endemic species, violation of the rights of indigenous communities in the Great Nicobar Island.

**Details of the project and conditions for the Impugned EC**

6. Perusal of impugned EC dated 04.11.2022 shows that the proposal for the project was considered in the 293<sup>rd</sup> meeting of EAC held on 24<sup>th</sup> – 25<sup>th</sup> March, 2022 and again in the 297<sup>th</sup> meeting of EAC held on 24<sup>th</sup> – 25<sup>th</sup> May, 2022. Based on the reply submitted to the queries raised by the EAC, the proposal is again placed in the 306<sup>th</sup> meeting of EAC held on 22<sup>nd</sup> – 23<sup>rd</sup> August, 2022. Some details of the project are mentioned as follows:

*“6. The proposed project fall under 7(e) Ports, harbours; 1 (d) Power Plant; and 8 (b) Township & Area Development project, Category A, Scheduled to the EIA Notification, 2006.*

*7. The total area required for the proposed project is 16610 ha. The proposed Project site is in not connected through any road. Currently, the access is through sea and air route only. Approach roads shall be developed within the Islands.*

8. No development is proposed on the western side of Galathea Bay in Phase I development apart from Defence area development, power plant and basic infrastructure to sustain defence and power plant site. Suggestion/opinion from MoD will be sought to finalise the buffer zones around Defence parcels. Buffer area of 500 mts from high tide line around Pemayya to be declared as Coastal Protection Area with stringent controls on any development within the area. Further, Alexandria Bay and Casuarina Bay are located far away and fall outside the project area on the western coast. All these areas including Pemayya Bay have been made part of the leatherback conservation plan. Adequate measures have been proposed for protection of nesting beaches and turtles.

9. A separate land use category "Special Use" has been included in the land use plan. The subcategories under "Special Use" are:

- a. National Memorial (Western tip of Galathea Bay),
- b. Defence Purpose (Western tip of Galathea Bay),
- c. Pemayya Buffer Area (Buffer area of 500m from HTL for safe nesting of Leatherback turtles).

10. xxx.....xxx.....xxx

11. The North South road of 55m ROW is the main arterial road connecting different pockets of development across the master plan area. It also serves as the key connector between the development on the eastern and western side of the master plan area and serves the overall function of distributing traffic and enabling access. The 55m RoW has been envisaged as an urban arterial road and the proposed design for this road is in compliance with guidelines for Urban Roads. The 55 m arterial road serves multiple functions enabling movements through different modes of transport including non-motorised transport i.e. cycles as well as pedestrians. Development within CRZ area will be in compliance with ICRZ Notification 2019.

12. The arterial road will be developed in a phased matter. In the first phase, 30 m ROW will be utilized and developed and the balance 25 m ROW will be reserved for future expansion for Bus Rapid Transit (BRT) or Light Rail Transit (LRT). Need for development of remaining 25 m RoW will be reviewed by the project monitoring committee on biodiversity before its construction and after full capacity utilization of 30m RoW and evaluation by CSIR-Central Road Research Institute (CRRI).

13 to 22...xxx.....xxx.....xxx

**23. WII has prepared the plan for conservation and long term monitoring of sea turtles of the Nicobar Islands along with the leatherback sea turtles for a period of 10 years primarily. The conservation plan will be implemented in two phases. Phase1 involves monitoring and nesting the population tracking the movements, identification of high use areas in the breeding sites and non-breeding regions, determining foraging areas**

**using stable isotopes, population genetic structure of leatherback turtles, assessing vulnerability of turtle nesting beaches and adoption of appropriate management strategies and multi stakeholders' involvement in the long-term conservation of sea turtles. Phase 2 of the conservation plan will develop effective site-specific actions for conservation of sea turtles.**

24. WII has been identified as a scientific agency to prepare and implement conservation plans for leatherback turtles and saltwater crocodiles. In the case of Nicobar Megapod, coordinated and collaborative research will have better outcome and in the larger interest of the endemic species of Nicobar megapode.

25. **For facilitating movement of wildlife between forest and the sea shore and for crossing the arboreal animals as well as for passage of snakes, crabs, crocodiles etc, safe wildlife corridors at 8 locations along the eastern side of the island connecting forest and seashore through via-ducts in the north south arterial road have been proposed and incorporated in the master plan. The locations of the proposed wildlife corridors i.e. via ducts have been selected based on the ground situation and inputs provided by ZSI and Department of Environment & Forest. The width of the corridor ranges from 250 meters to 1100 meters and the eastern side of the corridors via ducts towards the seashore would be maintained as green area and no development is proposed in the said areas.**

26. The port may place series of Ecological Marker Buoys for every 200 m along the proposed extended breakwater line. Also, Marker Booms may be connected in between the buoys. **Such arrangement will clearly mark the 'AREA TO BE AVOIDED TO AID TURTLES', warn restriction of the navigational route, thereby neither ships nor boats can enter the 'TURTLE NESTING AREA'. It would protect the turtles from the port operation.**

27. *Shoreline change:* The observed trend of the shoreline at the proposed project location reveals that the shoreline remains with not noticeable change over a period of 5 years from 2015 to 2020. The shoreline analysis shows that the project site at port is surrounded with elevated hill promontories and rocky shores.

28. *Dredging and Reclamation:* The total quantity of capital dredging for the development of port is about 17.7 million cu.m. MIKE 21-PA (Particle Analysis) module was used to identify a suitable location for dumping the dredge spoil and to understand the dispersion pattern of disposed material after dumping. The maximum increase in seabed level over the disposal area is about 0.03 m at the proposed dumping location. Due to availability of deeper water depth of 600m the change in bed level at the proposed disposal location due to dumping is

insignificant. The plume of suspended sediment after dumping tends to spread towards northeast to an extent of 1 km with an increase in seabed level of <0.008 m. Therefore, the proposed disposal location is found to be more ideal and it will not cause any adverse impact on the proposed port development facilities and the marine environment.

29. xxx.....xxx.....xxx

30. Cargo handling with dust control measures: Since the proposed port is International Container Transshipment Terminal (ICTT), there will be no dusty cargo, dry bulk cargo such as coal, iron ore or hazardous cargo, etc. will be handled at port. All the vehicles engaged for construction should have valid pollution check certificate as per the motor vehicle act. Further, any regulations related to vehicle emission issued by local government should also be adhered to. Generators and machineries are to be serviced and maintained regularly to avoid generation of dust and other air pollutants. Oil Spill Contingent Management Plan includes Boom containment, Spray of dispersant and Skimmers. No hazardous industries are envisaged at GNI however the containers may contain hazardous cargo, **Hazardous cargo shall be handled in accordance with 'The Manufacture, Storage and Import of Hazardous Chemicals Rules, ACT 1989'. Containers carrying hazardous cargo are labelled as Hazardous Cargos and stored at separate locations in the yard designated for the storage of hazardous cargo and a dedicated Nodal Officer will be appointed who will be responsible to check the compliance of the regulations from time to time. Hazardous waste like used oil, insecticide/ herbicides, paints, solvents, lubricants etc. would be generated from the project, the same hazardous substances will be securely stored at site before transportation, Double chamber Incinerator has been proposed to treat the possible hazardous waste generated from Port, Power plant and the Township.**

31 to 32 xxx.....xxx.....xxx

33. Land acquisition and R&R issues: Total land acquisition required for project is approximately 421.57 ha. Total families affected is 379 and total affected population is 1761.

34. Revised ICRZ recommendations have been received via letter 'No.PCCF/EPA/1/Vol-XVI/154, Andaman & Nicobar administration, Department of Environment and Forests, PCCF (CRZ&FC) / nodal officer, FCA&MS, A&NCZMA/ Van Sadan, Haddo, Port Blair, Dated 8<sup>th</sup> July, 2022.

35 xxx.....xxx.....xxx

36. Mangroves: **The Mangrove Conservation and Management Plan for Great Nicobar Island has been prepared by the Department of Environment and Forests, A&N Administration.**

The mangrove conservation plan is aimed at restoration and restocking of the tsunami impacted mangrove areas besides enhancement/enrichment through plantations. The plan also aims at improving the diversity of mangroves, its richness and stand density through proper assessment of distribution and status of mangrove species found in Great Nicobar Island along with the locations. The conservation plan addresses the strategies to restore and revive the mangrove areas through ecological restoration and enrichment planting.

**37. The Coral Conservation Plan prepared by ZSI addresses both, the conservation strategies for coral colonies around GNI as well as translocation strategies for ten (10) hectares of impacted corals. A total of 245 species of scleractinian corals under 53 genera and 15 families are recorded from seven sites including the Great Nicobar Island. No major coral reef exists within the work area of the project. However, scattered coral reefs are available at the peninsular part of the Galathea Bay. As part of the assessment for conservation and management of Coral reefs, the Coral cover required to be translocated from the proposed site is around 10 ha which includes around 20668 Coral colonies out of which approximately 16150 colonies will be translocated. The plan addresses the probable sites for translocation, the methodology, the coral colonies for transplantation, conservation and management of coral reefs both at the translocated sites, donor sites and other sites in Great Nicobar Islands.**

38. xxx.....xxx.....xxx

39. *Employment Potential:* The project around 6,939 persons directly and 10,408 persons would be employed by 2025, around 24,734 persons directly, 37,101 persons indirectly would be employed by 2040 and 51,423 persons directly and 77,135 persons indirectly would be employed by 2052. Generally, locals are employed by the contractor.

40. *Public Hearing:* Public Hearing was conducted on 27.01.2022 at Community Hall, Gram Panchayat, Campbell Bay, Great Nicobar.

**41. Benefits of the Project: Strategic benefits:- Strong presence in Indian Ocean Region to counter the pressure being built by foreign powers growing presence. Capturing the Strategic location to develop a new Economic hub in India Ocean region. Improving connectivity with Indian mainland and other global cities. Socio-economic benefits: Promoting sustainable tourism. The proposed ICTT will allow India to participate in the regional and global maritime economy by becoming a major player in cargo transshipment. A Mixed-use**

**urban development in the vicinity of these major infrastructure works will also be necessary to support quality of life for the residents that will generate and enable growth in the various economic sectors over time. This will require the development of simultaneous primary and secondary urban infrastructure networks such as roads, public transport, energy and electrical power, as well as water, wastewater, and storm water facilities and services, which will form the skeleton of the proposed township master plan. It is estimated that after the project is fully implemented, it has the potential to generate around 1,28,558 jobs opportunity. Socio-economic growth of local population. Development of social infrastructure supporting existing population and proposed population.**

42. WII suggested that the project can be undertaken however more intensive assessment/research is required on Leatherback Sea turtle and its movements to craft site-specific mitigation strategy and suggested 10-year road map to systematically implement mitigation measures. SACON and WII has provided 10-year plan to mitigate impacts on Nicobar Megapod.

43. EAC also noted that there are several other endemic flora and fauna and impact of the project on these species is mostly unknown. The EAC noted the scale of impacts the proposed project may have both on flora and fauna of GNI and native populations, however, considering the strategic nature of the integrated project as presented by the PP and taking into account the submission made by the project proponent had a detailed deliberation in its 306<sup>th</sup> meeting during 22<sup>nd</sup> – 23<sup>rd</sup> August, 2022 and recommended the proposal for grant of Environmental and CRZ clearance with the specific conditions, as mentioned below, in addition to all standard conditions applicable for such projects:

44. The Ministry of Environment, Forest and Climate Change has considered the proposal based on the recommendations of the Expert Appraisal Committee (Infrastructure, CRZ and other Miscellaneous projects and other co-opted members of Infra-2 EAC, members of Thermal EAC and NDS Committee) and hereby decided to grant Environmental Clearance and CRZ Clearance for the “Integrated development of International Container Transshipment Terminal (ICTT)-14.2 Million TEU, Township & Area development and 450 MVA Gas and Solar based power plant in 16610 ha. Great Nicobar Islands, Nicobar District by M/s Andaman and Nicobar Islands Integrated Development Corporation Ltd” under the EIA Notification, 2006 and ICRZ Notification, 2019 as amended, subject to strict compliance of the following specific conditions, in addition to all standard conditions applicable for such projects.

### **SPECIFIC CONDITIONS**

- I. All the recommendations mentioned in the wildlife conservation plans and Tribal welfare plans below shall be implemented in time bound manner. The compliance to the recommendations as per schedule shall be submitted along with 6 monthly compliance reports to the regional office of MoEF&CC.**
- A. Leatherback Sea Turtle:** Proposal submitted by Wildlife Institute of India (WII) was considered by the EAC and following recommendations are provided to ensure conservation of Leatherback along with other species of sea turtles such as Hawksbill, Green, Loggerhead and Olive Ridley in Andaman and Nicobar Islands with focus of Nicobar group of Islands. EAC has following specific recommendations-
- a. The budget estimated by WII needs to be revised as the project life-cycle is for 30 years till year 2052, however, the proposal of WII is only for 10 years. Therefore, WII need to revise proposal for 30 years along with budgetary provisions and implementation timeline and submitted to PP within 15 days of the grant of EC. Based on the revised proposal sent by WII corresponding amount for first 10 years will be released by PP within 3 months of submission of proposal which would enable WII to undertake uninterrupted research and conservation interventions on Leatherback and other species of sea turtles such as Hawksbill, Green, Loggerhead and Olive Ridley. Accordingly, the Committee informed PP to revise the EMP provisions. The provision for WII would be over and above the cost required by forest department. The costing should include costs of additional resources such as human resource, vehicles, mechanized boats, 200 additional satellite tags and monitoring costs over entire lifecycle of the proposed project etc as stated below. Project tenure of WII should be consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052 and not limited to 10 years. The financial allocation in the proposal of WII should be such that the satellite tagging studies can be started immediately and have adequate and uninterrupted financial resources to continue the conservation work on Leatherback Sea Turtles. If any additional funds are required at a later stage or for post project development monitoring work, those will be made available by PP to WII. Project monitoring committee as stated in 3.10.3(VI) will review the project progress through biannual meetings and additional financial requirements in due course.
  - b. 20% of nesting population of Leatherback Sea Turtle or minimum 150 satellite tags (Argos-linked FastGPS Platform Terminal Transmitter with DIVE sensors), whichever is higher, to be deployed to Leatherback Sea Turtle in GNI and Nicobar Islands and Little Andaman in the first 5 years phase by WII. Of these 150 tags, minimum 50 tags to be deployed in the first year so that the sea turtle movement data will be available for the PP to monitor construction activity. For rest of the nesting individuals, flipper tags to be deployed.

- c. 20 satellite tags each for Green Sea Turtle, Hawksbill Sea Turtle and Olive Ridley Sea Turtle to be deployed in the first 5 years phase.
- d. Provision for 10 satellite tags for Loggerhead Sea Turtle should be made in case if nesting females are noticed in A&N
- e. Considering the vast research area, additional manpower especially research associate and field assistants needs to be incorporated in the proposal of WII including dedicated units for Great Nicobar, Little Nicobar and Little Andaman
- f. One additional mechanized engine Dingy for the inter-island movement including boatman, boat running and maintenance cost be included in the WII proposal. All three mechanized dingy (2 for forest dept and one for WII) to be exclusively dedicated to sea turtle research and monitoring
- g. Holistic development will include data and recommendation from WII, ZSI, SACON and BSI studies in the deliberations and directions of the monitoring committee as stated in 3.10.3(VI) and plans maybe modified accordingly if found necessary in the interest of all species of sea turtles with focus of Leatherback Sea Turtle and other flora and fauna of GNI. Additional measures may be considered by the Committee if found essential.
- h. Zero nest predation approach must be ensured by the state forest department to achieve highest possible survival of Leatherback, Hawksbill, Olive Ridley and Green Sea Turtle. Community based nest monitoring and protection programme should be initiated from year 2022 nesting season. The budget for the same will be submitted by state forest department to PP. This will be over and above the budget for WII proposal.
- i. Domestic dog population control through sterilization to be explored with priority.
- j. Accordingly, WII is advised to revise the proposal and implementation plan within 15 days and send the same to EAC and MoEFCC for record and to PP for release of first 10 years installment within three months.
- k. A&NFD will ensure implementation of conservation measures as recommended by WII.

**B. Nicobar Megapod:** The endemic Nicobar Megapod is a keystone species of Nicobar group of islands. From the enclosure no 17 provided by PP it is clear that about 51 active nests of Nicobar Megapod are present within the proposed project areas of which appx 30 will be permanently destroyed. In this context, the PP has submitted two proposals towards understanding of habitat utilization and microhabitat and conservation of remaining population of this endemic species in the Nicobar region. The approach and methodology for both is similar in nature. However, WII alongside the population monitoring also suggested disease prevalence study. After careful consideration, EAC suggested SACON and WII in close collaboration will undertake comprehensive studies and conservation measures for endemic Nicobar Megapod. Project tenure should be consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052 and not limited to 10 years. Accordingly, SACON and WII shall submit two full proposals to PP with a copy to MoEFCC and EAC within 15 days of grant of EC and CRZ clearance. The SACON will undertake

studies for population ecology, meta populations, disease surveillance and translocation of endemic Nicobar Megapod and WII will study population genetics and Satellite tagging studies. SACON and WII is advised to develop full proposals with sufficient budgetary provisions and timeline. Based on the revised proposal sent by SACON and WII corresponding amount for first 5 years will be released by PP within 3 months of submission of proposal which would enable SACON and WII to undertake uninterrupted research and conservation interventions on endemic Nicobar Megapod. A&NFD will ensure implementation of conservation measures as recommended by SACON and WII. This cost is over and above the cost required by A&NFD. If any additional funds are required at a later stage or for post project development monitoring work, those will be made available by PP to SACON. Accordingly, the Committee informed PP to revise the EMP provisions.

- C. **Saltwater Crocodile:** PP submitted the proposal by WII and A&N State Forest Department towards addressing issue of saltwater water crocodile conservation and conflict mitigation. Project tenure should be consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052. Accordingly, WII and A&N Forest Department should revise the proposal with budget allocation and timeline and submit it to the PP with a copy to MoEFCC and EAC within 15 days from the grant of EC and CRZ clearance. The Committee direct PP for the release the first five years budget payment to WII and A&N Forest Department for the study and conservation measures for Saltwater Crocodiles within 3 months from the grant of EC & CRZ Clearance. If any additional funds are required at a later stage or for post project development monitoring work, those will be made available by PP to WII. Accordingly, the Committee informed PP to revise the EMP provisions
- D. **Impact of invasive species on native flora:** To understand the impact and to develop prevention of invasives in to the wild, a specific action plan is required. Accordingly, the Committee suggested that a detailed proposal consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052 along with budgetary provisions shall be developed by Botanical Survey of India (BSI) and submitted to the PP with a copy to MoEFCC and EAC within three months of grant of EC and CRZ clearance. The Committee direct PP for the release the first five years budget payment to BSI within three months from the grant of EC and CRZ clearance to undertake immediate work on this very important subject, develop robust guidelines in the first year and monitor the impact of invasives on native endemic and endangered flora as the project development progress. If any additional funds are required at a later stage or for post project development monitoring work, those will be made available by PP to BSI. Accordingly, the Committee informed PP to revise the EMP provisions. A&NFD will ensure implementation of conservation measures as recommended by BSI.
- E. **Impact on inter-tidal flora and fauna:** The ZSI report emphasize rich biodiversity of the inter-tidal region of GNI.

Several parts of this region will be either directly reclaimed or used for other infrastructure such as road on stilts, and other permissible activities within CRZ. Accordingly, the Committee suggested that a detailed proposal consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052 along with budgetary provisions shall be developed by Zoological Survey of India (ZSI) and submitted to the PP with a copy to MoEFCC and EAC within 15 days of grant of EC and CRZ clearance. The Committee direct PP for the release the first five years budget payment to ZSI within three months from the grant of EC and CRZ clearance to undertake immediate work to undertake the detailed baseline documentation and further monitoring of the same during entire implementation phase of the holistic development plan. ZSI should also document shift in the inter-tidal community with each phase of the project is being implemented so as to understand the impact and develop mitigation strategies. Accordingly, the Committee informed PP to revise the EMP provisions. A&NFD will ensure implementation of conservation measures as recommended by ZSI.

**F. Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar:** For conservation of Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar the Committee suggested that a detailed proposal consistent with the holistic development plan for GNI i.e. till the completion of the final phase of the same in the year 2052 along with budgetary provisions shall be developed by SACON and submitted to the PP with a copy to MoEFCC and EAC within 15 days of grant of EC and CRZ clearance. The Committee direct PP for the release the first five years budget payment to SACON within three months from the grant of EC and CRZ clearance to undertake detailed baseline documentation, conservation intervention and further monitoring of the same during entire implementation phase of the holistic development plan. Accordingly, the Committee informed PP to revise the EMP provisions. A&NFD will ensure implementation of conservation measures as recommended by SACON.

**G. Mangrove Restoration:** PP provided the Committee a proposal submitted by A&N forest department for the conservation and restoration of mangroves. EAC agreed to the proposal and directed PP to release the amount mentioned in the proposal to A&N state forest department within 3 months of grant of EC and CRZ.

**H. Coral translocation: Zoological Survey of India provided detailed plan for coral translocation with a budget of 55 Crore. EAC noted that the budget is only for 10 years while the project lifecycle is for 30 years.** It also does not include several components that will be necessary for this complex work. Accordingly, the Committee advised ZSI to submit revised proposal with budget provisions to PP with copy to Ministry and EAC. Committee also direct ZSI to include translocation of endangered Giant Clams (*Tridacnasp*) in the same proposal with necessary budget provisions. Project tenure should be consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052 and not for 10 years. The Committee direct PP for the release the first five

*years budget payment to ZSI within three months from the grant of EC and CRZ clearance to undertake the uninterrupted work of preparation of new translocation sites and actual translocation of coral heads and giant clams (Tridacnasp) from 10 ha project impact areas as stated in the proposal before project work begins on ground. ZSI will maintain systematic data on translocated coral colonies with GPS tags to each colony to monitor its survival. The proposal may be finalized based on the EMP and consultation with PP. A&NFD will ensure implementation of conservation measures as recommended by ZSI.*

**I. Welfare of local tribal population of Shompen and Nicobaris:**

*The project activities shall not disturb Shompen tribe and their habitations. Clear demarcation of the land shall be done for specific purpose of land use in the vicinity of project area such that habitations of the tribal shall not be intervene. Budgetary provisions for the same shall be made in the EMP report and expenditure in this regard shall be maintained on records. For the protection and safety purpose of community, security & surveillance mechanism shall be in place with geo-fencing cum surveillance towers nearby Tribal settlements.*

**All the considerations will be undertaken by Department of Tribal Welfare (DTW) as per the Andaman and Nicobar Islands (Protection of aboriginal Tribes) Regulation, 1956. (Commonly known as PAT Regulation), Policy on Shompen Tribes. Accordingly, the Committee suggested that a detailed proposal for 50 years along with budgetary provisions shall be developed by Department of Tribal Welfare (DTW) and submitted to the PP. The Committee direct PP for the release the first 10 years budget payment to DTW within three months from the grant of EC and CRZ clearance to undertake immediate work and to undertake the detailed baseline documentation and further monitoring of the same during entire implementation phase of the holistic development plan. Accordingly, the Committee informed PP to revise the EMP provisions.**

**Other Specific Conditions**

- II. *PP should construct all weather good quality two research stations within one year from the grant of EC and CRZ clearance (one each in Campbell Bay and Kamorta) with office space and accommodation facilities. Campbell station should have accommodation facility for 40 research team members (ten double occupancy rooms, and four dormitories) while Kamorta accommodation facility will be for 10 research team members (two double occupancy rooms, and two dormitories). PP will maintain at its own cost both the research stations for the entire project duration. The research station will be exclusively used and shared by WII, BSI, SACON and ZSI teams and other invited scientists. In the meantime, PP will make arrangements of accommodation of researchers at their own cost through the provisions provided in the respective budgets.*
- III. *WII will be overall in-charge of the station and will appoint a focal person (through the funds allocated to them under various components) to oversee the smooth running of the above centers. WII*

*should make adequate financial provision for the same in their proposals under overall administrative costs.*

- IV. *After the completion of the project i.e. after 2052, the research station will be handed over to the A&N Forest Department and maintained by them and will be provided exclusively to the researchers involved with the biodiversity studies of the region and forest department staff for on ground conservation work.*
- V. *PP will also separately provide funds to A&N forest department for complete oversee of the conservation and mitigation work, infrastructure and operation costs towards implementation of Leatherback Sea Turtle, Nicobar Megapod, Saltwater Crocodile management and other endemic flora and fauna conservation. Proposal for the same will be developed by A&N Forest Department. This amount will be over and above the cost recommended for WII (Leatherback Sea Turtle, Salt-water Crocodile related work and Nicobar Megapod); SACON ( Nicobar Megapod, Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar); Zoological Survey of India (for coral and Giant Clam translocation and restoration work, inter-tidal flora and fauna work); Botanical Survey of India (for invasive species related work); A&N Forest department (for mangrove restoration and supervision of work of WII, SACON, BSI and ZSI); and A&N Tribal Welfare Department (for welfare, protection and other measure for Shompen and Nicobarese). All these funds will be provided by the PP as stated in the specific conditions and within stated time stipulated from sr. no A to I upon receiving the EC and CRZ so that respective agencies can initiate uninterrupted conservation action, research and monitoring while the project is being implemented.*

### **Monitoring Committee**

- VI. *PP will establish three independent Monitoring Committees to oversee the implementation of Environmental Management Plan. Each committee must meet twice a year and undertake one site visit each year. The committees will take review of progress of work of respective areas and implementation of mitigation measures and advise further on its implementation. Minutes of the meetings, site visit reports by these committees and recommendation of the same will be included in the implementation plans of each institute and PP. Proceedings of each Committee will be uploaded on the A&N state forest department website under a specific link provide to the project at GNI. One committee will be to oversee the pollution related matters and measures and its implementation. Second committee is to oversee the implementation of biodiversity related conditions. Third committee will oversee welfare and issues related to Shompen and Nicobarese. Following specific composition of the committees are stipulated. The tenure of the committee will be till the completion of final phase of Holistic Development Plan. However, tenure of every individual expert in each of the Committee shall not exceed three years, and accordingly committees should be reconstituted every three years. The budget allocation of 10 Crore is provided to meet the expanses of the committee meetings. For the first three years following:*

- i. **Committee to oversee pollution related matters** – The Committee will be chaired by Member Secretary of State Pollution Control Board. The other members of the committee should include representative from CPCB, one national reputed expert each in the field of air, noise, water, solid waste and soil pollution. The committee will also include representative of Chief Wildlife Warden not below the rank of CF, representative of PP, representative of Niti Aayog, representative of collector, representative of disaster management unit, representative from Central/State-UT Ground Water Authority and one member of EAC-CRZ and Infra 1 Committee.
  - ii. **Committee to oversee biodiversity related matters** – The Committee will be chaired by PCCF (WL) A & N Forest Department. The other members of the committee must include directors of WII, SACON, ZSI, and Botanical Survey of India, representative of PP, representative of Niti Aayog, representative of collector, Director, CSIR-National Botanical Research Institute, two independent and nationally recognized scientists in the field of terrestrial and marine biodiversity, Director-Deep Sea Mission of GoI and one member of EAC-CRZ and Infra 1 Committee with biodiversity expertise.
  - iii. **Committee to oversee welfare and issues related to Shompen and Nicobarese**- The Committee will be chaired by the Collector. The other members of the committee should include Director - A & N Tribal Welfare Department, PCCF and HoFF-A&N, Director of department of health, two independent and nationally reputed individual experts on Shompen and Nicobarese, representative of PP, representative of Niti Aayog, representative of A&N Administration and one member of EAC-CRZ and Infra 1 Committee.
- VII. **Western Flank of the Galathea Bay:** Along the western flank of Galathea Bay no development will be allowed in Phase 1 and 2 of the projects except defence related infrastructure (pocket 10 in the master plan) or any activity that is strategic and national defence point of view important in nature. A buffer of 500 meters from HTL on both the sides of the flank shall be maintained in any case. Infrastructure related to Gas-based power plant as shown in the development plan (pocket 9) will be allowed. Institutional areas marked in pocket 9 and 10 will not be allowed at this location. It needs to be shifted within pocket 1 to 7. Tourism will not be permitted along the western flank of Galathea Bay in any phases. Pemayya Bay and all other Leatherback nesting sites on the western parts of GNI must remain no development zones as these sites are likely to be used by Leatherback Sea Turtles as alternate sites due to impact of ICTT at Galathea Bay. All major nesting beaches in Great Nicobar Islands including Alexandria Bay, Casuarina Bay, Pemayya Bay, Dogmar will be protected by establishing protection camp, sea turtle hatcheries and kept under 24X7 surveillance and monitoring from nesting till hatching season each year. No development and tourism will be allowed on these shores. Besides, in GNI nesting of Leatherback turtles also have been reported in East of Indira point, West of Indira Point, Koshindon, Laxmi Nagar, North of Alexandria, South of Alexandria, North of Dogmar, South of Dogmar, Pulo Bed, PuloKunji, re Pinsuot, Renhong, Safed Balu, Patatiyo and South of Galathea. These sites will be kept disturbance free with no tourism activity or infrastructure

*development. WII studies will provide further insight in to it and can be further incorporated in the management plan of Leatherback and other sea turtles at GNI.*

- VIII. *No withdrawal of water from Galathea River is permitted. Galathea River must remain free of any recreational activity. No ground withdrawal of freshwater will be permitted. Drinking water will be exclusively augmented through two reservoirs proposed along with capacity augmentation of existing freshwater storage facilities at GNI.*
- IX. *Construction activity shall be carried out strictly according to the provisions of the ICRZ Notification, 2019. No construction works other than those permitted in Coastal Regulation Zone Notification shall be carried out in Coastal Regulation Zone area.*
- X. *All the recommendations and conditions specified by the Andaman Nicobar Coastal Zone Management Authority (ANCZMA) vide letter dated 8<sup>th</sup> July, 2022 shall be complied with.*
- XI. *Consent to Establish/Operate for the project shall be obtained from the State Pollution Control Board as required under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974. The project proponent shall comply with the air pollution mitigation measures as submitted.*
- XII. *The Project proponent shall ensure that no creeks or rivers are blocked due to any activities at the project site and free flow of water is maintained.*
- XIII. *Necessary approvals to be taken during implementation and commissioning from statutory bodies concerned.*
- XIV. *Shoreline should not be disturbed due to dumping. Periodical study on shore line changes and coastal geomorphology shall be conducted and mitigation measures like living shoreline carried out in line with conservation plan. The details shall be submitted along with the six monthly monitoring report to the regional office of MoEFCC.*
- XV. *No trees will be cut at one go. These will be done in phased manner and depending on the progress of the work on an annual basis. Plan for cutting of trees should be developed by PP and got approved from state forest department. All trees which are exceptionally tall and old in age shall be safeguarded, as far as possible. A&NFD will mark all such trees and submit the species wise list to the Ministry and EAC and the regional office of MoEFCC before the infrastructure activities take place.*
- XVI. *Trees with nesting holes of endemic owls to be identified and geo-tagged with the help from SACON. Such trees shall be safeguarded, as far as possible.*
- XVII. *Some of the township clusters seems to have several defence installations abutted by commercial and tourism infrastructure thus PP shall obtain the recommendations from the Ministry of Defence and as suggested by them buffer zone will be maintained in between the defence installation and township cluster, commercial and tourism infrastructure.*

- XVIII. *The arterial road shall be developed in a phased matter. In the first phase, 30 m ROW shall be utilized and developed and the balance 25 m ROW shall be reserved for future expansion for Bus Rapid Transit (BRT) or Light Rail Transit (LRT). Need for development of remaining 25 m RoW will be reviewed by the project monitoring committee on biodiversity before its construction and after full capacity utilization of 30m RoW and evaluation by CSIR-Central Road Research Institute (CRRI). During that period the 25 m RoW shall be maintained in “as it is” condition.*
- XIX. *In the western coast of Galathea Bay excluding the defence installation and power plant, a buffer area of 500 mts from high tide line around Pemayya may be declared as Coastal Protection Area with no development within the area.*
- XX. *Safe wildlife corridors at eight (8) locations along the eastern side of the island connecting forest and seashore through via-ducts (elevated crossings) on the north south arterial road shall be provided. In addition to wildlife corridors, culverts and canopy crossings will be provided at appropriate locations for movement of wildlife. The chainage wise locations of the wildlife corridors has been identified by ZSI and Department of Environment & Forest. The width of the corridor ranges from 250 m to 1100 m and the eastern side of the corridors towards the seashore would be maintained as green area. SACON and WII may further suggest additional corridors and canopy crossings based on the data available with them and proposed studies. Representative of A&FFD will physically monitor that the same are implemented as stipulated in the EIA-EMP.*
- XXI. *The Mangrove Conservation and Management Plan for Great Nicobar Island has been prepared by the Department of Environment and Forests, A&N Administration with the budget of Rs.7.5 crores for mangrove conservation and management as part of EMP. PP shall strictly implement the same. The conservation plan shall adhere the strategies to restore and revive the mangrove areas through ecological restoration and redensification.*
- XXII. *No dredging activity should be taken in Rocky areas to avoid any type of Disaster. Dredge management plan with automatic monitoring sensors in port area, reclamation area to contain the impact of dredge spoil on marine ecosystem to be developed and to be overseen by nationally reputed institution such as NIOT or NIO.*
- XXIII. *All illumination for ICTT, Gas-based power plant and other infrastructure adjacent to sea turtle nesting areas must be in conformity with international standards and sea turtle friendly. No other type of illumination would be permitted. WII will develop illumination policy for the entire infrastructure and PP will ensure its implementation.*
- XXIV. *Dredging, sea reclamation activity for ICTT should take into account nesting and hatching time of sea turtles. Also it should be strictly following Dredging protocol and operational protocol as prepared by IUCN experts and Species Survival Commission’s Marine Turtle Specialist Group and revision, scrutiny, and follow-up of the processing time to time as per the expert opinion.*

XXV. Movement of the ships within Galathea Bay once the ICTT is operational should take into account the movement of Leatherback Turtles. WII satellite data will aid ICTT operators to monitor movement and accordingly plan operations to avoid sea turtle collision risks. One scientist from WII and representative of A&NFD will be on boarded by ICTT operators for the environment monitoring cell as a part of their standard operating procedures. Adequate financial provisions be made by ICTT to meet the costs of both environmental cell and requirements of WII scientists including long term satellite tagging of Leatherback Sea Turtles.

XXVI. Installation of deflectors to be done to clear turtles from the path of the suctioning equipment. Underwater silt/sediment dispersal preventing curtains to be deployed to avoid deposition of silt on sandy shores.

XXVII. PP must explore and use non-conventional sources of energy in the form of solar, wind or tidal energy to bridge the deficit, if needed.

XXVIII. A & N administration should establish within six month a Special Medical Unit along with state of art infrastructure, medicines and qualified medical staff at GNI to monitor human induced diseases due to expected influx of large population both domestic and international. All mechanism must be in place to ensure that Shompen and Nicobarese are not exposed to the risks related to introduced diseases. SOP and Guidelines will be developed by the Special Medical Unit for the same within 6 months from the grant of EC&CRZ. A provision of 100 Crore is recommended and PP is advised to accordingly revise EMP and submit the same to the Ministry and EAC within 30 days from the grant of EC and CRZ. PP is also directed to make these funds available for A&N Administration within 3 months from grant of EC and CRZ. Any additional funds required will be provided through special provisions by A&N Administration.

XXIX. Forest department will establish hatcheries to ensure minimum 90% survival of hatchlings with onset of coming nesting season for Leatherback and other sea turtles, as presented during the EAC. Systematic data will be maintained for the same and reported to the regional office of the Ministry on annual basis.

XXX. The existing island human population should be protected and if needed, ensure to provide the compensation instead of their agricultural/ residential Lands. The census of local as well as population from mainland should be documented.

XXXI. Optimum number (minimum 2) of road side monitors (CAAQMS) at appropriate distance from the kerb of the road shall be fixed following the CPCB criteria to monitor biogenic VOCs, NOx and PM2.5.

XXXII. Disposal of hazardous waste material would not be allowed in GNI including batteries, pesticides, organochlorines etc.

XXXIII. The waste generated during construction and operation period of the project shall be managed as per the prevailing regulations on management of solid waste, plastic waste, e-waste, bio-medical waste, C&D waste and hazardous wastes issued in 2016 by the Ministry. The waste shall be segregated and should be

*recycled/reused as per the regulatory provisions. No Municipal Landfills will be allowed in GNI. All rejects after the recycle/reuse of waste must be transported to mainland for its safe disposal. A separate application for TSDF shall be made to the Ministry in case of establishment of TSDF at GNI.*

*XXXIV. For the first 5 years (Phase-I) of the project, power demand shall be met through Diesel Generators (DG). Phase I of project shall include construction and commissioning of 50MVA gas based power plant and floating solar power plant in water reservoirs. The combined installed capacity to 90 MVA through diesel and gas based power will further augmented by 20 MVA through first phase of solar power from 6<sup>th</sup> year. During 10-15 years (Phase-II), the power generation shall be augmented to 220 MVA by increasing the installed capacity of Gas based power plant to 150 MVA and increasing the Solar power generation by additional 50 MVA taking total Solar power generation to 70 MVA. During 15 – 30 years (Phase III) the Gas based power plant capacity shall be increased to 300 MVA and Solar power plant shall be augmented to 100 MVA.*

*XXXV. Additional storage facility for 7000 kl fuel, 4 ha of additional land at GNI has been provided considering the existing fuel storage capacity is inadequate to cater to increased fuel demand during construction. The area for the storage and hazard mitigation measures as stated in the revised EIA-EMP be followed strictly.*

*XXXVI. All the facilities such as port, powerplant and township etc., to be designed to withstand seismic and Tsunami hazard and detailed plan should be submitted to monitoring committee.*

*XXXVII. As stated by PP, a total number of 102 active mounds of Nicobar Megapode and their locations in GNI have been mapped by ZSI. Out of the 102 mounds, only 19 mounds are falling in the project area. Further, it is seen that several mounds are falling in the green area of the development and the same will be protected. SACON will thoroughly map exact locations of all such mounds falling in the green areas of development and A&N forest department will ensure that these are not disturbed during project development and accordingly advised to define safe buffer areas as advised by SACON for each mound and to be designated as NDZs.*

*XXXVIII. A&N Administration should develop tourism policy for GNI considering ecological sensitivities of the island. The tourism development will be guided by the GNI Tourism Policy. PP has to ensure that tourism development is consistent to this policy.*

*XXXIX. PP will establish a modern nature and science information center at GNI in consultation with National Council of Science Museum, Kolkatta (NCSM) an autonomous society under the Ministry of Culture, Government of India. PP is advised to write to NCSM seeking further assistance and develop a full proposal within 3 months from grant of EC&CRZ. All costs necessary for developing the center will be made available by PP. The center can also act as capacity building for operators of various infrastructure components of GNI holistic development. Accordingly, the Committee informed PP to revise the EMP provisions.*

- XL. *Use of vehicles or any recreational means on Sea Turtle nesting beaches will be strictly prohibited. Such beaches will be clearly marked as no-use zones by A&NFD. These will also be included in the Tourism Policy of GNI.*
- XLI. ***Three new sanctuaries are notified by A&N administration as follows towards mitigation measures. It will be ensured that these remains as sanctuaries with no further scope of denotification for any purposes.***
- a. ***Leatherback turtle sanctuary of 13.75 sq.km at Little Nicobar Island***
  - b. ***The entire Menchal Island of 1.29 sq.km as a Megapode Sanctuary.***
  - c. ***The entire Meroe Island of 2.73 sq.km as a Coral Sanctuary.***
- XLII. ***The recommendation from Standing Committee of NBWL under the Wildlife (Protection) Act, 1972 should be obtained, if applicable.***

**STANDARD CONDITIONS:**

**A. International Container Transshipment Terminal (ICTT)**

**I. Statutory compliance**

- (i) *Construction activity shall be carried out strictly according to the provisions of ICRZ Notification, 2019 and the Coastal Zone Management Plan as drawn up by the State/UT Government. No construction work other than those permitted in Coastal Regulation Zone Notification shall be carried out in Coastal Regulation Zone area.*
- (ii) *All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Coast Guard, Civil Aviation Department shall be obtained, as applicable by project proponents from the respective competent authorities.*

**II. Air quality monitoring and preservation:**

- (i) *The project proponent shall install system to carryout Ambient Air Quality monitoring for common/criterion parameters relevant to the main pollutants released (e.g. PM10 and PM2.5 in reference to PM emission, and SO2 and NOx in reference to SO2 and NOx emissions) within and outside the project area at least at four locations, covering upwind and downwind directions.*
- (ii) *Appropriate Air Pollution Control (APC) system shall be provided for all the dust generating points including fugitive dust from all vulnerable sources, so as to comply prescribed emission standards.*

- (iii) *Shrouding shall be carried out in the work site enclosing the dock/proposed facility area. This will act as dust curtain as well achieving zero dust discharge from the site. These curtain or shroud will be immensely effective in restricting disturbance from wind in affecting the dry dock operations, preventing waste dispersion, improving working conditions through provision of shade for the workers.*
- (iv) *Dust collectors shall be deployed in all areas where blasting (surface cleaning) and painting operations are to be carried out, supplemented by stacks for effective dispersion.*
- (v) *The Vessels shall comply the emission norms prescribed from time to time.*
- (vi) *Diesel power generating sets proposed as source of backup power should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use of low sulphur diesel. The location of the DG sets may be decided with in consultation with State Pollution Control Board.*

### **III. Water quality monitoring and preservation:**

- (i) *The Project proponent shall ensure that no creeks or rivers are blocked due to any activities at the project site and free flow of water is maintained.*
- (ii) *Appropriate measures must be taken while undertaking digging activities to avoid any likely degradation of water quality. Silt curtains shall be used to contain the spreading of suspended sediment during dredging within the dredging area.*
- (iii) *No ships docking at the proposed project site will discharge its on-board waste water untreated in to the estuary/ channel. All such wastewater load will be diverted to the proposed Effluent Treatment Plant of the project site.*
- (iv) *Measures should be taken to contain, control and recover the accidental spills of fuel and cargo handle.*
- (v) *Total fresh water use shall not exceed the proposed requirement as provided in the project details. Prior permission from competent authority shall be obtained for use of fresh water.*
- (vi) *A certificate from the competent authority for discharging treated effluent/ untreated effluents into the Public sewer/ disposal/ drainage systems along with the final disposal point should be obtained.*
- (vii) *No diversion of the natural course of the river shall be made without prior permission from the Ministry of Water resources.*
- (viii) *All the erosion control measures shall be taken at water front facilities. Earth protection work shall be carried out*

*to avoid erosion of soil from the shoreline/boundary line from the land area into the marine water body.*

**IV. Noise monitoring and prevention:**

- (i) Noise level survey shall be carried as per the prescribed guidelines and report in this regard shall be submitted to Regional Officer of the Ministry as a part of six-monthly compliance report.*
- (ii) Noise from vehicles, power machinery and equipment on-site should not exceed the prescribed limit. Equipment should be regularly serviced. Attention should also be given to muffler maintenance and enclosure of noisy equipments.*
- (iii) Acoustic enclosures for DG sets, noise barriers for ground-run bays, ear plugs for operating personnel shall be implemented as mitigation measures for noise impact due to ground sources.*
- (iv) The ambient noise levels should conform to the standards prescribed under E(P)A Rules, 1986 viz. 75 dB(A) during day time and 70 dB(A) during night time.*

**V. Energy Conservation measures:**

- (i) Provide solar power generation on roof tops of buildings, for solar light system for all common areas, street lights, parking around project area and maintain the same regularly;*
- (ii) Provide LED lights in offices and project areas.*

**VI. Waste management:**

- (i) Shoreline should not be disturbed due to dumping. Periodical study on shore line changes shall be conducted and mitigation carried out, if necessary. The details shall be submitted along with the six monthly monitoring reports.*
- (ii) Necessary arrangements for the treatment of the effluents and solid wastes must be made and it must be ensured that they conform to the standards laid down by the competent authorities including the Central or State Pollution Control Board and under the Environment (Protection) Act, 1986.*
- (iii) The solid wastes shall be managed and disposed as per the norms of the Solid Waste Management Rules, 2016.*
- (iv) Any wastes from construction and demolition activities related thereto shall be managed so as to strictly conform to the Construction and Demolition Waste Management Rules, 2016.*
- (v) A certificate from the competent authority handling municipal solid wastes should be obtained, indicating the*

*existing civic capacities of handling and their adequacy to cater to the M.S.W. generated from project.*

- (vi) Used CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/ rules of the regulatory authority to avoid mercury contamination.*
- (vii) Oil spill contingency plan shall be prepared and part of DMP to tackle emergencies. The equipment and recovery of oil from a spill would be assessed. Guidelines given in MARPOL and Shipping Acts for oil spill management would be followed. Mechanism for integration of terminals oil contingency plan with the overall area contingency plan under the co-ordination of Coast should be covered.*

**VII. Green Belt:**

- (i) Green belt shall be developed in area as provided in project details with a native tree species in accordance with CPCB guidelines.*
- (ii) Top soil shall be separately stored and used in the development of green belt.*

**VIII. Marine Ecology:**

- (i) Dredging shall not be carried out during the fish breeding and spawning seasons.*
- (ii) Dredging, etc shall be carried out in the confined manner to reduce the impacts on marine environment.*
- (iii) The dredging schedule shall be so planned that the turbidity developed is dispersed soon enough to prevent any stress on the fish population.*
- (iv) A detailed marine biodiversity management plan shall be prepared through the NIO or any other institute of repute on marine, brackish water and fresh water ecology and biodiversity and submitted to and implemented to the satisfaction of the State Biodiversity Board and the CRZ authority. The report shall be based on a study of the impact of the project activities on the intertidal biotopes, corals and coral communities, molluscs, sea grasses, sea weeds, sub-tidal habitats, fishes, other marine and aquatic micro, macro and mega flora and fauna including benthos, plankton, turtles, birds etc. as also the productivity. The data collection and impact assessment shall be as per standards survey methods and include underwater photography.*
- (v) Marine ecology shall be monitored regularly also in terms of sea weeds, sea grasses, mudflats, sand dunes, fisheries, echinoderms, shrimps, turtles, corals, coastal vegetation, mangroves and other marine biodiversity components including all micro, macro and mega floral and faunal components of marine biodiversity.*

- (vi) *The project proponent shall ensure that water traffic does not impact the aquatic wildlife sanctuaries that fall along the stretch of the river.*

## **B. Township & Area development**

### **I. Statutory compliance:**

- (i) *The project proponent shall obtain all necessary clearance/ permission from all relevant agencies including town planning authority before commencement of work. All the construction shall be done in accordance with the local building byelaws.*
- (ii) *The approval of the Competent Authority shall be obtained for structural safety of buildings due to earthquakes, adequacy of firefighting equipment etc. as per National Building Code including protection measures from lightening etc.*
- (iii) *The project proponent shall obtain forest clearance under the provisions of Forest (Conservation) Act, 1980, in case of the diversion of forest land for non-forest purpose involved in the project.*
- (iv) *The project proponent shall obtain Consent to Establish/ Operate under the provisions of Air (Prevention & Control of Pollution) Act, 1981 and the Water (Prevention & Control of Pollution) Act, 1974 from the concerned State Pollution Control Board/ Committee.*
- (v) *The project proponent shall obtain the necessary permission for drawl of ground water/ surface water required for the project from the competent authority.*
- (vi) *All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department shall be obtained, as applicable, by project proponents from the respective competent authorities.*
- (vii) *The provisions of the Solid Waste Management Rules, 2016, e-Waste (Management) Rules, 2016, and the Plastics Waste Management Rules, 2016, shall be followed.*
- (viii) *The project proponent shall follow the ECBC/ECBC-R prescribed by Bureau of Energy Efficiency, Ministry of Power strictly.*

### **II. Air quality monitoring and preservation:**

- (i) *Notification GSR 94(E) dated 25.01.2018 of MoEF&CC regarding Mandatory Implementation of Dust Mitigation Measures for Construction and Demolition Activities for projects requiring Environmental Clearance shall be complied with.*
- (ii) *A management plan shall be drawn up and implemented to contain the current exceedance in ambient air quality at the site.*
- (iii) *The project proponent shall install system to carryout Ambient Air Quality monitoring for common/criterion parameters relevant to the main pollutants released (e.g.*

- PM10 and PM2.5) covering upwind and downwind directions during the construction period.*
- (iv) Diesel power generating sets proposed as source of backup power should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use of low sulphur diesel. The location of the DG sets may be decided with in consultation with State Pollution Control Board.*
  - (v) Construction site shall be adequately barricaded before the construction begins. Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3-meter height). Plastic/tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murrum and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site.*
  - (vi) Sand, murrum, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution.*
  - (vii) Wet jet shall be provided for grinding and stone cutting.*
  - (viii) Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.*
  - (ix) All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Management Rules 2016.*
  - (x) The diesel generator sets to be used during construction phase shall be low sulphur diesel type and shall conform to Environmental (Protection) prescribed for air and noise emission standards.*
  - (xi) The gaseous emissions from DG set shall be dispersed through adequate stack height as per CPCB standards. Acoustic enclosure shall be provided to the DG sets to mitigate the noise pollution. Low sulphur diesel shall be used. The location of the DG set and exhaust pipe height shall be as per the provisions of the Central Pollution Control Board (CPCB) norms.*
  - (xii) For indoor air quality the ventilation provisions as per National Building Code of India.*

### **III. Water quality monitoring and preservation:**

- (i) The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site, on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.*
- (ii) Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.*

- (iii) Total fresh water use shall not exceed the proposed requirement as provided in the project details.
- (iv) The quantity of fresh water usage, water recycling and rainwater harvesting shall be measured and recorded to monitor the water balance as projected by the project proponent. The record shall be submitted to the Regional Office, MoEF&CC along with six monthly Monitoring reports.
- (v) A certificate shall be obtained from the local body supplying water, specifying the total annual water availability with the local authority, the quantity of water already committed, the quantity of water allotted to the project under consideration and the balance water available. This should be specified separately for ground water and surface water sources, ensuring that there is no impact on other users.
- (vi) At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.
- (vii) Installation of dual pipe plumbing for supplying fresh water for drinking, cooking and bathing etc and other for supply of recycled water for flushing, landscape irrigation, car washing, thermal cooling, conditioning etc. shall be done.
- (viii) Use of water saving devices/fixtures (viz. low flow flushing systems; use of low flow faucets tap aerators etc) for water conservation shall be incorporated in the building plan.
- (ix) Separation of grey and black water should be done by the use of dual plumbing system. In case of single stack system separate recirculation lines for flushing by giving dual plumbing system be done.
- (x) Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices referred.
- (xi) The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016. Rain water harvesting recharge pits/storage tanks shall be provided for ground water recharging as per the CGWB norms.
- (xii) A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.
- (xiii) All recharge should be limited to shallow aquifer.
- (xiv) No ground water shall be used during construction phase of the project.
- (xv) Any ground water dewatering should be properly managed and shall conform to the approvals and the guidelines of the CGWA in the matter. Formal approval shall be taken from the CGWA for any ground water abstraction or dewatering.
- (xvi) The quantity of fresh water usage, water recycling and rainwater harvesting shall be measured and recorded to monitor the water balance as projected by the project

- proponent. The record shall be submitted to the Regional Office, MoEF&CC along with six monthly Monitoring reports.
- (xvii) Sewage shall be treated in the STP with tertiary treatment. The treated effluent from STP shall be recycled/re-used for flushing, AC make up water and gardening. As proposed, no treated water shall be disposed in to municipal drain.
  - (xviii) No sewage or untreated effluent water would be discharged through storm water drains.
  - (xix) Onsite sewage treatment of capacity of treating 100% waste water to be installed. The installation of the Sewage Treatment Plant (STP) shall be certified by an independent expert and a report in this regard shall be submitted to the Ministry before the project is commissioned for operation. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per statutory norms notified by Ministry of Environment, Forest and Climate Change. Natural treatment systems shall be promoted.
  - (xx) Periodical monitoring of water quality of treated sewage shall be conducted. Necessary measures should be made to mitigate the odour problem from STP.
  - (xxi) Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organization (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.

#### **IV. Noise monitoring and prevention:**

- i. Ambient noise levels shall conform to residential area/commercial area/industrial area/silence zone both during day and night as per Noise Pollution (Control and Regulation) Rules, 2000. Incremental pollution loads on the ambient air and noise quality shall be closely monitored during construction phase. Adequate measures shall be made to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB / SPCB.
- ii. Noise level survey shall be carried as per the prescribed guidelines and report in this regard shall be submitted to Regional Officer of the Ministry as a part of six-monthly compliance report.
- iii. Acoustic enclosures for DG sets, noise barriers for ground-run bays, ear plugs for operating personnel shall be implemented as mitigation measures for noise impact due to ground sources.

#### **V. Energy Conservation measures:**

- i. Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC.
- ii. Outdoor and common area lighting shall be LED.
- iii. Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design. Wall, window, and roof u-values shall be as per ECBC specifications.

- iv. *Energy conservation measures like installation of CFLs/LED for the lighting the area outside the building should be integral part of the project design and should be in place before project commissioning.*
- v. *Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.*
- vi. *Solar power shall be used for lighting in the apartment to reduce the power load on grid. Separate electric meter shall be installed for solar power. Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.*

#### **VI. Waste Management:**

- i. *A certificate from the competent authority handling municipal solid wastes, indicating the existing civic capacities of handling and their adequacy to cater to the M.S.W. generated from project shall be obtained.*
- ii. *Disposal of muck during construction phase shall not create any adverse effect on the neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority.*
- iii. *Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. Solid waste shall be segregated into wet garbage and inert materials.*
- iv. *Organic waste compost/Vermiculture pit/Organic Waste Converter within the premises with a minimum capacity of 0.3 kg /person/day must be installed.*
- v. *All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.*
- vi. *Any hazardous waste generated during construction phase, shall be disposed off as per applicable rules and norms with necessary approvals of the State Pollution Control Board.*
- vii. *Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include Fly Ash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.*
- viii. *Fly ash should be used as building material in the construction as per the provision of Fly Ash Notification of September, 1999 and amended as on 27<sup>th</sup> August, 2003 and 25<sup>th</sup> January, 2016. Ready mixed concrete must be used in building construction.*
- ix. *Any wastes from construction and demolition activities related thereto shall be managed so as to strictly conform to the Construction and Demolition Waste Management Rules, 2016.*

- x. *Used CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/ rules of the regulatory authority to avoid mercury contamination.*

#### **VII. Green Cover:**

- i. *A minimum of 1 tree for every 80 sqm of land should be planted and maintained. The existing trees will be counted for this purpose. The landscape planning should include plantation of native species. The species with heavy foliage, broad leaves and wide canopy cover are desirable. Water intensive and/or invasive species should not be used for landscaping.*
- ii. *Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services. It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.*

#### **VIII. Transport**

- i. *A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks. Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria.*
  - a. *Hierarchy of roads with proper segregation of vehicular and pedestrian traffic.*
  - b. *Traffic calming measures.*
  - c. *Proper design of entry and exit points.*
  - d. *Parking norms as per local regulation.*
- ii. *Vehicles hired for bringing construction material to the site should be in good condition and should have a pollution check certificate and should conform to applicable air and noise emission standards be operated only during non-peak hours.*
- iii. *A detailed traffic management and traffic decongestion plan shall be drawn up to ensure that the current level of service of the roads within a 05 kms radius of the project is maintained and improved upon after the implementation of the project. This plan should be based on cumulative impact of all development and increased habitation being carried out or proposed to be carried out by the project or other agencies in this 05 Kms radius of the site in different scenarios of space and time and the traffic management plan shall be duly validated and certified by the State Urban Development department and the P.W.D./competent authority for road augmentation and shall also have their consent to the implementation of components of the plan which involve the participation of these departments.*

**C. 450 MVA Gas and Solar based power plant.**

**I. Statutory Compliance**

- i. Part C of Schedule II of Municipal Solid Wastes Rules, 2016 dated 08.04.2016 as amended from time to time shall be complied for power plants based on Municipal Solid Waste.
- ii. The recommendation from Standing Committee of NBWL under the Wildlife (Protection) Act, 1972 should be obtained, if applicable.
- iii. No Objection Certificate from Ministry of Civil Aviation be obtained for installation of requisite chimney height and its siting criteria for height clearance.
- iv. Groundwater shall not be drawn during construction of the project. In case, groundwater is drawn during construction, necessary permission be obtained from CGWA.

**II. Air quality monitoring and Management:**

- i. Stacks of prescribed height shall be provided with continuous online monitoring instruments for SOX, NOx and Particulate Matter as per extant rules.
- ii. Exit velocity of flue gases shall not be less than 20-25 m/s. Mercury emissions from stack shall also be monitored periodically.
- iii. Continuous Ambient Air Quality monitoring system shall be set up to monitor common/criteria pollutants from the flue gases such as PM10, PM2.5, SO2, NOX within the plant area at least at one location. The monitoring of other locations (at least three locations outside the plant area covering upwind and downwind directions at an angle of 120° each) shall be carried out manually.
- iv. Appropriate Air Pollution Control measures (DEs/DSs) be provided at all the dust generating sources including sufficient water sprinkling arrangements at various locations viz., roads, excavation sites, crusher plants, transfer points, loading and unloading areas, etc.

**III. Noise pollution and its control measures:**

- i. The Ambient Noise levels shall meet the standards prescribed as per the Noise Pollution (Regulation and Control) Rules, 2000.
- ii. Persons exposed to high noise generating equipment shall use Personal Protective Equipment (PPE) like earplugs/ear muffs, etc.
- iii. Periodical medical examination on hearing loss shall be carried out for all the workers and maintain audiometric record and for treatment of any hearing loss including rotating to non-noisy/less noisy areas.

**IV Human Health Environment:**

- i. Bi-annual Health check-up of all the workers is to be conducted. The study shall take into account of chronic exposure to noise which may lead to adverse effects like increase in heart rate and blood pressure, hypertension and peripheral vasoconstriction and thus increased peripheral vascular resistance. Similarly, the

study shall also assess the health impacts due to air polluting agents.

- ii. Baseline health status within study area shall be assessed and report be prepared. Mitigation measures should be taken to address the endemic diseases.
- iii. Impact of operation of power plant on agricultural crops, large water bodies (as applicable) once in two years by engaging an institute of repute. The study shall also include impact due to heavy metals associated with emission from power plant.
- iv. Sewage Treatment Plant shall be provided for domestic wastewater.

#### **V. Risk Mitigation and Disaster Management:**

- i. Storage facilities for auxiliary liquid fuel such as LDO and HFO/LSHS shall be made as per the extant rules in the plant area in accordance with the directives of Petroleum & Explosives Safety Organisation (PESO). Sulphur Content in the liquid fuel should not exceed 0.5%.
- ii. Ergonomic working conditions with First Aid and sanitation arrangements shall be made for the drivers and other contract workers during construction phase.
- iii. Safety management plan based on Risk Assessment shall be prepared to limit the risk exposure to the workers within the plant boundary.
- iv. Regular mock drills for on-site emergency management plan and Integrated Emergency Response System shall be developed for all kind of possible disaster situations.

#### **D Public hearing and human health issues:**

- (i) The work space shall be maintained as per international standards for occupational health and safety with provision of fresh air respirators, blowers, and fans to prevent any accumulation and inhalation of undesirable levels of pollutants including VOCs.
- (ii) Workers shall be strictly enforced to wear personal protective equipments like dust mask, ear muffs or ear plugs, whenever and wherever necessary/ required. Special visco-elastic gloves will be used by labour exposed to hazards from vibration.
- (iii) In case of repair of any old vessels, excessive care shall be taken while handling Asbestos & Freon gas. Besides, fully enclosed covering should be provided for the temporary storage of asbestos materials at site before disposal to CTSDF.
- (iv) Safety training shall be given to all workers specific to their work area and every worker and employee will be engaged in fire hazard awareness training and mock drills which will be conducted regularly. All standard safety and occupational hazard measures shall be implemented and monitored by the concerned officials to prevent the
- (v) occurrence of untoward incidents/ accidents.
- (vi) Emergency preparedness plan based on the Hazard identification and Risk Assessment (HIRA) and Disaster Management Plan shall be implemented.

- (vii) Provision shall be made for the housing of construction labour within the site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets, mobile STP, safe drinking water, medical health care, crèche etc. The housing may be in the form of temporary structures to be removed after the completion of the project.
- (viii) Occupational health surveillance of the workers shall be done on a regular basis.

**E. Environment Responsibility:**

- (i) The company shall have a well laid down environmental policy duly approved by the Board of Directors. The environmental policy should prescribe for standard operating procedures to have proper checks and balances and to bring into focus any infringements/deviation/violation of the environmental / forest / wildlife norms/ conditions. The company shall have defined system of reporting infringements / deviation / violation of the environmental / forest / wildlife norms / conditions and / or shareholders / stake holders. The copy of the board resolution in this regard shall be submitted to the MoEF&CC as a part of six-monthly report.
- (ii) Action plan for implementing EMP and environmental conditions along with responsibility matrix of the company shall be prepared and shall be duly approved by competent authority. The year wise funds earmarked for environmental protection measures shall be kept in separate account and not to be diverted for any other purpose. Year wise progress of implementation of action plan shall be reported to the Ministry/Regional Office along with the Six Monthly Compliance Report.
- (iii) Self-environmental audit shall be conducted annually. Every three years third party environmental audit shall be carried out.

**F. Miscellaneous:**

- (i) The project proponent shall 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, of which one shall be in the vernacular language within seven days and in addition this shall also be displayed in the project proponent's website permanently.
- (ii) 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.
- (iii) The project proponent shall upload the status of compliance of the stipulated environment clearance conditions, including results of monitored data on their website and update the same on half-yearly basis.
- (iv) The project proponent shall submit six-monthly reports on the status of the compliance of the stipulated environmental conditions on the website of the ministry of Environment, Forest and Climate Change at environment clearance portal.

- (v) *The project proponent shall submit the environmental statement for each financial year in Form-V to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently and put on the website of the company.*
- (vi) *The criteria pollutant levels namely; PM2.5, PM10, SO2, NOx (ambient levels) or critical sectoral parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.*
- (vii) *The project proponent shall inform the Regional Office as well as the Ministry, the date of financial closure and final approval of the project by the concerned authorities, commencing the land development work and start of production operation by the project.*
- (viii) *The project authorities must strictly adhere to the stipulations made by the State Pollution Control Board and the State Government.*
- (ix) *The project proponent shall abide by all the commitments and recommendations made in the EIA/EMP report, commitment made during Public Hearing and also that during their presentation to the Expert Appraisal Committee.*
- (x) *No further expansion or modifications in the project shall be carried out without prior approval of the Ministry of Environment, Forests and Climate Change (MoEF&CC).*
- (xi) *Concealing factual data or submission of false/fabricated data may result in revocation of this environmental clearance and attract action under the provisions of Environment (Protection) Act, 1986.*
- (xii) *The Ministry may revoke or suspend the clearance, if implementation of any of the above conditions is not satisfactory under the provisions of the Environmental (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time bound and satisfactory manner.*
- (xiii) *The Ministry reserves the right to stipulate additional conditions if found necessary. The Company in a time bound manner shall implement these conditions.*
- (xiv) *The Regional Office of this Ministry shall monitor compliance of the stipulated conditions. The project authorities should extend full cooperation to the officer (s) of the Regional Office by furnishing the requisite data / information/ monitoring reports.*
- (xv) *The above conditions shall be enforced, inter-alia under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and the Public Liability Insurance Act, 1991 along with their amendments and Rules and any other orders passed by the Hon'ble Supreme Court of India / High Courts and any other Court of Law relating to the subject matter.”*

### **Appellants' contentions**

7. Main contentions in the appeal are that the project will have adverse impact on rich bio-diversity of the area and damage the habitats of the

endangered species. Galathea bay is nesting ground for birds and the area is also part of CRZ-IA & IB. Location of port is expressly prohibited in CRZ-IA area, having presence of huge number of coral colonies. It will also lead to erosion of the coast. **Only one season data has been taken as against requirement of taking data for three seasons for comprehensive impact assessment**, studies have not been conducted as per ToR, turtle nesting sites will be disturbed, harm will be caused to dolphins and other species by dredging, consideration of sea level rise has also not been kept in mind. In power plant, apart from generation of power by solar and gas sources, 15% generation of power will be by diesel. Impact of combustion of diesel has not been considered. The area is a part of seismic zone-V having potential for disasters which aspect has not been considered. As per government policy, Shompen tribes and Nicobari communities have to be kept isolated which aspect has not been considered, ignoring Forest Rights Act, 2006 and Andaman and Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956. EIA is not by accredited consultancy. There are two national parks - Campbell Bay National Park (in the North) and Galathea National Park (in the South) which will be adversely impacted.

#### **Stand of the respondents**

8. Stand of the MoEF&CC is that the proper appraisal has been conducted by the EAC in its meetings. EAC comprised not only members of Infra-I sector but also Member Secretaries of the Infra- II sector, Thermal sector and Nuclear, Defence and Strategic (NDS) sector, Coastal Regulation Zone (CRZ) sector for comprehensive appraisal of the various components of the Project both before grant of the ToR and thereafter at the time of appraisal for grant of the EC/CRZ Clearance. The project proponent was awarded detailed Terms of Reference with

18 specific ToRs for the ICTT, 23 specific ToRs for the Airport, 12 specific ToRs for the Township and Area Development Project and 52 specific ToRs for the Gas and Solar Based Power Plant, in addition to Special Conditions and all standard ToR conditions as applicable to such projects. A public hearing was held involving 138 participants on 27.01.2022. EIA Report was received on 7.03.2022. Thereafter, the project was again deliberated upon at the 293rd, 297th and 306th meetings of the EAC, before the Environmental Clearance was finally accorded on 4.11.2022. The Environmental Clearance accorded contains as many as 42 specific conditions dealing with each component of the project, in addition to all standard conditions applicable to each component dealing with statutory compliances, air quality monitoring and preservation, water quality monitoring and preservation, noise monitoring and preservation, energy conservation measures, waste management, green belt, marine ecology, transport, human health environment and mitigation and disaster management. Out of these specific conditions, the first condition itself comprises of 9 further sub-conditions dealing with (i) Leatherback Turtles (ii) Nicobar Megapode (iii) Saltwater Crocodile (iv) Impact of invasive species on native flora (v) Impact on inter-tidal flora and fauna (vi) Nicobar Macaque, Robber Crab and other endemic bird species of Greater Nicobar (vii) Mangrove Restoration (viii) Coral translocation and (ix) Welfare of local tribal population of Shompen and Nicobarese. PP has been asked to undertake studies as follows:-

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- (i) *Independent evaluation of impact of proposed port site at Galathea Bay by engaging a nationally recognized institute such as Zoological Survey of India ("ZSI") or Salim Ali Centre for Ornithology and Natural History ("SACON") or the Wildlife Institute of India ("WIT") or a consortium of these institutes.*

- (ii) *Independent study for the assessment of biodiversity and Wildlife value of all alternative port sites by engaging nationally reputed institutes like WII, ZSI, SACON or the Indian Institute for Science ("IISc").*
- (iii) *Comprehensive study of the impact of dredging and reclamation and port operations by ZSI, SACON or WII or a consortium of these institutes*
- (iv) *A specific study on the impact of the proposed development on migratory birds by ZSI, SACON or WII covering both inward and return migration period.*
- (v) *Involvement of an independent organization with specialized skill such as IIT, NIOT, NCCR, NIO, etc. for technical aspects of site selection of the port as well reputed research institutes such as WII, ZSI, SACON for ecological assessment.*
- (vi) *In addition to the above, the Project Proponent also undertook multiple studies through reputed agencies during the preparation of an environmentally sound Environmental Management Plan ("EMP") such as: Marine Ecological Conservation of Island Fauna Diversity and Marine Ecological Studies, Comprehensive conservation plan for Nicobar Megapode, an assessment of the Environmental sensitiveness of sea turtle nesting beaches of the Great Nicobar island, Environmental Baseline Data Monitoring, Socio-Economic Survey, Environmental Impact Assessment Study, Topographic survey through helicopter mounted LIDAR and OLS Survey, Mathematical Modelling Study, Oceanographic Study, Hydrographic Survey and Bathymetric & Geophysical Survey, Soil Investigation Study, Traffic & Market Analysis for Port."*

9. It is further stated that there are stringent conservation and mitigation measures keeping in mind the need to balance the defence and strategic requirements of the Nation along with the seminal importance that is owed to the biodiversity and natural habitat of the region. Some of such measures are:-

- (i) *WII would establish a long-term field research unit in the Andaman & Nicobar specifically for undertaking uninterrupted turtle research and carrying out necessary conservation interventions if required*
- (ii) *WII and SACON would undertake comprehensive conservation measures for the endemic Nicobar Megapod, and two fail proposal for the same are to be submitted to the Project Proponent with a copy to the Answering Respondent.*

- (iii) *The Project Proponent would release funds within three months to the WII and A&N Forest Department for conservation measures for saltwater crocodiles*
- (iv) *SACON would develop a detailed proposal for the conservation of the Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar, which would then be implemented by the Project Proponent.*
- (v) *Over and above all other conservation proposals, the Project Proponent is to separately provide funds to the A&N Forest Department for the complete oversee of the conservation and mitigation work, infrastructure and operation costs towards implementation of Leatherback Sea Turtle, Nicobar Megapod, Saltwater Crocodile management and other endemeic flora and fauna conservation.*
- (vi) *Three independent monitoring committees are to be established by the Project Proponent for implementation of the Environment Management Plan, i.e. - one committee would oversee all pollution related matters, one committee would oversee the implementation of biodiversity related conditions and the third committee would oversee welfare and issues related to the Shompen and Nicobarese tribal populations.*
- (vii) *Safe wildlife corridors at 8 locations along the eastern side of the island would be created.*
- (viii) *The Mangrove Conservation and Management Plan for Greater Nicobar Island prepared by the A&N Administration would be adhered to.*
- (ix) *The Coral Conservation Plan prepared by Zoological Survey of India (ZSI) addresses both the conservation strategies for coral colonies around Great Nicobar Island (GNI) as well as translocation strategies for ten hectares of impacted corals.*
- (x) *Various restrictions on dredging, construction activity, waste management, disease control etc. have all be provided for within the Environmental Clearance.”*

10. The Tribals were duly represented at the public hearing and they will not be displaced. **The EAC has inter alia noted that - (i) the project will not disturb or displace any Shompen/Nicobari tribal or their habitation (ii) there will be a clear demarcation of land so that there is no scope of conflict arising in future, and (iii) the habitat rights of the tribal persons will be duly taken care of as per the provisions of Forest Rights Act in the unlikely event that any issue in this regard should arise. Further, the Environmental Clearance mandates that**

**Project Proponent constitutes a specific committee to oversee all issues related to welfare of the Tribal population.**

11. Further, **the project area does not fall within the boundary of any National Park or Wildlife Sanctuary or their Eco-Sensitive Zones and therefore, the project is not proposed to be established in any Eco Sensitive Zone of any Protected Area contrary to what has been claimed in the present appeal.** The Project Proponent further submitted that the project site is outside the Ecologically Sensitivity Zone (ESZ) notified around the two National Parks. The EAC, therefore directed the Project Proponent that **parts of the proposed master plan for Ports which are falling within CRZ IA and IB areas shall be excluded from the revised layout of master plan in order to safeguard the ecological sensitive areas of the coastal areas.** Inland Coastal Regulation Zone plans of Great Nicobar island as per ICRZ Notification, 2019 has been approved by the answering Respondent vide letter dated 1st June, 2021 i.e. before the grant of EC/CRZ clearance.

12. The diversion of forest for the instant project is as per the provisions of the National Forest Policy, 1988, which says that in hills and in mountain regions, the aim should be to maintain two-third of the area under forest cover. **Despite the diversion of proposed forest land for this project in Great Nicobar Island, the remaining forest cover still be more than two-third of the geographical area of island.** Moreover, if the proposed area with respect to the entire forest area of the A&N island is considered, it amounts to only 1.82%. It is also respectfully submitted that the area proposed for development is approximately 18% of the total area in Great Nicobar island. Remaining area of 82% covered under Protected Forests, National Parks, Eco Sensitive Zones and Biosphere Reserve and managed for conservation

of biodiversity at ecosystem, species and genetic levels. Thus, 82% of Great Nicobar Island will be protected and conserved to take care of ecosystem structure, functions and services. The Answering Respondent is also monitoring the steps being taken towards Compensatory Afforestation in this regard. Stage- 1 Clearance under the Forest Conservation Act, 1980 has been correctly accorded. In this regard, the answering Respondent respectfully submits that the proposal received from the UT administration was placed before the Forest Advisory Committee (FAC) in its meeting held on 21.09.2022. Keeping in view the strategic nature of the project, the meeting of the FAC was held separately and the minutes of the said meeting are therefore not available in public domain.

13. **Stand of the PP** is that the **project is for holistic development of Great Nicobar Island in view of its strategic, security and socio economic benefits.** It will transform the Island into a hub of port led development. NITI Aayog has studied and planned the holistic development of identified Islands. A&N Administration vide order dated 28.07.2020 appointed Andaman Nicobar Island Integrated Development Corporation Ltd. (ANIIDCO) as Project Proponent for development of various projects in question. On 18.12.2020, the NITI Aayog appointed a qualified Technical Consultant for preparation of Master Plan for Holistic of Great Nicobar Island who carried out land suitability assessment, eco sensitivity analysis, and carrying capacity assessment to delineate all environmentally sensitive areas and to provide a development suitability map of the Island. Accordingly, **EIA study has been undertaken to identify and analyse impact of the project on the environment and suggest various mitigation measures to ensure that the development takes place with minimal environmental and social impact.** Further, in compliance of the

Terms of Reference (ToR) issued by MoEF&CC vide letter dated 25.05.2021, assistance of technical organizations/institutions with expertise in ecological and biodiversity studies such as ZSI, WII, SACON etc. was taken for ecological assessment and their studies/ reports are part of the EIA report. As per the terms & conditions of grant of EC & CRZ Clearance vide letter dated 4.11.2022, wildlife conservation plans have been prepared for leatherback sea turtle, nicobar megapode, salt water crocodile, inter tidal flora 86 fauna, mangroves, nicobar macaque, robber crab, other endemic bird species and corals in consultation with Wildlife Institute of India (WII), Zoological Survey of India (ZSI), Salim Ali Centre for Ornithology and Natural History (SACON), Botanical Survey of India (BSI) and Institute of Forest Management (IIFM). Fund for the wildlife conservation plans shall be released to the institutes by the Respondent No. 2. Further, as per the terms & conditions of grant of EC & CRZ Clearance, three independent committees have been set upto oversee pollution related matters, biodiversity and welfare & issues related to Shopmen and Nicobarese tribes. The Government of India (GOI) has adopted a proactive policy aimed at transforming the Andaman and Nicobar Islands (A&N Islands), as an economic hub. Strategically located, the A&N Islands, larger than several island countries in themselves, are an asset in India's cultural, economic and strategic calculus. **The project will strengthen India's presence in the Andaman Sea and in Southeast Asia; and will create an economic hub with a major cargo transshipment terminal and a global tourism destination. The location of the project, besides being of strategic importance, presents immense opportunities to further strengthen India's trading position in the world by developing an International Transshipment terminal. A new transshipment port at GNI can be competitive because of the cost savings that shippers can realize using feeder ships to service ports around the rim of the Bay of Bengal.**

**A new port at GNI highlights its locational advantages over competing ports in the region for accessing ports in Bay of Bengal region.** The importance of the said project would further be evident from the following facts:

- a) The Andaman and Nicobar Islands constitute just 0.2 per cent of India's landmass but account for 30 per cent of the country's 200-nautical-mile Exclusive Economic Zone (EEZ).
- b) Great Nicobar Island is the largest of the Nicobar group of Islands which represents a huge, strategically located land mass in the Bay of Bengal, whose economic potential and strategic importance is enormous.

14. It is further stated that the project plan ensures that both development and environment go hand in hand. It is stated that the appeals are focusing only on environment without considering development. Both are to be considered. Reference has been made to judgement in Citizens For Green Doon and Others Versus Union of India and Others (2021 SCC OnLine SC 1243) pertaining to the Char Dham project. It is further stated that only 166.1 sq. km of area is proposed for development which is approximately 2% of the total area of A & N Islands. Further, 130.75 sq. km of forest area is proposed to be diverted for the project which is only approximately 1.82% of the total forest area of A & N Islands. A&N Administration is allowed to accept and process the Forest Clearance applications through offline mode as per Ministry's letter dated 12.06.2015. The PP filed online Terms of Reference (ToR) application to MoEF&CC on 03.03.2021 which was considered in the meeting of the Expert Appraisal Committee (EAC) and ToR was issued on 25.05.2021. The draft Environmental Impact Assessment (EIA) report was uploaded on the MoEF&CC portal on 24.12.2021. The public hearing on the draft EIA report

was held on 27.01.2022. Final EIA report, after incorporating the written suggestions/ objections and public hearing, was uploaded on the MoEF&CC portal on 07.03.2022. The EAC in its meeting held on 24.03.2022, considered the proposal and MoEF&CC on 4.11.2022 granted EC & CRZ clearance. A comprehensive EIA study was undertaken by QCI-NABET accredited consultants to evaluate environmental impact and identifying mitigation measures for the project. The following studies were undertaken as part of the EIA study by various technical organizations:

- Marine Ecological Conservation of Island Fauna Diversity and Marine Ecological Studies.
- An assessment of the Environmental sensitiveness of sea turtle nesting beaches of the Great Nicobar Island.
- Environmental Baseline Data Monitoring, Socio-Economic Survey, Environmental Impact Assessment Study.
- Topographic survey through helicopter mounted LIDAR and OLS Survey.
- Mathematical Modelling Study.
- Oceanographic Study, Hydrographic Survey and Bathymetric & Geophysical Survey.
- Soil Investigation Study.
- Traffic & Market Analysis for Port.

**As part of the EIA study, alternate site analysis for Port, Airport and Power Plant were undertaken and requirement for power, water and solid waste management were worked out.** Thereafter, baseline environmental studies for air, water, noise & ecological attributes were undertaken. **Mathematical modelling was undertaken for the Port project for shoreline changes, transportation study was undertaken for working out details of road network, impact assessment**

**&mitigation measures for land environment, reclamation, change in coastline/shoreline, air emissions, noise pollution, waste water, solid waste, social ecology, coral reef, etc. were worked out; risk assessment study was undertaken for Port, Airport, Power Plant considering earthquake, tsunami, cyclone for preparation of management plan. Information and data obtained during the course of these studies were part of the comprehensive EIA report submitted to MoEF&CC.** The Pollution Control Committee (PCC) uploaded the draft EIA report on the website of A&N Administration and after due publicity in local and mainland newspapers, broadcasting the information regarding public hearing in All India Radio (AIR) and Doordarshan, conducted public hearing on the draft EIA report on 27.01.2022 at 11.00 am in the community hall, Gram Panchayat, Campbell Bay, Nicobar District under the chairmanship of Deputy Commissioner (Nicobar). 138 participants including tribals, settlers, representatives of Tribal Council and Andaman Adim Janjati Vikas Samiti attended the public hearing alongwith the officials of A & N Administration. Written comments were received from 12 organizations/persons and 14 persons gave their comments during public hearing. All the written comments and verbal comments received during the public hearing were responded and the reply is part of the EIA report. The final EIA report after incorporating the written suggestions/objections and public hearing was uploaded on the MoEF&CC portal on 07.03.2022. Detailed site alternative analysis has been undertaken as part of EIA to identify the best location for Port, Airport and Power Plant. **Alternate site analysis has been carried out as part of EIA wherein multi criteria analysis of alternate site have been undertaken considering factors like land development, cost risk, dredging requirement, environmental issues, tribal, breakwater, etc. which is mentioned under Analysis of Alternatives under**

**Chapter 5 of the EIA report. As per the alternate site analysis, Galathea Bay appears to be the most feasible in terms of technical, environmental and financial parameters, and was thus selected for further detailed evaluation.**

15. The proposed development is integrated in nature and includes port, airport, power plant and all supporting infrastructure within the township. The township development provides all social and infrastructure amenities required to support the proposed development. The trunk infrastructure thus proposed spreads from North of Campbell Bay to Galathea Bay including seven revenue villages within project boundary. **As the availability of non-forest land is very limited in Great Nicobar Island and to have the integrated and strategic development of the island, forest land is required for which the diversion of forest land was proposed.** Residential township is required to cater to the requirement of personnel engaged in defence and Port development and therefore cannot be considered as standalone development. For the integrated development of GNI, only 130.75 sq. km of forest land is proposed for diversion which is around 1.82% of the existing forest area of A & N Islands. **Effectively only 7.11 sq. km Tribal Reserve area will be required for de-notification for the project which is only 0.21% of the total tribal reserve area of A & N Islands and thus 743.96 sq. km of the Great Nicobar Island will remain protected as Tribal Reserve.** Section 3 of A&N (Protection of Aboriginal Tribes) Regulation, 1956 empowers A&N Administration to declare reserve Tribal area specifying the limits of such area. Accordingly, the Empowered Committee of UT Administration has recommended de-notification of Tribal Reserve and Ministry of Tribal Affairs vide letter dated 18.11.2020 has given no objection for the proposal for de-notification of tribal reserve area in Great Nicobar Island subject to compliance under

Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The Andaman & Nicobar Coastal Zone Management Authority (ANCZMA) meeting convened for recommending CRZ Clearance for various projects in A&N Islands held on 17.03.2022, the Principal Secretary (Environment & Forests) has attended the meeting and on 27.06.2022, the Commissioner-cum-Secretary (E&F) has attended member of the ANCZMA. Both the officers were not holding the charge of Managing Director of ANIIDCO (2<sup>nd</sup> Respondent). With regard to Forest Clearance, it is submitted that the A & N Administration had vide Order No. 639 dated 28.07.2020 designated the 2<sup>nd</sup> Respondent as the project proponent of various projects in GNI. As part of the recommendation of the State Govt. for diversion of forest land, the then Commissioner-cum-Secretary (E&F) had recommended the Holistic Development proposal of GNI on 07.10.2020. During that period **the then Commissioner-cum-Secretary (E & F) was not holding any charge in the office of the 2<sup>nd</sup> Respondent. Thus, there is no conflict of interest contrary to what has been alleged by the applicant in the present appeals.**

16. The MoEF&CC vide letter dated 01.06.2021 has conveyed its approval of the ICRZ Plans for the Great Nicobar Island as per ICRZ 2019. Para 5 (III)(A) of the ICRZ 2019 mandated that the draft ICRZ plans shall be prepared in 1:25000 scale and accordingly NCSCM has prepared the draft ICRZ maps in 1:25000 scale. After receipt of ICRZ map, the same was published in print and electronic media for wide publicity and for obtaining claims/suggestion/views from general public and other stakeholders. Public hearing on the draft Island Coastal Regulation Zone (ICRZ) Plan was also conducted. The ICRZ Plan of the Great Nicobar Island as per the ICRZ Notification 2019 was finalized after following the due process and after consulting the stakeholders in a fair and f transparent manner.

17. **As per the guidelines of Forest (Conservation) Act, 1980 formulated by the MoEF&CC dated 22.05.2019, the states/UTs having forest land of more than 75% of their respective total geographical area, shall not be insisted upon for providing non-forest land for raising compensatory afforestation and the same may be taken up in any other state/UT having deficient forest land/cover and having land bank for CA.** Since, the UT of Andaman 86 Nicobar Islands is having recorded forest cover of more than 75% of the geographical area, the compensatory afforestation is proposed to be raised in other States in conformity with the aforesaid guideline formulated by the MoEF&CC and in view of the fact that sufficient non-forest land for the purpose is not available in this UT. The project area does not fall within the boundary of any National Park or Wildlife Sanctuary or their Eco-Sensitive Zones. Therefore, the project is not proposed to be established in any Eco Sensitive Zone of any Protected Area contrary to what has been claimed in the present appeals.

### **Rejoinder**

18. The appellants have filed rejoinders reiterating their stand in the main appeal.

### **Consideration by the Tribunal**

19. We have heard learned counsel for the appellants – M/s Kaustav Dhar and A. Yogeshwaran and learned ASGs for the respondents - Ms. Aishwarya Bhati for MoEF&CC and Mr. Vikramjit Banerjee for ANIIDCO Ltd. and perused the record. We have given due consideration to the rival submissions already set out above.

20. Issue for consideration is whether the impugned FC/EC are liable to be interfered with either on account of failure of the authorities in following laid down procedure or on account of adverse impact on environment rendering the project unviable on anvil of sustainable development principle.

21. As already mentioned, main contentions on behalf of the appellants are that the area is rich in bio-diversity. It is covered by CRZ IA as per ICRZ Notification, 2019 where port is expressly prohibited. It has Mangroves, Corals and Coral reefs, Turtle nesting grounds, nesting ground of birds. It has high eroding stretches of critical habitats for turtle nesting, comprehensive EIA based on three seasons data has not been prepared, EIA report by Vimta, ZSI etc is not even a Rapid EIA, incorrect information in Form – I vitiates the EC, EIA report does not conform to TOR, no assessment of impact on biodiversity has been done in the EIA report, Public hearing is vitiated, impact of the project on Tribals has not been assessed, Wildlife clearance has not been taken, Port and Power plant are Red category activities prohibited in ESZ and Forest land cannot be diverted for township.

22. As against above, the stand of MoEF&CC and the PP is that the project is of great defence, national security and strategic significance for holistic development of Great Nicobar Island. It will strengthen India's presence in the Andaman Sea and in Southeast Asia and create an economic hub with a major cargo transshipment terminal and a global tourism destination. It presents immense opportunities to further strengthen India's trading position in the world by developing an International Transshipment terminal. A new transshipment port at GNI can be competitive because of the cost saving that shippers can realize using feeder ships to service ports around the rim of the Bay of Bengal. A

new port at GNI highlights its locational advantages over competing ports in the region for accessing ports in Bay of Bengal region. The airport will be developed as a joint military-civil dual use airport under the operational control of Indian Navy. There has been comprehensive evaluation by the EAC of Infra-I Sector with the association of Infra-II Sector, Thermal Sector, Nuclear Defence and Strategic (NDS) Sector, Coastal Regulation Zone (CRZ) Sector. Detailed ToRs were issued and public hearing was held with participation of 138 persons. EC has specific and general conditions ensuring protection of environment in every possible manner. Further studies will be conducted by relevant Institutions apart from taking conservation and mitigation measures with no disturbance to the tribal or eco-sensitive areas like National Park, Wildlife Sanctuaries with no damage to corals or mangroves. Since more than 75% area is on the forest, requirement of compensatory afforestation in the same area does not apply under the declared policy of the State.

23. During the hearing, Dr. Dhriti Banerjee, Director, Zoological Survey of India (ZSI) appeared by V.C. and explained that corals can be protected. Environmental impact can be sustainably managed. On being required, she has filed her specific statement as follows:

*“The assessment made by ZSI revealed that the environmental impact can be managed sustainably to restore the pristine ecosystem though proper conservatory measures and have suggested long term environmental management plans for that area.*

***A total of 309 species of scleractinian corals under 66 genera, 19 families are recorded from Great Nicobar Island based on the comprehensive studies for last 14 years across all the coastal areas of this island. However, it has been noted that no major coral reef exists within the work area of the project. Only scattered coral reefs are available at the peninsular part of Galathea Bay. As per the detailed analysis, the environmental status and physicochemical status of the sampling sites are conducive to the oligotrophic environment. Hence, the overall benthic community of Galathea Bay is different from other major reefs. The size of the colonies reported from Galathea Bay is relatively small and most of the***

**species are found scattered with small growth forms which may be due to the presence of an extremely high cover of algae (51.75%). The high density of *Halimeda* sp. growing in Galathea Bay is known for its quick growth rate and deposit of calcium on a higher scale.**

**During the construction in seafront areas, the marine ecosystem may be affected especially wherever there are coral reefs. The development of jetties and ports along the coastal areas is likely to have an impact on the entire benthic cover including coral reefs, seagrass, and seaweed habitats along with associated faunal communities.**

**Even though there are no coral reefs in the proposed site, coral reefs are recorded in the adjoining areas of the proposed project site. However, as a precautionary measure, to avoid damage to the corals by any means, it is a prerequisite to translocate the corals from the Galathea Bay adjoining up to the depth limit of 15 m.**

**Any coral colonies which are presumed to be get impacted by the proposed construction has been recommended by ZSI to be translocated to a suitable place where similar environment as well as topographic features prevails in the Great Nicobar.**

**Reef restoration and coral relocation due to coastal development and/or dredging, are among the most common reasons for transplantation and is world-wide solution, which could be easily executed in Great Nicobar in alternate suitable offshore habitats. Successful coral reef restoration has previously been accomplished by ZSI in Gulf of Kachchh and the transplanted corals had >90% survival and effectively transformed into a functional coral reef.**

**Rehabilitation, restoration and development of new reef areas by modern technologies can lead to protection and conservation of reef and reef associated fauna of Great Nicobar.”**

24. ANZMA recommendations dated 8.7.2022 have also been filed which inter-alia are as follows:

**“The effective ICRZ areas involved in various activities of the project are given as under.**

S. No	Name of the Activity	Total area in Sq.km	ICRZ I		ICRZ III		ICRZ IV	
			IA	IB	NDZ	50-100M	IVB	IVA
1	Port	7.39	0.67	0.38	0.00	0.00	0.18	0.62
2	Airport	8.49	0.58	0.82	0.38	0.10	0.14	0.56
3	Power Plant	0.39	0.00	0.00	0.00	0.00	0.00	0.00
4	Township Defence	12.60	0.81	1.43	0.02	0.00	0.07	0.20

5	Township Other Landuse	137.27	4.93	5.92	1.69	0.45	2.50	3.55
6	Port reclamation area	2.27	0.06	0.11	0.00	0.00	0.00	2.10
7	Airport Reclamation on area	0.71	0.02	0.08	0.04	0.00	0.32	0.02
	<b>Total</b>	<b>169.08</b>	<b>7.07</b>	<b>8.74</b>	<b>2.13</b>	<b>0.55</b>	<b>3.21</b>	<b>7.05</b>

**The project proponent submitted the revised area falling under various categories of ICRZ and the details are as follows.**

Sr. No	Activity	Area in Sq.km	ICRZ I		ICRZ III		ICRZ IV	
			CRZ IA	CRZ IB	NDZ	5'-100m	IVB	IVA
1	Port (ICIT)	7.39	0.57	0.25	0	0	0.18	0.62
2	Airport	8.45	0.60	0.82	0.38	0.1	0.14	0.56
3	Power Plant	0.39	0.00	0.00	0	0	0	0
4	Township (Defence)	12.6	0.81	1.43	0.02	0	0.07	0.2
5	Township (other landuses)	137.27	5.03	6.05	1.69	0.45	2.5	3.55
<b>Total</b>		<b>166.1</b>	<b>7.01</b>	<b>8.55</b>	<b>2.09</b>	<b>0.55</b>	<b>2.89</b>	<b>4.93</b>
A	Port (reclamation area)	2.27	0.06	0.11	0	0	0	2.1
B	Airport (reclamation area)	0.71	0.00	0.33	0.04	0	0.32	0.02
<b>Total (including reclaimed area)</b>		<b>169.08</b>	<b>7.07</b>	<b>8.74</b>	<b>2.13</b>	<b>0.55</b>	<b>3.21</b>	<b>7.05</b>

*It is mentioned that the revised effective area ICRZ involved in the project includes the same area of 7.07 sq.km in ICRZ IA and 8.74 Sq.km in ICRZ IB, 2.13 Sq.km in ICRZ III NDZ, 0.55 Sq.km in ICRZ III, 3.21 sq.km in ICRZ VI B and 7.05 Sq.km in ICRZ IVA. The only difference in the revised effective area mentioned by the project proponent is 0.57 sq.km and 0.25 sq.km instead of 0.67 sq.km and 0.38 sq.km in ICRZ IA and IB respectively in case of Port and 5.03 sq.km and 6.05 sq.km instead of 4.93 sq.km and 5.92 sq.km in ICRZ IA and IB respectively in the case of township (other land uses). In case of Airport reclamation, there is no CRZ IA involved and the area involved in ICRZ IB is 0.33*

sq.km, 0.04 sq.km in NDZ of ICRZ III, 0.32 sq.km in ICRZ IV B and 0.02 Sq.km in ICRZ IV B. The proposed activities are permissible in ICRZ areas as per ICRZ notification 2019 as the Greenfield Airport Project is part of holistic Development of GNI project is now for Defence, Strategic, National Security, and Public Purpose.

**Recommendation:**

**Taking into consideration of the above facts namely the revised ICRZ area involved in the holistic development of Great Nicobar Island and the green field airport project is for defence, strategic, National Security and public purpose, ANZMA further recommends the project with revised ICRZ area involved in the project as above. The conditions stipulated in the earlier meeting dated 17.03.2022 and communicated vide letter No. PCCF/ EPA/ 1 / Vol-XVI/ 653 dated 22.03.2022 continue to remain valid and the project proponent has to follow those conditions while executing/implementing the project.”**

25. Copy of report of July 2021 prepared by ZSI has also been placed on record with following executive summary:

**“Executive Summary**

1. The Andaman and Nicobar Islands comprise an accurate chain of 836 islands, islets and rocky outcrops (including 649 islands and 187 rocks and rocky islands), spreading in a linear distance of around 900 km in the Bay of Bengal and the Andaman Sea between latitudes 06° and 14°N and longitudes 92° and 94° E.
2. The archipelago has a total land area of 8249 sq km and a coastline of 1962 km. The Andaman Islands and Nicobar Islands are distinctly separated by the wide Ten Degree Channel which is about 150 km wide and 400 fathoms deep. The Andaman group consists of more than 324 major islands with an area of 6408 sq km and the Nicobar group comprises 24 major islands with the landmass of 1841 sq km.
3. The Andaman and Nicobar Islands have a Continental Shelf of 35,000 sq km with an EEZ of 0.6 million sq. km, includes the ecologically enriched faunal and floral diversities.
4. The Great Nicobar Island is the southernmost landmass in Andaman and Nicobar Archipelago. The total area of this island is 1044 km<sup>2</sup>. It is a tropical and sub-tropical moist broadleaf forest biome and located in the Indo-Malayan biogeographic zone. The Great Nicobar Biosphere Reserve (GNBR) of this island is one of the 11 Biosphere Reserves declared under the Man and Biosphere Programme of Ministry of Environment, and Forests, Government of India and UNESCO.
5. Great Nicobar Biosphere Reserve (GNBR) was declared on 6<sup>th</sup> January 1989 by the Government of India Order No. J-22010/14/89-CSC. The GNBR is comprised of Campbell Bay National Park in the north and Galathea National Park in the south. GNBR spread 885 km<sup>2</sup> in two zones. A total area of

705 km<sup>2</sup> has been designated as Core Zone, and 180 km<sup>2</sup> is Buffer Zone.

6. The President of India is acting through the NITI Aayog, Government of India for holistic development of Great Nicobar Island.
7. As per the Vision Document prepared by NITI Aayog, a contiguous stretch of land is required in the south-eastern and south-western part of the island, which has a narrow strip ranging from 1.83 km to 3.8 km in the eastern side and 1.3 km to 5.4 km in the western side from the Galathea National Park which also happens to be the Protected Forest and Tribal Reserve.
8. In the eastern side, the NITI Aayog has proposed to construct an Airport, requiring 21.64 sq. km of land at the south eastern part and construction of Rapid Mass Transit System originating from Campbell Bay and terminating somewhere in the western part and running parallel to the coastline. In the southern part, besides the development of a major Transshipment Port, the area is also earmarked for future strategic Defence use in view of the developing geo-political scenario in the area. The south-western and western part of Great Nicobar Island outside the Galathea National Park are narrow and proposed to be used as Free Trade Zone as ancillary to the trans-shipment port leaving little area for declaration of ESZ and thereby the Committee recommended finalization of the ESZ notification of Galathea National Park. The proposed holistic development includes 1) Tourism and Hospitality; 2) Jetty and Marina; 3) Mixed use area; 4) Airport; 5) Port & 6) A Marina for Eco-Tourism.
9. AECOM is currently undertaking environmental monitoring for the Great Nicobar Island which is one of the largest islands in Andaman and Nicobar archipelago. In consultation with the concerned UT Administration and the concerned central ministries, it has been decided to undertake the holistic development of the Great Nicobar Island.
10. In view of this, AECOM, 9<sup>th</sup> Floor, Infinity Tower-‘C’, DLF Cyber City, DLF Phase-2, Gurgaon-122 002 has approached the Zoological Survey of India, Headquarters, Kolkata by electronic communication through an e-mail with the subject ‘Andaman Project’ dated 14<sup>th</sup> December 2020 to undertake ‘Rapid Environmental Impact Assessment studies on Marine Ecology for the Master Plan of Development of Great Nicobar Island’ to fulfill the requirement of Environmental and CRZ clearance from the Ministry of Environment, Forest and Climate Change, Government of India. Hence the present study has been executed.
11. Along the intertidal stations of the coastal waters of Great Nicobar Island, Station GB 1 (Galathea beach) witnessed the highest concentration of silicate (3.567 µg/ml) while station RB 1 (Rajiv Nagar Beach) had the least silicate concentration (2.131µg/ml).
12. The average phytoplankton abundance in the marine waters of sampling stations of Great Nicobar Island is about 24400 no./L (no. of organisms per litre). The phytoplankton abundance ranges from a maximum of 34200 no./L in the

- station GB3 M to a minimum of 15200 no./L at station LB2 IT.
13. The two major groups of phytoplankton observed are diatoms and mixotrophic (photosynthetic) dinoflagellates. The abundance of diatoms is much higher than the dinoflagellates across all stations, both in the intertidal and marine coastal study sites. This data is supported by the overall high silicate concentrations in the study area.
  14. In terms of phytoplankton diversity, station LB M is the most diverse. Mixotrophic dinoflagellate diversity is high in Lakshman Beach stations, while diatom diversity is high in Galathea Bay stations.
  15. The average microzooplankton abundance in the marine waters of sampling stations of Great Nicobar Island is about 19033 no./L (no. of organisms per litre). The microzooplankton abundance ranges from a maximum of 20800 no./L in the station GB3 M to a minimum of 16900 no./L at station LB3 IT.
  16. The major microzooplankton groups recorded from the study area are Ciliophora, heterotrophic Dinoflagellata, Foraminifera, Radiolaria and larval forms of Copepoda, Decapoda, Bivalva to name a few. In the intertidal stations the larval forms, especially copepod nauplii and bivalve larvae dominate the numbers, followed by foraminiferans (except in Galathea beach stations, where ciliates are the dominant group).
  17. A total of 17 groups of organisms or taxa were obtained in zooplankton collection namely, Copepoda, Ostracoda, Amphipoda, Decapoda, Siphonophora, Decapoda larvae, Polychaete, Polychaete larvae, Mollusca, Mollusca larvae, Appendularia, Thaliacea, Cumacea, Cladocera, Chaetognatha, fish/invertebrate eggs and fish larvae. Copepods comprised the major portion of the mesozooplankton biomass.
  18. A total of 92 species of mesozooplanktons were recorded from the study among which Copepoda showed the maximum species diversity. Copepoda comprised of 34 species, Ostracoda comprised of 9 species, Euphausiacea comprised of 12 species, Decapoda constituted of 5 species, Chaetognatha constituted of 9 species, Anthoathecata constituted of 2 species, Siphonophorae constituted of 4 species, Amphipoda and Pteropoda comprised of 2 species each, Appendicularia comprised of 4 species and Thaliacea comprised of 9 species.
  19. A total of 309 species of scleractinian corals under 66 genera, 19 families (including two genera under Scleractinia Incertae Sedis) are recorded from Great Nicobar Island. The present database of scleractinian species is prepared based on the available literature and studies made by the present author during period of last 12 years.
  20. Among the recorded 309 species, 66 species are under threatened category (2 species are under Endangered and 64 species are under Vulnerable categories) as per the category and criteria of IUCN (2021), while 90 species are recorded under Near Threatened, 135 species are under Least Concern and 9 species are under Data Deficient categories, whereas 9 species are under not evaluated category.

21. *A total of 245 species of scleractinian corals under 53 genera, 15 families (including 2 genera under Scleractinia Incertae Sedis) are recorded from seven sites including the proposed project site of Great Nicobar Island during the present study. A maximum of 117 species have been documented from Galathea Bay followed by 111 species from Sastri Nagar, 107 species from Campbell Bay, 102 species from Laxman Beach, 76 species from Gandhi Nagar, 25 species from Anderson Bay, and only 15 species Laxmi Nagar.*
22. *Thorough studies were carried out at the seven study locations of Great Nicobar Island to estimate the benthic cover. Maximum 39.27% of live coral cover was recorded from Campbell Bay region followed by 30.81% from Gandhi Nagar, 25.59% from Sastri Nagar, 24.10% from Laxman Beach, 19.92% from Anderson Bar, 17.46 from Galathea Bay, and the minimum of 13.45% from Laxmi Nager. Among the other algae, a maximum of 51.75% was recorded from Galathea Bay while the minimum of 5.52% from Anderson Bay.*
23. *The present study indicates a total of 491.7975 hect. reef areas across the seven study areas including 116.4173 hect. of reef areas at the Galathea Bay which is distributed up to the maximum extent of 1200m (perpendicular) from the coastline while most of the reefs are scattered in distribution within the limit of a mean distance of 500m, whereas the reef areas of Sastri Nagar are recorded with a total distributional cover of around 103.8703 hect. along with the mean distributional range from the coast is 250m (perpendicular) along with the maximum of 500m, while Laxman Beach represents the minimum of 34.4921 hect. Of reef areas within the mean proximity of 150m from the coast while the maximum distributional ranges are within 350m.*
24. *Great Nicobar Island is the land of two indigenous tribal population viz. Shompen and Nicobarese.*
25. *Shompens live in small groups in dense interior forests of the island and are entirely dependent on forest resources and sea products for their sustenance. They probably migrated into this area, several hundred years ago from nearby Malaysian regions. The Mongoloid Shompen Tribe, about 219 in number, is living within the Biosphere Reserve. They are shy in nature and avoid contact with outsiders. They live around and along the perennial freshwater rivers and constructs huts using palm and pandanus leaves. The Shompens are hunters and food gatherers leading a semi-nomadic life with stone-age civilization. They cultivate yams, pandanus, coconuts, arecanuts, bananas etc. They maintain small herds of pigs and also hunt wild pigs with spears and fish with harpoons.*
26. *The Nicobarese are horticulturists, are the second indigenous tribe, situated in mostly coastal areas of Great Nicobar Biosphere Reserve. Coconut, pandanus, banana, papaya, yam and other starchy roots and tubers are their principal items of crop. They also depend for food on hunting and fishing. Pig rearing is an important traditional practice of Nicobarese.*
27. *The Nicobarese live in villages located along the coast. The huts are made of wooden logs, stems of areca palm, coconut palm etc. while the roof is thatched with grass, canes,*

*bamboo and coconut leaves. At present, their traditional beliefs and customs are changing and modern education and Government jobs are readily accepted if they are in their own place.*

28. *According to the data of Botanical Survey of India, approximately 600 species of flora reported from Great Nicobar Island. Among them, 86 species of plants found endemic to Great Nicobar Island. Of which 28 species are exclusively reported from Great Nicobar Island, while 18 species identified from entire Nicobar group of Islands and 40 species recorded from Andaman and Nicobar Islands. Considerable number of plant species reported from Great Nicobar Island has ethno-botanical significance*
29. *A total of 695 species of fauna with the endemism of 158 species, which is equivalent to 22.73% have been reported from Great Nicobar Island.*
30. *A total of 48 vertebrates, recorded as endemic to Andaman and Nicobar Islands, were found in Great Nicobar Island during the study period. Among them 3 species are mammals, 36 species are birds, 7 species are reptiles and 2 species are amphibians.*
31. *This reserve is home for several endemic and endangered species including Nicobar Megapode *Megapodius nicobariensis*, Edible-nest Swiftlet *Aerodramus fuciphagus*, Nicobar Tree Shrew *Tupaia nicobarica*, Long-tailed Macaque *Macaca fascicularis*, Saltwater Crocodile *Crocodylus porosus*, Giant Leatherback Sea Turtle *Dermochelys coriacea*, Reticulated python *Pythonreticulatus* and Coconut Crab *Birgus latro*.*
32. *The Saltwater Crocodile is a common species throughout the Andaman and Nicobar Islands. Population estimates of saltwater crocodiles in Great Nicobar Island are about 6 adults and 3 sub-adults-based on questionnaire. It was sighted at Indira Point, Mahar Nallah, Gandhi Nagar, Shastri Nagar, and Galathea Bay.*
33. *Out of the five species of turtles recorded from mainland coast of India, the leatherback turtle *Dermochelys coriacea* (Vandelli, 1764) is well known for its nesting in the Andaman and Nicobar Islands. Leatherback turtles nesting have been recorded mainly on the long and wide beaches at the mouth of the Dagmar and Alexandira rivers on the west coast and at the mouth of the Galathea River along its south eastern coast.*
34. *Globally, leatherback turtle status according to IUCN is listed as Vulnerable. The Northeast Indian leatherback subpopulation nests primarily in the Andaman and Nicobar Islands of India, in some parts of Sri Lanka and to a lesser extent in Thailand. The first documentation of leatherback turtle nesting in the Great Nicobar Island was by Dr. Satish Bhaskar in 1978-79 and subsequently by other researchers including A&NB Forest Department and NGOs and institutions in the Andaman & Nicobar Islands. The leatherback nesting population in the Nicobar is one of the four colonies that exceeds 1000 individuals in the Indo-Pacific, and hence of global significance.*
35. *The southern bay of Great Nicobar is Southeast Asia's largest leatherback turtle nesting site. In Galathea bay nesting, egg*

- laying and hatchling are more for Leatherback turtle compared to the other regions of Great Nicobar Island. In current year, estimation of the number of hatchlings is not completed; hence the number is not mentioned.
36. The number of nestings, eggs laid and number of hatchlings has been increasing over past four years. The number of hatchlings increases at a rate of 21 % from 2018 to 2019 while it increases at a rate of 147 % from 2019 to 2020. The nesting leatherback populations of this species have also shown an increase in the trend in Galathea Bay. It is estimated that the succession rate of hatchlings of leatherback turtle are 59% in 2018; 60% in 2019 and 63.5% in 2020. The hatchling process has not completed for this year and hence not enumerated and presented.
  37. The Nicobar Megapode *Megapodius nicobariensis abbotti* (Oberholser, 1919) is an endemic bird species in the Nicobar group of Islands. According to the IUCN, this species was listed as Vulnerable (Birdlife International, 2000) and as per Govt. of India, Schedule-I of the Wildlife Protection Act (1972). As per the survey by ZSI, there are ~ 100 active mounds were recorded and ~ 202 megapodes were detected during the point-transect and playback surveys *Megapodius nicobariensis abbotti* occurs in all of the southern group of islands, it was estimated that 7 active mounds and 14 breeding pairs in Galathea.
  38. The Long-Tailed Macaque *Macaca fascicularis umbrosus* (Miller, 1902) is the only non-human primates found on Nicobar group of Islands. In 2000, a total of 88 groups, having a mean size of 36 monkeys, were recorded in Great Nicobar, Little Nicobar and Katchal Islands. However, in 2006 a total of 40 groups, including 814 monkeys were recorded in Great Nicobar, Little Nicobar and Katchal Islands while assessing the impact of the Tsunami on the Long-Tailed Macaque of Nicobar Islands. This is the only primate in the Nicobar Islands, and is listed in Schedule I of the Indian Wildlife (Protection) Act, 1972.
  39. The coconut crab or Robber crab or Palm thief (*Birgus latro* (Linnaeus, 1767)) is the largest terrestrial arthropod in the World (which is related to hermit crabs and lobsters). The crab is named because it is associated with coconut tree. It is listed as Schedule – I, Part - I under Wildlife Protection Act, 1972. The coconut crab populations are threatened with extinction in the Nicobar group of Islands, except for Menchal Island due to human predatory practices.
  40. Prediction of Environmental Impacts, Environmental Management Plan and Recommendations are given in detail in the report for the proposed 14.2 Million TEU (Twenty Feet Equivalent Unit) ICTT Port, (main project), Airport (4,000 Peak hour passenger, Category 4F), Township and Area Development for 14,960 Ha and Power Plant (405 MVA Gas + Diesel) (Additional 45 MVA from solar power will be included in total power generation.”

### **Finding**

**26.** From above resume, it is patent that the project has great significance not only for economic development of the island and surrounding areas of strategic location but also for defense and national security. Even the appellants have not joined issue on these aspects. **While the Tribunal's consideration is confined to material on record, we have also noted (without any comment) media reports that the area is located in China's 'string of pearls' strategy<sup>1</sup> which is sought to be countered by Indian Authorities under India's 'Act East' policy. Indian Ocean has emerged as a key intersection zone of Indian and Chinese strategic interests. There are further media reports of huge poaching of environmental marine resources of Andaman by poachers from Myanmar for which number of people have been arrested. Poaching activities include destruction of corals, killing of sharks, taking away of valuable fishes<sup>2</sup>. The project will help bridge infrastructural gap in island and promote international trade saving huge amount on transshipment cargo<sup>3</sup>.**

27. In view of above, what remains to be seen is whether the project is compliant with the mandatory environmental norms.

### **Forest Clearance**

28. As regards forest clearance, it is seen that forest cover in the area is more than 75%. While forest is of great significance in tackling air pollution and climate change, development cannot be totally ignored. There is hardly

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<sup>1</sup> <https://idsa.in/askanexpert/why-has-india-necklace-diamonds-strategy-indian-ocean-region>

<sup>2</sup> <https://www.reuters.com/article/environment-india-poaching-andaman-dc-idUSDEL4606520070607>  
<https://link.springer.com/article/10.1007/s11852-018-0640-y>

<sup>3</sup> <https://www.financialexpress.com/business/infrastructure-government-to-build-international-container-transshipment-port-in-great-nicobar-island-2961754/>  
<https://economictimes.indiatimes.com/news/economy/infrastructure/centre-prepares-for-rs-41000-crore-international-transshipment-port-at-great-nicobar-island/articleshow/97379332.cms>

any development in the area. There is need not only for economic development but also national security. These factors are not shown to be irrelevant. There is no conflict of interest as such. There is policy permitting afforestation outside the State if forest cover is more than 75%. Thus, no case is made out to interfere with the FC, considering the countervailing public interest in allowing diversion of forest land for the project which is subject to all relevant conditions. In *Lafarge Umiam Mining (P) Ltd. v. Union of India*, (2011) 7 SCC 338, it was observed :

*“ .. Time has come for us to apply the constitutional “doctrine of proportionality” to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilisation of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of “margin of appreciation” in favour of the decision-maker would come into play.”*

29. Considering the above, we do not find any ground to interfere with the FC.

### **Environmental Clearance**

30. Issues in this regard are alleged violation of ICRZ, 2019 for locating the port in prohibited area, ignoring soil erosion, damage to corals, wildlife habitats and tribals. Further issue is compliance of laid down procedure under the EIA notification, including public hearing. While it is true that EIA procedure is mandatory, it does not however follow that hyper technical

approach should be adopted ignoring ground realities about need of the country for development and national security. Every developmental activity is bound to have some adverse impact on environment but if impact can be mitigated and advantages to the society are greater, such project have to be allowed in larger public interest. In the present case, laid down procedure has been followed, public hearing held, EIA prepared, EAC evaluation undertaken, wildlife habitats protection, Tribal welfare considered and necessary conservation measures planned. MoEF&CC and the PP have stated that area proposed to be part of Port, falling in prohibited area as per CRZ notification will be left out, there will be no coverage of eco sensitive areas, corals will be protected and all other necessary measures taken.

31. The legal position has been discussed inter-alia in *G. Sundarrajan vs. Union of India & Ors.*<sup>4</sup> as follows:

*“238.1. In Intellectuals Forum, Tirupathi v. State of A.P. and others<sup>5</sup>, it has been held that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What is required to be prescribed is the principle of sustainable development and find a balance between the developmental needs and the environmental degradation.*

*238.2. In Bombay Dying & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group and others<sup>6</sup>, while dealing with the concept of sustainable development and planned development vis-à-vis Article 21 of the Constitution, a two-Judge Bench has opined thus:- (SCC p. 521)*

*“25l. It is often felt that in the process of encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the eutrophication<sup>7\*</sup> of water systems and biodiversity and global warming, the need to protect the environment has*

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<sup>4</sup> (2013) 6 SCC 620

<sup>5</sup> (2006) 3 SCC 549

<sup>6</sup> (2006) 3 SCC 434

<sup>7</sup> \* **Ed.:** Eutrophication of a water body is phenomenon that can impel a great deal of algae and other plankton or other plant life to reproduce quickly and lead to extermination of other aquatic life such as fish. Eutrophication occurs when excessive nutritional substances such as nitrogen and phosphorus are discharged into lakes, reservoirs and gulfs, etc.

*become a priority. At the same time, it is also necessary to promote development. The harmonisation of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines “sustainable development” as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs.”*

238.3. In *M.C. Mehta v. Union of India and others*<sup>8</sup>, while stating about sustainable development and the needs of the present without compromising the ability of the future generation to meet their own needs, this Court has expressed thus:- (SCC pp. 166-67, para 46)

*“46. ... The definition of “sustainable development” which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In *Narmada Bachao Andolan v. Union of India*<sup>9</sup> this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a “reasonable person’s” test. [See *Chairman Barton: The Status of the Precautionary Principle in Australia* (Vol. 22, 1998, *Harv. Envtl. Law Review*, p. 509 at p. 549-A) as referred to in para 28 in *A.P. Pollution Control Board v. Prof. M.V. Nayudu*<sup>10</sup>.]”*

238.4. In *Tirupur Dyeing Factory Owners Association v. Noyyal River Ayacutdars Protection Association and others*<sup>11</sup>, while dealing with the concept of sustainable development, the Court has observed as under:- (SCC p. 747, para 26)

*“26. The concept of “sustainable development” has been explained that it covers the development that meets the needs of the person without compromising the ability of the future generation to meet their own needs. It means the development, that can take place and which can be sustained by nature/ecology with or without mitigation. Therefore, in such matters, the*

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<sup>8</sup> (2004) 12 SCC 118

<sup>9</sup> (2000) 10 SCC 664

<sup>10</sup> (1999) 2 SCC 718

<sup>11</sup> (2009) 9 SCC 737

*required standard is that the risk of harm to the environment or to human health is to be decided in public interest, according to a “reasonable person’s” test. The development of the industries, irrigation resources and power projects are necessary to improve employment opportunities and generation of revenue, therefore, cannot be ignored. In such eventuality, a balance has to be struck for the reason that if the activity is allowed to go on, there may be irreparable damage to the environment and there may be irreparable damage to the economic interest. A similar view has been reiterated by this Court in T.N. Godavarman Thirumulpad (104) v. Union of India<sup>12</sup> and M.C. Mehta v. Union of India<sup>13</sup>.”*

238.5. In *T.N. Godavarman Thirumulpad (through K.M. Chinnappa) v. Union of India and others*<sup>14</sup>, this Court observed that: (SCC p. 628, para 35)

*“35. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship.”*

238.6. In *Narmada Bachao Andolan v. Union of India and others*<sup>43</sup>, a three-Judge Bench, while dealing with the public projects and policies, has opined that the court does not become the approving authority of such policies. Thereafter, the Bench observed thus:- (SCC p. 763, para 234)

*“234. ... Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government.”*

239. *I have referred to the aforesaid pronouncements only to highlight that this Court has emphasized on striking a balance between the ecology and environment on onehand and the projects of public utility on the other. The trend of authorities is that a delicate balance has to be struck between the ecological impact and development.*

240. *The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of*

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<sup>12</sup> (2008) 2 SCC 222

<sup>13</sup> (2009) 6 SCC 142

<sup>14</sup> (2002) 10 SCC 606

*people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society. But, a pregnant one, the present case really does not fall within the four corners of that principle. It is not a case of the land oustees. It is not a case of “some inconvenience”. It is not comparable to the loss caused to property.*

241. *I have already emphasized upon the concept of living with the borrowed time of the future generation which essentially means not to ignore the intergenerational interests. Needless to emphasize, the dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Ouster from land or deprivation of some benefit of different nature relatively would come within the compartment of smaller public interest or certain inconveniences. But when it touches the very atom of life, which is the dearest and noblest possession of every person, it becomes the obligation of the constitutional courts to see how the delicate balance has been struck and can remain in a continuum in a sustained position. To elaborate, unless adequate care, caution and monitoring at every stage is taken and there is constant vigil, life of “some” can be in danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the Constitution. It would be guillotining the human right, for when the candle of life gets extinguished, all rights of that person perish with it. Safety, security and life would constitute a pyramid within the sanctity of Article 21 and no jettisoning is permissible. Therefore, I am obliged to think that the delicate balance in other spheres may have some allowance but in the case of establishment of a nuclear plant, the safety measures would not tolerate any lapse. The grammar has to be totally different.*

242. *I may hasten to clarify that I have not discussed anything about the ecology and environment which has been propounded before us, but I may particularly put that the proportionality of risk may not be “zero” regard being had to the nature’s unpredictability. All efforts are to be made to avoid any man-made disaster. Though the concept of delicate balance and the doctrine of proportionality of risk factor gets attracted, yet the same commands the highest degree of constant alertness, for it is disaster affecting the living. The life of some cannot be sacrificed for the purpose of the eventual larger good.”*

### **Conclusion**

32. We are of the opinion that there can be no two views about need for adequate studies of adverse impact on coral reefs, mangroves, turtle nesting sites, bird nesting sites, other wildlife, of erosion, disaster management and other conservation and mitigation measures. ICRZ 2019 has to be duly complied with about the location of the Port. Tribal rights and their rehabilitation has to be ensured. Compensatory

Afforestation/mangrove plantations have to be as per forest policy. Stand of the respondents shows that such studies have already been undertaken and further studies are proposed. The respondents are committed to comply with the ICRZ 2019 and tribal rights. They have also planned compensatory afforestation and mangrove plantations. Thus, by and large the project is compliant and EC does not call for interference.

33. However, there are some unanswered deficiencies pointed out by the appellants which need to be addressed. By way of instance, it is pointed out that out of 20668 coral colonies, 16150 are proposed to be translocated without any mention of threat to remaining 4518 coral colonies. It is pointed out that ICRZ Regulations prohibit destruction of corals. Further, data collected for impact assessment is only of one season as against requirement of three seasons. It is also shown that part of the project is in CRZ IA area where Port is prohibited. These aspects may call for revisiting the EC by a High-Powered Committee (HPC) which we propose to constitute. The same will be headed by Secretary, MoEF&CC, GoI. Other members will be Chief Secretary, Andaman & Nicobar, Zoological Survey of India, Botanical Survey of India, Central Pollution Control Board, nominee of Vice Chairman of Niti Aayog, nominee of Secretary, Ministry of Shipping and Director, Wildlife Institute of India. Secretary, MoEF&CC may appoint a nodal officer, not below the rank of Joint Secretary, for facilitating functioning of the Committee. The Committee may meet within two weeks from today and finalise its proceedings within two months. It will be open to the Committee to associate any other institution/expert. In the light of report of the Committee, the EC or its conditions may be re-looked into by the competent authority. Till then, further work in pursuance of impugned EC may not proceed except for the work which may not be of irreversible nature.

The appeals will stand disposed of accordingly.

A copy of this order be forwarded to Secretary, MoEF&CC, GoI, Chief Secretary, Andaman & Nicobar, Zoological Survey of India, Botanical Survey of India, CPCB, Vice Chairman of Niti Aayog, Secretary, Ministry of Shipping and Director, Wildlife Institute of India by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

B. Amit Sthalekar, JM

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

April 03, 2023  
Appeal Nos. 29 to 32/2022/EZ  
SN+DV+AB