BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE BENCH AT CHENNAI

M.A.No.2 OF 2021

IN

ORIGINAL APPLICATION NO: 71 OF 2020 (SZ)

IN THE MATTER OF:-

GAVINOLLA SRINIVAS .... **...Applicant**

Versus

UNION OF INDIA & ORS ... **....Respondents**

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REPLY AFFIDAVIT BY APPLICANT TO THE REPORT OF KRMB DATED 13.8.2021 AND SUBMISSIONS

I, Govinolla Srinivas S/o G. Venkatramulu, R/o 1-99, Bapanpally village, Damargidda Mandal, Narayanpet District,Telangana-509407, aged about 41 years presently in Telangana do hereby solemnly affirm and declare as under:

1. That I am the Applicant in the above mentioned application and I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.
2. That in compliance with the order dated 4.8.2021 of this Hon'ble Tribunal the Krishna River Management Board has finally conducted site inspection at Rayalaseema Lift Irrigation Scheme. The inspection confirmed the allegations raised in the M.A.No. 2 of 2021 of the Applicant. It is submitted that KRMB categorically shown the violations committed by the State of Andhra Pradesh. The photographs shows that five out of six components of the Rayalaseema Lift Irrigation Scheme have been executed. That the Chief Secretary of Andhra Pradesh has repeatedly filed misleading sworn affidavits dated 1.2.2021 and 22.7.2021 before this Hon'ble Tribunal that the State government is not conducting the actual works of the project. But at the ground the Contractor was executing the actual project. That progress of the project work mentioned in the KRMB report is mentioned below:
    a. **Approach Channel :** 30 percent of total excavations have completed
    b. **Forebay :** 237 m length and width has excavated. The depth of excavation of the forebay was observed as 150 to 180 ft.

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Two side ramps to facilitate movement. Shotcreting on the walls of forebay carried out.

c. **Pump House :** Full length of 250 m and width 40m of pump house pit has excavated upto EL 730 ft. Support to rock mass in the form of shotcreting/shotcreting with pattern rock bolting was observed on the vertically excavated walls of pump house.

d. **Delivery Main :** Out of 12 Tunnels 10 Tunnels excavated for creation of 5 m diameter pipeline (delivery main). 35 to 50 m excavation of tunnel carried out. Shotcreting at initial area/face of tunnel.

e. **Delivery Cistern and Link canal :** Full length and width of delivery cistern was excavated.

3. That report of KRMB categorically stated that the works undertaken by the State of Andhra Pradesh are beyond/"**excess to the preparation of Detailed Project Report**". But the Chief Secretary of Andhra Pradesh himself filed 2 misleading sworn affidavits before this Hon'ble Tribunal that the works undertaken are for the purpose of preparation of DPR only. That believing the affidavit dated 1.2.2021 of the Chief Secretary, this Hon'ble Tribunal disposed off the M.A.No. 6 of 2020 filed by the Applicant.

True copy of the Affidavit dated 1.2.2021 filed by the Chief Secretary of Andhra Pradesh in M.A.No. 6 of 2020 and Order dated 24.2.2021 passed by this Hon'ble Tribunal on the basis of the Affidavit filed by the Chief Secretary of Andhra Pradesh are annexed as **ANNEXURE A1. (Colly)**

True copy of the Report dated 13.8.2021 filed by the Krishna River Management Board is annexed as **ANNEXURE A2.**

4. It is clear that the Chief Secretary of Andhra Pradesh, Officials of Irrigation Department of Andhra Pradesh and Contractors have blatantly violated the Judgment dated 29.20.2020 in O.A.No. 71 of 2020 and the order dated 24.2.2021 in M.A.No.6 of 2020 passed by this Hon'ble Tribunal. It further submitted that the Chief Secretary and the Officials of Andhra Pradesh have not only committed willful disobedience of the Judgment and Orders of this Hon'ble Tribunal, they have also committed Criminal Contempt by filing false affidavit and made false statement on oath. The Hon'ble Apex Court and various Hon'ble High Courts have held the Criminal Contempt by the Government officials is a serious offence. In Dhananjay Sharma Vs State of

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Haryana & Ors, (1995) 3 SCC 757 the Hon'ble Apex Court held that filing of false affidavit amount to criminal Contempt of Court.

True copy of the Judgment passed by the Hon'ble Supreme Court of India in Dhananjay Sharma Vs State of Haryana & Ors, (1995) 3 SCC 757 is annexed as **ANNEXURE A3**.

5. It is humbly submitted that the Respondents of Andhra Pradesh and its officials have grossly violated the Article 47, 51 A(g) of the Constitutional of India, Environment (Projection) Act, 1986, CCS Rules, NGT Act, 2010 and the Judgment dated 29.10.2020 passed by this Hon'ble Tribunal. This kind of misleading and environmental violations needs to be stopped by taking deterrent action by this Hon'ble Tribunal and other regulating agencies.

6. That in R.K. Singh Vs Union of India, O.A.No. 45 of 2019 (EZ), this Hon'ble Tribunal while deal the issue of **construction of Jarkhand Vidhansabha and Jarkhand High Court** and other private construction activities **without Environment Clearance** from the statutory authorities according to the EP Act and EIA Notification, held the officials as responsible and directed to initiate disciplinary action against the concerned officials. The judgment of the Tribunal was confirmed the Hon'ble High Court of Jarkhand. The directions issued by this Hon'ble Tribunal are reproduced as under:

"11. We, therefore, direct as follows :-

i. The State Government through the Urban Development Department shall ensure that Environment Impact Assessment is undertaken in respect of all the structures which have been raised in the municipal areas expeditiously in accordance with the procedure laid down in the EIA Notification 2006. Accordingly, the Environmental Management Plan be prepared and mitigation measures proposed therein be implemented so as to address the environmental issues arising on account of such constructions without EC. Similar action shall be taken in respect of the structures falling within notified Nagarpalika areas and Gram Panchayats, if there be any.

ii. Environmental Compensation shall be assessed in respect of all the structures which have been raised without EC and shall be recovered from the appropriate authorities/persons/builders/project proponent (as the case maybe) within a period of three months from hence. Environmental Compensation in respect of those which have already been assessed shall also be recovered within the said period.

iii. All ongoing constructions undertaken without obtaining prior EC shall be stopped forthwith until the environmental clearance is obtained.

iv. Action shall be initiated under section 19 of the Environment (Protection) Act, 1986 by the State Pollution Control Board forthwith against those who are responsible for the violations.

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v. Since the violations were being committed under the gaze of the concerned authorities, we direct initiation of disciplinary proceedings against the concerned Officers, the Municipal Commissioners and the State Pollution Control Board at the earliest."

True copy of the judgment in R.K. Singh Vs Union of India, O.A.No. 45 of 2019 (EZ), dated 9.9.2020 of this Hon'ble Tribunal is annexed as **ANNEXURE A4.**

True copy of the judgment in Confederation of Real Estate Developers Association of India Vs Union of India, through the Secretary, Ministry of Environment & Forest and Others **2021 SCC OnLine Jhar 370 is annexed as ANNEXURE A5.**

7. That the five member bench of this Hon'ble Tribunal in OA No. 278 of 2013 and M.A.No. 110 of 2014 dated 5.8.2014 elaborately discussed the Contempt Power of this Hon'ble Tribunal and non-applicability of section 2(b) r/w section 12 of the Contempt of Court Act in the orders passed by this Hon'ble Tribunal. The relevant extracts of the Judgment rendered by five member bench of this Hon'ble Tribunal are reproduced as under:

"In respect of the inherent powers of the statutory tribunals especially relating to execution of their orders, a three Judge Bench of the Hon'ble Supreme Court of India had occasion to decide in relation to the Consumer Protection Act, 1986 creating hierarchy of courts namely, the District Fora, State Commission and National Commission. That was the decision rendered in State of Karnataka Vs. Vishwabharti House-Building Coop. Society & Ors, reported in (2003) 2 SCC 412. While holding that a parliamentary statute can create a tribunal and also that non-compliance of its order would be punishable with imprisonment or fine, has also observed that the cardinal principle of interpretation of statute is that, courts or tribunals must be held to possess power to execute their own orders. The relevant portions of the order of the Supreme Court in this regard are as follows:

"57. A bare perusal of Section 25 of the Act clearly shows that thereby a legal fiction has been created to the effect that an order made by District Forum/State Commission or National Commission will be deemed to be a decree or order made by a civil court in a suit. Legal Fiction so created has a specific purpose i.e. For the purpose of the execution of the order passed by the Forum or the Commission. Only in the event the Forum/State Commission or the National Commission is unable to execute it order, the same may be sent to the civil court for its execution. The High Court, therefore was not correct to hold that in each and every case the order passed by the District Forum/ State Commission/National Commission are required to be sent to the civil courts for execution thereof.

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58. Furthermore, Section 27 of the Act also confers an additional power upon the Forum and the Commission to execute its order. The said provision is akin to the Order 39 Rule 2- A of the Code of Civil Procedure or the provisions of the Contempt of Courts Act or Section 51 read with Order 21 Rule 37 of the Code of Civil Procedure. Section 25 should be read in conjunction with Section 27. A Parliamentary statute indisputably can create a tribunal and might say that noncompliance with its order would be punishable by way of imprisonment or fine, which can be in addition to any other mode of recovery.

59. It is well settled that the cardinal principle of interpretation of statute is that courts or tribunals must be held to possess to execute their own order.

60. It is also well settled that a statutory tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order. Further, the Act which is self-contained code, even if it has not been specifically spelt out, must be deemed to have conferred upon the Tribunal all powers in order to make its order effective."

True copy of the order passed by the Five member bench of this Hon'ble Tribunal in OA No. 278 of 2013 and M.A.No. 110 of 2014 dated 5.8.2014 is annexed as **ANNEXURE A6.**

True copy of the Judgment passed by the Hon'ble Supreme Court of India in State of Karnataka Vs. Vishwabharti House-Building Coop. Society & Ors, reported in (2003) 2 SCC 412 is annexed as **ANNEXURE A7.**

True copy of the Judgment passed by the Hon'ble Supreme Court of India on the powers of NGT in Director General (Road Development) National Highways Authority of India Vs Aam Aadmi Lokmanch and Others **2020 SCC OnLine SC 572** is annexed as **ANNEXURE A8.**

Constitution and Environment:

8. That the chapter on fundamental duties of the Indian Constitution of India clearly imposes duty on every citizen to protect environment. **Article 51-A (g),** says that **"It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures."**

9. The Directive principles under the Indian constitution directed towards ideals of building welfare state. Healthy environment is also one of the elements of welfare state. Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the

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improvement of public health as among its primary duties. The improvement of public health also includes the protection and improvement of environment without which public health cannot be assured. Article 48 -A of the constitution says that "the state shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country".

10. That According to Article 21 of the constitution, "no person shall be deprived of his life or personal liberty except according to procedure established by law". Article 21 has received liberal interpretation from time to time after the decision of the Supreme Court in Maneka Gandhi vs. Union of India, (AIR 1978 SC 597). Article 21 guarantees fundamental right to life. Right to environment, free of danger of disease and infection is inherent in it. Right to healthy environment is important attribute of right to live with human dignity. The right to live in a healthy environment as part of Article 21 of the Constitution was first recognized in the case of Rural Litigation and Entitlement Kendra vs. State, AIR 1988 SC 2187 (Popularly known as Dehradun Quarrying Case). It is the first case of this kind in India, involving issues relating to environment and ecological balance in which Supreme Court directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986. In M.C. Mehta vs. Union of India, AIR 1987 SC 1086 the Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Article 21 of the Constitution.

11. Excessive noise creates pollution in the society: The constitution of India under Article 19 (1) (a) read with Article 21 of the constitution guarantees right to decent environment and right to live peacefully. In PA Jacob vs. The Superintendent of Police Kottayam, AIR 1993 Ker 1, the Kerala High Court held that freedom of speech under article 19 (1)(a) does not include freedom to use loud speakers or sound amplifiers. Thus, noise pollution caused by the loud speakers can be controlled under article 19 (1) (a) of the constitution.

12. In these circumstances, it is humbly submitted that the Respondents/officials of State of Andhra Pradesh have grossly committed non-compliance of the Judgment dated 29.10.2020 and order dated 24.2.2021 of this Hon'ble Tribunal and violated the Environment (Projection) Act, 1986, CCS Rules of Government of Andhra Pradesh, NGT Act, 2010 besides that the Officials of Andhra Pradesh have committed Contempt of Court by filing false affidavits on oath and also violated the Constitutional provisions such as Article 47, 51 A (g) of the Constitution of India.

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13. It is also prayed that this Hon'ble Tribunal may take appropriate action according to the law against the Officials of State of Andhra Pradesh for willfully misleading this Hon'ble Tribunal and direct the authorities of MoEF to take appropriate action for violating provisions of Environment Protection Act, 1986.

DEPONENT

VERIFICATION

I, Govinolla Srinivas S/o G. Venkatramulu, R/o 1-99, Bapanpally village, Damargidda Mandal, Narayanpet District,Telangana-509407, aged about 40 years do hereby verify that the contents of Paras 1 to 13 are true and that I have not suppressed any material fact.

NOTARY
SPECIAL ADHESIVE

DEPONENT

Entered in Registrer
Page No.63 Sl No.622 Date.26/8/2021

Filed through

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SRAVAN KUMAR
Advocate for the Applicant

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE BENCH AT CHENNAI,

M.A.No. 6 of 2020

In ORIGINAL APPLICATION No. 71 OF 2020

IN THE MATTER OF:

Gavinolla Srinivas
H. No.1-99, Bapanapally Village,
Damargidda Mandal
Narayanpet District,
Telangana – 509 407. ..... Applicant

-VS-

1. Union of India,
Rep. by its Secretary,
Union Ministry of Environment,
Forest & Climate Change,
Indira Paryavaran Bhavan,
Jorbagh,New Delhi-110003.

2. Union of India
Rep. by its Secretary,
Union Ministry of Jal Sakti
Sramasakti Bhavan
New Delhi – 110 001

3. State of Telangana
Rep. by its Chief Secretary,
Secretariat, Hyderabad – 500 022.

4. State of Andhra Pradesh,
Rep. by its Chief Secretary,
Secretariat,Velagapudi,
Guntur District,
Andhra Pradesh – 522 503.

5. Krishna River Management Board,
Rep. by its Member Secretary,
Government of India,
Ministry of Water Resources 5th Floor,
Jalasoudha, Errum Manzil
Hyderabad –500082. .... Respondents

ATTESTOR

Executive Engineer
S.R.B.C. Division No:4
Gorukallu @ Nandyal

DEPONENT

CHIEF SECRETARY
Government of Andhra Pradesh
Velagapudi, Amaravati,
Guntur District-522 238.

REPLY AFFIDAVIT FILED BY THE 4th RESPONDENT

I, Adityanathdas, I.A.S., S/o Gaurikanthdas, aged about 59 years, R/o of Vijayawada, Andhra Pradesh do hereby solemnly affirm and sincerely state as follows,

1. I am the Chief Secretary to the Government of Andhra Pradesh, and I am representing the 4th Respondent i.e.,State of Andhra Pradesh to swear the present affidavit. Hence I am competent to sign and affirm the present affidavit.

2. I state that the present application, a misconceived proceeding under section 26 and 28 of NGT act 2010, cannot be initiated without proper ascertainment of facts. The applicant merely, annexing photographs without context or connection, cannot ask this Hon'ble tribunal to entertain such an application. The facts narrated here under, will show that the application deserved to be rejected. The respondent state has neither an intention to act in disobedience of the orders passed by this Hon'ble tribunal, nor has it acted in deviation from the orders passed by this Hon'ble tribunal.

3. I State that the 4th Respondent has accorded Administrative sanction for proposed Rayalaseema Lift Scheme to supplement 3 TMC per day from foreshore of Srisailam Reservoir vide G.O.Rt. No:203, Dated:05- 05.2020 for Rs.3825.00 Crores.

4. I State that the main intention is to supplement 3TMC per day to SRMC, downstream of Pothireddypadu Head regulator when the water level in

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Srisailam Reservoir is between 800 ft to 854 ft. The Scheme neither envisages any enhancement of ayacut/increase in the canal dimensions/ increase in the utilizations nor increase in existing storage in the reservoirs. In obedience of the Hon'ble National Green Tribunal order Dated : 20-05-2020, the process of tendering, preliminary investigation, preparation of detailed project report etc.., were completely stopped.

5. I State that the 4th respondent submitted to the Hon'ble National Green Tribunal that the Scheme is only at the state of launching and actual implementation will start only after preparing necessary project report and calling for tenders etc. On account of the order Dt: 20-05-2020 passed by the Hon'ble National Green Tribunal, the 4th respondent was unable to proceed with the preliminary work of preparing the project report and also calling for tenders etc..

6. I State that based on the submission made by the 4th respondent this Hon'ble tribunal have given modified interim directions to the order dated 20-05-2020 on 13-07-2020 allowing the 4th respondent to prepare the detailed project report and calling of tenders for that purpose.

7. I State that based on the modification given by this Hon'ble tribunal the 4th respondent have issued tender notice on 15-07-2020 (ANNEXURE-I). A work order has been issued on 27-08-2020 to take up the detailed survey, investigation, preparation of detailed designs and drawings, bill of quantities etc. and certain essential activities for preparation of DPR are under progress.

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8. I State that this Hon'ble tribunal constituted a committee comprising of EIA members of MoEF and other members. The members conducted an online meeting on 29-07-2020 and the committee opined that prima facie requirement of prior environmental clearance is not applicable in the case of Rayalaseema Lift Scheme.

9. I State that this Hon'ble National Green Tribunal has given its final order on 29-10-2020 stating that

"Since, the tribunal has prima facie found that there is a component of irrigation envisaged in the project and which requires prior environmental clearance (EC), and without getting prior Environmental Clearance (EC), the 4th respondent is not entitled to proceed with the project, the 4th respondent is restrained from proceeding of the work without getting Environmental Clearance (EC)."

10. I State that in view of this Hon'ble National Green Tribunal order, the 4th Respondent has not started the works at Sangameswaram. In view of the Hon'ble tribunal order Dated 29-10-2020, the 4th respondent has submitted a request to MoEF vide letter No.ICD01/1353/2020 - IS/EA, Dt:01/12/2020 (copy enclosed) and the matter is under process in MoEF.

11. I State that as per the directions of the Union Ministry of Jal Shakti, New Delhi and minutes of the APEX Council meeting Dt:06-10-2020, the DPR for

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the RLS is prepared and submitted to CWC (uploaded on 16-11-2020) and to the KRMB on 11-11-2020 vide letter No. 15691/IS.EA/2014 for appraisal.

12. I State that the question of starting the construction works at Sangameswaram does not arise as the water level in Srisailam Reservoir is at 880 ft level and at this level the work site of Sangameswaram is under submergence with water column of about 80ft. The assertion of the applicant that the work is being done at Sangameswaram, thus is untenable.

13. I State that the alternative proposals for Rayalaseema Lift Scheme are still under consideration and designs, drawings are not approved so far. Hence, the Scheme cannot be grounded without proper approvals by the competent authority. Hence, the contention of the applicant that the works of Rayalaseema Lift Scheme at Sangameswaram are under progress by deploying heavy equipment and hundreds of trucks is not true and baseless.

14. I State that the applicant's contention that the ground is leveled to create platform to erect pumps and motors is false, since the pumps and motors will be erected after construction of Pump House after excavating nearly 30 to 40 meters deep from the existing ground level after designs are approved. The very requirement is to lift water from level 800 ft the pumps have to be invariably placed at that level but not at ground level as pointed out by the petitioner. In any case, these works require approvals for designs etc. as they are highly technical in nature.

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15. I State that in the preliminary proposal, the Pump House is located near Muchumarri Village with approach channel of length Km 4.50 from Sangameshwaram and a link channel of length Km 22.00 from Pump House to SRMC downstream of Pothireddypadu Head Regulator. This proposal requires about 500 acres of land acquisition (Private Lands). The details of this proposal are also filed in the counter affidavit of Government of AP in OA No 71/2020 of Hon'ble Green Tribunal SZ.

16. I State that the agency during their investigation has studied various alternative proposals to minimize the land acquisition. A Location of Pump House on northern side of the Pothireddypadu Head Regulator with approach channel from Sangameshwaram and connecting the SRMC with minimum length of Link Channel which does not require any land acquisition is one among them.

17. I State that out of the alternatives of pump location, the one near the Pothireddypadu Head Regulator appears to be more suitable. Geological investigation process has commenced. Hon'ble NGT has permitted to go ahead with preparations of DPR and investigation work so involved.

18. I state that the Geologist has inspected the proposed location and verified the ground on 12/11/2020 (annexure II) for suitability for huge structures of pump house. In his report, he suggested to remove the disposed soil bund and suggested to drill 3 bore holes along the centre line of the proposed pump house location to estimate the stability of rock. The works in relation to the disposed soil bunds referred above are also not part of the work in the scheme. The report of the geologist is also annexed for the purpose of clarity.

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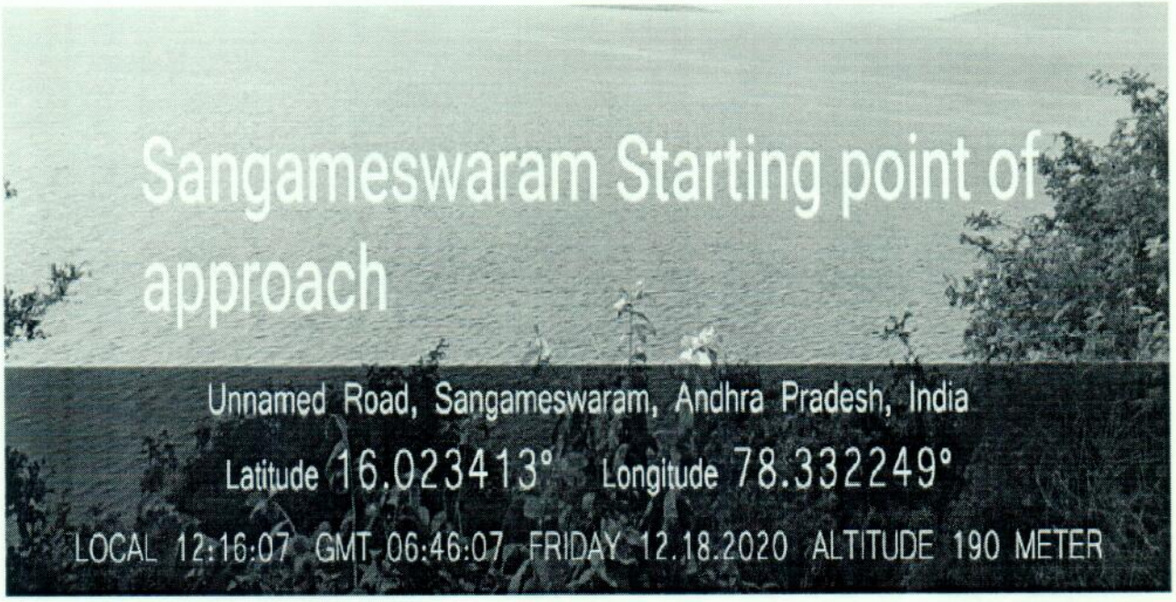
19. **I State that the geological investigation is a part of DPR preparation. The DPR submitted without these investigation details has been returned by the CWC, vide remarks dated 16-12-2020.**

20. I State that the soil dump removal and leveling off the ground is part of investigation and DPR work but not the main work.

21. I State that the work in the scheme can commence only when designs are finalized and suitability of foundation and location of choice of pump house is ascertained. The work which is going on now cannot be treated as the work of the scheme after DPR is finalized. The applicant cannot go to the extent of asking for restraining order even in respect of matters necessary for DPR.

22. I State that we humbly submit that we are doing only preparatory work for DPR investigation but not the main work.



ATTESTOR

Executive Engineer
S.R.B.C. Division No:4
Gorukallu @ Nandyal

DEPONENT

CHIEF SECRETARY
Government of Andhra Pradesh
Velagapudi, Amaravati,
Guntur District-522 238.

23. I State that as per orders of this Hon'ble Tribunal, the 4th respondent has written to the MoEF with regard to Environmental Clearance for Rayalaseema Lift Scheme vide letter No. ICD01/1353/2020-IS/EA, Dt:01/12/2020 (**copy enclosed ANNEXURE-III**) with all the necessary details and the process is under progress. Hence, the contention of the applicant that the 4th respondent has ignored the Environmental Clearance is baseless and not true, and also, the period of completion of the scheme is 30 months but not one year as stated by the Applicant.

24. I State that as per the directions of the Union Ministry of Jal Shakti, New Delhi and minutes of the APEX Council meeting Dt:06-10-2020, the DPR for the RLS is prepared and submitted to CWC (uploaded on 16-11-2020) and to the KRMB on 11-11-2020 vide letter No. 15691/IS.EA/2014 for appraisal.

25. I State that the 4th respondent has taken steps as per the orders of this Hon'ble Tribunal and directions of the Union Ministry of Jal Shakti.

Under the said circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above M.A.NO.6/2020 in OA. No.71/2020 With heavy cost and Pass such further order or orders as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case.

Deponent

Solemnly affirmed at Andhra Pradesh
On this the 1st day of February 2021
And signed in my presence.

Before me

CHIEF SECRETARY
Government of Andhra Pradesh
Velagapudi, Amaravati,
Guntur District-522 238.

Advocate
AP/1142/2012

ATTESTOR
Executive Engineer
S.R.B.C. Division No:4
Gorukallu @ Nandyal

DEPONENT

CHIEF SECRETARY
Government of Andhra Pradesh
Velagapudi, Amaravati,
Guntur District-522 238.

VERIFICATION

I, Adityanathdas, I.A.S., S/o Gaurikanthdas, aged about 59 years, R/o of Vijayawada, Andhra Pradesh do hereby verify that the contents from paras 1 to 25 are true and that I have not suppressed any material fact.

Deponent

Date: 1st day of February 2021

CHIEF SECRETARY
Government of Andhra Pradesh
Velagapudi, Amaravati,
Guntur District-522 238.

ATTESTOR
Executive Engineer
S.R.B.C. Division No:4
Gorukallu @ Nandyal

DEPONENT

CHIEF SECRETARY
Government of Andhra Pradesh
Velagapudi, Amaravati,
Guntur District-522 238.

Article 1: Notice Inviting Tender

Government of Andhra Pradesh

Water Resources Department

NIT No. **01/2020-21, Dt: 15.07.2020**

Tenders for the work mentioned below are invited from the Contractors/ firms/ Companies registered with Government Andhra Pradesh (OR) with any State Government/ Central Government/ Public Sector Undertakings in appropriate class and category of registration to the monetary limits of subject tendered work.

1. Preliminary details:

Name of work: "Rayalaseema Lift Scheme to draw and utilize 3 TMC per day from Sangameswaram to SRMC at Km. 4.00 from Pothireddypadu Head Regulator – under EPC Turnkey System."

1	Department Name	:	**Water Resource Department**
2	Circle / Tender Inviting Authority	:	Superintending Engineer, SRBC Circle No.1, Nandyal
3	Tender Notice No.	:	**01/2020-21, Dt: 15 .07.2020**
4	Name of Project	:	**Rayalaseema Lift Scheme**
5	Name of Work	:	**"Rayalaseema Lift Scheme to draw and utilize 3 TMC per day from Sangameswaram to SRMC at Km. 4.00 from Pothireddypadu Head Regulator** – under EPC Turnkey System."
6	IBM Value (INR)	:	**Rs.3278,18,55,104/-**
7	Period of Completion (in Months)	:	30 Months
8	Form of Contract	:	**EPC**
9	Class of Contractor eligible for tendering	:	Refer tender document
10	Tender Type	:	Open
11	Bid Call (Nos.)	:	1ST call
12	Type of Quotation	:	Percentage
13	Transaction Fee	:	Rs 29,500/- The participating bidders will have to pay transaction fee to M/s APTS, Vijayawada It is mandatory for the bidders to pay the transaction fee through the Electronic payment Gateway.
14	Bid Security (INR)/EMD	:	EMD amount is Rs.18.90 Crores. EMD shall be paid in the form of Bank Guarantee in

CONTRACTOR

Sd/-
SUPERINTENDING ENGINEER

			favor of the Superintending Engineer, SRBC Circle No-1, Nandyal, Kurnool District to be valid for a period of 6 months from the date of bid submission to be obtained from any Government owned Public Sector Bank or any Scheduled Commercial Bank or To be paid through Net banking /RTGS/ NEFT from the Registered Bank Account.
15	Bid Document Downloading Start Date	:	From 27.07.2020 @ 09.00 AM onwards
16	Bid Document Downloading End Date	:	03.00 PM on 10.08.2020
17	Pre bid Meeting	:	03.08.2020 @ 11.00 AM at O/o. The Chief Engineer & DWRO, Kurnool (AP)
18	Last Date & Time for Receipt of Bids	:	5.00 PM on 10.08.2020
19	PQ Stage Date & Time (EMD Submission)	:	11.00 AM on 12.08.2020
20	Technical Qualification Stage Date & Time	:	11.00 AM on 13.08.2020
21	Commercial Stage Date & Time	:	11.00 AM on 17.08.2020
22	Auction Date & Time	:	02.00 PM on 17.08.2020
23	Declaration of Successful Bidder by competent Authority (L1 after e-auction and physical Document verification)	:	02.00 PM on 19.08.2020
24	Bid Validity Period	:	90 Days from last date of receipt of Bids
25	Officer Inviting Bids	:	Superintending Engineer, SRBC Circle No.1, Nandyal.
26	Bid Opening Authority	:	Superintending Engineer, SRBC Circle No.1, Nandyal.
27	Address	:	O/o The Superintending Engineer, SRBC Circle No.1, Nandyal, Kurnool District, AP – Pin No.518501.
28	Contact Details	:	Sri Sk. Kabir Bhasha, Superintending Engineer, SRBC Circle No.1, Nandyal, Kurnool District, AP. Pin No.518501. Cell No.8985003091.

CONTRACTOR

Sd/-
SUPERINTENDING ENGINEER

			E-Mail : se1srbcnandyal@gmail.com
29	Procedure for bid submission	:	As per NIT
30	General Terms & Conditions / Eligibility criteria	:	As per Tender Document
31	E- Auction(Reverse Tendering)	:	Reverse tendering shall be followed (refer tender document for further guidelines).
32	Special conditions	:	Refer tender document
33	Brief scope of work		The brief scope of the work is as detailed below. Surveying, investigation, designs, Engineering, Estimates and construction of works in the following components. **1) Excavation of approach channel including fore bay from level + 240.000 in Srisailam foreshore area upto the pump house.** 2) Construction of pump house of required area. 3) Supply, erection and commissioning of pumps and motors of required capacity. **4) Erection of Delivery pipe lines of required capacity.** 5) Construction of Delivery cistern. 6) Construction of sub station of required voltage and laying electrical power line from the existing 400KV line 7) Construction of link canal including CM and CD works For detailed scope of work, please refer the tender document
34	Tender can be downloaded	:	https://tender.apeprocurement.gov.in
35	Tender documents (in zip format)	:	Tender Doc.zip
36	Others	:	Tender conditions are subject to modifications as per suggestions of Judicial preview/SLTC. Such changes if any will be notified through corrigendum to be issued from time to time.

CONTRACTOR

Sd/-
SUPERINTENDING ENGINEER

ANNEXURE - II

भारत सरकार/Government of India

भारतीय भूवैज्ञानिक सर्वेक्षण/ Geological Survey of India

अभियांत्रिकी भूविज्ञान विभाग / Engineering Geology Division
दक्षिणी क्षेत्र, बंदलागुड़ा/Southern Region, Bandlaguda
हैदराबाद /Hyderabad-500 068.

No. /EGD/GSI/SR/2020 Dated: 12/ 11 /2020

To
The Executive Engineer,
Water resource department,
SRBC Division No. 2,
Panyam, Andhra Pradesh.

Sub: A Inspection note on "Feasibility Stage Geotechnical Investigation of the proposed pump house near Pothulapadu village under Rayalaseema Lift Irrigation Scheme, Kurnool District, Andhra Pradesh" – reg.

Sir,

Please find enclosed herewith a "Feasibility Stage Geotechnical Investigation of the proposed pump house near Pothulapadu village under Rayalaseema Lift Irrigation Scheme, Kurnool District, Andhra Pradesh" for Field Season 2020-21.

This is for your kind necessary action at your end.

Yours faithfully,

12/11/2020

(बी अजय कुमार/B. Ajaya Kumar)
निदेशक /Director

Encl: As above.

Inspection Note on Feasibility Stage Geotechnical Investigation of the proposed pump house near Pothulapadu village under Rayalaseema Lift Scheme, Kurnool District, Andhra Pradesh

By

B. Ajaya Kumar,
Director
Engineering Geology Division
Geological Survey of India
Hyderabad

Under Rayalaseema Lift Irrigation Scheme a 222.725m long, 55.250m wide pump house is proposed suppliment 3 TMC water per day from Sangameswaram to SRMC on downstream from Pothireddypadu Head Regulator to stabilize the ayacut of the various projects in Rayalaseema Region and Nellore district including providing drinking water to the drought prone region. The project will facilitate to supplement assured /allocated water. The project will allow drawing water even during the lean periods in Krishna River.

The Water shall be drawn from the location just upstream of gorge near Sangameswaram Temple thorough an Approach channel. Pump House shall be located beyond FRL line and Water lifted shall be delivered into a Cistern. Water carried through a Link canal, from delivery cistern to SRMC downstream of Pothireddypadu Head Regulator (PRHR)

The Discharge Required in SRMC & capacity of PRHR- and status of SRMC decide WHEN lift has to operate Below 841' level- drawl only by Lift & Between 841' to 874' Drawl will be either by Lift OR Gravity flow depending on required 'discharge' & Srisailam Reservoir level.

The proposed scheme details furnished by project authority are as follows:

1. Approach channel: The approach channel is proposed in the Srisailam fore shore area from Sangameswaram (Bed level +240.0m) up to proposed pump house including fore bay at left side of existing Pothireddypadu Head Regulator.

The approach channel traverses along the valley in Bhavanasi river in Srisailam foreshore area for a length of 17.59 Km.

The approach channel is divided into 4 reaches.

Hydraulic Particulars of Approach Channel

Reach 1	:	**0.000 to 0.500 (500m)**
Bed Width	:	350 m

FSD	:	3.83 m
Bed Fall	:	1 in 5450
Side Slopes	:	2:1
Velocity	:	1.086 m/s
Reach 2	:	**0.630 to 6.500 (5.87KM)**
Bed Width	:	300 m
FSD	:	3.83 m
Bed Fall	:	1 in 4000
Side Slopes	:	1.5:1
Velocity	:	1.268 m/s
Reach 3	:	**6.800 to 8.500 (1.700KM)**
Bed Width	:	182 m
FSD	:	5 m
Bed Fall	:	1 in 3500
Side Slopes	:	1:1
Velocity	:	1.596 m/s
Reach 4(Lined)	:	**8.700 to 17.590 (8.890KM)**
Bed Width	:	66 m
FSD	:	5.5 m
Bed Fall	:	1 in 3000
Side Slopes	:	0.5:1
Velocity	:	2.608 m/s

2. **Forebay** : Forebay of required size is to be constructed from the end of approach channel upto the pump house.
3. ***Pump house*** :
   - The pump house is to be constructed to required size to accommodate required 12 no of pumps and motors and operating system.
   - *12 no of volute pumps of 81.93* cumecs capacity each.
   - *Power requirement: 420 MW*
   - H.T/L.T Panels, SCADA, HT/LT Cables, HM/EM Components as per approved drawings.
   - Water drawing level :+243.00 m/797.16 ft and above
   - Delivery level :+269.82 m /885.144 ft

4. **Pipe line :** The M.S pipe line is proposed from pump house to Delivery Cistern up to the required level.
   Diameter of Delivery main is 5000mm
5. Construction of One **Delivery Cistern** of required size.
6. *Excavation of Link Canal to connect it from delivery cistern to SRMC down stream of Pothireddypadu Head Regulator.*

Hydraulic Particulars of Link Canal: (Lined)

Bed Width	:	32 m
FSD	:	11.89 m
Bed Fall	:	1 in 11000
Side Slopes	:	1:1
Velocity	:	1.899 m/s

7. Providing infrastructure

   i. Road to the pump station along the FRL.
   ii. 400KV Sub-station and electrical power line from the existing HT lines.

At the request of the Executive Engineer, Water resource department, SRBC Division No. 2, Panyam, Andhra Pradesh via letter No. EE/SRBC-DIV.No2/PNM/AW/ATO/511M, dated 17.10.2020 to carryout feasibility stage Geotechnical investigation of the proposed pump house and auxiliary works of Rayalaseema Lift Scheme, the undersigned along with Shri. Bhushan D Kuthe, Senior Geologist visited the site on 30th and 31st October 2020 and carried out core logging of drilled boreholes and geological mapping of the proposed pump house location.

Feasibility Stage Geotechnical Investigation for proposed pump house location:

The proposed pump house is located approximately 100m in north eastern part of Pothireddypadu head regulator.

Regionally, area exposes mainly sediments of Cuddapah Supergroup and Kurnool Group of Meso to Neo-Proterozoic age. A small patch of migmatite and granite gneiss belonging to Peninsular Gneissic Complex (PGC-II) of Archaean to Paleo-Proterozoic age is exposed in the northwestern part of the area. The Cuddapah Supergroup is divided into Chitravati and Nallamalai Groups and occurs in the northeastern part. The Chitravati Group is represented by the by Pulivendla Formation and Tadipatri Formation. The Pulivendla Formation is essentially an arenaceous unit. It has a thin impersistent basal conglomerate followed by grit and quartzite. The Tadipatri Formation is constituted by shale, tuff, chert and jasper and lies conformably over Pulivendla Quartzite.

The Nallamalai Group is represented by Cumbum Formation which is exposed in the northeast. It consists of slate, phyllite and shale sequence with intercalations of quartzite.

The Kurnool Group of rocks unconformably overlies the Cuddapah Supergroup. They include Banaganapalle, Narji, Owk, Paniam, Koilkuntla and Nandyal Formations. The oldest unit in this area is Banaganapalle Quartzite which is exposed in the northwest. The Narji Limestone, with massive and flaggy members, is exposed in the western margin. The overlying Owk Shale lies directly over Narji Limestone. It occurs as a thin but persistent band preserved due to capping of Paniam Quartzite over it. The shale is predominantly non-calcareous, white, buff or

yellow and is often ochrous. Paniam Quartzite occurs capping the Owk Shale, forming plateau. Koilkuntla limestone occurs in the western and northern

The major part of the proposed pump house location is covered with the disposed muck excavated while the construction of Pothireddypadu head regulator. However, the reddish brown, thinly laminated, horizontally bedded shale belonging to Nandyal shale of Kurnool Supergroup is exposed in the cut slopes of adjacent Srisailam Right Main canal.

Sub-surface Exploration:

. The project authority has drilled 04 boreholes up to a depth of 70m in the surrounding area of the proposed pump house location and borehole 5 is in progress. Based on the core logging, it is found that thickness of top layer of dark grey to black clayey soil is varying from 1.5 to 4.5m followed by thinly laminated, reddish brown shale with thin laminations of grey shale up to the bottom of the borehole. The summary of the core logging is given below.

Borehole No.	Location	Drilled Depth	Run	Remark
01	Near PRP inspection path on R/S of PH location	70m	0 to 2m	Black clayey soil
			2 to 4m	Highly weathered, reddish brown shale
			4 to 5.8m	Moderately weathered reddish-brown shale with thin lamination of shale
			5.8 to 70m	Slightly weathered to fresh, reddish brown shale with thin laminations of grey shale.
02	PRP pump house & DC	70m	0 to 3m	Black clayey soil
			3 to 4.5m	Highly weathered, reddish brown shale
			4.5 to 6.0m	Moderately weathered reddish-brown shale with thin lamination of shale
			6m to 70m	Slightly weathered to fresh, reddish brown shale with thin laminations of grey shale.
03	Approach Channel (Right side)	70m	0 to 4.5m	Black clayey soil
			4.5 to 6m	Highly weathered, reddish brown shale
			6 to 8.5m	Moderately weathered reddish-brown shale with thin lamination of shale
			8.5 to 70	Slightly weathered to fresh, reddish brown shale with thin laminations of grey shale. Silicification was recorded between 63-66m depth.

04	Approach Channel (Left side)	70m	0 to 3	Black clayey soil
			3 to 6m	Highly weathered, reddish brown shale
			6 to 8m	Moderately weathered reddish-brown shale with thin lamination of shale. Silicification was recorded between 6-8m depth.
			8 to 70m	Slightly weathered to fresh, reddish brown shale with thin laminations of grey shale.

Conclusion & Recommendations:

- Based on the geological set up of the area and borehole core logging, it is opined that the proposed location of the pump house is prima-facie feasible.
- Suggested to remove the disposed muck and to intimate for further geological mapping before start of concrete.
- Based on the core logging, it is expected to encounter a slightly fresh to fresh rock below a depth of about 8 to 10m from the ground level.
- Suggested to drill 3 boreholes along the centre line of the proposed pump house location to ascertain the nature of bed rock and also to estimate the stability of the slopes during the construction of the proposed pump house.

12/9/2020

B. Ajaya Kumar
Director

File No.ICD01/1353/2020-IS/EA

ANNEXURE-III

GOVERNMENT OF ANDHRA PRADESH
WATER RESOURCDES (IS-EA) DEPARTMENT

Letter No.ICD01/1353/2020-IS/EA Dt: 01/12/2020

From
The Special Chief Secretary to Government,
Water Resources Department,
A.P. Secretariat,
1st Floor, 4th Block, Velagapudi,
Guntur District, A.P.

To
The Secretary,
Union Ministry of Environment, Forest and CC,
Indira Paryavaran Bhavan, Jorbagh,
New Delhi – 110003.

Sir,

Sub: Water Resources Department – Rayalaseema Lift Scheme to supplement 3TMC per day from Sangameswaram to SRMC on D/S of Pothireddypadu Head Regulator, Kurnool Dist, A.P – Environmental Clearance- Requested - Regarding.

Ref:

1. G.O.Rt,No. 203 Water Resources Department dt.05.05.2020.
2. Report of the Committee comprising of Expert appraisal committee (River valley projects) of Ministry of Environment Forest and Climate change (MOEFCC) Central Pollution Control Board (CPCB) Regional Directorate, Bangalore, Indian Institute of Technology, Hyderabad and Krishna River Management Board (KRMB) in the matter of O.A. No.71/2020(SZ)/In compliance to Hon'ble NGT Orders dated 20.05.2020 and 13.07.2020
3. Order of the Hon'ble NGT dt.29.10.2020.
4. From the CE & DWRO, WRD, Kurnool, Lr. No. CE/KNL/ICD32-TW/648/2020/DEE2/AEE1/RL1, Dt: 17.11.2020.

@@@

Kind attention is invited to the subject cited.

2. I am to inform that in the G.O. 1st cited, the Government of Andhra Pradesh have accorded Administrative Sanction for proposed Rayalaseema Lift Scheme to supplement 3 TMC of water per day to the already existing systems downstream of the Pothireddypadu Head Regulator from foreshore

of Srisailam Reservoir.

3. The Project proponent ie., the Chief Engineer (Projects), Kurnool on 29-07-2020 in virtual meeting has presented the environmental aspects in the proposed scheme to the committee, proposed by the Honourable NGT in OA No. 71 of 2020, consisting of EAC Members of MOEFCC and the Members from Central Control Pollution Board, Benguluru, IIT Hyderabad, Krishna River Management Board (KRMB). Further it was submitted that the scheme neither envisages any enhancement of ayacut/increase in the canal dimensions/increase in the utilisations of water nor increase in existing storage in the reservoirs and the Rayalaseema Lift scheme does not impact any wild life sanctuaries and as such Environmental Clearance is not required for the present proposed scheme.

The Committee opined that

1. Prima facie requirement of prior environment clearance is not applicable in the case of Rayalaseema Lift Scheme.
2. As long as Andhra Pradesh is restricted to drawing its allocated share of water, environmental impacts of the availability of water on other users are not envisaged. Further, state of A.P. in order to ensure that only allocated water of 3 TMC/day is drawn, shall install pumps of capacity capable of pumping only 3 TMC of water (excluding the safety margins).
3. The project proponent shall obtain all applicable clearances sanction before launching the scheme.

Later the report of the committee was submitted to the Hon'ble National Green Tribunal.

The Hon'ble National Green Tribunal has disposed the matter in O.A. No.71/2020 vide reference 3rd cited, as under.

> *"Since, the Ministry of Jal Shakti has already directed the Andhra Pradesh Government not to proceed with the project without submitting the Detailed Project Report (DPR) before the Krishna River Management Board (KRMB) and getting their appraisal done, there is no necessity for this tribunal to go into the question whether prior approval from the Krishna river Management Board (KRMB) is required or not as the matter has to be considered by that Board after evaluating the Detailed Project Report (DPR) to be produced before them as directed by the Ministry of Jal Shakti as that is covered by the provision of the Andhra Pradesh Reorganisation Act, 2014.*
>
> *Since, the Tribunal has prima facie found that there is a component of irrigation envisaged in the project and which requires prior Environmental Clearance (EC) and without getting prior*

Environmental (EC), the 4th respondent is restrained from proceeding of the work without getting Environmental Clearance (EC).
The parties are directed to bear their respective costs in the application."

4. Further it is submitted that earlier the scheme consisted of pump house, which draws water through approach channel of about 4.50 km long from Sangameswaram (which submerges when water level is at FRL +885 ft)and carry the water to about 22 km in open channel drops into the SRMC at km 4.0 on Downstream side of Pothireddypadu Head Regulator.

5. It is further submitted that after detailed investigation and considering 5 alternatives, an alignment is finalised. In this alignment, the Approach Channel runs for a length of 17.59 Km in foreshore of Srisailam Reservoir upto Pump House, the pump house is proposed adjacent to the existing Pothireddypadu Head Regulator, and delivery carried through pipeline into the Delivery Cistern constructed on left side of SRMC, and delivers through a link canal into SRMC on downstream side of Head Regulator. This alignment does not require any Land acquisition. This scheme is envisaged to supplement water to the existing schemes. This scheme neither envisages any enhancement of ayacut/ increase in utilisations nor increase in existing storage in the reservoirs. This scheme does not impact any Wild life sanctuaries. The Chapter-4 of detailed project report for the proposed scheme, explains all the features of the scheme including hydrology and environmental aspects. The DPR is attached below for appraisal.

Requirement of Prior Environment Clearance :

"The Expert Appraisal Committee of MOEFCC, after reviewing the EC's granted to TGP, SRBC and GNSS and detailed discussions, submits that the Rayalaseema Lift Scheme does not attract the provisions of the EIA Notification, 2006; therefore, the proposed project does not require prior environmental clearance. The EAC deliberated on the above submission based on the mandate as provided by the Hon'ble NGT and the following conclusion was arrived

With regard to the matter related to the requirement of prior environment clearance for Rayalaseema Lift Scheme, the committee noted that the project is not a new project and do not fall under any of the category listed in the Schedule of EIA notification, 2006. It is neither a new irrigation project nor power generation component is involved; therefore, it will not be covered under item 1(c) of the EIA Notification, 2006. Further, the project will also not qualify under the expansion and modernization of existing project; as expansion or modernization is for activities listed in the Schedule to the notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization. In this case, there is no change in culturable command area, which qualifies an irrigation project to be covered under the EIA notification. Further, EC letters of 3 schemes to which the project will be feeding water have

been taken by Government of Andhra Pradesh and a review of the EC conditions listed in the letters reveals that changing from gravity discharge to pumping should not be considered as change in scope as the environmental clearances issued to these schemes do not restrict them to gravity discharge only. Keeping these in view, committee opined that prima facie requirement of prior environment clearance is not applicable in this case."

As per Para 4 of EIA Notification 2006:

"Categorization of projects and activities:-

(i) All projects and activities are broadly categorized in to two categories - Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and manmade resources.

(ii) All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

(iii) All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. II "In the absence of a duly constituted SEII or SEAC, a Category 'B' project shall be considered at Central Level as a Category 'B Project "

The concerned extract of the schedule as per EIA Notification relevant to the Department is

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
1(c)	**River valley Projects**	(i) > 50 MW hydroelectric power generation; (ii) > 10,000 ha. of culturable command area	(i) < 50 MW > 25 MW hydroelectric power generation; (ii) < 10,000 ha. of culturable	General Condition shall apply. Note: Irrigation projects not involving submergence or inter-state domain shall be appraised by the SEIAA

			command area	as Category 'B' Projects.";

Application to the present project:

The present project i.e. Rayalaseema Lift Scheme project sanctioned vide G.O.Rt.No.203 dt.05.05.2020 does not fall under any of the above categories which need prior environmental clearance. A check list is appended below.

Sl.No.	Content of the Act	Application to present project
1	All new projects or activities listed in the Schedule to this notification	The present project is not a new project and does not fall under any activity listed in the schedule to the notification.
2.	Expansion and modernisation of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernisation.	The present project is neither an expansion nor modernisation of an existing project or an activity listed in the schedule. Rayalaseema Lift Scheme is intended to provide an additional facility to draw allocated water from a lower level i.e. from 797 ft (240m) level at which water cannot be drawn by gravity from Pothireddypadu Head Regulator. The threshold limits in the schedule do not apply as the project does not provide for any new ayacut.
3.	Any change in product – mix in existing manufacturing unit included in Schedule beyond the specified range	Not applicable to this project.

The relevant clause 1 (c) was amended vide Environment impact assessment notification, 2016 of MoEF and CC dated 14.08.2018, and the following were included.

Project or Activity		Category with threshold limit		*Conditions if any*
		A	B	
1(c)	(i) River Valley projects	(i) 50 MW hydroelectric power generation;	(i) 25 MW and < 50 MW hydroelectric power generation;	General Condition shall apply. Note:- (i) Category 'B' river valley projects falling in more than one state

	(ii) Irrigation projects	(ii) 50,000 ha. of culturable command area	(ii) > 2000 ha and < 50,000 ha. of culturable command area.		shall be appraised at the central Government Level. (ii) Change in irrigation technology having environmental benefits (eg. From flood irrigation to Drip irrigation etc.) by an existing project, leading to increase in Culturable Command Area but without increase in dam height and submergence, will not require amendment/ revision of EC.
			Irrigation system	**Requirement of EC**	
			(a) Minor Irrigation system (_ 2000 Ha)	Exempted	
			(b) Medium irrigation system (> 2000 and < 10,000 ha.)	Required to prepare EMP and to be dealt at State Level (B2 category).	
			(c) Major irrigation system (_10,000 to < 50,000 ha.)	Required to prepare EIA/EMP and to be dealt at State Level (B1 category).	

Application to the present project:

With respect to the amendment, it is to submit that Rayalaseema Lift Scheme is not a new project and only supplements the existing schemes when the water level in the Srisailam Reservoir is below +840 ft. The Rayalaseema Lift Scheme is envisaged to support the following schemes.

Name of the Project	IP Contemplated in Acres	IP Created in Acres	Balance in Acres
Telugu Ganga Project			
Kurnool	114500	103717	10783
Kadapa	177000	128214	48786
Srisailam Right Branch canal			
Kurnool	157422	153936	3486
Kadapa	32578	0	32578
Galeru Nagari Sujala Sravanthi	**479000**	**1500**	**477500**
Total	**960500**	**387367**	**573133**

All the schemes are still under construction only. There is no change in Irrigation Technology having Environmental benefits leading to increase in culturable commanding area or increase in dam height ore submersion. The scheme does not have a culturable command area of its own. It is only to supply water to the existing schemes. The Environmental Clearances for the above schemes are already obtained. It is submitted that RLS does not fall under this category and hence Environmental Clearance is not required.

The applicant in his original application has relied upon the following provision of EIA Notification 2006 in regard to expansion of projects.

7 (ii).	Prior Environmental Clearance (EC) process for expansion or modernisation or change of product mix in existing projects: All applications seeking prior environmental clearance for expansion with increase in production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in wither lease area or production capacity in case of mining project or for the modernisation of an existing unit with increase in the total production capacity beyond threshold limit prescribed in the schedule this notification through change in process and or technology or involving a change in the product mix shall be made in form-I and they shall be considered by the concern expert appraisal committee or state level expert appraisal committee within the 60 days, who will decide on the due diligence necessary including preparation of EIA and public consultation and application shall be apprised accordingly for grant of environmental clearance.	The present scheme does not fall under this category as there is no expansion with increasing production capacity because the ayacut proposed earlier is not being enhanced / increased. The total production capacity remains the same even after the lift scheme is commissioned. There is no change in the product mix. There is no change either in the technology or the process utilised for irrigation of crops. The environmental clearance already obtained for the existing schemes are not limited to irrigation by gravity

I therefore, request you to kindly issue directions to implement the Project.

Encl: DPR- 1No.

Yours faithfully,

Special Chief Secretary To Govt

Copy to:-

The Chief Engineer & DWRO, WRD, Kurnool.

Item No.40:

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

M A. No. 06 of 2020 (SZ) in
Original Application No. 71 of 2020 (SZ)

(Through Video Conference)

IN THE MATTER OF

Gavinolla Srinivas
H. No.1-99, Bapanapally Village,
Damargidda Mandal,
Narayanpet District,
Telangana – 509 407.

...Applicant(s)

Versus

1. Union of India,
   Rep. by its Secretary,
   Union Ministry of Environment, Forest & Climate Change,
   Indira Paryavaran Bhavan,
   Jorbagh, New Delhi- 110 003.

2. Union of India
   Rep. by its Secretary,
   Union Ministry of Jal Sakti
   Sramasakti Bhavan
   New Delhi – 110 001.

3. State of Telangana
   Rep. by its Chief Secretary,
   Secretariat, Hyderabad – 500 022.

4. State of Andhra Pradesh,
   Rep. by its Chief Secretary,
   Secretariat, Velagapudi,
   Guntur District, Andhra Pradesh – 522 503.

5. Krishna River Management Board,
   Rep. by its Member Secretary,
   Government of India, Ministry of Water Resources
   5th Floor, Jalasoudha, Errum Manzil
   Hyderabad – 500 082.

...Respondent(s)

For Applicant(s): Sri. Sravan Kumar.

For Respondent(s): Smt. M. Sumathi for R1.
Sri. J. Ramachandra Rao, Addl. Adv. General along with Sri. A. Sanjeev Kumar, Spl. Govt. Pleader & Smt. H. Yasmeen Ali for R3.
Sri. R. Venkataramani, Sr. Adv. along with Smt. Madhuri Donti Reddy for R4.
Sri. D. Ramesh Kumar for R5.

Date of Order: 24th February, 2021.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

ORDER

1. This application has been filed by the applicant under Section 26 & 28 of the National Green Tribunal Act, 2010 requesting to take action against the 4th respondent for proceeding with the Rayalaseema Lift Irrigation Project against the directions issued by this Tribunal while disposing the case by Judgement Dated 29.10.2020.
2. According to the applicant, the 4th respondent is making lot of arrangements and steps for proceedings with the project without obtaining environmental clearance as directed by this Tribunal and according to the applicant that will amount to disobedience of the directions of this Tribunal which attracts the penal action to be taken against them as contemplated under Sections 25, 26 & 28 of National green Tribunal Act, 2010.
3. The 4th respondent filed a detailed reply affidavit sworn by the Chief Secretary of the State where in, they have categorically stated, that they

are not doing anything against the directions issued by this Tribunal and they have no intention to proceed with the project against the directions issued by this Tribunal and they are doing all the works relating to the project only in tune with the directions issued by this tribunal

4. It is also alleged in the reply affidavit that in order to prepare the DPR for the project as observed by this Tribunal in the matter while disposing the case, they have entrusted certain agencies for doing the investigation for preparing the DPR and they will have to do the preliminary investigation for the purpose of preparing the estimate on the basis of the guidelines given by the Central Water Commission, Ministry of Jal Shakti and for that purpose, on the basis of the directions given by the Geologist, the soil test will have to conducted and in order to get the proper report of the soil quality, the superficial dumped soil will have to be removed and in compliance with the directions given by the Geologist, arrangements were made for removing of superficial soil that has been dumped and that has been now projected as an activity of the State of Andhra Pradesh in execution of the project in violation of the directions issued by this Tribunal.
5. They have categorically reiterated, that they will proceed with the project only after preparation of the DPR and getting approval from the concerned departments as directed by this Tribunal and as such there is no violation or wilful disobedience committed by the 4th respondent and there is no necessity for initiating any action as contemplated under Section 25, 26 & 28 of National Green Tribunal Act, 2010 as required by the applicant.

6. Third respondent had also filed a reply affidavit stating that when they got information that some work is going on behalf of the State of Andhra Pradesh in respect of this project, they have applied to the Krishna River Management Board (KRMB) to enquire into the matter by appointing a committee and that matter is pending before them.

7. The applicant file rejoinder affidavit to the reply affidavit filed by the 4th respondent where in, they have reiterated the allegations and also produced certain photographs showing the nature of work that is alleged to be being done in that area.

8. Heard, Sri. Sravan Kumar the learned counsel appearing for the applicant. Smt. M. Sumathi represented the counsel for first respondent, Sri. J. Ramachandra Rao, Additional Advocate General along with Sri. Sanjeev Kumar, Special Government Pleader and Smt. Yasmeen Ali counsel for 3rd respondent, Sri. R. Venkataramani, Senior Counsel along with Smt. Maduri Donti Reddy for 4th respondent and Sri. D. Ramesh Kumar for 5th respondent.

9. The counsel appearing for 5th respondent wanted time to file their counter to this application. The senior learned counsel appearing for the State of Andhra Pradesh reiterated that they have no intention to violate the directions of this Tribunal and what is being done by the State of Andhra Pradesh is only the preliminary investigation for the purpose of preparing the DPR on the basis of the guidelines of the Central Water Commission as they are the ultimate authority to approve the project before it is being put to execution.

10. The learned counsel appearing for the applicant reiterated their contentions in the application and he wanted the same committee to go

into the issue to find out the nature of work that is being undertaken by them.

11. This Tribunal while disposing the Original Application No. 71 of 2020 issued certain directions and also prima facie came to the conclusion that considering the nature of the project, prior environmental clearance, is required and without getting environmental clearance, they cannot proceed with the work and further this Tribunal also observed that as per the directions of the Union Ministry of Jal Shakti, they will have to submit the DPR before the Krishna River Management Board and they will have to consider as to whether there is any deviation and whether such project can be permitted etc., on the basis of the powers vested on them under the Andhra Pradesh State Reorganisation Act, 2014.

12. There is nothing to disbelieve the assertion made by the Chief Secretary of the State stating that there is no intention to violate the directions issued by this Tribunal while disposing the matter and whatever is being done is only strictly in accordance with the guidelines provided for preparing the DPR for the project.

13. It is seen from the reply affidavit filed by the third respondent that they have made a complaint to the Krishna River Management Board regarding the alleged activity and wanted the Board to appoint a committee to go into the question and pass necessary directions.

14. We don't think that there is any necessity for this Tribunal to go into those aspects at this stage. We are now believing the assertions made by the Chief Secretary that they are only doing the preliminary investigation for the purpose of preparing the DPR on the basis of the

directions given by the Central Water Commission as well as the Geologist for conducting the soil test which is necessary for the purpose of preparing the estimate regarding the constructions etc., that they want to make for implementing the project. Preparation of DPR for such projects can be carried out by the authorities only on the basis of the guidelines given by the competent authority who are expected to approve the same. Further, when risk involving projects are to be implemented, DPR has to be prepared properly and for that purpose, they may have to undertake certain investigation in a scientific manner involving certain tests etc. to ascertain the manner in which the contracts will have to be made and estimate the amount required for carrying out the work and that cannot be treated as execution of the project and wilful disobedience of the direction of this Tribunal to attract the penal provision against the officials who are exercising their experience in carrying out the work.

15. So under such circumstances, we feel that there is no necessity at this stage for go into the investigation in this matter and the Krishna River Management Board, on the basis of the compliant made by the Telangana Government in this regard, are at liberty to go into the question and if it is found that there is any violation of direction of this Tribunal in proceedings with the matter on the basis of the investigation conducted by them independently, they are at liberty to take appropriate action against the 4th respondent in accordance with law, apart from the applicant to approach this Tribunal at that stage.

16. The Krishna River Management Board is directed to take appropriate decision in the application at the earliest.

17. With the above directions, observations and liberty to the applicant, this application is disposed of.

Sd/-
.....J.M.
(Justice K. Ramakrishnan)

Sd/-
.....E.M.
(Shri. SaibalDasgupta)

M.A.No.06/2020(SZ) in
O.A. No. 71/2020 (SZ)
24th February, 2021. Sr.

KRISHNA RIVER MANAGEMENT BOARD
HYDERABAD

REPORT OF THE TEAM CONSTITUTED FOR INSPECTION OF

RAYALASEEMA LIFT SCHEME (ANDHRA PRADESH)

AUGUST 2021

REPORT ON THE SITE VISIT OF THE TEAM CONSTITUTED BY KRISHNA RIVER MANAGEMENT BOARD (KRMB) FOR THE INSPECTION OF RAYALASEEMA LIFT SCHEME (RLS) IN ANDHRA PRADESH

1. BACKGROUND

Shri Gavinolla Srinivas, resident of Narayanpet District filed O.A. No. 71/2020 in Hon'ble National Green Tribunal (SZ), Chennai, by questioning the validity of Rayalaseema Lift Scheme (RLS) taken up by the Govt. of Andhra Pradesh (GoAP).

Hon'ble National Green Tribunal (NGT) in the matter, vide order dated: 24th February, 2021, under Para 15 and Para 16 stated as under:

> *"so under such circumstances, we feel that there is no necessity at this stage for go into the investigation in this matter and Krishna River Management Board, on the basis of the complaint made by the Telangana Government in this regard, are at liberty to go into the question and if it is found that there is any violation of direction of this Tribunal in the proceedings with the matter on the basis of the investigation conducted by them independently, they are at liberty to take appropriate action against the 4th respondent (GoAP) in accordance with the law, apart from the applicant to approach this Tribunal at that stage."*
>
> *"the Krishna River Management Board is directed to take appropriate decision in the application at the earliest."*

Accordingly, Chairman, KRMB, constituted a team consisting of officers from KRMB Secretariat and Central Water Commission (CWC), with a direction to find out if there is any violation of directions of NGT proceedings in this matter. The team consisted of the following officers:

i)	Shri Harikesh Meena,Member,KRMB	Team Leader & Convenor
ii)	Shri D. M. Raipure, Member Secretary, KRMB	Member
iii)	Shri L. B. Muanthang, Member (Power), KRMB	Member
iv)	Shri P. Devender Rao, Director, KGBO, CWC, Hyderabad	Member

GoAP did not facilitate the visit of the team to the project site citing various reasons.

Subsequently, again Shri Gavinolla Srinivas filed M.A. No.02/2021 Hon'ble NGT, Southern Zone, Chennai in O.A. No. 71/2020 in connection with the construction of Rayalaseema Lift Scheme.

Hon'ble NGT, Southern Zone, Chennai vide order dated: 23th July,2021 in the matter under Para 7 *inter-alia* stated that:

> *" .....we have directed the Krishna River Management Board to submit as to whether there is any violation of the undertakings given by the parties and the directions given by the Ministry in this regard. So they are expected to incorporate those things in their reply to be filed, for that purpose they are at liberty to conduct inspection on their own and come with the data of what is transpired at the site and also whether that is done for the purpose of preparing the DPR for the project for the purpose of ascertaining the real nature of the project or otherwise"*

Accordingly, KRMB Secretariat vide letter dated 02.08.2021 informed Government of Andhra Pradesh that a team comprising of officers of KRMB and CWC is proposed to visit the project site on 05.08.2021. GoAP vide letter dated 03.08.2021 objected about the nomination of Shri P. Devender Rao, Director, KGBO, CWC as a member of the proposed team.

Hon'ble NGT in M.A. No.02/2021 & M.A. No.03/2021 in its order dated:04.08.2021 vide Para 4 *inter-alia* stated that

> *".....however, when some apprehension has been raised, it is always better that persons from both the states will have to be avoided as justice must not only be done, but it must appear to be done as well ".*

Hon'ble NGT in M.A. No.02/2021 & M.A. No.03/2021 in its order dated:09.08.2021 vide Para 3 *inter-alia* stated that

> *".....as only question that has to be considered is as to whether there was any excess work, than required for the purpose of preparing the DPR by the State of Andhra Pradesh has been done by them and whether they are doing any preparatory work for the execution of the proposed project... ".*

2. RE-CONSTITUTION OF TEAM AND SITE VISIT

In light of the directions of the Hon'ble NGT, Chennai dated 04.08.2021, the team was re-constituted with the following officers from KRMB & DoWR-CWC:

i)	Shri D. M. Raipure, Member (Link Officer) and Member Secretary, KRMB	Convenor
ii)	Shri L. B. Muanthang, Member (Power), KRMB	Member
iii)	Shri Darpan Talwar, Director, HCD, CWC, New Delhi	Member

The above said team that visited the project site does not have any officer from the State of Telangana or Andhra Pradesh. The team was mandated to visit the project site to conduct inspection and come with the report of what is transpired at the site and also whether that is done for the purpose of preparing the DPR for the project or actual construction of the project. A copy of the Office Order re-constituting the team is enclosed as **Annex**.

The team undertook the visit to the project site on 11.8.2021. The Chief Engineer of Rayalseema Lift Scheme facilitated the visit of the team.

3. MAIN COMPONENTS OF THE SCHEME

As per the DPR received in KRMB vide Letter dated 1.7.2021 of Chief Engineer (P) & DWRO, Kurnool, the proposed Rayalseema Lift Scheme (RLS) is located adjacent to the existing Pothireddypadu Head Regulator in Kurnool district of Andhra Pradesh. The main components of the scheme are as given below:

- **Approach channel**: The approach channel with EL 800 ft. is proposed for the length of 8892m in Srisailam foreshore area upto forebay of pump house.
- **Forebay:** Forebay is proposed from approach channel to the pump house for a length of 237 m.
- **Pump house:** It is proposed to be of size 250m x 40m with bottom level at about EL710 ft. The pump house is proposed to accommodate 12 no. of pumps. The proposed capacity of each pump is 81.93 Cumec.
- **Pipe Line:** The M.S. pipe line for pressure main of 5m diameter and length of 200 m for each motor is proposed from the pump house to the delivery Cistern.
- **Delivery Cistern:** Pressure main will have delivery level at EL 885.14 ft. The delivery Cistern is connected to Link Channel.
- **Link Canal:** Link channel for a length of 500m is proposed from delivery Cistern to Srisailam Right Main Canal (downstream of Pothyreddypadu

Head Regulator), joining at 300m downstream of Pothireddypadu Head Regulator.

4. SITE INSPECTION AND OBSERVATIONS

The team undertook the visit to various components of the project. The observations of the team during the inspection of the site are as under:

(i) Approach Channel

It was observed that the approach channel was completely submerged under water as the water level in the reservoir was reported to be at EL 884.8 ft. during the visit. The Chief Engineer informed that the approach channel has been partially excavated to the extent of about 30% of total excavations at various locations to different elevations along the length. Further, the excavation levels have not reached upto the bed level of EL 800ft.

Due to submergence of the approach channel, the team could not ascertain the extent of excavation undertaken in the approach channel. It was however observed that a ledge of about 15m has been kept unexcavated between forebay and approach channel to prevent entry of water into excavated area of the forebay. An upstream view of the approach channel is placed as P1.

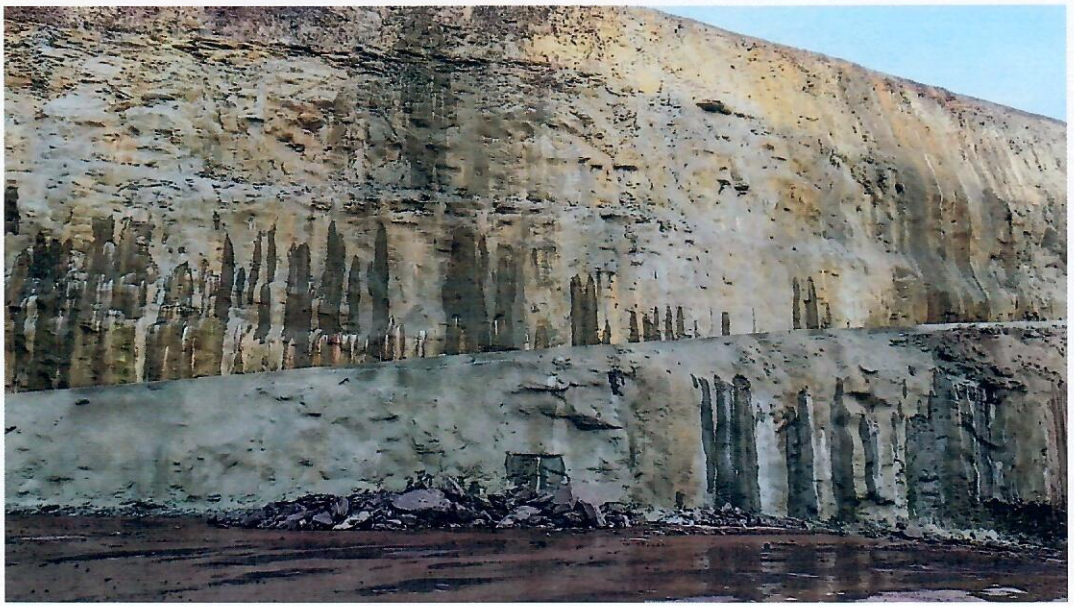
P1: View of Upstream View of the Approach Channel

(ii) Forebay

It was observed that a major portion of forebay, with the full length of 237m and its width, has been excavated to varying depths. The average excavated level

of the forebay towards the pump house side is observed to be lower than the invert level of delivery tunnels. The depth of excavation of the forebay is observed to be of the order of about 150 to 180 ft towards the pump house end. Two side ramps to facilitate movement to lower levels of excavation have been observed. It was observed that the shotcreting on the walls of forebay has been carried out. Views of Downstream View of Forebay and side ramp and Wall of Forebay are placed P2 and P3.

P2: View of Downstream View of Forebay



P3: View of Side ramp and Wall of Forebay

(iii)Pump House

It was observed during the visit that full length of 250m & width of 40m of pump house pit has been excavated upto about EL730 ft. The pump house pit excavation levels were observed to be below the level of invert of delivery tunnels. The support to rock mass in the form of shotcreting/ shotcreting with pattern rock bolting has been observed on the vertically excavated walls of the pump house pit. Views of Pump house pit from Forebay and Pump house pit are placed as P4 and P5.

P4: View of Pump house from Forebay

P5: Closure View of Pump house Pit

(iv)Pipe line (Delivery Main)

It was observed that ten number of tunnels out of a total of 12 have been excavated for erection of 5m diameter pipe line (delivery main). The excavation of tunnels for a short length of reportedly about 35-50m has been carried out. The shotcreting at initial area/face of tunnel was observed. Closer View of Pipe Line /Delivery Main Tunnel is placed as P6.

P6: Closer view of Pipe line /Delivery Main Tunnel

(v) Delivery Cistern and Link Canal

It was observed that the delivery cistern has been excavated to its full length and width. Significant depth of delivery cistern has been excavated. The link canal of length of about 500m is proposed to connect delivery cistern with Srisailam Right Main Canal (SRMC). View of the Delivery Cistern from side is placed as P7.

P7: View of the Delivery Cistern from Side

(vi)Batching Plant

The team observed that two batching plants have been installed at the project site. View of Batching Plants are paced at P8 and P9.

P8: View of Batching Plant

P9: View of Batching Plant

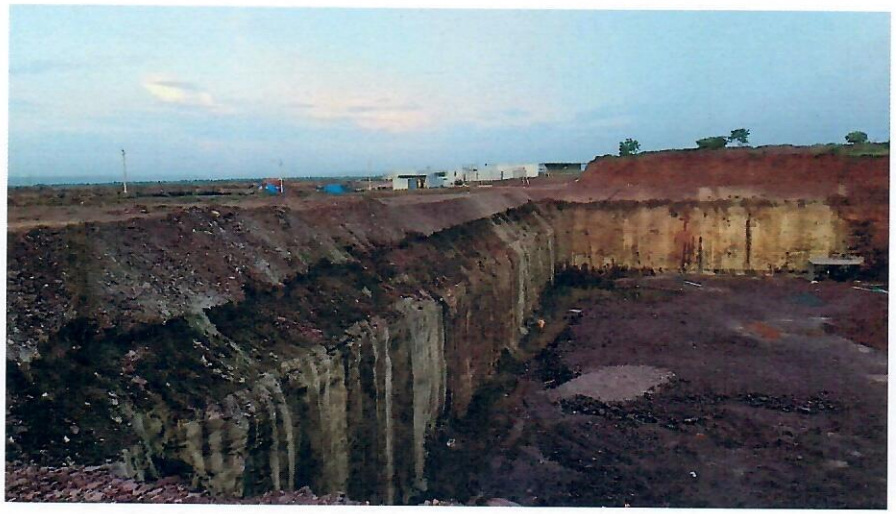
(vii) Stacking of Aggregates

It was observed that coarse aggregates, fine aggregates and sand have been stacked besides the batching plant at the site. The view of stacking of aggregates is placed at P10.

P10: Stacking of Aggregates

(viii) **Activities ongoing at Site during visit**

During the visit, no activity was going on at the site. The view of sheds near upstream side of Delivery Chamber is placed as P11.



P11: Sheds near upstream side of Delivery Chamber

5. CONCLUSIONS

Based on the observations made during project site visit, the team concludes as follows:

1. The activities undertaken at the site as observed by the team have been detailed at Item number 4 "Site Inspection and Observations" above, along with the photographs taken during the visit.

2. During the visit to the project site, no activity was going on at the site. However, the team observed that two batching plants have been installed at the site. Further, coarse aggregates, fine aggregates and sand were seen stacked besides the batching plant at the site.

3. The team is of the view that the works undertaken at the site are in excess than what is, in general, required for the purpose of the preparation of Detailed Project Report as per Ministry of Water Resources' *"Guidelines for the Preparation of Detailed Project Report of Irrigation and Multipurpose Projects" (2010).*

13.8.21

Shri D. M. Raipure,
Member (Link Officer)
and Member Secretary
KRMB

13/8/21

Shri L. B. Muanthang,
Member (Power)
KRMB

Talwar 13/8/21

Shri Darpan Talwar,
Director, HCD,
Central Water Commission
New Delhi

Annex

भारत सरकार
जलशक्ति मंत्रालय
जलसंसाधन, नदी विकासऔर
गंगा संरक्षण विभाग
कृष्णा नदी प्रबंधन बोर्ड
५वी मंजिल, जलसौधा
एरुम मंजिल, हैदराबाद-५०००८२

Government of India
Ministry of JalShakti
Dept. of Water Resources,
River Development & Ganga Rejuvenation
Krishna River Management Board
5th Floor, Jalasoudha, Errum Manzil
Hyderabad – 500 082

F.No. 02/07/A/2021/KRMB/ 1815-19 **Dt:** 10 **.08.2021**

Office Order

In pursuant to the Hon'ble NGT, Chennai Order on the M.A. No. 02/2021 (SZ) & M.A. No. 03/2021 (SZ) in O.A. No. 71/2020 (SZ) dated 23-07-2021 and M.A. No. 06/2020 (SZ) in O.A. No. 71/2020 (SZ) and observation dated 04.08.2021 in M.A. No.02 of 2021 at para 5 regarding Rayalaseema Lift Scheme taken up by the Government of Andhra Pradesh, a team of officers from KRMB & DoWR-CWC formed on 26-03-2021 is here by reconstituted with the following members.

1)	Shri D. M. Raipure, Member (Link Officer) and Member Secretary, KRMB	Convenor
2)	Shri L. B. Muanthang, Member (Power), KRMB	Member
3)	Shri Darpan Talwar, Director, HCD, CWC, New Delhi	Expert Member

The team may visit the project site to conduct inspection and come with the report of what is transpired at the site and also whether that is done for the purpose of preparing the DPR for the project or actual construction of the project. The team shall submit its report to KRMB before 16.8.2021.

This issues with the approval of Chairman, KRMB.

10.8.2021
(Baba Sharfuddin)
Superintending Engineer

Copy for information and necessary action to:

1) Shri D. M. Raipure, Member (L.O.) and Member Secretary, KRMB
2) Shri L. B. Muanthang, Member (Power), KRMB
3) Shri Darpan Talwar, Director, HCD, CWC, New Delhi
4) Copy for information to the Senior Joint Commissioner (PR), Ministry of Jal Shakti, Dept. of WR, RD & GR, Room No. 107-B, Shastri Bhawan, New Delhi – 110 001 for information
5) P.S to Chairman, KRMB

Tel: 040-23301858 ;**Fax:** 040-23301655 **e-Mail:** krmb.hyd@gmail.com

ANNEXURE A3

(1995) 3 Supreme Court Cases 757

(BEFORE DR A.S. ANAND AND FAIZAN UDDIN, JJ.)

DHANANJAY SHARMA .. Petitioner;

Versus

STATE OF HARYANA AND OTHERS .. Respondents.

Writ Petition (Crl.) No. 15 of 1994†, decided on May 2, 1995

A. Constitution of India — Arts. 129, 142 and 32 & 21, 22(5) — Criminal contempt — By police — Filing of false affidavit, or making false statement on oath or adducing false evidence before the Court amounts to criminal contempt of the Court — Detenu, while going by taxi waylaid by State police, though not wanted in any case there, and detained in police station for two days along with the taxi driver — Habeas corpus petition filed in Supreme Court — Pursuant to the Court's direction to Home Secretary of the State to have a search made and to have the detenus produced before it, the detenus appearing before the Court — Respondents 1 to 5 viz. Home Secretary, DGP, SP, Addl. SP and SHO concerned and the taxi driver also required to file affidavits before the Court — Affidavits filed by Respondents 3 to 5 viz. SP, Addl. SP and SHO, as well as the driver, denying the waylaying and subsequent detention — CBI directed to find out veracity of the version of the deponents — CBI report that statement made by the main detenu was correct and statements made in affidavit by the driver and the respondent police officers were false, accepted by Supreme Court on facts — Another affidavit filed by the SP (Respondent 3) 'on behalf of Respondents 1 to 5' found to be without express knowledge of Respondents 1 and 2 — False statement found to be made by the driver on being tutored by the respondents Addl. SP and SHO and on account of fear of the police — Respondents Home Secretary and DGP filing no reply to the rule nisi and in spite of directions issued by Supreme Court, and dealing with the case in a casual manner but later concurring with the CBI report — Held, filing of false affidavits by Respondents 3 to 5 and the driver amounted to contempt calling for stern action — Belated apologies of Respondents 3 to 5 having been made to escape punishment not acceptable — Respondent 3 sentenced to 2 months' simple imprisonment, while Respondents 4 and 5, having aggravated the contumacious act by tampering with the evidence, sentenced to 3 months' simple imprisonment with fine of Rs 1500 each — Unconditional apology of Respondents 1 and 2 acceptable — Taxi driver, having disclosed correct facts before CBI and reiterating the same subsequently in Supreme Court through affidavit and also having tendered unconditional apology, sentenced to one day's simple imprisonment with fine of Rs 1000 — Punishment would serve deterrent to others in future

B. Constitution of India — Arts. 32, 22(5), 21 and 144 — Habeas corpus petition — Rule nisi issued — State obliged to file affidavit through its functionaries to satisfy the Court that the detention was in conformity with Art. 22(5) — Where specific direction issued by Supreme Court to Home Secretary to file his affidavit, inaction on his part reflects a casual approach

C. Contempt of Courts Act, 1971 — Ss. 2(c) and 12 — Criminal contempt — Filing of false affidavit in court constitutes contempt — Tutoring, or pressure by police or fear of police no defence

† Under Article 32 of the Constitution of India

D. **Constitution of India — Arts. 32 and 21 — Compensation — For illegal detention in police custody — Where detenus themselves not fair before the Court and filing false affidavit and exaggerating the incident by involving persons who were not present at the scene, held, they would not be entitled to any compensation from State — Equity**

Held :

Per curiam

Any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice. (Para 38)

Chandra Shashi v. *Anil Kumar Verma*, (1995) 1 SCC 421 : 1995 SCC (Cri) 239, *relied on*

The action of Respondents 3 to 5 in filing false affidavits and denying that the detenu and the taxi driver had been whisked away and detained illegally in their custody for two days is not only reprehensible and condemnable but also requires to be dealt with rather sternly. The belated apologies offered by them, though still maintaining that the detenu and the driver had not been detained by them, even in the face of the evidence recorded by the CBI, as Commissioner of the Supreme Court, and its report are not apologies of a truly repentant person but made obviously with a view to escape punishment. It is a matter not only of regret and concern but also causes great anguish to notice that the police officials, Respondents 4 and 5, should have indulged in tutoring the driver and forced him to give false evidence while proceedings were pending in the Supreme Court. They have aggravated their contumacious acts. Their action was deliberate and an attempt to overreach the due process of law without compunction. Their action is an affront to the majesty of law. Under the circumstances, the question of accepting the belated apologies tendered by Respondents 3 to 5, which were not genuine, bona fide or expression of true repentance, does not arise. It is clear from the facts and the findings recorded by the CBI that Respondents 3 to 5 committed a grave contempt of the Supreme Court by not only interfering with the due course of justice but also making calculated and deliberate attempts to obstruct the administration of justice. (Paras 39 and 40)

Besides, Respondents 4 and 5 have aggravated their contumacious act by tampering with the evidence during the pendency of proceedings in the Supreme Court. They have deflected the course of judicial proceedings. Both of them, therefore, deserve to be punished properly not only for the wrong done by them but also to give a proper signal and deter others from indulging in similar type of activities. The interest of public justice demands a deterrent sentence to be imposed upon them. (Para 41)

Respondent 3 is sentenced to suffer simple imprisonment for a period of two months for committing contempt of court by filing false affidavits. Having regard to the aggravating circumstances each of Respondents 4 and 5 is sentenced to suffer simple imprisonment for a period of three months each and to pay a fine of Rs 1500 each and in default to further undergo simple imprisonment for fifteen days each. (Paras 43 and 44)

Respondents 1 and 2 were obliged to file counter-affidavits to the rule nisi issued by the Court and in response to the specific directions of the Court. They, having failed to do so, acted in a casual manner which is disapproved. By virtue of Article 144, these authorities are legally obliged not only to act in aid of the Supreme Court for the enforcement of the law declared by the Supreme Court but also in aid of all its orders, decrees or directions. (Para 48)

Whenever a question is raised regarding the illegal detention of a citizen in a writ of habeas corpus and the court issues the *rule nisi*, a duty is cast on the State, through its functionaries and particularly those who are arrayed as respondents to the writ petition, to satisfy the court that the detention of the citizen was legal and in conformity not only with the mandatory requirements of the law but also with the requirements implicit in Article 22(5) of the Constitution. It is obligatory on the part of the respondent-State to place before the Court all relevant facts relating to the impugned detention truly, clearly and with utmost fairness through an affidavit. An affidavit-in-reply is required to be filed by the respondents not as a mere formality but to truly assist the Court in drawing permissible inferences from the rival contentions. The right of personal liberty of a citizen is all too precious and no one can be permitted to interfere with it except in accordance with the procedure established by law. The State owes an obligation to the courts to place all relevant facts before the court in all cases where interference with his fundamental rights is alleged by a citizen. (Para 47)

However, Respondent 1 filed his affidavit subsequently in which he detailed the system and procedure which was being followed by the State Government of Haryana in cases of complaints of detention by the citizens. In his further affidavit he stated that he had not seen the affidavit filed by Respondent 3 (said to be 'on behalf of Respondents 1 to 5') before it was tendered in the Supreme Court and that after carefully perusing the affidavit filed by Respondent 3 and the report of the CBI, he found no reason to differ from the opinion given by the CBI, on the basis of the oral and documentary evidence, that the detenu and his driver had been waylaid and kept in illegal detention by the police. From a consideration of the material on record, Respondent 1 appears to have followed a faulty system, which was prevailing in the State of Haryana in cases involving detention of the citizens in the matter of filing of counter-affidavits in petitions for habeas corpus and on a wrong understanding of the import of the order of the Supreme Court. However, the unqualified apology tendered by him is genuine and an expression of real contriteness and repentance. Therefore, while cautioning him to be careful in future, his unqualified apology is accepted and the contempt proceedings initiated against him are allowed to rest here. The rule issued against him is discharged. (Paras 49, 50 and 51)

Respondent 2 had also filed two subsequent affidavits and in each one of them he explained the steps taken by him after he was apprised of the pendency of the writ petition in the Supreme Court. He corroborated the version given by Respondent 1 in his affidavit. After giving the explanation, he also tendered an unqualified apology. It appears that Respondent 2 is also truly repentant for the lapses committed by him and the unqualified apology tendered by him is genuine and bona fide and not made with a view to escape punishment. Therefore, his unqualified apology is accepted and the rule against him is discharged though warning him to be careful and not to be casual in such like matters in future. (Para 52)

The taxi driver on his own showing has made a false statement in the Supreme Court. He also filed a false affidavit. He has on his own showing, thus, committed a grave contempt of the Supreme Court, besides committing perjury. However, he disclosed the correct facts to the CBI and reiterated the same subsequently in the Supreme Court through his affidavit. He placed himself at the mercy of the Court, after tendering an unconditional and unqualified apology, which has been reiterated at the bar both by him personally and through his Advocate. From the report of CBI and the other material on record, it is clear that the false statements made by him in the Supreme Court, both orally and through his affidavit, were not voluntary and that he was acting under pressure of Respondents 4 and 5. It is, however, no defence for him to say that he so acted on account of the fear of the police of Haryana and that he had been 'tutored' by Respondents 4 and 5 to make a false statement and file a false affidavit in the Court. He should have known better. Though he is now repentant but he cannot be allowed to go scot free for the falsehood indulged into by him in the Supreme Court and for his attempt to poison the stream of justice. However, taking the mitigating circumstances also into consideration, he is sentenced to one day's simple imprisonment and to a fine of Rs 1000 and in default to further undergo fifteen days' simple imprisonment, for committing contempt of the Supreme Court. (Para 53)

Since it has been found that the detenu and his driver had been illegally detained by Respondents 3 to 5 for two days, the State must be held responsible for the unlawful acts of its officers and it must repair the damage done to the citizens by its officers for violating their indefeasible fundamental right of personal liberty without any authority of law in an absolutely high-handed manner. But the Court would not direct the State Govt. to compensate the detenu and the driver since the driver indulged in falsehood in the Supreme Court and the detenu also exaggerated the incident by stating that two employees of Respondents 6 and 7 were also present with the police party, which version has not been found to be correct by the CBI. Therefore, they both have disentitled themselves from receiving any compensation, as monetary amends for the wrong done by Respondents 3 to 5, in detaining them. (Para 54)

Per Faizan Uddin, J. (concurring)

It is a matter of concern that even senior police officials of the status of SSP and DSP should not realise their obligations to the courts and indulge in blatant falsehood with a view to mislead the court. This attitude on their part has to be strongly condemned. They had not only chosen a wrong path for themselves contrary to the principles of the institution to which they belong, but they also tried to detract the taxi driver from divulging the truth to mislead the Supreme Court which was concerned with the liberty of a citizen. They went on to reiterate their false stand till after the CBI enquiry report was received and wisdom dawned upon them to tender apology only when they found themselves in a tight corner and had no way out to escape. In such circumstances, it cannot be said to be a real

repentance of what they have done. By indulging in such disruptionary manner Respondents 3 to 5 acted in a most irresponsible manner giving an impression that they were not the defenders of truth and protectors of the citizens but violators of the law and justice and thereby defaced the name of the force of which they belong. They acted with gross impropriety and intentionally committed serious and grievous wrong of a clearly unredeeming nature, while it was expected from the seniors of the rank of SSP and Addl. SP that they at least would observe the high standards in maintaining impartiality and promote public confidence in the force. The Court expects candour and frankness from the parties to the litigation before it. Court proceedings cannot be allowed to be trifled with. In the facts and circumstances of the case Respondents 3 to 5 do deserve the punishment awarded to them to serve as a deterrent to others in future. (Para 60)

In recent times our administrative system is passing through a most critical phase, particularly, the policing system which is not as effective as it ought to be and unless some practical correctional steps and measures are taken without further delay, the danger looms large when the whole orderly society may be in jeopardy. (Para 58)

R-M/14417/CR

Advocates who appeared in this case :

P.P. Malhotra, Gopal Subramanium, R.K. Jain, N. Natarajan and G. Ramaswamy, Senior Advocates (S.S. Gandhi, N.K. Sharma, Ms Indu Malhotra, Ms Nisha Bagchi, Anil K. Makhija, Mahinder Singh, Pankaj Kalra, N.M. Popli, Lalitha Kaushik (Smt), Naresh Kaushik, Shankar Divate, R.K. Gupta, Prem Malhotra, K.K. Lahiri, Ms M. Karanjawala, Ms Nandini Gore, R. Karanjawala and Ms Ruby Ahuja, Advocates, with them) for the appearing parties.

Ranjit Kumar, Advocate for Driver Sushil Kumar.

The Judgments of the Court were delivered by

DR ANAND, J.† — On 17-1-1994, Shri Parasmal Rampuria of G.R. Industries Limited filed a petition seeking issuance of a writ of habeas corpus for the release of Dhananjay Sharma from illegal and unauthorised custody of the Haryana Police and for his production in Court. It is alleged in the writ petition that on account of some civil disputes between M/s Bhanu Iron and Steel Company Limited (in short BISCL) of New Delhi with a factory at Indore, which is owned by Respondent 7, Shri Anoop Bishnoi, son-in-law of Shri Bhajan Lal, Chief Minister of Haryana and M/s G.R. Industries Limited, a case under Sections 406/420 IPC was got registered by Respondent 6 Shri S.K. Kaushik, the Commercial Manager of BISCL, being FIR No. 663 of 1993 at Police Station Sadar, Hissar against Shri Pradeep Rampuria and others. On 7-1-1994, a team of police party, headed by Additional Superintendent of Police, Hissar, Shri Sham Lal Goel, Respondent 4, went to the residence of Shri Pradeep Rampuria at Diamond Harbour Road, Calcutta, to arrest Shri Pradeep Rampuria, on the authority of non-bailable warrants of arrest issued against him by the Additional Chief Judicial Magistrate, Hissar. Shri Pradeep Rampuria was arrested and on 7-1-1994 itself produced before the Chief Judicial Magistrate, Alipore, Calcutta, who released him on bail till 15-1-1994, with a direction to appear before the

† **Ed.** As per the certified copies of the two judgments while Faizan Uddin, J. has given a separate concurring judgment his Lordship has also signed the judgment of Dr Anand, J.

competent court at Hissar. On 15-1-1994 Shri Dhananjay Sharma, the detenu, who is an employee of M/s Golden Industries, a sister concern of M/s G.R. Industries Limited, along with Shri S.C. Puri, advocate went to Hissar in a taxi (van) bearing registration No. DAE-3668 driven by Sushil Kumar. They appeared in the court of the Addl. CJM Hissar and filed an application seeking exemption from personal appearance of Shri Pradeep Rampuria on medical grounds. After filing the application and obtaining the next date from the court, the detenu, Shri Dhananjay Sharma along with his lawyer, Shri S.C. Puri, left for Delhi in the same taxi car (van) driven by Sushil Kumar. A team of Haryana police officers, riding in six police gypsy jeeps, waylaid them on Hissar-Delhi Road and while, after some arguments Shri S.C. Puri, Advocate, was allowed to go, the detenu and Sushil Kumar along with the taxi car were whisked away by the police personnel on 15-1-1994 and were being illegally detained by the Haryana Police and their whereabouts were not known and that they had not returned to Delhi. Shri S.C. Puri, Advocate filed an affidavit in support of the writ petition, wherein it was inter alia stated:

> "That after obtaining the date, the deponent came to his car waiting outside the court premises and advised Mr Dhananjay Sharma to direct the driver to take us back immediately to Delhi.
>
> That we hardly travelled one or two kilometres when a number of fully armed police gypsies of Haryana Police appeared at the site and surrounded the Maruti van in which we were travelling. One of the police officers ordered the driver to show him the papers relating to the vehicle which were handed over to him by the driver. The deponent immediately came down from the van. However, Mr Sharma and the driver were not allowed to come out of the van and remained surrounded by the fully armed police officers. They also wanted the deponent to sit in the Maruti van or even in their own vehicle to which the deponent resisted strongly. On persistent enquiries from the deponent, one of the police officers had a talk with some of his superiors on wireless set and after completing the conversation, Mr Dhananjay Sharma and the driver of the said vehicle were taken away by the Armed Police Squad towards city side leaving the deponent on the road. The deponent boarded a three-wheeler and came to a nearby market. The deponent contacted Shri P.P. Malhotra, Senior Advocate and narrated him the whole incident from a shop having STD facility. Thereafter, the deponent boarded a bus and reached Delhi at about 4.30 p.m."

2. On 18-1-1994 after perusing the affidavit of Shri S.C. Puri and the writ petition, this Court issued notice to the respondents. Miss Indu Malhotra, Advocate, Standing Counsel for the State of Haryana, accepted the notice on behalf of Respondents 1 to 5. Copies of the petition and the affidavit had already been handed over to her by the learned counsel for the petitioner. A direction was issued by us to Respondent 3 to produce the detenu Dhananjay Sharma and the taxi driver Sushil Kumar, if in detention, in this Court on 19-1-1994. Respondents 3 to 5 were also directed to file an

affidavit indicating the circumstances under which they took the detenu and the driver of the taxi car, Sushil Kumar, into custody, as alleged in the petition and in the affidavit of Shri S.C. Puri. Notices by ordinary means were issued to Respondents 6 and 7. On 19-1-1994 Respondents 3 to 5 filed their affidavits. Shri Sham Lal Goel, Additional Superintendent of Police, Hissar, Respondent 4, in his affidavit denied the allegations made in the writ petition as well as in the affidavit of Shri S.C. Puri, Advocate. In para 1 of the affidavit he stated:

> "That in reply to para 1 of the petition it is submitted that neither of the alleged detenus, namely, Shri Dhananjay Sharma or Shri Sushil are/were wanted in any case of Hissar District, nor they were ever detained or confined by any police officer/official as alleged. It is also wrong and hence denied that the said alleged detenus are or ever were in the unlawful, illegal and unauthorised custody of the official respondents, as alleged."

3. In paras 2, 3, 4, 9, 10, 13, 14 and 15 (there are no paragraphs numbered as 5 to 8) the details of the case leading to the registration of the FIR against Shri Rampuria and others and the investigation of the case, registered on the statement of S.K. Kaushik, Respondent 6 were given. It was asserted that the dispute between the parties was not of a civil nature. In para 12 it was admitted that an advocate had appeared in the court of Addl. CJM, Hissar on 15-1-1994 and had filed an application for exemption from personal appearance of Shri Pradeep Rampuria and that the court had adjourned the case to 12-2-1994. Rest of the allegations were denied.

4. Shri Rajinder Singh, Inspector, SHO, Police Station Sadar Hissar, Respondent 5, in his affidavit stated that he had been wrongly implicated in the petition and asserted that the incident as alleged in the writ petition never took place. He went on to say:

> "I submit that on the relevant date i.e. 15-1-1994 I was present on duty in the Court of the Addl. CJM in the morning at about 11 a.m. and remained in the court premises till late afternoon. On the said date the deponent was present in court when the application was filed on behalf of Shri Pradeep Rampuria. The deponent also submitted an application for the issuance of fresh warrants against Shri Parasmal Rampuria and Shri Mukharjee since the earlier warrants were only valid till 15-1-1994. At the time of presentation of the application the learned Magistrate directed that photocopies of the FIR and other relevant documents be also filed along with the application. Consequently after the departure of the petitioner and his advocate, the deponent remained within the court premises to prepare the photocopies which were thereafter submitted to the court of the learned Magistrate on the same day. Thereafter the deponent also went to the office of the Assistant District Attorney in connection with the scrutinising of certain challans. It is consequently submitted that the deponent could not be involved in the incident as alleged in the writ petition nor does he have any knowledge that any

other police officer working in the Sadar Hissar Police Station has indulged in such activity."

5. Respondent 3, Shri Anil Davra, IPS, Superintendent of Police, in his affidavit asserted:

"That in reply to para 1 of the petition it is submitted that neither of the alleged detenus namely Shri Dhananjay Sharma or Sushil are/were wanted in any case of Hissar District, nor they were ever detained or confined by any police officer/official as alleged. It is also wrong and hence denied that the said alleged detenus are or ever were in the unlawful, illegal and unauthorised custody of the official respondents, as alleged."

6. Thereafter, Respondent 3 referred to the investigation in connection with the FIR registered at the instance of Respondent 6, Shri S.K. Kaushik and maintained that the dispute between the parties was not of a civil nature and went on to say:

"It is submitted that the petitioner has levelled these false allegations against the Hissar Police with ulterior motives in order to win the sympathy of this Hon'ble Court. In fact the deponent or any other police officer working under his command have never resorted to any such illegal activities as alleged by the petitioner in this para. The deponent is a staunch believer of rule of law and as such he cannot ever think of flouting the rule of law. As already submitted in the preceding paras of this affidavit neither Shri Dhananjay Sharma nor taxi driver Shri Sushil was ever wanted by the Hissar Police in any criminal case nor were they ever whisked away by the police personnel of Hissar Police with the help of any police gypsy as alleged."

7. Thus, Respondents 3 to 5 in their affidavits denied the allegations levelled against Haryana Police with regard to the whisking away of Dhananjay Sharma and driver Sushil Kumar on 15-1-1994 and their subsequent detention, thereby refuting the assertions made in the affidavit of Shri S.C. Puri, Advocate, and the petitioner. Since, the allegations made by Shri Puri, Advocate, were of a serious nature and if true they disclosed a rather disquieting state of affairs, on 19-1-1994, before proceeding further in the matter, we deemed it proper and necessary, in the first instance, to direct the Home Secretary, Government of Haryana, Respondent 1, through his learned Advocate, Shri Kapil Sibal, to have a search made for the detenus Dhananjay Sharma and the taxi driver Sushil Kumar and have them produced in this Court. In the course of our order, we said:

"The Home Secretary, Government of Haryana, may if he finds it necessary take assistance from the Delhi Police, and on such request being made the Commissioner of Police, Delhi shall afford all assistance to him. We are issuing the directions in the name of the Home Secretary, Government of Haryana, to avoid any possibility of a plea being raised that Respondents 3 to 5 are unable to trace out the taxi or the petitioner

and Sushil not hailing from areas falling within their jurisdiction in Hissar.

We expect that the needful shall be done and all efforts shall be made to produce Shri Dhananjay Sharma and Shri Sushil Kumar in this Court tomorrow. An affidavit disclosing from where they have been brought and the whereabouts of the taxi as mentioned above shall also be filed on behalf of Respondent 1."

8. On 20-1-1994, in spite of our specific directions (*supra*) no affidavit was filed by the Home Secretary, Respondent 1. However, one more affidavit was filed by Shri Anil Davra, Superintendent of Police, Respondent 3, "on behalf of Respondents 1 to 5". In the said affidavit it was stated that Respondents 3 to 5 with the help of Delhi Police had been able to identify the taxi-stand from where taxi No. DEA-3668 operated and that they were also able to ascertain the whereabouts of driver Sushil Kumar and had contacted him. Respondent 3 further deposed:

"On enquiries from said taxi driver Shri Sushil Kumar the Delhi Police were told that he returned to Delhi along with Shri Dhananjay Sharma from Hissar on 15-1-1994 itself and left them at Daryaganj, New Delhi. The Incharge of the Police Post, Church Mission Road, S.I. Surender Kumar, has assured the presence of said Shri Sushil and the concerned vehicle in the court premises today.

Further I submit that the respondents are still making efforts to trace Shri Dhananjay Sharma but as yet has no information of his whereabouts specially since the police does not have any means of identifying him."

9. On 20-1-1994, Shri Sushil Kumar was produced by the Delhi Police and the detenu Shri Dhananjay Sharma on his own also appeared in the Court. Their statements were recorded on oath.

10. Shri Dhananjay Sharma in his statement deposed about the manner in which he had been waylaid, along with others and whisked away by the Haryana Police from the Delhi-Hissar Road on 15-1-1994. He then stated that the police party took him and Sushil Kumar to the Hissar Police Station where Shri Anil Davra, called them to his room and made enquiries from him regarding the case against Shri Rampuria and others. He further stated that whereas they were kept during the day at the police station on Saturday, during the night intervening Saturday and Sunday, they (Sushil Kumar and himself) were kept in a police "residential quarter" behind the police station. They were let off on 17-1-1994 at about 6 or 6.30 p.m. and the taxi car was also released. They left Hissar at about 7.30 p.m. and arrived at Delhi at about 11.30 p.m. on 17-1-1994. He further stated that the police officers at Hissar had told him before leaving the police station that Shri G.R. Rampuria be told to meet and talk to the police officers at Hissar. He went on to say that while in the police custody at Hissar, under instructions of Shri Davra, they were provided with food. He went on to depose that since some personnel of Delhi Police had visited his residence the previous evening and

had met his sister, leaving directions for him to appear in the Court, he had come to the Court on his own.

11. Shri Sushil Kumar taxi driver, in his statement in the Court however, gave a totally different version. He admitted that on 15-1-1994, he had gone to Hissar along with Shri Dhananjay Sharma and Shri S.C. Puri in his taxi to the Court of Addl. CJM at Hissar. He then stated that after leaving the court premises, at about 12.00 or 1.00, in the afternoon on 15-1-1994, all of them returned to old Delhi, reaching there at about 7 p.m. on 15-1-1994 itself. He denied that he or Shri Dhananjay Sharma were either whisked away or kept in illegal detention by the Hissar Police as alleged in the petition and in the affidavit of Shri S.C. Puri, Advocate. He further stated that the Hissar Police had contacted him at the taxi-stand and that the Delhi Police had directed him to appear in the Court and that he had been brought to the Court from the taxi-stand by Sub-Inspector, Surinder Kumar of Delhi Police.

12. After recording the statements of Messrs Dhananjay Sharma and Sushil Kumar and going through the affidavits filed by the parties, we found that two diametrically opposite versions had been given and that the truth had not come out and that either of the two versions was false. Both Sushil Kumar and Shri Dhananjay Sharma also filed their affidavits on 22-1-1994. In his affidavit while Shri Sushil Kumar reiterated the statement made by him in Court, Shri Dhananjay Sharma, reiterated his case as disclosed by him in his statement in the Court. He further deposed in the affidavit that when they were whisked away, the police party, was accompanied by "two employees of BISCL, Hissar" and that at the Hissar Police Station, Shri Anil Davra, Superintendent of Police along with Shri Rajinder Singh, SHO, and other police officials had questioned him and repeatedly enquired from him about the whereabouts of Shri Pradeep Rampuria. He went on to say that on 17-1-1994, when both he and the driver, were in the room of the SHO Hissar, there was a lot of activity and "we were directed to leave the police station immediately at about 6.30 p.m."

13. Respondent 6, Shri S.K. Kaushik and Respondent 7, Shri Anoop Bishnoi, who appeared through their counsel, were given an opportunity to file their affidavits in view of the assertions made in the affidavit of Shri Dhananjay Sharma on 22-1-1994. Both Shri S.K. Kaushik, Respondent 6, and Shri Anoop Bishnoi, Respondent 7 filed their affidavits. Apart from dealing with the dispute between BISCL and M/s G.R. Industries in general and with Shri Pradeep Rampuria in particular, (with which case we are not concerned at this stage) it is stated in their affidavits that Shri Dhananjay Sharma or the taxi driver Sushil Kumar were never in their custody and that they had no knowledge about the allegations made in the petition with regard to the incident of 15-1-1994. Both Respondents 6 and 7 further stated that they could say with some amount of responsibility, after making enquiries from their staff, that neither the respondents nor any of the employees of their company were present in the court or at the alleged site along with the police on the Hissar-Delhi Road on 15-1-1994 as alleged.

14. On 1-2-1994 after scrutinising the affidavits on the record and the statements of Shri Dhananjay Sharma and Shri Sushil Kumar we found that it was not possible to reconcile the two versions. We felt that it was a matter of concern that in the Highest Court of the land, false version by way of affidavits or statements had been made. In our order dated 1-2-1994, we observed:

> "Though the petition for habeas corpus under Article 32 of the Constitution of India, in the facts and circumstances of the case which have come on record, does not survive, as at the time of the return, the detenu was not, on his own showing under any illegal detention and technically, therefore, the writ petition does not survive but keeping in view the developments which have taken place during the proceedings of this case, we cannot let the matters rest there. ...
>
> The matter requires to be taken to the logical conclusion. In the womb of every concoction lies the seed of detection. We have to get the truth detected which lies buried somewhere under the debris of falsehood in this case. Before we proceed further in this matter, it appears appropriate to us that we should have this matter enquired into and get a report as to which of the two versions, above-mentioned, is prima facie correct."

15. We, accordingly, directed the CBI to have the matter enquired into under the supervisions of an officer, not below the rank of Superintendent of Police, and submit a report to this Court within seven weeks. We directed that the CBI shall confine the enquiry and its report to find out as to which of the two versions regarding the alleged incident of 15-1-1994 on the Hissar-Delhi Road and the subsequent detention of the detenu and Sushil Kumar was correct. We clarified that the CBI would not be required to go into the truthfulness or merits of the criminal case arising out of FIR No. 663 of 1993, Police Station Sadar Hissar but shall restrict its enquiry to the determination of the correctness of the two versions as noticed above.

16. In obedience to our directions, the CBI conducted an enquiry, recorded evidence, and submitted its report under the signatures of Shri M.L. Sharma, DIG, CBI. Copies of the report and other documents were permitted to be obtained by the parties.

17. The CBI inter alia in its report submitted:

> "Based on the facts and evidence discussed above, the picture emerges that on 15-1-1994, Shri Dhananjay Sharma while travelling back to Delhi after attending the Court of ACJM, Hissar, along with Shri S.C. Puri, Advocate, in taxi No. DAE-3668 (Maruti van) driven by Shri Sushil Kumar, was intercepted by Haryana Police near Hissar Cantt., at about 12.30 p.m. Shri S.C. Puri, Advocate, was let off by the Police after 'arguments'. Shri Dhananjay Sharma along with Sushil Kumar were taken to Police Station, Sadar, and confined there in a quarter behind the Police Station from 15-1-1994 to 17-1-1994 afternoon. This is borne out by the statements of Dhananjay Sharma, Sushil Kumar and S.C. Puri,

Advocate. Shri Puri after being let off by the Police, made a call to Shri P.P. Malhotra, Senior Advocate, Supreme Court of India, New Delhi from a PCO Tel. No. 63318 and thereafter came back to Delhi by bus. This finds support from the printout of PCO No. 63318 as also from the Ticket No. 68648 DN/6-93 which he has produced in the course of enquiry. *The plea of ignorance about the incident by Shri Anil Davra, SSP, Hissar, Shri Sham Lal Goel, Addl. SP, Hissar and Shri Rajinder Singh, SHO, PS Sadar, Hissar, ex facie does not appear to be correct.* The aforesaid three officers have taken special interest in the investigation of case, FIR No. 663 of 1993, registered at PS Sadar, Hissar. ..."

The CBI then concluded:

"According to the enquiry conducted by the CBI, *the version given by Shri Dhananjay Sharma and Shri S.C. Puri, Advocate, in the Supreme Court is prima facie correct. Shri Sushil Kumar, taxi driver, has corroborated this version in his statement made to the CBI.* Other evidence viz. telephone call by Shri Puri, Advocate on 15-1-1994, bus ticket produced by him, statement of taxi owner Nazir Hussain, the sketch map drawn by Shri Dhananjay Sharma corroborates the version submitted by them to the Hon'ble Supreme Court."

(emphasis supplied)

The report of the CBI was accepted by the Court, after hearing learned counsel for the parties.

18. The report of the CBI, clearly indicates that the version given by Respondents 3 to 5 and Shri Sushil Kumar in his first affidavit and in his deposition in this Court is palpably false. The description of the place of detention i.e. the malkhana of the Police Station and identification of the constables who were guarding the detenus at the police station, by the detenu has satisfied us that the version given by Shri Dhananjay Sharma regarding his illegal detention is correct. The evidence collected by the CBI unmistakably supports the version contained in the affidavit of Shri Puri, Advocate. These three respondents denied the allegations made by Dhananjay Sharma, Shri S.C. Puri, Advocate and the petitioner in the writ petition. It is interesting to note that Shri Anil Davra, Respondent 3 in his affidavit deposed that he had "examined the records of Police Station, Hissar" to find out about the correctness of allegations of detention and came to know that the said allegations were false. Since, the detenu and Sushil Kumar, taxi driver had been illegally detained at the police station no record could have revealed their detention. Therefore, the exercise conducted by Shri Anil Davra, Respondent 3, of examining the record of the police station was obviously a camouflage and a cover-up. That apart, neither Shri Anil Davra nor Shri Sham Lal Goel or Shri Rajinder Singh stated in their affidavits that Dhananjay Sharma had not been called to the office of Shri Anil Davra, Respondent 3 during the detention of Dhananjay Sharma and the taxi driver nor did Respondent 3 refute the allegations of Dhananjay Sharma

that when he was released from custody he was advised to tell Shri Rampuria to meet the police officials. None of the respondents in the counter-affidavit have even stated that they had not seen the detenu in the police station between 15-1-1994 to 17-1-1994. They have remained silent on this aspect. Nothing has been brought to our notice from which the correctness of the contents of the affidavit of Shri Puri or Dhananjay Sharma about the illegal detention may be doubted. From a critical analysis of the material collected by the CBI, as Commissioners of this Court, and hearing learned counsel for the parties, we are of the opinion that Shri Dhananjay Sharma and Sushil Kumar, taxi driver, were waylaid on 15-1-1994 on the Hissar-Delhi Road when they were returning to Delhi in the taxi along with Shri S.C. Puri, Advocate and while Shri Puri was let off after some arguments with the police personnel, the detenu and Sushil Kumar taxi driver were illegally detained by Respondents 3 to 5 at the Hissar Police Station till 17-1-1994. The counters filed by Respondents 3 to 5 denying the allegations made by the petitioner and in the affidavit of Shri S.C. Puri are palpably false and incorrect.

19. The CBI examined Shri Surinder Kumar, SI, In-charge Police Post Fatehpuri, PS Lahori Gate on 7-4-1994, who stated before the CBI that after receiving a wireless message from the North District Control Room for immediate search of Shri Dhananjay Sharma and Shri Sushil Kumar, he made efforts to locate them. He located Shri Sushil Kumar along with vehicle No. DAE-3668 and brought him to Police Outpost Fatehpuri. The information was passed on to his senior officers as well as to the SSP Hissar camping at Haryana Bhavan. Shri Surinder Kumar, SI, further told the CBI that at about 8.30 p.m. on 19-1-1994 Shri S.L. Goel, Addl. S.P., Hissar along with Rajinder Singh, SHO, Police Station Sadar, Hissar, reached police post and made inquiries from Sushil Kumar separately. They took away Sushil Kumar along with the taxi for producing him in the Supreme Court. Shri Surinder Kumar SI informed his senior officers about it and also made an entry to this effect in the Roznamcha of the Police Station vide Entry No. 22 at 10.10 p.m. on 19-1-1994. The Roznamcha entry was checked by the CBI and it tallied with the statement made by Shri Surinder Kumar, SI, who also stated before the CBI that on 20-1-1994 Shri Sushil Kumar reported to him at the Police Post Church Mission Road and he produced him in the Supreme Court and that Shri Rajinder Singh, SHO, had met Sushil Kumar in the outpost on 20th morning also. According to the statement of Shri Sushil Kumar, taxi driver, before the CBI, Respondents 4 and 5 had pressurised him to make a false statement in this Court and deny the allegations contained in the petition and in the affidavit of Shri S.C. Puri, Advocate, and that he had acted accordingly for fear of the Haryana Police.

20. The CBI in its report dealt with this aspect of the matter and stated:

> "From the enquiry, *it also emerges that Sushil Kumar, driver of taxi No. DAE-3668 was contacted by the Haryana Police and briefed by them to make a false statement in the Supreme Court on 20-1-1994 denying the incident of waylaying of 15-1-1994.* Shri Sushil Kumar,

originally hailing from U.P. is semi-literate and simple person who has been living in Delhi for the last 6/7 years for making a living. Because of the inconsistent posture adopted by him, he was cautioned to make a correct statement before the CBI. He was firm that he was making a correct statement before the CBI and regrets having made a false statement in the Supreme Court earlier on the advice of Haryana Police. He also agreed to have his statement tape-recorded in presence of independent witnesses. This lends assurance to the conclusion that the statement being made by him now is a correct version of facts and this finds corroboration in the statement of Dhananjay Sharma and Shri S.C. Puri, Advocate. Shri Puri, Advocate, is a professional and despite the fact of his having been engaged by the petitioner in the impugned criminal case, he appears to have no axe to grind with any party and as such there appears to be no reason for his making a false statement before the Supreme Court and the CBI. In fact, his version finds support from the statement of Shri P.P. Malhotra, Senior Advocate. ...

However, the version of Shri Dhananjay Sharma that Shri Ishwar Singhal and Shri S.K. Kaushik of M/s Bhanu Iron and Steel Co. Ltd., were present on 15-1-1994 at the time of his waylaying seems to be suspect."

21. We are of the opinion that the findings of the CBI as noticed above are based upon proper appreciation of evidence and are supported by the material on the record. Since, prima facie, we found that Respondents 3 to 5 and Shri Sushil Kumar, taxi driver have made false statements and filed false affidavits in this Court and have thus committed the offence of perjury, therefore with a view to eradicate the evil of perjury, we put them on notice to show cause as to why they should not be prosecuted for the said offence in a competent court.

22. As already noticed the affidavit filed by Respondent 3 on 20-1-1994 had been filed "on behalf of Respondents 1 to 5". That affidavit as per the report of the CBI and our finding has been found to be false. Respondent 1, despite the directions issued by this Court on 19-1-1994, had not filed any affidavit. Notices were, therefore, issued to Respondents 1 to 5 and Shri Sushil Kumar also to show cause why they should not be punished for having committed contempt of this Court.

23. Shri Rajinder Singh Yadav, SHO, Respondent 5 in his reply to the show-cause notice in the contempt proceedings tendered an *unconditional* and *unqualified* apology and further deposed:

"In view of what I have stated above, while in no way seeking to diminish my role in the events that have transpired so far, *I submit that I have only acted as a diligent subordinate officer of the Haryana Police Department.* I unequivocally apologise to this Hon'ble Court for my mistakes and seek leniency and pardon and pray that no further action be taken against me. *I undertake to this Hon'ble Court that I shall in future*

be very careful and cautious and ensure that such events do not recur in my professional life."

24. It is, thus, seen that Respondent 5 has taken shelter under the plea that he had "only acted as a diligent subordinate officer of the Haryana Police". Shri Anil Davra, SSP, Respondent 3 who possesses the degrees of LL.B. and LL.M. from Delhi University and had practised law for about four years before joining the service, in response to the show-cause notice in the contempt proceedings also tendered an unqualified apology. He gave an account of his duties during his service career and filed copies of various commendation and appreciation certificates received by him from various quarters. He then went on to say that "the instant case, in my humble submission is just an inadvert mishap of my life resulting into present unsavoury situation."

25. Respondent 4 Sham Lal Goel, Additional Superintendent of Police in his affidavit filed on 21-10-1994 in the contempt proceedings first asserted that his role in the investigation of the case was restricted to a period of six days only i.e. from 4-1-1994 to 9-1-1994 and that the Superintendent of Police, Shri Anil Davra, was concerned with the investigation and being his superior officer, he had acted under his directions. He then again stated that "the answering respondent was not connected with the incidents of waylaid (*sic*) and detaining of Sushil Kumar or Dhananjay Sharma in any manner", and that he had no hand in the filing of the affidavit by Respondent 3 on 20-1-1994. He went on to add:

> "On 18-1-1994 the answering respondent received a message, to contact Shri Anil Davra, Superintendent of Police at Haryana Bhawan in New Delhi in respect of a Supreme Court case. On this the answering respondent rushed to Delhi and came to know at Haryana Bhawan that Shri Anil Davra is with the standing counsel, Smt Indu Malhotra at her residence. The answering respondent thereafter went to the residence-cum-office of Smt Indu Malhotra in the evening where Shri Anil Davra and Rajinder Singh were present. Shri Anil Davra apprised the answering respondent about the writ petition in the Supreme Court and instructed him to sign an affidavit, which had already been prepared by the counsel on the instructions of Shri Anil Davra. Shri Anil Davra, the Superintendent of Police said to the answering respondent that he had already verified the facts regarding the writ petition on 17-1-1994 by personally visiting the Police Station, Sadar, Hissar and making enquiries from thana staff. The answering respondent was told that his affidavit has also been prepared on the basis of the aforesaid enquiry. It may be noted that this fact is borne out by the statement of Shri Anil Davra to the CBI. This fact is also written by Shri Anil Davra in Daily Diary 26 dated 17-1-1994 in Police Station, Sadar, Hissar in his own hand. The answering respondent therefore signed this affidavit of his on the assurance of the correctness of the facts by Shri Anil Davra and Shri Rajinder Singh. The answering respondent had perused the concerned papers and the case diaries shown to him by Shri Rajinder Singh."

26. Shri A.N. Mathur, IAS, Commissioner and Secretary to Government of Haryana, Home Department, Respondent 1 in response to the notice in the contempt proceedings filed his affidavit on 21-10-1994 in which he expressed his regret and tendered an unqualified apology for all that had transpired in this Court in this case. He thereafter proceeded to give an explanation "for the purpose of showing that if any lapse has occurred, it could either be on account of a bona fide misunderstanding or on account of deficiencies in the system which are being rectified to ensure that they do not recur". Respondent 1 then stated that the order of the Court dated 19-1-1994 was received by him by Fax for the first time on 20-1-1994 and that he had then contacted Shri Kalyan Rudra, the then Director General of Police, Haryana, and discussed the matter with him on telephone. He also wrote a D.O. letter to Shri Rudra and that after 20-1-1994, he had asked the Legal Department and the senior counsel as to whether any further action was required to be taken by him and in particular whether in view of the fact that the detenus had appeared before the Court on 20-1-1994, any affidavit was required to be filed by him and that he was "advised by senior counsel that on his reading of the order no affidavit needed to be filed by him as the State had not produced the detenus". Respondent 1 then explained the procedure which was being followed by the State of Haryana in connection with petitions for habeas corpus and stated that:

> "Although the State of Haryana is impleaded in criminal writs in the name of Home Secretary, the practice so far has been that in matter which are directly within the knowledge of the local police, it is they who depose an affidavit on behalf of the State. The system was evolved since it obviates a lot of delay which would necessarily occur in information being passed from one centre to another. It is for this reason that the officers directly dealing with the matter and who are themselves a part of the law enforcement agency directly depose about the facts in their direct knowledge. Keeping in view the facts which have transpired in the present case, it has now been decided to create an independent cell at the police headquarters in Chandigarh as well as in the Home Department (who would report to the Home Secretary) to monitor all cases where writs of habeas corpus are sought by citizens either from the High Court or from this Hon'ble Court."

27. Shri Kalyan Rudra, IPS, the then Director General of Police, Respondent 2, in his affidavit filed on 20-10-1994 in response to the show-cause notice after tendering his unconditional apology corroborated the averments contained in the affidavit filed by Respondent 1 in all material particulars. Both the affidavits were, however, silent about the contents of the affidavit filed by Respondent 3 "on behalf of Respondents 1 to 5" on 20-1-1994. Both Respondents 1 and 2 were directed by us to explain their stand vis-à-vis the contents of the affidavit filed by Shri Davra, Respondent 3 on 20-1-1994 on behalf of Respondents 1 to 5, which has been found by us to be incorrect.

28. Further affidavits were therefore filed by both, Respondents 1 and 2, to explain their position vis-à-vis the affidavit filed by Respondent 3 on 20-1-1994 on behalf of "Respondents 1 to 5". In his affidavit Shri A.N. Mathur, Respondent 1, stated that *he had not seen the affidavit of Shri Anil Davra dated 20-1-1994, before the same had been filed in this Court* and that he came to know about the said affidavit subsequently and saw the copy of the affidavit for the first time only on 21-1-1994. He went on to state that after going through that affidavit, which he had no occasion to see before it was filed as well as perusing the report and the evidence marshalled by the CBI he had no reason to differ from the opinion given by the CBI, and went on to specifically say:

> "As regards that part of the affidavit where Shri Anil Davra has suggested that Shri Dhananjay Sharma and Shri Sushil Kumar were not in the custody of the Haryana Police, the CBI has prima facie found otherwise *and I have no reason to differ from the view expressed by the CBI.*"

29. Shri Kalyan Rudra, IPS, Respondent 2 also in his additional affidavit besides once again tendering an unqualified apology stated that *he had not seen the affidavit of Shri Anil Davra before it was filed in this Court on 20-1-1994* and that it was only upon a request made by him, that the copy of the affidavit was later on sent to him at Chandigarh. He then went on to refer to some of the evidence recorded by the CBI and its report and stated:

> "I am to state that I have not conducted any enquiry, nor examined any witnesses or documents, in this case. *I have, however, no reason whatsoever to differ from the prima facie conclusions arrived at by the CBI* on the basis of the oral and documentary evidence marshalled by them."

30. Respondent 2 thereafter dealt specifically with the statement made by Shri Davra in his affidavit dated 19-1-1994 and 20-1-1994 denying the allegations made in the petition and deposed:

> "The CBI enquiries on the other hand have shown that this version does not appear to be correct. *I would, therefore, respectfully submit that this part of the affidavit of Shri Davra, which is contrary to facts found through examination of witnesses and other enquiries by the CBI, is not accepted by me.*"

31. In his affidavit dated 21-10-1994, in the proceedings for perjury, Shri Anil Davra, Respondent 3, once again denied the allegations contained in the petition regarding the waylaying and detention of the petitioner and Sushil Kumar and then went on to say that the allegations "had not been proved even from the evidence recorded by the CBI". Explaining the contents of his affidavit dated 20-1-1994, he stated that the same had been filed "*on the basis of the relevant record and as per legal advice and sanction*". He asserted that:

> "*the deponent did not pressurise or induce Sushil Kumar directly or indirectly to give any false statement.*"

32. We are at a loss to understand as to how Respondent 3 could have deposed about the facts in his affidavit "as per legal advice and sanction". Since, we have already held the affidavit filed by Respondent 3 on 19-1-1994 and 20-1-1994 to be false, we need not detain ourselves to make any further observations in that behalf.

33. Shri Sushil Kumar, taxi driver, in his affidavit filed on 18-10-1994, after tendering his unqualified apology and reiterating that he had earlier also tendered his unconditional apology at the hearing through his counsel and sought pardon from this Court and placing himself at the mercy of the Court went on to depose:

> "The deponent reiterates *that the false statement and subsequently the supporting false affidavit made on 20-1-1994 and 22-1-1994 respectively were made on account of fear as the deponent along with the petitioner had been detained at Hissar for two days i.e. 15-1-1994 to 17-1-1994*. Thereafter the deponent was approached by Respondents 4 and 5 at the Fatehpuri Police Chowki on 19-1-1994, where the deponent was brought, so as to appear on the next day before this Hon'ble Court. *At that point of time the deponent was told to state before this Hon'ble Court that he had not been detained at Hissar on 15-1-1994 or thereafter. Out of fear of the police the deponent made a false statement before this Hon'ble Court on 20-1-1994 that he had not been detained at Hissar on the said date.*"

34. Shri Sham Lal Goel, Respondent 4, in his reply affidavit in proceedings for perjury inter alia stated:

> "That the conclusion of the CBI report attributing the charge that Shri Sushil Kumar was taken away from the Police Post, Church Mission Road, Fatehpuri, Delhi by the answering respondent and SHO Rajinder Singh is erroneous. The true facts in this regard are revealed by Shri Sushil Kumar himself in the statement before the CBI, as well as in his statement through counsel before this Hon'ble Court during the course of hearing that he was not taken away anywhere by the answering respondent on 19-1-1994. *Shri Sushil Kumar has stated in unequivocal terms that Shri Rajinder Singh SHO alone had tutored him to make a false statement before the Court on 19-1-1994 and again on the morning of 20-1-1994. The answering respondent had visited the Police Post, Church Mission Road, Fatehpuri, Delhi under the orders of Shri Anil Davra, Superintendent of Police only to verify that Shri Sushil Kumar has been traced out so that his presence before the Court on 20-1-1994 had been ensured.* After verifying the facts, the answering respondent conveyed the facts to the Superintendent of Police, Shri Anil Davra. Thereafter the answering respondent returned to his room in Haryana Bhawan, where he was staying separately and he had no communication either with the Superintendent of Police or the SHO during that night. The answering respondent has not influenced or tried to influence Sushil Kumar in any manner to make a false statement. The answering

respondent has unfortunately been bracketed along with Respondents 3 and 5 only because of his being a subordinate to Shri Anil Davra and happened to be present at Haryana Bhawan, New Delhi on the night of 19-1-1994, on the direction of Shri Anil Davra."

35. Rajinder Singh, SHO, Respondent 5 also apart from tendering an unqualified apology denied the allegation that he had tutored Sushil Kumar or induced him to file a false affidavit or make a false statement in this Court.

36. We have minutely considered the affidavits referred to above and the report of the CBI. The evidence of Shri Surinder Kumar, SI of Delhi Police, which is supported by the Roznamcha entries of the Police Station and the statement of Shri Sushil Kumar as recorded by the CBI and his affidavit in Court establish that Respondents 4 and 5 had pressurised Shri Sushil Kumar to give false evidence in this Court and that both of them have, thus, tampered with the evidence during the pendency of the proceedings in this Court. The denial of Respondents 4 and 5 to have tutored Shri Sushil Kumar carries no conviction and does not appeal to us. The denial is, obviously, false.

37. After carefully perusing the material on the record, including the evidence both documentary and oral as recorded by the CBI and hearing learned counsel for the parties, the following irresistible conclusions therefore arise:

(*a*) That the detenu Dhananjay Sharma, driver Sushil Kumar and Shri S.C. Puri, Advocate, were waylaid by the Haryana Police on the Hissar-Delhi Road on 15-1-1994, though they were not wanted in any case by the Hissar Police.

(*b*) That while Shri S.C. Puri, Advocate was allowed to leave after some arguments, the police personnel took Dhananjay Sharma and Sushil Kumar to the police station and detained them there till the evening of 17-1-1994. Neither Respondent 6 or Respondent 7 nor any of their employees was present with the police on 15-1-1994 when Dhananjay Sharma and others were waylaid on the Hissar-Delhi border. The affidavit filed by Shri S.C. Puri, Advocate, contains a true and correct account of the incident.

(*c*) That Respondents 3 to 5 were taking "special interest in the investigation of case FIR No. 663 of 1993 registered at the Police Station Sadar, Hissar" on the complaint of Respondent 6.

(*d*) That the affidavit filed in reply to the habeas corpus petition by Respondent 3 on behalf of Respondents 1 to 5 on 20-1-1994 denying the allegations is false.

(*e*) That the affidavits filed by Respondents 3 to 5 denying the waylaying of the detenu and others on 15-1-1994 and their subsequent detention at the police station are false.

(*f*) That the affidavit filed by Respondent 3 on 20-1-1994 on behalf of Respondents 1 to 5 was filed by him without the express knowledge

of Respondents 1 and 2 and both of them had not seen the said affidavit till its copy was supplied to them by the counsel for the State of Haryana.

(*g*) That both the statements made by Sushil Kumar, driver, in the Court on 20-1-1994 and his affidavit dated 22-1-1994 supporting the version of Respondents 3 to 5 are false.

(*h*) That Respondents 4 and 5 had met Sushil Kumar, driver, at Delhi and pressurised him to give a tutored false version in this Court.

(*i*) That the false statement and affidavit were made by Sushil Kumar on being tutored by Respondents 4 and 5 and on account of the fear of the Hissar Police on 20-1-1994 and 22-1-1994 respectively.

(*j*) That Respondents 6 and 7 are not concerned either with the filing of the false affidavits by Respondents 3 to 5 or for tutoring of Sushil Kumar, by Respondents 4 and 5, to make a false statement and file a false affidavit in this Court.

(*k*) That Respondents 1 and 2 did not file any reply to the *rule nisi* and in spite of the directions issued by this Court on 19-1-1994 Respondent 1 did not file any reply affidavit and dealt with the case in a rather casual manner.

The question, therefore, which now requires our consideration is as to what action, is required to be taken against the respondents.

38. Section 2(*c*) of the Contempt of Courts Act, 1971 (for short the Act) defines criminal contempt as "the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or *the doing of any other act whatsoever* to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any court; (2) *prejudice or interfere or tend to interfere with the due course of judicial proceedings* or (3) *interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner*. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the

tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice. In *Chandra Shashi* v. *Anil Kumar Verma*[1] the respondents produced a false and fabricated certificate to defeat the claim of the respondent for transfer of a case. This action was found to be an act amounting to interference with the administration of justice. Brother Hansaria, J. speaking for the Bench observed: (SCC pp. 423-24, paras 1 and 2)

> "The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.
>
> Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice."

39. The actions of Respondents 3 to 5 in filing false affidavits and denying that the detenu and Sushil Kumar had been whisked away and detained illegally in their custody between 15-1-1994 and 17-1-1994 is not only reprehensible and condemnable but also requires to be dealt with rather sternly. The belated apologies offered by them, though still maintaining that the detenu and Sushil Kumar had not been detained by them, even in the face of the evidence recorded by the CBI, as Commissioner of this Court, and its report are not apologies of a truly repentant person but made obviously with a view to escape punishment. Had Respondents 3 to 5 been sincere in their apologies and had they realised their mistake, there was no reason why Respondents 4 and 5 should have subsequently indulged in acts which have the effect of aggravating their contumacious conduct. During the pendency of the proceedings in this Court, as already observed, Respondent 4 Sham Lal Goel and Respondent 5 Rajinder Singh, SHO 'tutored' Sushil Kumar, taxi driver, and 'forced' him to make a false statement and file a false affidavit in this Court and to falsely assert that he had never been waylaid by the Haryana Police and that the story of detention as put forward by Shri Dhananjay Sharma and Shri S.C. Puri, Advocate, was false. Subsequently,

1 (1995) 1 SCC 421 : 1995 SCC (Cri) 239

not only before the CBI but also in this Court Sushil Kumar realised his mistake and gave the correct version of the occurrence and also disclosed as to how and why he had made the false statement. It is a matter not only of regret and concern but also causes us great anguish to notice that the police officials, Respondents 4 and 5, should have indulged in tutoring Sushil Kumar and forced him to give false evidence while proceedings were pending in this Court. They have aggravated their contumacious acts. Their action was deliberate and an attempt to overreach the due process of law without compunction. Their action is an affront to the majesty of law. Under the circumstances, the question of accepting their belated apology for which a very strong plea was made by their learned counsel, Mr R.K. Jain, Mr Natarajan and Mr Lalit does not arise and we have no hesitation whatsoever in rejecting the belated apologies tendered by Respondents 3 to 5, which we do not find to be genuine, bona fide or expression of true repentance.

40. From the facts set out above and the findings recorded by the CBI, Respondents 3 to 5 have, thus, committed a grave contempt of this Court by not only interfering with the due course of justice but also making calculated and deliberate attempts to obstruct the administration of justice.

41. Besides Respondents 4 and 5, as already noticed, have aggravated their contumacious act by tampering with the evidence during the pendency of proceedings in this Court. They have deflected the course of judicial proceedings. Both of them, therefore, deserve to be punished properly not only for the wrong done by them but also to give a proper signal and deter others from indulging in similar type of activities. In our opinion, the interest of public justice demands a deterrent sentence to be imposed upon them.

42. Though, Respondent 3 was present in Haryana Bhavan on 19-1-1994 and 20-1-1994, but there is no material on the record to show that he was also a party to the tampering of evidence of Shri Sushil Kumar. Indeed, he must have been kept informed by his subordinates but in the absence of any positive material on the record, we cannot fasten the liability on him for forcing Shri Sushil Kumar to give false evidence in this Court.

43. We, sentence Respondent 3 to suffer simple imprisonment for a period of two months for committing contempt of court by filing false affidavits denying the allegations made in the writ petition and in the affidavit of Shri S.C. Puri.

44. So far as Respondents 4 and 5 are concerned, instead of showing any real contriteness and regret for their wrongful action of filing false affidavits in this Court, they have compounded their offence by tutoring Shri Sushil Kumar to give false evidence in this Court and have tampered with the evidence during the pendency of proceedings in this Court. We, therefore, sentence each one of them to suffer simple imprisonment for a period of three months each and to pay a fine of Rs 1500 each and in default to further undergo simple imprisonment for fifteen days each.

45. So far as Respondents 6 and 7 are concerned, there is no material to show that they are either responsible for the filing of the false affidavits by

Respondents 3 to 5 or for tampering of evidence during the pendency of proceedings in this Court. May be Respondents 3 to 5, acted in the objectionable and high-handed manner to waylay and detain Shri Dhananjay Sharma and Shri Sushil Kumar during the investigation of the case FIR No. 663 of 1993 registered on the statement of Respondent 6 at PS Sadar, Hissar, to please someone but this is only in the realm of suspicion and it cannot be said with any amount of certainty whether it was overzealousness on the part of Respondents 3 to 5 during the investigation of the case or they were trying to prove themselves "to be more loyal than the king" or were acting under any extraneous pressure. We are satisfied that neither Respondents 6 and 7 nor any of their employees was present with the police on 15-1-1994 on the Hissar-Delhi Road.

46. But be that as it may, Respondents 6 and 7 cannot be held responsible for or privy to the actions of Respondents 3 to 5 and they cannot be said to have committed any contempt of this Court. The rule against them is accordingly discharged.

47. So far as Respondent 1, Mr A.N. Mathur, Commissioner and Secretary to the Government of Haryana, Home Department is concerned, he did not file any counter-affidavit to the *rule nisi* issued by this Court. Even in response to the specific directions of this Court dated 19-1-1994, he chose not to file a counter-affidavit. Complaints regarding detention of citizens cannot be permitted to be treated in such a casual manner by the State. Whenever a question is raised regarding the illegal detention of a citizen in a writ of habeas corpus and the court issues the *rule nisi*, a duty is cast on the State, through its functionaries and particularly those who are arrayed as respondents to the writ petition, to satisfy the court that the detention of the citizen was legal and in conformity not only with the mandatory requirements of the law but also with the requirements implicit in Article 22(5) of the Constitution of India. It is obligatory on the part of the respondent-State to place before the Court all relevant facts relating to the impugned detention truly, clearly and with utmost fairness through an affidavit. An affidavit-in-reply is required to be filed by the respondents not as a mere formality but to truly assist the Court in drawing permissible inferences from the rival contentions. The right of personal liberty of a citizen is all too precious and no one can be permitted to interfere with it except in accordance with the procedure established by law. The State owes an obligation to the courts to place all relevant facts before the court in all cases where interference is alleged by a citizen with his fundamental rights. Respondents 1 and 2 were, therefore, under a legal obligation to inform this Court of the facts regarding the alleged detention of Shri Dhananjay Sharma and Shri Sushil Kumar, since notice had been issued to them in the writ petition. Even after this Court gave specific directions to Respondent 1 to file an affidavit about the steps taken by the State to trace and produce the detenus in the Court, he failed to file the affidavit. We cannot but disapprove the manner in which Respondent 1 acted even after being apprised of the directions of this Court to file his counter-affidavit. In his affidavit dated

21-10-1994 filed in response to the notice to show cause in the contempt proceedings, Respondent 1 stated:

> "After 20-1-1994, I made further enquiries from our legal department including Senior Counsel as to whether, any further action was required to be taken by me in this matter and in particular whether in view of the fact that detenus had appeared before the Hon'ble Court on 20-1-1994. *My understanding of the order of this Hon'ble Court was that I should trace out the detenus and inform this Court on affidavit as to the location from where they were found.* Since Mr Dhananjay Sharma himself appeared in Court while Sushil Kumar had been produced by the Delhi Police, and was not produced by the Haryana Police/Government. *I had a bona fide and genuine doubt as to what precise course of action was to be adopted by me. On this, I was advised by Senior Counsel that on his reading of the order no affidavit needed to be filed by me as the State had not 'produced' the detenus.*"

48. We do not think that there was any scope for not understanding the import of our order dated 19-1-1994, wherein a specific direction had been given to Respondent 1 to file his affidavit. Admittedly, the Haryana Police officials Respondents 4 and 5 had traced the taxi and had met Sushil Kumar before he was produced in Court. Respondent 1 was therefore duty-bound to place this information before the Court and to obey the directions of this Court and file his affidavit. We fail to understand why any *advice* was required by him from a senior counsel as to whether or not to comply with the orders of this Court. The directions of this Court are meant to be complied with and punctually obeyed by all concerned. We have no reason to doubt that a senior IAS Officer of the status of the Home Secretary of a State would not be aware of the provisions of Article 144 of the Constitution which mandates that "*all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court*". These authorities are legally obliged not only to act in aid of the Supreme Court for the enforcement of the law declared by the Supreme Court but also in aid of all its orders, decrees or directions. Respondent 1, by not filing the reply affidavit acted in a casual manner.

49. Respondent 1 in his affidavit dated 21-10-1994 has detailed the system and procedure which was being followed by the State Government of Haryana in cases of complaints of detention by the citizens. He deposed that the procedure hithertofore being followed had been that the local police authorities file affidavits in courts even where the State Government is impleaded in the name of the Home Secretary and the officers directly dealing with the matters, file affidavits depose about the facts in response to the *rule nisi*. He has then averred that a decision has now been taken by the State to create an independent cell at the Police Headquarters at Chandigarh as well as in the Home Department to monitor all cases where writs of habeas corpus are sought by citizens either from the High Court, or from this Court so that without delay the requisite information can be placed before

the courts by the appropriate authority and no lapses occur on the part of the State in that behalf in future. Respondent 1 has then stated in his affidavit:

> "I respectfully reiterate that my actions in the present case have been purely motivated by my bona fide understanding of situation and also on advice received by me. They have not at all emanated from any sense of casualness as, I submit with great respect, that as Home Secretary I would never ever be casual in relation to matters pending in this Hon'ble Court or in any other court.
>
> I respectfully once again tender my unqualified apology for any lapse that might have occurred and respectfully pray that the notice for contempt may be discharged."

50. In his further affidavit dated 10-11-1994 which was filed in continuation of the affidavit dated 21-10-1994, Respondent 1 has stated that he had not seen the affidavit filed by Respondent 3 on 20-1-1994 before it was tendered in this Court and that he had not even seen the affidavit filed by Respondent 3 on 19-1-1994 or on 20-1-1994 and that after carefully perusing the affidavit filed by Respondent 3 on 20-1-1994 and the report of the CBI, he found no reason to differ from the opinion given by the CBI, on the basis of the oral and documentary evidence, that Dhananjay Sharma and Sushil Kumar had been waylaid on 15-1-1994 and kept in illegal detention from the afternoon of 15-1-1994 to 17-1-1994 by the Hissar Police. Mr Gopal Subramanium, learned Senior Counsel appearing for Respondent 1 very frankly conceded that there was a lapse on the part of the Home Secretary in not filing the affidavit in response to the *rule nisi* and the directions given by this Court but he submitted that the lapse had occurred on account of a wrong understanding of the import of the order of the Court and faulty advice given to him. He submitted that Respondent 1 was truly sorry for his lapses and requested for his apology to be accepted.

51. From a consideration of the material on the record, we find that Respondent 1 appears to have followed a faulty system, which was prevailing in the State of Haryana in cases involving detention of the citizens in the matter of filing of counter-affidavits in petitions for habeas corpus and on a wrong understanding of the import of the order of this Court. We are, however, satisfied that the unqualified apology tendered by him is genuine and an expression of real contriteness and repentance. Therefore, while cautioning him to be careful in future, we accept his unqualified apology and the contempt proceedings initiated against him are allowed to rest here. The rule issued against him is discharged. We hope that such lapses shall not occur in the future, since the system, we have been assured, has now been revamped.

52. So far as Respondent 2 is concerned, he also failed to appreciate his obligations and did not file a counter-affidavit although notice was issued to him also in the habeas corpus petition. While dealing with the case of Respondent 1, we have highlighted the obligations of the State and its functionaries when a *rule nisi* is issued by a court in a habeas corpus petition

and these observations apply to him also and we need not repeat the same. Respondent 2 has also filed two affidavits and in each one of them he has explained the steps taken by him after he was apprised of the pendency of the writ petition in this Court. He has corroborated the version given by Respondent 1 in his affidavit. After giving the explanation, he has also tendered an unqualified apology. It appears to us that Respondent 2 is also truly repentant for the lapses committed by him and the unqualified apology tendered by him is genuine and bona fide and not made with a view to escape punishment. We, therefore, accept his unqualified apology and discharge the rule against him though warning him to be careful and not to be casual in such like matters in future.

53. So far as Shri Sushil Kumar, taxi driver, is concerned, he on his own showing has made a false statement in this Court. He has also filed a false affidavit. He has on his own showing, thus, committed a grave contempt of this Court, besides committing perjury. However, he disclosed the correct facts to the CBI and reiterated the same subsequently in this Court through his affidavit. He has placed himself at the mercy of the Court, after tendering an unconditional and unqualified apology, which has been reiterated at the bar both by him personally and through his Advocate, Shri Ranjit Kumar. From the report of the CBI and the other material on the record, we are satisfied that the false statements made by him in this Court, both orally and through his affidavit, were not voluntary and that he was acting under pressure of Respondents 4 and 5. It is, however, no defence for him to say that he so acted on account of the fear of the police of Haryana and that he had been 'tutored' by Respondents 4 and 5 to make a false statement and file a false affidavit in this Court. He should have known better. Though, we are of the opinion that he is now repentant but he cannot be allowed to go scot free for the falsehood indulged into by him in this Court and for his attempt to poison the stream of justice. However, taking the mitigating circumstances also into consideration, we sentence him to one day's simple imprisonment and to a fine of Rs 1000 and in default to further undergo fifteen days' simple imprisonment, for committing contempt of this Court.

54. Since, from the report of the CBI and our own independent appraisal of the evidence recorded by the CBI, we have come to the conclusion that Shri Dhananjay Sharma and Sushil Kumar had been illegally detained by Respondents 3 to 5 from the afternoon of 15-1-1994 to 17-1-1994, the State must be held responsible for the unlawful acts of its officers and it must repair the damage done to the citizens by its officers for violating their indefeasible fundamental right of personal liberty without any authority of law in an absolutely high-handed manner. We would have been, therefore, inclined to direct the State Government of Haryana to compensate Dhananjay Sharma and Sushil Kumar but since Sushil Kumar has indulged in falsehood in this Court and Shri Dhananjay Sharma, has also exaggerated the incident by stating that on 15-1-1994 when he was waylaid along with Sushil Kumar and Shri S.C. Puri, Advocate, *two employees of Respondents 6 and 7 were also present with the police party*, which version has not been

found to be correct by the CBI, they both have disentitled themselves from receiving any compensation, as monetary amends for the wrong done by Respondents 3 to 5, in detaining them. We, therefore, do not direct the payment of any compensation to them.

55. Since we have held Respondents 3 to 5 and Sushil Kumar, taxi driver, guilty of committing contempt of this Court and have punished them in the manner indicated above, we drop the proceedings insofar as commission of perjury is concerned.

FAIZAN UDDIN, J. (*concurring*)— I have had the advantage of reading the judgment written by my learned brother, Dr Anand, J., and I entirely endorse what has been said by him, the orders passed and the directions given by my learned brother. Learned brother has in his judgment elaborately set out the relevant facts in detail as well as the circumstances under which the unfortunate situation has been brought about by the police officials concerned and in fact it is not necessary for me to add anything further. But with profound respect to my learned brother I propose to express a few concurring observations of my own as I cannot remain without expressing my anguish and grave displeasure on the undesirable conduct with which the said police officials have projected themselves. It is perhaps one of the most unpleasant episodes in the history of the force which has been exposed in the portals of the Highest Court of land which has plunged the members of the force and its reputation to a new low probably out of a frenetic zeal to please someone best known to the officials concerned.

57. In the present case before us it appears the police officials concerned deliberately clogged their mind and shut their eyes to the realities and the fact that the primary duties and function of the members of the police force is to prevent and detect the crime, to take such measures to ensure the safety of the life, property and liberty of the citizens and accord such protection in that behalf as may be necessary and thereby serve the community and at the same time obey the orders issued to them by the competent authorities with regard to prevention of commission of offences and public nuisance etc. It was this object for which the police force was conceived and it was this purpose for which it exists. But to our dismay, it is distressing to note that quite often when every morning one opens the newspapers and goes through its various columns, one feels very much anguished and depressed in reading reports of custodial rapes and deaths, kidnapping, abduction and faked police encounters and all sorts of other offences and lawlessness by the police personnel, of which countless glaring and concrete examples are not lacking.

58. It is in common knowledge that in recent times our administrative system is passing through a most critical phase, particularly, the policing system which is not as effective as it ought to be and unless some practical correctional steps and measures are taken without further delay, the danger looms large when the whole orderly society may be in jeopardy. It would, indeed, be a sad day if the general public starts entertaining an impression that the police force does not exist for the protection of society's benefits but

it operates mainly for its own benefit and once such an impression comes to prevail, it would lead to disastrous consequences.

59. In the instant case before us as noticed and highlighted by my learned brother at the Bench, we express our grave displeasure over the whole episode. The police officials, Respondents 3 to 5 herein, namely, the Superintendent of Police, Hissar, Shri Anil Davra, Additional Superintendent of Police, Hissar, Shri Sham Lal Goel and SHO, Hissar, Shri Rajendra Singh, totally misdirected themselves by not allowing the truth to come out before this Court. They had audacity to make false affidavits in the Apex Court to cover up their illegal acts. It is a matter of concern that even senior police officials of the status of SSP and DSP should not realise their obligations to the courts and indulge in blatant falsehood with a view to mislead the Court. We cannot but strongly condemn this attitude on their part. Not only this but Respondents 4 and 5 even went to the extent of forcing the taxi driver Sushil Kumar to make a false affidavit and false statement on oath before this Court by denying the allegations contained in the petition, with a view to misguide this Court and hamper the course of justice. They had not only chosen a wrong path for themselves contrary to the principles of the institution to which they belong, but they also tried to detract the taxi driver from divulging the truth to mislead this Court which was concerned with the liberty of a citizen. They went on to reiterate their false stand till after the CBI enquiry report was received and wisdom dawned upon them to tender apology only when they found themselves in a tight corner and had no way out to escape. In such circumstances, by no stretch of imagination, it can be said to be a real repentance of what they have done.

60. By indulging in such disruptionary manner as indicated hereinabove by my learned brother in the preceding paragraphs, Respondents 3 to 5 acted in a most irresponsible manner giving an impression that they were not the defenders of truth and protectors of the citizens but violators of the law and justice and thereby defaced the name of the force of which they belong. They acted with gross impropriety and intentionally committed serious and grievous wrong of a clearly unredeeming nature, while it was expected from the seniors of the rank of SSP and Addl. SP that they at least would observe the high standards in maintaining impartiality and promote public confidence in the force. The Court expects candour and frankness from the parties to the litigation before it. We cannot allow the court proceedings to be trifled with. In the facts and circumstances of the case Respondents 3 to 5 do deserve the punishment awarded to them to serve as a deterrent to others in future.

END OF THIS VOLUME

Item No. 01

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

Original Application No. 45/2019/EZ

R. K. Singh Applicant(s)

Versus

Union of India & Ors Respondent(s)

Date of hearing: 09.09.2020

CORAM: HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s): Mr. Sourabh Sharma, Advocate
For Respondent(s): Mr. Gora Chand Roy Choudhury, Advocate for Respondent No.1,
Mrs. Aishwarya Rajyashree, Advocate for Respondent Nos. 2,4&5,
Mr. Ashok Prasad, Advocate for Respondent No.3,
Mr. Surendra Kumar, Advocate for Respondent No.6.
Mr. Sibojyoti Chakraborti, Advocate for CPCB,

ORDER

1. The applicant has filed this case alleging non-implementation of Environmental Impact Assessment Notification, 2006 in the State of Jharkhand in respect of building constructions. It is stated that the State of Jharkhand has undertaken various major constructions of buildings particularly in the cities of Ranchi, Jamshedpur, Bokaro and Deogarh without obtaining mandatory *prior*

environmental clearance under the EIA Notification, 2006 even when it is mandatory in respect of structures having more than 20,000 Sq. Ms. which is categorized as Category 8(a) in the schedule to the notification. Specific mention has been made of the Jharkhand High Court Building, Jharkhand Vidhan Sabha, P & M Hi-Tech City Centre Mall, Jamshedpur, Vijaya Garden Homes and Aastha Twin City.

2. Apart from the above, it is stated that there are large number of other structures and, as per the information obtained from the State Government under the RTI application, only 20 buildings and construction projects have thus far applied for environmental clearance since the year 2006. As a consequence, the ecology of the State has been affected due to the detrimental impact on the air quality, depletion in the level and the quality of the ground water and on soil fertility caused by indiscriminate disposal of construction and demolition wastes. According to the applicant, if environmental clearance had been obtained, it would have taken care to ensure that such deleterious effect did not occur.

3. The matter was taken up on 02.09.2019 when notice was issued upon the respondents and, having regard to the

nature of the case, a committee was constituted comprising of the following: (i). a representative of the Regional Office of the MoEF & CC at Ranchi and (ii) a representative of the SEIAA, Jharkhand. The SEIAA Jharkhand was directed to the nodal agency for coordination and logistic support. The committee was directed to verify on the merits of the statements contained in the Original Application and to submit a report and further, if the factual statements made in the application were found to be correct, appropriate action was directed to be taken in accordance with law against those who were in violation.

4. On 23.09.2019 an affidavit was filed on behalf of the Respondent no. 3, SEIAA Jharkhand which clearly revealed that the Assembly Building (Vidhan Sabha, Jharkhand) had been constructed without environmental clearance and a proposal had been submitted on 11.09.2017 for environmental clearance to the MoEF & CC in the violation category. The SEIAA, Jharkhand, to which the matter was referred proceeded with the ToR process. By order dated 23.09.2019, we had also indicated that since the cases fell under the purview of the violation notification dated 14.03.2017, action to be taken against the violators and

payment of environmental compensation assessed by the CPCB for environmental damage caused due to constructions. Alarming state of affairs was also noted in our order dated 06.01.2020 and on the next date i.e. 16.03.2020, it was noted that the window provided under the MoEF Notification dated 14.03.2017 had expired and, therefore, its validity having lapsed, it would be appropriate for the MoEF & CC to arrive at a decision. The State Government on its part was directed to recover the environmental compensations assessed by the CPCB as conveyed vide their affidavit filed on 12.03.2020. Show was also directed to be filed by the State Government to showcase as to why compensation assessed by the CPCB be not directed to be paid. Order dated 27.07.2020 would reveal that according to the learned Counsel for the State Government, EIA proceeding in respect of the Vidhan Sabha building had been completed and environmental compensation also granted.

5. The State of Jharkhand filed an affidavit on 09.08.2020 to place on record the present status in respect to the matter according to which is as follows:-

1.1 Status of EC of Buildings mentioned in the plea:-

Sl.	**Name of**	**Urban Local**	**Environmental**	**Action Taken**

No.	Building/Constructio n	Bodies (ULB)	Clearance (EC) Status	
1	P&M Hi-Tech City Centre Mall	Jamshedpur	Not Obtained yet	Directed by ULB to obtain the EC at the earliest (via letter no. 1312 dated 19.06.2020).
2	Vijaya Garder Homes	Jamshedpur		

1.2 Status of EC of other Buildings in the Jharkhand:-

Sl. No.	Name of Applicant	Urban Local Bodies (ULB)	Environmental Clearance (EC) Status	Action Taken
1.	Ashiana housing Ltd. Building Permit No.	Adityapur Municipal Corporation	EC obtained via letter no. EC/SEIA/2018 19/2102/2018/ 334 dated 02.08.2019	Not Applicable
2.	Juidco Ltd. File No. Dhanbad Municipal Corporation/AH/0230/ W37/2019	Dhanbad Municipal Corporation	EC had been applied for the old site (in fire zone) which was earlier selected for construction but as new site of construction is being looked for so EC status is not pertaining to this project unit finalization of new site.	
3.	P&M Infrastructure Pvt. Ltd.	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. No. 1312 dated 19.06.2020 ii. Lt. No. 1845 dated 02.09.2020.
4	M/s Vijaya Homes Maker Pvt. Ltd.	Jamshedpur Notified Area	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. No. 1312 dated 19.06.2020. ii. Lt no. 1845 dated 02.09.2020

5	Sri Phanidra Mahto, Director, Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj mention Bistupur Building Permit No. 27226	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020.
6	Sri Phanidra Mahto, Director, Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj mention Bistupur Building Permit No. 27226	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
7	Director, Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj mention Bistupur Building Permit No. 27426	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
8	Sri Phanidra Mahto, Director, Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj mention Bistupur Building Permit No. 27809	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
9	Sri Phanidra Mahto, Director, Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj mention Bistupur Building Permit No. 27898	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
10	Sri Phanidra Mahto, Director, Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj mention Bistupur Building Permit No. 28227	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020

11	Sri Shyam Sundar Gaur, Director Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj Mention Bistupur Building Permit No. 28314	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
12	Sri Shyam Sundar Gaur, Director Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj Mention Bistupur Building Permit No. 28322	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
13	Sri Shyam Sundar Gaur, Director Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj Mention Bistupur Building Permit No. 28333	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
14	Sri Shyam Sundar Gaur, Director Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj Mention Bistupur Building Permit No. 28453	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
15	Sri Shyam Sundar Gaur, Director Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj Mention Bistupur Building Permit No. 28557	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
16	M/s Tribhumi Housing Pvt. Ltd. Sri Shyam Sundar Gaur, Director,	Jamshedpur Notified Area	Without EC	Directed by ULB to obtain the EC at the

	Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj Bistupur Building Permit No. 28612	Committee		earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
17	M/s Gailtricks Developers Pvt. Ltd. Sri Shyam Sundar Gaur, Director, Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj Bistupur Building Permit No. 28625	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
18	M/s Gailtricks Developers Pvt. Ltd. Sri Shyam Sundar Gaur, Director, Vijaya Homes Pvt. Ltd. 2nd Floor Gajraj Bistupur Building Permit No. 28722	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
19	P&M Infrastructure Pvt. Ltd. Khata No. 2 Plot No. 952(P), 966(P), 9723(P), Ward No. 4, Jamshedpur Building Permit No. 28846	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
20	M/s Samay Construction Pvt. Ltd. Plot No. 3621(P), 3642(P), 3643(a,b,c), 3645(P). Khata No. 312 Mauza-Paridih. Ward No. 8. Old Purulia Road, Mango	Mango Municipal Corporation	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
21	Panchwati IV Y	Ramgarh Municipal Council	Without EC	Notice by ULB to stop construction via Lt. no. 913 dated 20.08.2020

22	Green Valley	Ramgarh Municipal Council	Without EC	Notice by ULB to stop construction via i. .Lt. no. 333 dated 05.03.2020 ii. Lt. No. 673 dated 26.05.2020 iii. Lt. no. 913 (A) dated 20.08.2020
23	(i) Vibgyor Estates Pvt. Ltd (ii) High Street Enterprises (P) Ltd. (ii) File No. Building Permit Wo2/0162/ 17	Ramgarh Municipal Council	The Proposal is pending at SEAC, Jharkhand.	Directed by ULB to obtain the EC at the earliest via Lt. no. 507 dated 02.09.2020
24	M/s Assotech New City LLP& Assotech Sun Growth Abade LLP File No. Building Permit W04/0165/16	Ramgarh Municipal Council	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 507 dated 02.09.2020
25	Chalice Real Estate LLP through its designated partner Mr. BIshnu Kumar Agarwal File No. Building Permit /W06/0031/18	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 509 dated 02.09.2020
26	Chalice Real Estate LLP through its designated partner Mr. BIshnu Kumar Agarwal File No. Building Permit /W06/0310/17	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 510 dated 02.09.2020
27	Estate Buidcon Pvt. Ltd Director Sumeet Kumar Agarwal File No. Buidling Permit/WO6/0419/17	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 511 dated 02.09.2020
28	Ankroday Kumar File No. Building Permit /WO7/0419/17	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 512 dated 02.09.2020

29	Ranchi Municipal Corporation File No. Building Permit/W22/0315/17	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 513 dated 02.09.2020
30	Arvind Ram Sahu, Shyam Kishor Ram, Asha Devi, Arvind Kishor Ram, Babloo Ram, Rajendra Ram, Basant Prased, Power of Attorney Holder-Land Owner Name Manorma Barju Ram Sahu File No. Building Permit/W36/0364/18	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 514 dated 02.09.2020
31	Amrit Mahto, Basant Kumar Sahu, Gopal Sahu, Kanhai Mahto and Ramdayal Mahto File No. Building Permit W36/0821/18	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 515 dated 02.09.2020
32	Shobha Mandal, Dinesh Mandal, Kapil Ram, Kashi Ram Sahu, Parichan Sahu, Lalchand Sahu, Dharichand Sahu, Devendra Ram Sahu, Devanand Sahu, Permanad Ram, Shukhlal Ram, Dinesh Ram, Jaglal Ram, Chotelala Ram, Barju Ram Sahu, Smt. Sushila Devi, Smt. Jitan Devi File No. Building Permit W37/0298	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 516 dated 02.09.2020
33	Udit Ram and Sadhu Mahto File No. Building Permit W38.0133.17	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 517 dated 02.09.2020
34	Anita Srivastava, Ratan Lal Kasyap, Yogesh Kumar Sahu, Bhago	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no.

	Devi, Pawan Kumar Sahu, Praveen Kumar Sahu, Prabht Kumar Sahu, Rama Mahto, Neelam Devi, Jagnarayan Sahu, Nirmala Devi, Bigal Ram, Govardhan Sahu, Jugal Ram Sahu, Madan Ram, Sandeep Kumar, Kuldeep Kumar, Umesh Ram Sahu, Lt No. 507 dated 02.09.2020 Rupesh Kumar, Prakash Kumar, Sud Lt. No. 507 dated 02.09.2020 hir kumar File No. Building			518 dated 02.09.2020
35	Mahavir Kanshi, Urmila Devi, Parmand Kumar, Shivanad Kumar, Sachidanand Kumar File No. Building Permit W52/0353/18	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 519 dated 02.09.2020
36	Ranchi Smart City Corporation Limited File No. Building Permit W54/0317/17	Ranchi Municipal Corporation	Accorded vide letter no EC/SEIAA/2018 19/2089/2018/ 287 dated 20.06.19	Directed by ULB to obtain the EC at the earliest via Lt. no. 520 dated 02.09.2020
37	Jharkhand Urban Infrastructure Development Limited File No. Building Permit W54/0317/17	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 521 dated 02.09.2020
38	Laxmi Devi, Meen Devi, Ajay Kumar, Hila Devi, S. Ram, RR Sahu, S.K. Ram, A.K. Ram, A. Devi R. Ram, B. Sahu, S. Prasad, P. Kuar, S. Kasyap, S. Kasuap, D. Kasyap, R Kashyap, R. B. Kashyap M. Kashyap, B. Kasyap, S. Kasyap, R. Kumar	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 522 dated 02.09.2020

	File No. RMC/AH/0009/W36			
39	Assotech Sun Growth Abode LLP File No. RMC/AH/0139/W04/2019	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 523 dated 02.09.2020
40	Rizwan Ahmad Mahadeo Oraon, Bhadwa Oraon, Dilip Oraon, Karma Oraon File No. RMC/Building Permit/0232/W01/2019	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 524 dated 02.09.2020
41	Nandlal Mahto, Lav Mahto, PParth Mahto, Manoj Mahto, Santosh Mahto, Sahdeo Mahto, Nilamber Mahto, Rohit Mahto, Hirala Mahto, Radheshyam Ram, Munna Sahu, Kailash Sahu, Prakash Sahu, NisithKumar, Keshari Babita Kumari and Kari Devi File No. RMC/GH/0294/W36/20	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 526 dated 02.09.2020
42	ESIC Hospital, Industrial Area, Namku, Ranchi (Built up Area-25876.56)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 527 dated 02.09.2020
43	Shakabari Builders PVt. Ltd. Shri Pawan Bojan, Sri Ram Garden, 2nd Floor, Kanke Road, Ranchi (Built up Area-86339.92)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 528 dated 02.09.2020
44	Jitendra Kumar Singh and Others, Ganpat Palace, Near Nayak Talak, Dumsa Toli, Ranchi- 834001)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 529 dated 02.09.2020

	(Built up Area-34277.3)			
45	Pranami Estates Pvt. Ltd and Others, 4th Floor, Cross Wear Katchary Rod, Ranchi (Built up Area-25505.51)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 530 dated 02.09.2020
46	Satish Kumar and Others at Vashundhara Homes Pvt. Tld Balbir Villa, Near Gate No. 02, Main Ashok Nagar Road, P.S Argora, Ranchi (Built up Area-33695.35)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 531 dated 02.09.2020
47	Viabhay Saraf and Others, Upper Bazar, Ranchi (Built up Area-22069.35)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 532 dated 02.09.2020
48	Morias Infrastructure Pvt. Ltd. Pustal Bhawan, Cout Road, Ranchi 834001 (Built up Area-31245.17)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 533 dated 02.09.2020
49	City Select Developers and Others, City Select Developers, 57A, main Road, Ranchi (Built up Area-27656)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 534 dated 02.09.2020
50	Sri Ram Ozone Housing Development Pvt. Ltd. 301, Sunrise forum, 100 Bhudwan Compound, Circular Road, Ranchi (Built up Area-30012.303)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 535 dated 02.09.2020
51	Morias Infrastructure Pvt. Ltd. Pustal Bhawan, Cout Road, Ranchi 834001 (Built up Area-45795.9)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 536 dated 02.09.2020
52	Sarawgi Builders and Promoters Ltd. 201 2nd Floor, MR tower, Sharda BabuStreet,	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 537 dated

	Line Tank Rod, Ranchi 834001 (Built up Area-24888.13)			02.09.2020
53	Adarsh Heights Pvt Ltd. Room No. 08, 9th Floor Shanti Niketan Building 8 Canal Street, Kokata-700017, West Bengal (Built Up Area-33897.83)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 538 dated 02.09.2020
54	Sheo Narayan Jaiswal, Ranchi Distilliary, Old Hazaribagh Road, Lalpur, Ranchi - 834001 (Built up Area-9043.24)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 539 dated 02.09.2020
55	IIM Ranchi (Area of Construction 81109.80)	Ranchi Municipal Corporation	Details not available. However, as per MoEF & CC Clarification vide letter no 19-20/2013 IA-III dated 09.06.2015 Educational Institues are exempted from obtaining prior EC subject to Sustainable Environment Management.	

6. The MoEF has also filed an affidavit in which it is *inter alia* stated as follows:-

> *"11. It is submitted that the Answering Respondent issued Notification No. S.O. 804 (E) dated 14.03.2017 to deal with the cases of violation by ensuring immediate arrest of environmental damage and bringing the enterprise in compliance regime rather than letting it go as such or completely restore the ante original state. It is further submitted that the*

Answering Respondent vide the said Notification dated 14.03.2017 opened a window of 6 months for the projects which failed to obtain prior environmental clearance in accordance with EIA Notification, 2006.

12. It is submitted that the Notification dated 14.03.2017 was challenged by way of WP No. 11189/2017 before the Hon'ble High Court of Madras and the same has been upheld by the judgment dated 13.10.2017. However, during pendency of the case, the Notification was stayed vide order dated 06.06.2017. The Answering Respondent sought clarification with respect to the expiry of the Notification after the judgment dated 13.102017 and the Hon'ble Court granted a further period of 30 days for the window provided in the Notification. It is further submitted that as on date, the window provided for the projects which failed to obtain prior environmental clearance has expired and there is no prevailing provision whereby the concerned authority can deal with such violation cases.

13. It is submitted that the in compliance of order dated 06.01.2020 passed by this Hon'ble Tribunal, matter has been discussed in the Ministry and it has

observed that violation case being recurring in nature may come to the notice in future during the process of appraisal or monitoring or inspection by Regulatory Authorities, Ministry also deems it necessary to lay down the procedure to bring such violation projects under the regulations in the interest of environment at the earliest point of time rather than leaving them unregulated and unchecked, which will be more damaging to the environment. Therefore, Ministry is in the process a comprehensive review of the EIA Notification, 2006. It is further submitted that the Ministry has issued a draft EIA Notification, 2020 vide Notification No. S. O. 1199 (E) dated 23.02.2020. To deal with the violation cases, following mechanism inter-alia has been proposed in para 22 of draft EIA Notification, 2020, as follows:-

I. The cognizance of the violation of the EIA Notification shall be made on the:

a. suo moto application of the project or

b. reporting by any government authority or

c. found during the appraisal of the Expert Committee or

d. during the processing of application, if any by the Regulatory Authorities.

II. The cases of violation will be appraised by the Appraisal Committee with a view to assess that the project has been constructed or carried at a site, which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards. In case, where the finding of the Appraisal Committee is negative, closure of the project shall be recommended along with other actions under the law;

III. In case, where the finding of the appraisal Committee are positive, the project under this category will be prescribed with appropriate specific terms of Reference (ToR) on assessment of ecological damage, remediation plan and natural and community resource augmentation plan in addition to the slandered applicable to the project.

IV. The CPCB shall issue guidelines for assessment of ecological damage from time to time.

V. The project proponent shall prepare the report of assessment of ecological damage as per the

guidelines issued by the CPCB in this regard from time to time, along with remediation plan natural and community recourse augmentation plan as an independent chapter in the EIA report through an Accredited Consultant Organization.

VI. The Appraisal Committee shall stipulated the implementation of EMP, comprising remediation plan and natural and community resource augmentation plan corresponding to the one and half times the ecological damage assed and economic benefit derived due to violation in case of the suo moto application or two times the ecological damage assessed and economic benefit derived due to violation in cases reported by any Government Authority or found during the appraisal of Appraisal Committee or during the appraisal of Appraisal Committee or during the processing of the Application if any by the Regulatory Authority, as a condition of Environment Clearance or Environment Permission as the case may be.

VII. The Project Proponent will be required to submit a blank guarantee valid for five years equivalent to the amount of Remediation plan and Natural and

Community Resource Augmentation plan with the SPCB or UTPCB as the case may be and the quantification will be recommended by Appraisal Committee and finalized by the Regulatory Authority, with a condition to implement the same within a period of three years.

VIII. The project proponent shall prepare the EIA report and conduct public consultation as per the provisions in the EIA Notification.

IX. The appraisal of the proposals shall be carried as per the provisions given in EIA Notification.

X. Further, the action will be taken against the project proponent by the respective State Government or Union Territory Administration or SPCB or UTPCC as the case may be, under the provisions of section 19 of the Environment (Protection) Act, 1986.

A copy of draft notification dated 23.03.2020 is annexed herewith as Annexure-I

14. It is submitted that at present no mechanism available with the Answering Respondent to deal with the cases which are in violation of the EIA Notification, 2006.

15. It is submitted that the mechanism to deal with the cases which are in violation of the EIA Notification, 2006, proposed in para 13 above is in draft stage and published and uploaded in the website of the Ministry for seeking objections or suggestions on the proposal contained in the draft notification."

7. The status report of the State of Jharkhand reveals as many as 35 major structures which have been constructed admittedly without obtaining *prior* Environmental Clearance.

8. Admittedly, the violation notification dated 14.03.2017 has ceased to have effect and it is admitted by the MoEF that at present no mechanism is in existence to deal with the situation as prevailing in the present case except that a draft EIA Notification, 2020 has been published under paragraph 22 in which procedure has been laid down to deal with the situation. The notification is yet to be published leaving a vacuum in the procedure to deal with such matters.

9. In the above circumstance the Tribunal is faced with the serious dilemma as regards the course of action to be taken. Mr Sourabh Sharma, learned Counsel for the Applicant has suggested that Environmental Compensation ought to be

recovered from those violating the EIA Notification and to direct institution of prosecution under section 19 of the Environment (Protection) Act, 1986 against those responsible for the violation. It is further submitted that in the meanwhile the ongoing constructions of structures being undertaken without EC be directed to be stopped until it is obtained by the project proponents.

10. We have considered the various affidavits filed by the parties, considered the oral submissions of the learned Counsel for the parties and we are of the view that it would be necessary to take action to remedy the situation keeping in view that principle of sustainable development and the precautionary principle.

11. We, therefore, direct as follows :-

i. The State Government through the Urban Development Department shall ensure that Environment Impact Assessment is undertaken in respect of all the structures which have been raised in the municipal areas expeditiously in accordance with the procedure laid down in the EIA Notification 2006. Accordingly, the Environmental Management Plan be prepared

and mitigation measures proposed therein be implemented so as to address the environmental issues arising on account of such constructions without EC.

Similar action shall be taken in respect of the structures falling within notified Nagarpalika areas and Gram Panchayats, if there be any.

ii. Environmental Compensation shall be assessed in respect of all the structures which have been raised without EC and shall be recovered from the appropriate authorities/persons/builders/project proponent (as the case maybe) within a period of three months from hence. Environmental Compensation in respect of those which have already been assessed shall also be recovered within the said period.

iii. All ongoing constructions undertaken without obtaining *prior* EC shall be stopped forthwith until the environmental clearance is obtained.

iv. Action shall be initiated under section 19 of the Environment (Protection) Act, 1986 by the State Pollution Control Board forthwith against those who are responsible for the violations.

v. Since the violations were being committed under the gaze of the concerned authorities, we direct initiation of disciplinary proceedings against the concerned Officers, the Municipal Commissioners and the State Pollution Control Board at the earliest.

12. With the above directions the Application stands disposed off. However the State Government of Jharkhand and the State Pollution Control Board shall file their reports of the action taken in terms of the above directions within 6 (six) months from hence by e-mail at judicial-ngt@gov.in.

S.P. Wangdi, JM

Dr. Nagin Nanda, EM

9th September, 2020
Original Application No. 45/2019/EZ
pk

2021 SCC OnLine Jhar 370

In the High Court of Jharkhand
(BEFORE RAJESH SHANKAR, J.)

Confederation of Real Estate Developers Association of India ... Petitioner;

Versus

Union of India, through the Secretary, Ministry of Environment & Forest and Others ... Respondents.

W.P.(C) No. 3119 of 2020
Decided on May 13, 2021, [CAV On : 09.04.2021]

Advocates who appeared in this case:

For the Petitioner : Mr. Abhishek Manu Singhavi, Sr. Advocate
Mr. Keshav Mohan, Advocate
Mr. N.K. Pasari, Advocate

For the Respondent No. 1 : Mr. Rajiv Sinha, A.S.G.I.

For the Respondent Nos. 2 and 3 : Mrs. Surabhi, A.C. to A.A.G.-II

For the Respondent No. 4 : Mr. Bhanu Kumar, Advocate

The Judgment of the Court was delivered by

RAJESH SHANKAR, J.:— The judgment is being pronounced today through virtual mode.

2. The present writ petition has been filed for following reliefs:—

i. For issuance of direction upon the Ministry of Environment, Forest and Climate Change (MoEF & CC), Government of India (respondent no. 1) to open a window for processing the applications for grant of Environment Clearances (EC) in the cases of violations of Environment (Protection) Act, 1986 (in short, "the Act, 1986") and Environment Impact Assessment (EIA) Notification, 2006.

ii. For issuance of direction upon the respondent no. 1 to issue necessary direction to the respondent no. 4-State Level Environment Impact Assessment Authority (SEIAA), Jharkhand to take up the matters of the members of the petitioner for processing of applications made for Environment Clearance and process the same within a period of one week.

iii. For quashing the notices (Annexure-1 series to the writ petition) issued by the instrumentalities of Urban Development and Housing Department (respondent no. 3) on different dates for stoppage of all construction activities in the projects listed therein.

iv. For issuance of direction upon the respondent no. 4 to decide the proposal for grant of Environment Clearance already filed, within a period of one month and for the fresh proposal, within a period of 90 days.

3. The factual background of the case as stated in the writ petition is that the Confederation of Real Estate Developers' Association of India (CREDAI) is the apex body of private real estate developers and the petitioner-CREDAI, Jharkhand is its member comprising of the real estate developers of the State of Jharkhand. The respondent no. 1 vide notification dated 14.09.2006 formulated the Environment Impact Assessment Notification, 2006 (EIA Notification, 2006) which mandates for requirement of obtaining prior Environmental Clearance from the concerned regulatory authority to initiate construction activities for the projects falling under the Schedule of EIA Notification, 2006. On 14.03.2017, the respondent no. 1 issued notification to

deal with the cases of alleged violation of the environmental laws by ensuring immediate arrest of environmental damage and bringing the enterprises in compliance regime rather than letting it go unregulated and unchecked. As such by this notification, a process was established by the respondent no. 1 for appraisal of cases of violation as well as for prescribing adequate environmental safeguards so that it would deter violation of provisions of EIA Notification, 2006 and damage to environment may adequately be compensated by restoring the ante-original state. The said notification opened a window for a period of six months for the projects which failed to obtain a prior EC in accordance with the EIA Notification, 2006. A Public Interest Litigation (PIL) challenging the validity of notification dated 14.03.2017 was filed before the High Court of Madras and the implementation of the said notification was stayed and finally vide order dated 13.10.2017, the said stay was vacated by upholding the validity of the notification dated 14.03.2017. Thereafter, the respondent no. 1, vide notification dated 08.03.2018, amended the earlier notification dated 14.03.2017 and delegated the power to the States for appraisal of category 'B' proposals which are under violation of EIA Notification, 2006. The respondent no. 1 issued another notification dated 15.03.2018 for implementation of the notification dated 08.03.2018. One R.K Singh approached the National Green Tribunal (NGT), Delhi by making an application before it, assailing non-implementation of EIA Notification, 2006 in the State of Jharkhand in respect of building construction and the said application was registered as Original Application No. 45/2019/EZ. The learned Tribunal, vide order dated 09.09.2020, issued several directions to the State of Jharkhand including order to forthwith stop all the ongoing construction activities undertaken without obtaining prior EC. Pursuant to the order of the NGT, the members of the petitioner have been served notices issued by the respondent no. 3 directing them to stop the construction activities forthwith. Hence, the present writ petition.

4. Mr. Abhishek Manu Shingvi, the learned Senior Counsel for the petitioner, submits that neither the petitioner nor its members were party in the proceeding before NGT and as such the action of the respondent no. 3 in directing the members of the petitioner to stop construction activities without any opportunity of hearing, is in violation of the principles of natural justice. It is further submitted that various applications of the members of the petitioner were pending for consideration of grant of EC before SEIAA, Jharkhand, which were made immediately upon its reconstitution by the respondent no. 1 vide Gazette Notification dated 3rd November, 2020 and thus the members of the petitioner may not be penalized without their fault. The members of the petitioner have all requisite documents for grant of EC, however the same was not granted due to non-existence of SEIAA in the State of Jharkhand so as to deal with the violation cases. The projects which are subject matter of the present dispute, have been started only after grant of duly approved Building Plans sanctioned by the concerned Municipal Corporations/Nagar Parishads which never raised the issue regarding obtaining of EC prior to issuance of the impugned notices. It is also submitted that the respondent no. 1 reconstituted SEIAA vide Gazette Notification dated 03.11.2020 and immediately thereafter the members of the petitioner filed applications for grant of EC for their respective projects in the State, however the SEIAA, Jharkhand returned the applications with observation that the projects were in violations of the Act, 1986 and EIA Notification, 2006 and at the said moment, no mechanism was in existence to deal with the violation cases. It is further submitted that as per the contention of the respondent no. 1 before the NGT, a draft of EIA notification, 2020 was prepared to deal with the cases relating to violation which was yet to be notified and as such no mechanism was available then with the MoEF & CC to deal with such cases which were in violation of the EIA Notification, 2006.

5. Mr. Singhvi also submits that the impugned orders prohibiting construction activities without obtaining prior EC has brought the entire real estate sector to a

grinding halt which was just getting back to normalcy post first wave of Covid-19 pandemic and as a result of stoppage of construction activities, the livelihood of around 3 lakhs construction workers and over 15 lakhs dependent members are at stake and over 200 industries in the MSME Sector have been severely affected. Further, lakhs of home buyers falling under affordable housing segment are badly affected. Moreover, due to delay in construction, the loan accounts of both the home buyers and developers are likely to be turned into NPAs.

6. It is further submitted that section 3(1) of the Act, 1986 empowers the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment. Similarly, in view of section 5 of the Act, 1986, the Central Government is duly empowered to issue direction in exercise of its powers and performance of its functions under the said Act. The petitioner wrote letter dated 07.12.2020 to the respondent no. 1 requesting inter alia to open a window for processing of violation cases by SEIAA in the State of Jharkhand arising out of stoppage of all construction projects in the State of Jharkhand pursuant to the order dated 09.09.2020 passed by the NGT, however no decision has yet been taken on the said application.

7. It is also submitted that the power under Article 226 of the Constitution of India is extraordinary and discretionary in nature and the same may be exercised to see as to whether injustice has resulted on account of any decision of a constitutional or statutory authority, a Tribunal and an authority within the meaning of Article 12 of the Constitution of India. Power of judicial review is designated to prevent cases of abuse of power or neglect of a duty by the public authority. It is a settled position of law that the jurisdiction under Article 226 is exercised for enforcement of various rights of the public or to compel public/statutory authorities to discharge the public functions entrusted on them. The scope of Article 226 is very wide and can be used to remediate injustice wherever it is found. The High Court being a Constitutional Court has been conferred the power of judicial review to protect the fundamental and other rights of the citizens. In the present situation, this Court by exercising power under Article 226 of the Constitution of India, may direct the MoEF & CC, Government of India to provide the necessary window to deal with the violation cases in the State of Jharkhand and further SEIAA, Jharkhand to process and grant EC to the members of the petitioner subject to the measures/compensation as may be imposed by the authority i.e SEIAA, Jharkhand so that the projects of the members of the petitioner may receive ex-post facto environmental clearances.

8. Learned Senior Counsel for the petitioner further submits that respondent-SEIAA has issued EC for the new building of Jharkhand High Court by imposing penalty for initiating of construction work without obtaining prior EC and the issue of not procuring prior EC for the said High Court building was also before the NGT in O.A. No. 45/2019/EZ. Since the case of the petitioner is in complete parity with the issue of granting of EC to the Jharkhand High Court Building, this Court may direct the respondent-SEIAA through MoEF & CC to process and grant EC for the projects of the members of the petitioner in a time bound manner. The balance of convenience is also in favour of the members of the petitioner as all the necessary sanctions, permission and licenses required for construction of the projects have been procured from various authorities, however the prior EC could not be obtained in absence of the respondent-SEIAA in the State of Jharkhand. Since these projects fall under Category “B” as per EIA Notification, 2006 and has standard requirement for obtaining EC which includes Solid Waste Management, Rain Water Harvesting, Sewage Treatment Plant, Ground Water Recharge Energy, Transport etc., most of these requirements arise post construction of the projects only. In case the EC for the projects of the members of the petitioner members are not processed and the construction work is not resumed, it will have extremely adverse fallback including unemployment, migration of labour work

force etc. Moreover, Banks and other financial institutions will also suffer as the developers and most of the buyers have obtained loan, hence, all such accounts may turn into NPAs. Delay in construction would lead to increase in litigation before RERA and Consumer Courts as well. Most of the projects are meant for EWS, LIG and MIG, delay in construction of which would cause apathy and chaos.

9. Learned Senior Counsel for the petitioner further submits that adherence to the principles of the environmental laws and development are sine qua non for the maintenance of symbiotic balance between the rights to proper environment as well as development. The projects of the members of the petitioner have duly complied all the necessary requirements/permissions/sanctions except obtaining prior EC, which could not be procured for the reason that respondent-SEIAA, Jharkhand was not functional from since 09.11.2019 to 03.11.2020 i.e. for about a year and thus the petitioner has approached this Court seeking appropriate solution of the cause. The traditional concept that development and ecology are opposed to each other is no longer acceptable. The petitioner has filed the present writ petition seeking a pragmatic resolution of the precarious situation and hence this Court is supposed to take a balance approach by applying the doctrine of sustainable development between ecology and development.

10. The learned Senior Counsel for the petitioner puts reliance on paragraphs-374, 375 and 376 of a judgment rendered by the Hon'ble Supreme Court in Transferred Case (Civil) No. 229 of 2020 (*Rajiv Suri* v. *Delhi Development Authority*) and submits that Their Lordships in the said case while holding that every development work is sustainable, have directed that steps should be taken to ensure that projects are developed keeping in mind the mitigating measures. Stopping of the project and/or construction work surely can never be a solution.

11. It is further submitted that the members of the petitioner are ready and willing to get their projects assessed by the respondent-SEIAA, Jharkhand for any mitigating condition including payment of compensation that may be assessed in true letter and spirit while processing and granting EC for their projects. Thus, this Court may strike a balance and evolve a viable solution so that the construction of the projects affected by the impugned orders resumes immediately and thousands of home buyers do not suffer without any fault on their part. The projects of the members of the petitioner may be granted ex post facto EC within a time bound manner. The assessment of hitherto damage of environment and the neighborhood as well as formulation of mitigation plan may be permitted to be filed by the members of the petitioner as per the provisions of the EIA Notification, 2006 and the respondent-SEIAA, Jharkhand may be directed to process the applications for grant of EC within a time bound manner.

12. Learned A.C. to A.A.G.-II appearing on behalf of the respondent nos. 2 and 3, submits that the petitioner had never asked for any help or had informed the Urban Local Bodies (ULBs) that its members were facing problem in compliance of the EIA Notification, 2006, moreover they did not even inform the ULBs that they were going to start construction without obtaining prior environmental clearance due to certain reasons. The Urban Development & Housing Department (UDHD), Government of Jharkhand, vide letter no. 69 dated 30.09.2020, has instructed to all the urban local bodies to ensure compliance of the direction of the NGT as contained in the order dated 09.09.2020 passed in in O.A. No. 45/2019/EZ. Ranchi Municipal Corporation and Ramgarh Nagar Parishad have also directed all the concerned promoters/developers that all ongoing constructions undertaken without obtaining prior environmental clearance must be stopped forthwith until the environmental clearance is obtained in order to comply the direction of the NGT. It is further submitted that in view of the specific provision of the EIA Notification, 2006, it was the responsibility of the concerned promoters/developers to obtain EC from the competent authority before

starting the construction work but the members of the petitioner failed to do so. The urban local bodies have also provided opportunity to the promoters/developers to produce EC procured from the competent authority before communication of the notices for stoppage of construction, however they have failed to produce the same due to which they have been directed to stop the ongoing construction work till the EC is obtained.

13. Mr. Rajiv Sinha, learned A.S.G.I. appearing on behalf of the respondent no. 1-MOEF & CC, Government of India, submits that the Central Government issued the EIA Notification, 2006 under the Act, 1986 and as per the said notification, prior environmental clearance is required to be obtained if building and construction project is Rs. 20000 sq. meters and <1,50,000 sq. meters of built up area and in the case of Township and Area Development project covering an area Rs. 50 hactares and/or built up area Rs. 1,50,000/- sq. mtrs. The entries of item 8(a) and 8(b) are qualified as category 'B' projects under the EIA Notification, 2006 and the said projects are to be appraised by the State Level Expert Appraisal Committee (SEAC) and to be approved by the SEIAA. The tenure of SEIAA, Jharkhand had expired on 09.11.2019 and as per EIA Notification, 2006, reconstitution of SEIAA and SEAC was required to be notified by the Central Government on the basis of recommendations/nominations received from the concerned State Government. Nonetheless, SEIAA and SEAC were reconstituted by the respondent no. 1 vide notification dated 03.11.2020. It is further submitted that as per EIA Notification, 2006, in the absence of SEIAA/SEAC in the State/UTs, the proposal was to be appraised by the EAC at central level. Therefore, the plea of the petitioner that the SEIAA, Jharkhand was non-functional from 09.11.2019 to 03.11.2020 due to which many project proponents could not obtain prior EC, is baseless and not tenable in the eye of law. The respondent no. 1, vide notification number S.O. 804(E) dated 14.03.2017 and further vide amendment notification numbers S.O. 1030(E) dated 08.03.2018, opened a window for six months for the projects which had failed to obtain prior EC in accordance with EIA Notification, 2006 wherein a procedure was provided to deal with the cases of violation received during the said window period. It is also submitted that in the light of the judgment dated 13.10.2017 passed by the Madras High Court, the period of the window provided in the said notifications was extended by thirty days. It is the duty of the project proponent to give information about the requirement of getting NOCs before commencing any project and therefore the plea of the petitioner that the concerned authority i.e State Pollution Control Board/Municipal Corporation has not informed regarding obtaining of prior EC for the project, is baseless and cannot be accepted.

14. The learned counsel appearing on behalf of the respondent no. 4-SEIAA submits that the projects mentioned in the writ petition come under the violation category and such the same can be taken up by SEIAA, Jharkhand only after fresh window is provided by MoEF & CC, Government of India with a clear direction and mechanism to deal with such cases under violation category. The members of the petitioner are trying to cover up their lapses pertaining to proceeding with the construction work without obtaining mandatory EC in violation of EIA Notification, 2006 by taking a plea that SEIAA, Jharkhand was not in existence. As a matter of fact, all construction work of petitioners have admittedly commenced prior to expiry of tenure of erstwhile SEIAA, Jharkhand i.e. 09.11.2019. It is further submitted that the members of the petitioner started construction work without obtaining mandatory EC required under EIA Notification, 2006 which comes under violation category and presently there is no mechanism to deal with such violation cases. At present, no project of petitioner's members is pending before SEIAA, Jharkhand for grant of EC. If they were aggrieved with the order dated 09.09.2020 passed by the NGT in O.A. No. 45/2019/EZ, they should have approached the Hon'ble Supreme Court under the relevant provisions of the NGT Act, 2010. The MoEF & CC, Government of India, vide

notification dated 14.03.2017, has already provided an opportunity to consider the violation cases by applying within six months which is known as window period, but the members of the petitioner did not apply within the said stipulated period for grant of EC and at present there is no such mechanism to deal with the violation cases. Thus, the applications for grant of EC were returned with remarks that the projects were related to the violations of Act, 1986 and EIA Notification, 2006 and there was no mechanism to deal with the violation cases at that time.

15. Heard the learned counsel for the parties and perused the materials available on record. The petitioner has challenged the impugned notices issued to its members which are said to be issued in compliance of the direction of the NGT, Delhi as contained in order dated 09.09.2020 directing them to stop all ongoing construction activities till the EC is obtained.

16. For better appreciation of the contentions of the learned counsel for the parties, it would be appropriate to refer some facts and laws which are relevant in the present case.

17. The respondent no. 2, in exercise of the power conferred by subsection (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, issued notification contained in S.O. 1533 dated 14.09.2006 imposing certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the Schedule to the notification, being undertaken in any part of India, unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy as approved by the Union Cabinet on 18th May, 2006 and the procedure specified in the notification by the Central Government or the State or Union Territory Level Environment Impact Assessment Authority (SEIAA), to be constituted by the Central Government in consultation with the State Government or the Union Territory Administration concerned under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 for the purpose of the said notification.

18. Clause 2 of the notification dated 14.09.2006 deals with the requirement of getting prior EC which reads as under:—

> "2. Requirements of prior Environmental Clearance (EC) : - The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:
>
> (i) All new projects or activities listed in the Schedule to this notification;
>
> (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
>
> (iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.

19. Schedule of the said notification provides list of projects or activities requiring prior environmental clearance wherein under column no. 3, the projects or activities falling under category "A" have been mentioned whereas under column no. 4, the projects or activities falling under category "B" have been described. In the schedule, Sl. No. 8 is related to Building/Construction projects and Townships/Area Development

projects and items 8(a) and 8(b) are qualified as category "B" projects under the EIA Notification, 2006 and the said projects are to be appraised by the State Level Expert Appraisal Committees and approved by the State Level Environmental Impact Assessment Authorities. The said items of the schedule read as under:—

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
1	2	3	4	5
8(a)	Building and Construction projects		<Rs. 20000 sq.mtrs and <1,50,000 sq. mtrs. of built up area#	#(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects		Covering an area Rs. 50 ha and/or built up area < Rs. 1,50,000 sq.mtrs ++	++All projects under Item 8 (b) shall be appraised as Category B1

20. Admittedly, the projects of the members of the petitioner fall under category "B" and as such they were obliged to get EC from SEIAA, Jharkhand before starting the projects which they failed to do.

21. The learned Senior Counsel for the petitioner has contended that the members of the petitioner could not get EC due to absence of duly constituted SEIAA as per EIA Notification, 2006. The said contention has however been heavily opposed by the learned counsel appearing on behalf of SEIAA, Jharkhand (the respondent no. 4) submitting that all the construction work of petitioners had commenced prior to expiry of tenure of erstwhile SEIAA, Jharkhand i.e., 09.11.2019 and as such the members of the petitioner cannot escape from the responsibility of obtaining prior EC on the ground that at some point of time, the SEIAA, Jharkhand was not functioning. The learned counsel for the respondent no. 4 has further contended that even if the SEIAA, Jharkhand was not functioning for certain period, the proposal could have been submitted to the EAC at Central level in the absence of SEIAA/SEAC in the State/UTs in view of EIA Notification, 2006. In support of the said contention, the learned counsel for the respondent no. 4 has referred clause-4 of the EIA Notification, 2006 which reads as under:—

> "4. Categorization of projects and activities:—
>
> -------
>
> (iii) All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project;"

22. In view of the aforesaid stipulation, even if it is assumed that the projects of the members of the petitioner had started during the period when the SEIAA,

Jharkhand was not functioning, the petitioner cannot claim the benefit of the said fact, since its members could have applied before the EAC at Central level for grant of EC and thus the contention of the learned Senior Counsel for the petitioner that the EC could not be obtained by the members of the petitioner due to non-functioning of SEIAA, Jharkhand at the relevant time, has no leg to stand.

23. One of the contentions of the learned Senior Counsel for the petitioner is that the projects of the members of the petitioner are similar to that of the High Court of Jharkhand building for which EC has been granted by SEIAA, Jharkhand and as such on the same terms and conditions, the cases of the members of the petitioner may also be considered. The learned counsel appearing on behalf of the respondent no. 4 has refuted the said contention of the learned Senior Counsel for the petitioner by submitting that the case of High Court of Jharkhand building is not similar to the present case as its proposal for grant of EC was submitted under the violation category within the window period opened in view of S.O. 804(E) dated 14.03.2017 which was subsequently granted on the terms and conditions as well as by following the procedure specified in the said notification. Admittedly, the members of the petitioner failed to move any application within the window period and as such they cannot claim similar treatment.

24. Learned Senior Counsel for the petitioner assailing the impugned notices, has assiduously argued that the same have been issued without giving any opportunity of hearing to the members of the petitioner and as such those suffer from violation of the principles of natural justice.

25. To appreciate the aforesaid contention of the learned Senior Counsel for the petitioner, I have gone through the contents of the impugned notices which inter alia mention that the National Green Tribunal, vide order dated 09.09.2020 passed in O.A No. 45/2019/EZ, directed that all ongoing constructions undertaken without obtaining prior EC shall be stopped forthwith until the Environmental Clearance is obtained and in this regard, instruction of Urban Development and Housing Department vide letter no. 1089 dated 31.08.2020 has been obtained. Some of the impugned notices refer the direction of Town Commissioner, Ranchi Municipal Corporation according to which if the noticees have not obtained environmental clearance, they must stop the construction activities immediately and submit the environmental clearance, failing which action will be initiated under the provisions of the Jharkhand Municipal Act, 2011.

26. In view of the aforesaid fact, it is evident that the impugned notices have been issued to the members of the petitioner by the Town Planner, Ranchi Municipal Corporation, Ranchi/Executive Officer, Municipal Council, Ramgarh just to comply the order of the NGT dated 09.09.2020. The members of the petitioner were informed by the said notices that if they were carrying on construction activities without obtaining EC, the same must be stopped in view of the said direction of NGT. It is the admitted case of the petitioner that its members have not obtained EC in terms of EIA Notification, 2006 before commencing the construction activities. In view of the specific direction of the NGT as contained in the order dated 09.09.2020, the Town Planner, Ranchi Municipal Corporation, Ranchi/Executive Officer, Municipal Council, Ramgarh had no option but to comply the same. If the petitioner or any of its members found itself aggrieved by the order of the NGT, it could have filed appeal against the said order for getting appropriate relief, however it did not choose to challenge the same. As such, challenge to the impugned notices on the ground of violation of the principles of natural justice, is not sustainable in the eye of law.

27. In the case of *Punjab National Bank* v. *Manjeet Singh* reported in (2006) 8 SCC 647, the Hon'ble Supreme Court has held as under:—

> "17 [Ed. : Para 17 corrected vide letter dated 28-11-2006.]. In an industrial

dispute referred by the Central Government which has an all-India implication, individual workmen cannot be made party to a reference. All of them are not expected to be heard. The unions representing them were impleaded as parties. They were heard. Not only were the said unions heard before the High Court, as noticed hereinbefore from a part of the judgment of the High Court, they had preferred appeals before this Court. Their contentions had been noticed by this Court. As the award was made in the presence of the unions, in our opinion, the contention of the respondents that the award was not binding on them cannot be accepted. The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice."

28. In the case of *Dharampal Satyapal Ltd.* v. *Deputy Commissioner of Central Excise* reported in (2015) 8 SCC 519, the Hon'ble Supreme Court has held thus:—

"38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing "would make no difference"—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch* v. *Aberdeen Corpn.* [[1971] 1 WLR 1578 : (1971) 2 All ER 1278 (HL)], who said that : (WLR p. 1595 : All ER p. 1294)

> "... A breach of procedure ... cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain."

Relying on these comments, Brandon L.J. opined in *Cinnamond* v. *British Airports Authority* [[1980] 1 WLR 582 : (1980) 2 All ER 368 (CA)] that : (WLR p. 593 : All ER p. 377)

> "... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing."

In such situations, fair procedures appear to serve no purpose since the "right" result can be secured without according such treatment to the individual.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "prejudice". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

29. It is a trite law that a writ cannot be issued on the ground of violation of principles of natural justice if only one conclusion is possible in a given situation. Every violation of a facet of natural justice may not lead to a conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "prejudice". The principles of natural justice cannot be applied in a straitjacket formula, rather it is quite flexible to be tested on case to case basis.

30. The learned Senior Counsel for the petitioner has also submitted that even though it is accepted that the projects in question were started without getting prior EC from SEIAA, Jharkhand or from the central authority in absence of SEIAA, Jharkhand and thereby the members of the petitioner violated the provisions of EIA Notification, 2006 as well as failed to apply for grant of EC under the violation category in view of Notification, 2017 and Notification 2018, this Court in exercise of the powers conferred under Article 226 of the Constitution of India, may issue necessary directions to the respondent no. 1 to open a window to deal with violation cases falling under Category "B" in the State of Jharkhand and to direct the state authorities to comply the directions of the NGT, Delhi including completion of Environment Impact Assessment as per EIA Notification, 2006, preparation of Environment Management Plan, calculating mitigation measures/Environmental Compensation in respect of all structures raised without obtaining prior EC. It has further been contended that this Court should take a balanced approach by applying the doctrine of sustainable development between ecology and development.

31. The learned Senior Counsel for the petitioner while putting reliance on the judgment of the Hon'ble Supreme Court in the case of *Alembic Pharmaceuticals Limited* v. *Rohit Prajapati* reported in 2020 SCC OnLine SC 347 has submitted that in the said case, Their Lordships applied the doctrine of proportionality and quashed the order of the NGT and directed the defaulters to pay compensation as a facet of preserving the environment in accordance with the precautionary principles. In the present case, the members of the petitioner are the similarly situated entities and they are ready and willing to comply any mitigating measures/to pay compensation and as such this Court may grant relief to the petitioner applying the doctrine of proportionality. It has further been submitted that this Court also, in the case of *Hindustan Copper Limited* v. *Union of India* [W.P.(C) No. 2364 of 2014] relying on the judgment of *Alembic Pharmaceuticals* (supra.), has held that violation cases must be considered on merits and proposal for EC must be processed regardless of alleged

violation for which independent action can be initiated.

32. Before coming to the merit of the said submission of the learned Senior Counsel for the petitioner, relevant paragraphs of the order dated 09.09.2020 passed in O.A No. 45/2019/EZ by the National Green Tribunal, Principal Bench, New Delhi are reproduced hereinbelow:—

> "8. Admittedly, the violation notification dated 14.03.2017 has ceased to have effect and it is admitted by the MoEF that at present no mechanism is in existence to deal with the situation as prevailing in the present case except that a draft EIA Notification, 2020 has been published under paragraph 22 in which procedure has been laid down to deal with the situation. The notification is yet to be published leaving a vaccum in the procedure to deal with such matters.
>
> 9. In the above circumstance the Tribunal is faced with the serious dilemma as regards the course of action to be taken. Mr. Sourabh Sharma, learned Counsel for the Applicant has suggested that Environmental Compensation ought to be recovered from those violating the EIA Notification and to direct institution of prosecution under section 19 of the Environmental protection Act, 1986 against those responsible for the violation. It is further submitted that in the meanwhile the ongoing construction of structures being undertaken without EC be directed to be stopped until it is obtained by the project proponents.
>
> 10. We have considered the various affidavits filed by the parties, considered the oral submissions of the learned Counsel for the parties and we are of the view that it would be necessary to take action to remedy the situation keeping in view that principle of sustainable development and the precautionary principle.
>
> 11. We, therefore, direct as follows:—
>
> (i) The State Government through the Urban Development Department shall ensure that Environment Impact Assessment is undertaken in respect of all the structures which have been raised in the municipal areas expeditiously in accordance with the procedure laid down in the EIA Notification 2006. Accordingly, the Environmental Management Plan be prepared and mitigation measures proposed therein be implemented so as to be address the environmental issues arising on account of such constructions without EC.
>
> (ii) Similar action shall be taken in respect of the structures falling within notified Nagarpalika area and Gram Panchayats, if there be any.
>
> (iii) Environmental Compensation shall be assessed in respect of all the structures which have been raised without EC and shall be recovered from the appropriate authorities/persons/builders/project proponent (as the case may be) within a period of three months from hence. Environmental compensation in respect of those which have already been assessed shall also be recovered within the said period.
>
> (iv) All ongoing constructions undertaken without obtaining prior EC shall be stopped forthwith until the environmental clearance is obtained.
>
> (v) Action shall be initiated under section 19 of the Environmental (Protection) Act, 1986 by the State Pollution Control Board forthwith against those who are responsible for the violations.
>
> (vi) Since the violations were being committed under the gaze of the concerned authorities, we direct initiation of disciplinary proceedings against the concerned officers, the Municipal Commissioners and the State Pollution Control Board at the earliest.

33. It would transpire from the aforesaid order passed by the NGT, Delhi that the learned Tribunal having taken into consideration the attending circumstance of the case as well as the suggestions of the counsel for the applicant, while applying the

principle of sustainable development and the precautionary principle, has directed the Government of Jharkhand through Urban Development and Housing Department to ensure that EIA is undertaken for all the structures in accordance with the Notification, 2006 and therefore Environmental Management Plan be prepared and mitigation measures proposed therein be implemented so as to address the environmental issues arising on account of such construction done without taking prior EC and thereafter to assess the environmental compensation as well as to recover the same from the violators within a period of three months. In the meantime, the ongoing construction undertaken without taking prior EC has been ordered to be stopped until the EC is obtained. It has further been directed that an action under Section 19 of the Act, 1986 be initiated against those who are responsible for violation as also for initiating disciplinary proceedings against the concerned officers, municipal commissioners and the State Pollution Control Board at the earliest.

34. It is evident from the order of the NGT that the Government of Jharkhand has been directed to ensure that EIA is undertaken, management plan is prepared for the projects which were started in violation of EIA Notification, 2006, compensation is duly assessed and recovery of the same is made from the defaulter as well as in the meantime the ongoing construction has been directed to be stopped. Similar measures were suggested under the window opened vide notification dated 14.03.2017. Further, the State of Jharkhand and Jharkhand State Pollution Control Board have been directed to file their action taken reports within six months from the date of order. It thus appears that even after passing the final order dated 09.09.2020 in O.A. No. 45/2019/EZ, the NGT, Delhi is still monitoring the cases of violation of EIA Notification 2006 by the project proponents within the State of Jharkhand.

35. The National Green Tribunal Act, 2010 (in short "the Act, 2010") has been enacted for the establishment of National Green Tribunal for effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

36. Since the NGT is a specialized body to look into the environmental affairs which has passed the order to deal with the present issue applying the principle of sustainable development and the precautionary principle having been empowered in view of Section 22 of the Act, 2010, this Court after taking into consideration all the facts and circumstance, does not wish to add anything more on the subject.

37. In the case of *Cicily Kallarackal* v. *Vehicle Factory* reported in (2012) 8 SCC 524, the Hon'ble Supreme Court has held as under:—

> "4. Despite this, we cannot help but state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.

38. In the case of *Union of India* v. *Shri Kant Sharma* reported in (2015) 6 SCC 773, the question before the Hon'ble Supreme Court was as to whether the High Court could have entertained the writ petition against the final order or decision passed by the Armed Forces Tribunal under Section 30 of the Armed Forces Tribunal Act, 2007

(in short, "the Act, 2007"), bypassing statutory redressal mechanism. Their Lordships quashed the order of the Delhi High Court which had entertained the writ petition holding that if High Court entertains such writ petitions, it is likely to lead to anomalous situation. It was also held as under:

> "43.....if any person aggrieved by the order of the tribunal, moves the High Court under Article 226 and the High Court entertains the petition and passes and judgment or order, the person who may be aggrieved against both the orders passed by the Armed Forces Tribunal and the High Court, cannot challenge both the orders in one joint appeal. The aggrieved person may file leave to appeal under Article 136 of the Constitution of India against the judgment passed by the High Court but in view of the bar of jurisdiction by clause (2) of Article 136, this Court cannot entertain appeal against the order of the Armed Forces Tribunal. Once, the High Court entertains a petition under Article 226 of the Constitution of India against the order of the Armed Forces Tribunal and decides the matter, the person, who thus approached the High Court, will also be precluded from filing an appeal under Section 30 with leave to appeal under Section 31 of the Act, 2007 against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court under Article 226 of the Constitution under Section 30 read with Section 31 of the Act, 2007. Thereby, there is a chance of anomalous situation. ....."

39. Coming back to the present case, if the petitioner felt itself aggrieved with the order of the NGT, it could have preferred appeal to the Hon'ble Supreme Court even if it was not the party before the NGT. However, it neither availed the said remedy nor moved before the NGT for any modification/clarification of the order dated 09.09.2020. Curiously enough, the petitioner has also not approached to the State Government asking it to comply the order of the NGT in entirety, rather it rushed to this Court seeking direction to the respondent no. 1 to open a window to deal with the violation cases of its members which is not entertainable by this Court as opening a window for such cases is a policy decision of the government towards which the court should be slow to interfere. Moreover, the NGT has already framed the mechanisms to deal with the cases of the members of the petitioner and thus the said prayer of the petitioner cannot be entertained.

40. Undoubtedly, the power of judicial review under Article 226 of the Constitution of India is a basic feature of the constitution and no legislation can override or curtail its jurisdiction, however the Hon'ble Supreme Court in catena of decisions has held that the High Courts should give due regard to the legislative intent evidenced in various statutes and exercise jurisdiction consistent therewith. In the case of *Alembic Pharmaceuticals* (supra.) as relied upon by the learned Senior Counsel for the petitioner, the Hon'ble Supreme Court has exercised the power under Article 142 of the Constitution of India and has quashed the order of NGT revoking ECs of the industries involved in the said case by applying the principle of proportionality directing the violators to pay compensation amount of Rs. 10 crores each. The said order has been passed looking to the peculiar facts and circumstances of that case to do complete justice which does not constitute a binding precedent similar to the law laid down by the Hon'ble Supreme Court under Article 141 of the Constitution of India. Moreover, the petitioner has moved this Court bypassing the statutory remedy of appeal to the Hon'ble Supreme Court against the order of the NGT provided under Section 22 of the National Green Tribunal Act, 2010 (in short, "the NGT Act, 2010").

41. It may be observed that whatever relief has been sought by the petitioner from this Court, has already been taken into consideration by the NGT and a detailed direction has been issued for remedying the situation and as such this Court does not feel it appropriate either to add anything to the said order or to modify the same under extraordinary writ jurisdiction particularly when neither of the parties has challenged the order of the NGT in appeal before the Hon'ble Supreme Court under Section 22 of

the NGT Act, 2010. Even if it is assumed that the said exercise is time consuming, this Court does not intend to modify the order of the NGT merely on the said ground so as to provide a shortcut method of dealing with the violation cases of the members of the petitioner.

42. Before parting with the case, I would like to add that the Government of Jharkhand seems to have complied only the part order of the NGT and has stopped the ongoing constructions of the members of the petitioner. No averment has been made in the counter affidavit filed on behalf of the respondent nos. 2 and 3 as to what steps have been taken by them for complying the other part of the order i.e ensuring the EIA of the violation cases and preparation of Environmental Management Plan, assessment and recovery of compensation, disciplinary actions against the erring officers and penal action against the defaulters. This Court has also not been apprised of the fact as to whether any report has been submitted by the State Government before the NGT in compliance of the order dated 09.09.2020 as the period of six months have already elapsed. It seems that since the NGT, vide order dated 09.09.2020, has not issued any direction to SEIAA, Jharkhand, it has not entertained the EC applications of the members of the petitioner and has returned the same stating that these projects belong to the violation of Environment (Protection) Act, 1986 and EIA Notification, 2006 and there is no mechanism in existence to deal with the violation cases at present. The Government of Jharkhand should have complied the order of the NGT, Delhi in entirety and if it felt any difficulty in complying the entire order, it should have approached the NGT for clarification/modification of the said order. Nonetheless, it cannot sit idle by only complying the part order leading to a situation that the projects of the members of the petitioner for grant of EC have not been processed despite they being ready to comply all the conditions that may be imposed upon them for grant of EC.

43. In view of the aforesaid discussions, this Court is not inclined to grant relief to the petitioner as prayed in the present writ petition. The petitioner may however move before the NGT, Delhi for clarification/modification of the order dated 09.09.2020 passed in Original Application No. 45/2019/EZ or to take appropriate recourse against the said order as permissible under the law.

44. The writ petition is, accordingly, dismissed with aforesaid observation.

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
……..

Application No. 278/2013
And
M.A. No. 110/2014

In the matter of :

The Braj Foundation
Through its Secretary, Mr. Rajneesh Kapur …..Applicant

Versus

1. **Government of Uttar Pradesh**
   Through its Chief Secretary, Lucknow-226001

2. **Union of India**
   Through its Secretary,
   Ministry of Environment & Forests
   FC Division, Paryavaran Bhawan,
   CGO Complex, Lodhi Road, New Delhi- 110010

3. **The Principal Secretary (Forests)**
   Government of Uttar Pradesh
   17, Rana Pratap Marg, Lucknow- 226001

4. **Principal Chief Conservator of Forests**
   Social Forestry
   17, Rana Pratap Marg, Lucknow – 226001

5. **Government of Rajasthan**
   Through its Chief Secretary,

6. **Government of Haryana**
   Through its Chief Secretary …..Respondents

Counsel for Applicants;

Mr. Rakesh Munjal, Sr. Adv., Ms. Anita Pandey and Ms. Yashita Munjal, Ms. Kunal Bhargava, Mr. Ankur Arora, Advocates.

Counsel for Respondents:

Ms. Savitri Pandey and Rashmi Singh, Adv for respondent 1,3,& 4.
Ms. Panchajanya Batra Singh with Mr. Salauddin Khan, Advocates for Respondent No. 2
Mr. D. Rajeshwar Rao, Mr. Aditya Sharma, Mr. Vimal Nigam, Advocates for Respondent No. 5
Mr. Narender Hooda Sr. Adv., Mr. D.P. Singh and Mr. Vineet Malik , Mr. B. Yadav, Advocates for Respondent No. 6

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Dr. P. Jyothimani (Judicial Member)
Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)
Hon'ble Dr. G.K. Pandey (Expert Member)
Hon'ble Prof. Dr. P.C. Mishra (Expert Member)
Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Dated: 5th August, 2014

JUSTICE DR. P. JYOTHIMANI (JUDICIAL MEMBER):

1. **This Application is preferred by the applicant which is a registered trust constituted to preserve world heritage for humanity, seeking for a direction against the respondents to execute the Memorandum of Understanding (M.O.U) and to handover forest lands to the applicant trust for the development of those sites on the mutually decided targets as can be achieved by dividing the financial load as per the capacity of the department and the applicant.**

2. **According to the applicant trust, the Braj Foundation, heritage has suffered in recent decade which warrants immediate action. The Braj is situated 115 kms from Delhi on the Delhi - Agra National Highway spanning across the Mathura District of Uttar Pradesh, part of Bharatpur District of Rajasthan and part of Palwal District of Haryana. It covers a span of 5000 acres in 1300 villages centering around Vrindavan. Most part of the prime land situated which connect National Highways NH-2 is being exploited by the vested interest.**

3. **The applicant trust registered in the year 2005 is stated to have worked towards forestry in Mathura and elsewhere apart from planting trees for restoration of Ratnagiri Hills in Barsana. It is stated that during 2008-09, a protective fencing for restoration of Uddav Kyari Forest with the financial grant of Rs.12,00,000/- from NTPC was undertaken through a tri-partite agreement between the applicant, NTPC and District Forest Officer, Mathura. It is stated that for restoration of Vrindavan Forest, Power Grid Corporation of India has also granted Rs. 25 Lakhs in 2008-09.**

4. **The U.P. Forest Department in the advertisement issued on 26.06.2010 invited applications from NGO's for plantation in the protected forest of Uttar Pradesh, giving the last date of submission of application as 07.07.2010. It is stated that pursuant to the advertisement, the applicant submitted an application on 01.07.2010 apart from the additional information of detailed work done, on 27.07.2010. It is stated that at the instance of the respondent Government as per the letter dated**

04.01.2011 seeking information about the signing authority of the Braj Foundation, particulars were furnished apart from the required fees for MOU. It appears that there has been some reminder from the respondent Government on 02.02.2011 based on which certain clarification were made by the applicant on 28.02.2012. It is the case of the applicant that the respondent has communicated on 05.03.2012 informing that the applicant has been shortlisted for the afforestation of the forest area. It is also the case of the applicant that in response to certain letters from the respondent, the applicant has informed that the signing authority on behalf of the applicant is Mr. Rajneesh Kapur and on behalf of the sponsoring party the agreement shall be signed by an executive of HR-CSR Department. A copy of Site plan was also stated to have been submitted assuring the respondent that if empanelled, the applicant shall convert the entire barren forest area into lush green forest. After seeking permission from the Department of Forest, U.P. and obtaining clarifications from the applicant, it appears that the applicant has deposited a sum of Rs. 6000 towards the processing fees. It is the case of the applicant that the Principal Chief Conservator of Forests has written a letter on 09.07.2012 to the Principal Secretary of Forests, stating that it is the State government which alone can enter such M O U. The special Secretary of Forest, Government of U.P in the letter dated 26.10.2013 addressed to the Secretary, Ministry of Environment and Forest, Government of India is stated to have informed that the applicant foundation has been selected for the plantation work in Mathura District. However, no further action

was taken by the respondent state government to permit the applicant to proceed with the work. It was due to the delaying tactics of the respondents, not only the afforestation of the Vrindavan area stood neglected but also the efforts of NGO's like the applicant have been discouraged.

5. **On the basis, that the conduct of the respondents amount to neglect of taking care for the ecological balance, to protect and improve the environment and to safeguard the forest and wildlife and in spite of the fact that by a transparent method the applicant has been selected for the afforestation purposes, the respondent State failed to act and thus the applicant has no other remedy than filing the present application.**

6. **In the reply the State of Haryana, respondent no. 6 stated that the area of Braj development is not within the territory of State of Haryana. State of Uttar Pradesh namely respondent no 1, 3 and 4 would submit that the State Government had initiated process to implement the guidelines issued by the Ministry of Environment and Forest dated 07.06.1999 for participation of private Sector through involvement of NGO's and Forest Department in afforestation. Pursuant to the advertisement, about 68 proposals were received by the department and on scrutiny it was found that none of the 68 proposals were eligible. In so far as it related to Braj Foundation, as against the requirement of 5 years of registration as NGO it was only having 3.5 years. Since all the proposals were found to be ineligible, expression of interest was issued again, pursuant to which 58 proposals were received and the applicant Foundation was satisfying the conditions mentioned**

in the revised expression of intention. For the purpose of handing over forest land to an NGO for afforestation, the guidelines issued by the Ministry of Environment and Forest , Government of India dated 07.06.1999, contemplates the proposals to be submitted under the Forest Conservation Act, 1980. The rules also prescribe for prior approval of Central Government before implementation of such proposal. The above said process has not been duly followed in respect of the applicant. It is also denied that the applicant has carried out any restoration work in Manpur Forest Block. It is also stated that Ratnagiri Hill Barsana Mathura does not fall in the forest area. It is the case of the State Government that no tripartite agreement will have any authority of law unless and until it precedes the sanction by the State/Central Government who are the authorities under the Forest Conservation Act. It is also stated that merely by making application to the State Government, an NGO cannot claim any right to carry on afforestation work in the Government land. The mere allegation that a public sector undertaking like that of the Power Grid Corporation of India has released some funds to the applicant Trust without checking up as to whether Government's permission has been obtained for working on the Government land, does not confer any right to the applicant to get possession of the Government land.

7. **Otherwise, it is the catagoric case of the State Government that there is no enforceable contractual obligation on the part of the Government. When once the legal requirements are not followed, simply by entering a memo of understanding, no right can be**

conferred on any party. It is also stated that in any event, it is not open to any private Organization or agency to claim as a matter of right to take possession of the Government land in the guise of making development or afforestation. It is also stated that the Forest Department, Uttar Pradesh Government itself has taken massive efforts in undertaking afforestation and soil and moisture conservation and formulating a composite development plan stated to have already been started. About 22,300 saplings of various local species are stated to have been planted by the Government already. Apart from installation of new irrigation work, it is also stated that the Department itself has professionally trained manpower, technical know-how and funds for afforestation. Owing to the availability of adequate funds, the Government is thinking in terms of dropping involvement of NGO's in the afforestation process. It is also stated that by allowing the third parties to do the developmental work, there is a possibility of illegal encroachment and mining of lands which the Government desires not to encourage.

8. **When the matter was taken up for admission, while ordering notice to the respondents, this Tribunal in the order dated 18th September 2013 ,directed the parties to maintain status quo. On 29th October 2013, as the learned counsel appearing for the state of Uttar Pradesh, while opposing the main application as not maintainable, contended that the government as a matter of policy has decided not to give any of the portion of Mathura and Vrindavan to any private individual or any NGO and itself intends to prepare a scheme for maintaining and beautifying**

Mathura and lands in Vrindavan. Therefore, we directed the learned counsel appearing for the State to produce such scheme by the next date of hearing. After the matter was adjourned again on 25th November, it was on 27th November 2013, a Management scheme for Eco-Restoration of Mathura was filed. Of course, we have also directed the Government to study about the restriction of building construction in the Parikrama area. Again on 27th January 2014, the government of U P sought time to submit a policy decision of the government not to involve private individuals, by the next date of hearing. On 26th February 2014, the learned counsel of the Government submitted a policy decision taken by the government not to involve any private individual in beautifying Vrindavan.

9. **Explaining the conduct of the government in interfering in the administration of justice by making false statement before the Tribunal, the applicant Foundation has filed M A no 110/2014 under section 2(b) r/w section 12 of the Contempt of Court Act to punish the respondent government. It was the further contention of the learned senior counsel for the applicant that no such policy decision was available with the government as on 29-10-2013 and the learned counsel for the government made a false statement before the Tribunal. The said application was vehemently opposed by the learned counsel appearing for the state of UP. According to her, some delay on the part of the government due to administrative reasons cannot be branded either as a willful disobedience or interference with the administration of justice. She also contended that an application under the Contempt Of**

Court Act is not maintainable before this Tribunal. As we are of the view that both the main application and the issue raised in the MA are to be jointly deliberated, we have heard both the applications together.

10. **Mr. Rakesh Munjal, the learned senior counsel would contend that , when it is admitted by the government that it was pursuant to the decision of the government to involve private agencies in the project , the application of the applicant has been taken into consideration as it is seen in many communications it was decided to execute the MOU, and therefore it is not proper for the government to go back. It is his vehement contention that there is a deemed concluded contractual obligation and the government is bound by that. There is absolutely no allegation of encroachment against the applicant which is a reputed organization with many eminent persons in the helm of affairs. Regarding the contempt application, it is his submission that the conduct of the government in deflecting course of judicial proceedings, and prolonging the matter with oblique motive amounts to interference with the administration of justice in not allowing the Tribunal from performing its function. Regarding the maintainability, the learned senior counsel pointed out that, as the creation of the Tribunal is traceable to Articles 323B and 253 of the Constitution of India, the power of contempt should be treated as inherent. To substantiate his contention, he would rely upon the judgments of the Honorable Supreme Court Of India reported in State Of Karnataka Vs Vishvabharathi House Building Coop. Society And Others 2003 (2) SCC 412 and Union**

Of India And Another Vs Delhi High Court Bar Association And Others 2002 (4) SCC 274. He also submitted that even if Contempt of Court Act is not applicable, contempt petition can be referred to the Honorable Apex Court which is empowered under Article129. He has also attempted to state that if the Tribunal is treated as subordinate to the High Court, the application can be referred to the High Court.

11. **Per contra, Ms Savitri Pandey, learned counsel appearing for the State of Uttar Pradesh would submit that, apart from the fact that there is no enforceable contract, no private person as a matter of right can claim the government land to be maintained especially when the government, as a matter of policy has decided to maintain itself. She has also submitted that even otherwise, contractual obligations cannot be decided by this Tribunal. She also submitted that the government has already started implementing the scheme. Insofar as it relates to the contempt, apart from reiterating her stand that administrative delay in framing the scheme cannot be treated as a disobedience of the order and that the Contempt of Court Act would not apply to this Tribunal, distinguished the powers of the tribunals and other courts, relying on the judgment of the Hon'ble Supreme Court reported in Nahar Industrial Enterprises Limited Vs Hong Kong And Shanghai Banking Corporation etc, 2009(8) SCC 646. Therefore it is her submission that both the main application and the contempt application are liable to be dismissed.**

12. **We have heard the learned senior counsel appearing for the applicant and the learned counsel for respondents, referred to the**

various documents filed in both the main application and contempt application and given our combined and considered thought to the issues raised in this case.

13. **It is submitted that the Government of U.P. has issued a public notification on 26/06/2010 inviting proposals from reputed NGOs for carrying out afforestation work in U.P. It was pursuant to the said notification, the applicant has applied to the Government on 1/7/2010 and the application is still pending. In the mean time the Government appears to have taken a decision that the beautification of Mathura including Vrindavan will be taken up by the Government itself, as the Government has sufficient funds. In this regard it is relevant to know that on 7/03/2008 there was MOU as it is seen in the typed papers filed by the applicant's trust. The MOU stated to have been signed by one Sri K. Raja Mohan, Divisional Director, Social Forestry Division, Mathura of the Forest Dept of the Government of U.P. on one hand apart from the applicant trust as a second party and N.T.P.C, a company incorporated under the Companies Act, 1956 as a third party. But it is not known as to under what authority the Divisional Forest Officer of the Forest Dept has become a party in the said MOU. However, in as much as the Govt. has issued a public notification as stated above on 26/02/2010 and the applicant has also applied pursuant to that, in effect the MOU has become insignificant.**

14. **Except the above said MOU, there is no other MOU / Agreement between the applicant and the Government. If the prayer of the applicant to give effect to the MOU relates to the above said**

document dt. 07/03/2008, we have no hesitation to hold that the MOU has no legal sanction. The signature of the officer of the Government does not contain any official seal. Further, when the applicant itself has applied to the Government based on the subsequent notification, the MOU dt. 07/03/2008 cannot be deemed to continue. The validity or otherwise of the said MOU is not within the purview of this Tribunal.

15. As we have stated earlier, the applicant trust has made application on 01/07/2010. This application is based on the public advertisement of the Forest Department dt. 26/06/2010 inviting proposals. Therefore at the most, it can be held that the notification of the Government is 'An Invitation to Treat'. The application of the applicant dt. 1/10/2010 is an offer made by the applicant which is yet to be accepted by the Government so as to make it as an agreement enforceable by law. Even otherwise, the applicant trust cannot claim any right to carry out the work by taking possession of the Government lands. It is true that there has been some subsequent communications by the Government officials with the applicant Trust even in the rank of the Principal Chief Conservator of Forests requiring to furnish various information. It is also seen that the dept. has required the applicant to pay certain processing fees of Rs. 6000/- which has in fact been paid by the applicant Trust. In one of the communications, the Principal Chief Conservator of Forests has in fact imposed certain conditions and asked for sanctioning the proposal of the organization for signing a tripartite agreement vide letter dt. 24/05/2012. Therefore, it means that the MOU dt.

07/03/2008 stands automatically rescinded. It is also seen that the Principal Chief Conservator of Forests has enclosed a draft agreement on 09/07/2012, however stating in the said letter by quoting a Government order that he was not competent. By a letter dt. 26/10/2012 the Special Secretary to the Government has communicated to the MoEF , that in a meeting of the officials after considering all the applications it was decided to select the applicant trust and enter a tripartite agreement and sought permission from the Government of India. Ultimately, the Government of India in its letter dt. 08/01/2013 addressed to the Government of U.P., has left it to the state Government to take action in accordance with the guidelines issued by the Ministry on 7/6/2009. It was thereafter, the Government of U.P. has taken a decision not to involve any private organizations or individuals in beautification and afforestation of Mathura including Vrindavan. Therefore on the face of it there is no concluded contract between the parties so as to enable the applicant to insist the Government to follow. Whether the conduct of the officials of the state government would amount to implied consent or not is again not for this Tribunal to adjudicate upon. It is for the applicant to work out his remedy in the manner known to law.

16. **There is another aspect relevant to be considered in this case. When once the state Government which is the authority, has taken a decision as a matter of policy not to involve any private individuals, it is not for this Tribunal to give any contrary directions. It is so even in respect of NGOs like that of the applicant which is no doubt a reputed organization consisting of**

eminent persons. Therefore viewed from any angle, the applicant trust is not entitled for any remedy asked for in the main application. For these reasons the main application deserves to be dismissed.

17. The above decision of ours leads to the next issue relating to the punishment of the U.P. Government for an alleged contempt. As narrated in the beginning of this judgment, the Government of U.P. which was stated to have decided to formulate a comprehensive scheme for beautifying the Braj area has taken some time to produce the said scheme and policy document before the Tribunal. In fact it was on 29/10/2013, the learned Counsel appearing for the State Government has submitted before the Tribunal that the Government intends to prepare a scheme and therefore we directed the counsel to place the scheme on the next date of hearing which was 25/11/2013. The scheme was submitted on 27-11-2013, while the policy document not involving the NGO was produced on 26-2-2014. In between 27-11-2013, the matter was adjourned at request, to 18-12 - 2013 and 27-01-2014 .According to Mr Rakesh Munjal the learned Senior Counsel appearing for the applicant trust, such long delay by the Government in framing the scheme and placing a document of policy decision is not only deliberate but also intended to interfere with the administration of justice and therefore the officials of the U.P. Government are liable for punishment for contempt. This was repudiated by Ms Savitri Pandey, learned counsel appearing for U.P Government stating that the administrative delay in governance of the state is not with any intention and therefore no

motive can be imputed on any officials. On reference to our various orders we see that on request we have granted time to the Government to produce scheme, and policy on various occasions. We have no hesitation to conclude that there is no deliberate violation so as to initiate contempt proceedings against the officials of the U.P govt.

18. The application in M.A. No. 110/ of 2014 has been filed by the applicant u/s. 2(b) r/w Section 12 of the Contempt of Court Act 1971. As we have already found prima facie that there was no contempt and there was some doubt as to whether Sec 12 of the Contempt of Court Act would apply to this Tribunal, without issuing statutory notice to the respondent Government, we permitted the learned counsel on both sides to make their submissions on both the main application and contempt application. Even though we have concluded that there is no contempt involved in the conduct of the respondent Government officials, we proceed to examine the legal issues raised by the counsel.

19. Mr. Rakesh Munjal, learned senior Counsel for the applicant has brought to the notice of the Tribunal that the Tribunal having been created in accordance with the terms of Article 323 B of the Constitution of India, it has inherent powers of punishing a person for contempt. To substantiate his contention, he would rely upon the judgments of the Hon'ble Supreme Court of India reported in 2003 (2) SCC 412 and 2002(4) SCC 274. It is also his submission that even otherwise, the Tribunal can refer the matter to the Hon'ble Supreme Court of India which is empowered to

punish a person for contempt, being a court of record under Art 129. He would further submit that if Article 235 of the Constitution of India is applied, the Tribunal is to be treated as subordinate to the High Court and in that event the matter can be referred to the High Court. He would also make a reference to the judgment reported in 1981 Crl LJ 283 and 1886 Crl LJ 1543.

20. **Per contra, it is the contention of the learned counsel appearing for the Government of U.P., Ms. Savitri Pandey, that there is no contempt committed by the Government and mere administrative delay cannot be construed to be interference with the administration of justice. She further submits that in any event the application for contempt u/s 12 of Contempt of Courts Act 1971 is not maintainable. By relying on a judgment of the Supreme Court reported in 2009 (8) SCC 646 she has attempted to distinguish between the Tribunal and Court, She has also submitted that the State Government is serious in implementing the scheme within the time frame.**

21. **At the outset one has to remember that the National Green Tribunal Act 2010 under which this Tribunal is created, itself was enacted by the Parliament of India to give effect to the true spirit of the terms of Article 253 of the Constitution of India which runs as follows:**

***Article 253*: Legislation for giving effect to international agreements**

"Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make

any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

22. It was in June 1972, the U.N. Conference on Human Environment held at Stockholm in which India was a participating country, it was decided to call upon the member States of the U.N. not only to take appropriate steps for protection and improvement of the human environment , but in a subsequent conference held at Rio de Janeiro, on Environment and Development in June 1992 in which also India was a participant by way of a resolution all member States were called upon to provide effective access to judicial and administrative proceeding including redressal and remedy apart from developing national laws regarding liability and the compensation for the victims of pollution and other Environmental damages.

23. It was squarely in accordance with the decision taken by the U.N. Conference and by virtue of powers conferred on it by the Constitution of India, "The Basic Document of The Country", in Article 253, the Parliament of India in its wisdom has enacted The National Green Tribunal Act 2010 to establish a National Green Tribunal for the effective and expeditious disposal of the cases relating to environmental protection and conservation of forests and natural resources etc. Therefore it is clear that the National Green Tribunal is distinct from other tribunals either

created as per the provisions of the Constitution of India or otherwise. It is a constitutional creature with a specific purpose on the basis of certain principles like sustainable development, precautionary principle, and polluter pay principle. The NGT which proceeds to adjudicate the disputes which involve substantial questions relating to environment, consists of Expert Members from various fields connected with environment apart from Judicial Members selected by a committee constituted as per the Act with its Chairperson who is either a sitting or a Retired Judge of the Supreme Court of India. Therefore there is no iota of doubt in our mind that this Tribunal has inherent power of not only enforcing its orders but also treating with any person who either disobeys or violates its orders.

24. Even otherwise the NGT Act itself confers enormous power on the Tribunal to deal with any person who fails to comply with the order or award either by punishing with imprisonment up to 3 years or to impose a fine up-to 10 Crores under Section 26 which is as follows:

> **S 26. Penalty for failure to comply with orders of Tribunal**
>
> **(1) Whosoever, fails to comply with any order or award or decision of the Tribunal under this act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may**

extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention:

Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code.

While such powers are given in the Act itself one need not traverse to any other statute like Contempt of Courts Act. Therefore, we are of the view that the section 26 of the NGT Act empowers the Tribunal to deal with any person who disobeys its order. However in the present case prima facie, the Respondent U.P. Government has not committed any disobedience of our order.

25. M.A. No 110/2014 filed by the applicant for contempt under the Contempt of Courts Act is totally misconceived. While section 12 of The Contempt of Courts Act 1971 imposes punishment for

contempt of court, the said section actually deals with the powers of the High Courts to punish for civil contempt defined u/s 2(b) for violation of the orders of courts which are subordinate to the High Court. Under the provisions of the National Green Tribunal Act there is absolutely nothing to presume that the National Green Tribunal is either subordinate to any High Court or under the powers of superintendence of any High Court. In fact under the Act all the awards/decisions/orders are appealable to the Honorable Supreme Court of India u/s. 22 on the grounds available under section 100 Code of Civil Procedure 1908, like the second appeal provision which only relates to the substantial questions of law . Therefore the decision of the Tribunal is subject to regular appeal to the Honorable Supreme Court. In our considered view the question of supervisory power of any High Court does not arise, of course unless and until the Honorable Apex court ultimately resolves the legal issue. Even on this ground the application under Contempt of Courts Act is liable to be rejected.

26. In respect of the inherent powers of the statutory tribunals especially relating to execution of their orders, a three Judge Bench of the Hon'ble Supreme Court of India had occasion to decide in relation to the Consumer Protection Act, 1986 creating hierarchy of courts namely, the District Fora, State Commission and National Commission. That was the decision rendered in <u>State of Karnataka Vs. Vishwabharti House-Building Coop. Society & Ors</u>, reported in (2003) 2 SCC 412. While holding

that a parliamentary statute can create a tribunal and also that non-compliance of its order would be punishable with imprisonment or fine, has also observed that the cardinal principle of interpretation of statute is that, courts or tribunals must be held to possess power to execute their own orders. The relevant portions of the order of the Supreme Court in this regard are as follows:

> **"57. A bare perusal of Section 25 of the Act clearly shows that thereby a legal fiction has been created to the effect that an order made by District Forum/State Commission or National Commission will be deemed to be a decree or order made by a civil court in a suit. Legal Fiction so created has a specific purpose i.e. For the purpose of the execution of the order passed by the Forum or the Commission. Only in the event the Forum/State Commission or the National Commission is unable to execute it order, the same may be sent to the civil court for its execution. The High Court, therefore was not correct to hold that in each and every case the order passed by the District Forum/ State Commission/National**

Commission are required to be sent to the civil courts for execution thereof.

58. Furthermore, Section 27 of the Act also confers an additional power upon the Forum and the Commission to execute its order. The said provision is akin to the Order 39 Rule 2- A of the Code of Civil Procedure or the provisions of the Contempt of Courts Act or Section 51 read with Order 21 Rule 37 of the Code of Civil Procedure. Section 25 should be read in conjunction with Section 27. A Parliamentary statute indisputably can create a tribunal and might say that noncompliance with its order would be punishable by way of imprisonment or fine, which can be in addition to any other mode of recovery.

59. It is well settled that the cardinal principle of interpretation of statute is that courts or tribunals must be held to possess to execute their own order.

60. It is also well settled that a statutory tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order

has also the power to implement its order. Further, the Act which is self-contained code, even if it has not been specifically spelt out, must be deemed to have conferred upon the Tribunal all powers in order to make its order effective."

27. **Again, while dealing with the constitution of Banking Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act 1993, in terms of Article 50 of the Constitution of India, the Hon'ble Supreme Court has held that even if such tribunals may not in strict sense come within the concept of "Judiciary" envisaged in Article 50, but they are nevertheless effective part of the justice delivery system. That was the judgment delivered in Union of India & Anr Vs. Delhi High Court Bar Association and Anr., reported in (2002) 4 SCC 275.**

28. **Since we have held that the powers u/s. 12 of the Contempt of Court Act, 1971 are that of High Court against the courts subordinate to it and the National Green Tribunal, in the teeth of the provisions of the National Green Tribunal Act, 2010 cannot be held to be subordinate to the High Court's especially when regular Appeal is provided against its orders on substantial questions of law to the Hon'ble Supreme Court. Therefore the judgment relied upon by the learned Senior Counsel appearing for the applicant rendered in Sheikh Mohammad Bhikhan Hussain Bhai etc,. Vs. The Manager, Chandra Bhanu Cinema and Ors etc., a full bench judgment of the Hon'ble Gujarat High**

Court reported in 1986 Crl.LJ. 1543 is of no assistance to his contention. Of course the judgment of the Hon'ble Apex Court in Nahar Industrial Enterprises Ltd Vs. Hong-Kong and Shanghai Banking Corporation etc., reported in (2009) 8SCC 646, relied upon by the learned counsel appearing for the State while dealing with the powers of the High Court in transferring the suit from civil court to Debt Recovery Tribunal and in that judgment the distinction between Civil Court and Tribunal have been clearly analyzed .In any event the findings in the said judgment are not relevant for the purpose of deciding the issue in this case.

29. For all the reasons stated above, we dismiss the main application as well as M.A. No. 110 of 2014. However there shall be no order as to the costs.

30. Before parting with this case, we are constrained to make certain observations regarding the management scheme for eco-restoration of Mathura prepared and produced before the Tribunal by the Social Forestry Division, Mathura, Uttar Pradesh Forest Department. Even though we appreciate the scheme in the sense that it is exhaustive in nature, we fail to understand as to why the Government needed a direction from the Tribunal for framing such scheme relating to maintenance of a place of religious importance like Mathura including Vrindavan. It would have been appreciable if such scheme was already implemented. In any event, as it is usually said, "better late than never", the government has at least now woken up after the direction issued by the Tribunal which is

appreciable. We have to necessarily reiterate that the entire contents of the scheme are really scientific and would be fascinating and fruitful if it is implemented in true spirit by the implementing agency, namely the Social Forestry Division, Mathura, as it is seen in the scheme itself. The total outlay of the management scheme is stated to be Rs.95542.80/- thousands with the goal of the scheme as "Ecological Restoration through Removal of Invasive Species and Reestablishment of appropriate native plant communities, offering assistance in utilizing the opportunities extended for ravine reclamation through improved vegetative cover supported by appropriate soil and water conservation measures". The project aims to strengthen the eco-restoration to improve the governance of natural resources. The scheme also contains the different density of forest blocks in Mathura apart from soil condition, wildlife-census, financial estimate etc. We are of the view that the implementing agency under the scheme shall implement the entire scheme in its proper perspective expeditiously. It is also an admitted fact that in and around the vast Parikrama area, adedicated devotees face various hardships .The Government of U. P., Haryana and Rajasthan shall also take steps to preserve the Parikrama path apart from restricting the growth of buildings and develop large number of native trees and plantations on both sides of the Parikrama passage. Further, we direct the Government of U.P., Haryana and Rajasthan to declare both sides of atleast 100 Mts, all along Braj Parikrama route as 'No Development Zone' where no new Ashrams, Hotels, Buildings

and Industrial Units will be permitted except shelters for pilgrims to protect them from the rains, scorching sun and cold weather expeditiously and in any event not more than nine months. The shelters may include rest rooms & refreshment facilities. The drinking water, medical facilities shall also be made available to the pilgrims.

……,JM
(Dr. P. Jyothimani)

……,JM
(M.S. Nambiar)

……,EM
(Dr. G. K. Pandey)

……,EM
(Prof. Dr. P. C. Mishra)

……,EM
(Mr. Ranjan Chatterjee)

New Delhi,
5th August, 2014.

The judgment delivered through video conferencing from the Eastern Zone Bench of NGT at Kolkata in the presence of the other Hon'ble Judicial and Expert Members of the Bench present in the Principal Bench at New Delhi simultaneously by video-conferencing.

(2003) 2 Supreme Court Cases 412

(BEFORE V.N. KHARE, C.J. AND K.G. BALAKRISHNAN AND S.B. SINHA, JJ.)

STATE OF KARNATAKA .. Appellant;

Versus

VISHWABHARATHI HOUSE BUILDING COOP. SOCIETY AND OTHERS .. Respondents.

Civil Appeal No. 9927 of 1996† with WPs (C) Nos. 417 of 1996, 12 of 2000 and CAs Nos. 4613-14 of 1999, decided on January 17, 2003

A. **Consumer Protection Act, 1986 — Ss. 9, 10, 15, 16, 19, 20, 23 and 3 — Provisions in the Act for establishing hierarchy of courts like District Fora, State Commission and National Commission — Constitutionality — Held, within legislative competence of Parliament — Arts. 323-A and 323-B do not derogate from that legislative competence — Further held, the remedies under the Act are in addition to, and not in derogation of the remedies under other laws — Rights of parties are adequately guarded under the Act as the forums thereunder are required to assign reasons for their conclusion and are manned by qualified persons — Moreover, there are provisions in the Act for appeal and the remedies under Arts. 32, 226 and 227 are also available — Hence, the Act, held, constitutional — Further held, mere absence of a provision for inter-forum transfer of cases or absence of power to grant injunction would not render the Act ultra vires the Constitution or unworkable — Constitution of India — Arts. 245 & 246(2), 323-A, 323-B, 226, 227 & 32 and Sch. VII List I Entries 77, 78, 79, 95 & List III Entries 11-A, 46**

B. **Constitution of India — Arts. 323-A, 323-B, 245 & 246 and Sch. VII — Scope of Ss. 323-A and 323-B — Held, they do not bar the legislature from establishing tribunals not covered thereunder but covered under appropriate legislative entries of Sch. VII**

C. **Constitution of India — Sch. VII List III Entry 11-A and List II Entry 3 — Legislative history of Entry 11-A of List III, restated — Constitution (Forty-second Amendment) Act, 1976, S. 57(a)(vi)**

D. **Consumer Protection Act, 1986 — Ss. 25, 27 and 13(4), (5) & (6) — Execution of the order of the forum under the Act — Power of the forum concerned regarding — Held, it can execute its order itself — Although in the event it is unable to do so it may send the matter to civil court for execution but that does not mean that it has to send compulsorily all its orders to civil court for execution — A construction to the contrary would violate the plain language of S. 25 — Civil Procedure Code, 1908, S. 51 and Or. 39, R. 2-A & Or. 21 R. 37 — Contempt of Court — Contempt of Courts Act, 1971, Ss. 2(b) & 12 — Interpretation of Statutes — Plain or ordinary meaning — Applied**

E. **Interpretation of Statutes — Generally — Power of court/tribunal to execute its order — Held, it is a cardinal principle of interpretation that courts/tribunals must be held to possess such a power**

† From the Judgment and Order dated 19-4-1995 of the High Court of Karnataka in WP No. 23455 of 1994

F. **Consumer Protection Act, 1986 — S. 25 — Legal fiction in, deeming an order of a forum under the Act to be a decree or order of civil court — Purpose of — Restated — Statute Law — Legal fiction**

G. **Interpretation of Statutes — Socio-economic legislation — Consumer Protection Act, 1986 — Provisions of, held, should be interpreted as broadly as possible — Forums under the Act can entertain a complaint notwithstanding concurrent jurisdiction of other forums/courts**

The respondent, in its appeals, challenged the decision of the Karnataka High Court upholding the vires of the Consumer Protection Act, 1986 (the Act). The State of Karnataka filed a cross-appeal challenging the interpretation of Section 25 of the Act by the High Court as barring the District Forum from executing its own order. Moreover, certain persons filed writ petitions under Article 32 challenging the constitutionality of the Act. The respondent and the writ petitioners contended that: (*i*) without suitable amendment of the Constitution, Parliament could not establish the hierarchy of fora under the Act parallel to the hierarchy of the courts established by the Constitution viz. District Courts, High Courts and Supreme Court. Moreover, there might be conflict of decisions between the said two types of courts in similar matters, (*ii*) in view of Articles 323-A and 323-B, Parliament could not enact the Act establishing forums which were substitutes of the civil courts including the High Court, (*iii*) the provisions of the Act struck at the independence of the judiciary, (*iv*) in the absence of any provision in the Act for inter-forum transfer of cases and in the absence of power with the forums to pass interim orders, the functioning thereof was unworkable, and (*v*) Parliament could only establish courts to deal with special subjects specified therefor but not a court which would run parallel to civil courts.

Dismissing the private parties' writ petitions and appeals and allowing the State's appeal, the Supreme Court

Held :

Article 246 and Entries 77, 78, 79 & 95 of List I and Entries 11-A and 46 of List III of Schedule VII to the Constitution clearly indicate the legislative competence of Parliament to provide for creation of Special Courts and Tribunals. Administration of justice, constitution and organization of all courts, except the Supreme Court and the High Courts is squarely covered by Entry 11-A of List III. The said entry was originally a part of Entry 3 of List II. By reason of the Constitution (Forty-second Amendment) Act, 1976 and by Section 57(*a*)(*vi*) thereof, it was inserted into List III as Item 11-A. (Para 12)

Special Courts Bill, 1978, In re, (1979) 1 SCC 380 (certain observations of Shinghal, J. in dissenting judgment), *impliedly distinguished*

The Act was enacted keeping in view the long-felt necessity of protecting the common man from wrongs wherefor the ordinary law for all intent and purport had become illusory. In terms of the said Act, a consumer is entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of. (Para 17)

Under the Act quasi-judicial authorities have been created at the district, State and Central levels so as to enable a consumer to ventilate his grievances before a forum where justice can be done without any procedural wrangles and hypertechnicalities. One of the objects of the said Act is to provide momentum to the consumer movement. The Central Consumer Protection Council is also to be

constituted in terms of Section 4 of the Act to promote and protect the rights of the consumers. (Para 19)

In view of the constitutional scheme relating to legislative competence of Parliament and the State Legislature, it has to be held that Parliament has the requisite legislative competence to enact the Consumer Protection Act, 1986. (Para 35)

Articles 323-A and 323-B cannot be interpreted to mean that they prohibit the legislature from establishing tribunals not covered by these articles, as long as there is legislative competence under an appropriate entry in the Seventh Schedule. Articles 323-A and 323-B do not take away that legislative competence. Once it is held that Parliament had the legislative competence to enact the said Act, the contention that the relevant provisions of the Constitution required amendments has to be neglected. (Paras 36, 37 and 49)

Union of India v. *Delhi High Court Bar Assn.*, (2002) 4 SCC 275; *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577, *relied on*

Navinchandra Mafatlal v. *CIT*, AIR 1955 SC 58 : (1955) 1 SCR 829; *United Provinces* v. *Atiqa Begum*, 1940 FCR 110 : AIR 1941 FC 16; *Union of India* v. *Harbhajan Singh Dhillon*, (1971) 2 SCC 779 : (1972) 2 SCR 33; *D.K. Abdul Khader* v. *Union of India*, AIR 2001 Kant 176, *referred to*

The rights of the parties have adequately been safeguarded in the Act inasmuch as although it provides for an alternative system of consumer jurisdiction on summary trial, they are required to arrive at a conclusion based on reasons. Assignment of reasons excludes or at any rate minimizes the chances of arbitrariness and the higher forums created under the Act can test the correctness thereof. (Para 39)

Common Cause, A Registered Society v. *Union of India*, (1997) 10 SCC 729, *relied on*

The District Forum, the State Commission and the National Commission are not manned by lay persons. The President would be a person having judicial background and other members are required to have the expertise in the subjects such as economics, law, commerce, accountancy, industry, public affairs, administration etc. It may be true that by reason of Section 14(2-A), in a case of difference of opinion between two members, the matter has to be referred to a third member and, in rare cases, the majority opinion of the members may prevail over the President. But, such eventuality alone is insufficient for striking down the Act as unconstitutional, particularly, when provisions have been made therein for appeal thereagainst to a higher forum. (Para 40)

By reason of the provisions of the said Act, the power of judicial review of the High Court, which is a basic feature of the Constitution, has not been nor could be taken away. (Para 41)

Laxmi Engg. Works v. *P.S.G. Industrial Institute*, (1995) 3 SCC 583; *Charan Singh* v. *Healing Touch Hospital*, (2000) 7 SCC 668 : 2000 SCC (Cri) 1444; *Lucknow Development Authority* v. *M.K. Gupta*, (1994) 1 SCC 243; *Indian Medical Assn.* v. *V.P. Shantha*, (1995) 6 SCC 651; *J.J. Merchant (Dr)* v. *Shrinath Chaturvedi*, (2002) 6 SCC 635; *Synco Industries* v. *State Bank of Bikaner & Jaipur*, (2002) 2 SCC 1, *relied on*

From Section 3 of the Act, it is evident that remedies provided thereunder are not in derogation of those provided under other laws. The Act supplements and not supplants the jurisdiction of the civil courts or other statutory authorities. (Paras 46 and 16)

The Act provides for a further safeguard to the effect that in the event a complaint involves complicated issues requiring recording of evidence of experts, the complainant would be at liberty to approach the civil court for appropriate relief. (Para 47)

The provisions of the said Act are required to be interpreted as broadly as possible. The forums under the Act have jurisdiction to entertain a complaint despite the fact that other forums/courts would also have jurisdiction to adjudicate upon the lis. (Para 48)

Fair Air Engineers (P) Ltd. v. *N.K. Modi*, (1996) 6 SCC 385; *Satpal Mohindra* v. *Surindra Timber Stores*, (1999) 5 SCC 696, *relied on*

Therefore, the Act cannot be said to be unconstitutional. (Para 50)

Maybe there does not exist any provision for transfer of case from one forum to the other or there does not exist any provision to grant injunction. Absence of such provisions would not render the statute ultra vires the Constitution or unworkable. The provisions for appeal to appellate court by a party aggrieved by a decision of the forums/State Commissions as also the power of the High Court and the Supreme Court under Articles 226/227 and Article 32 apart from Section 23 of the Act provide for adequate safeguards. Furthermore, primarily the jurisdiction of the forums/Commissions is to grant damages. In the event, a complainant feels that he will have a better and effective remedy in a civil court as he may have to seek for an order of injunction, he indisputably may file a suit in an appropriate civil court or may take recourse to some other remedies as provided for in other statutes. (Paras 51 to 53)

The legal fiction created by Section 25 to the effect that an order made by District Forum/State Commission or National Commission will be deemed to be a decree or order made by a civil court in a suit has a specific purpose i.e. execution of the order passed by the Forum or Commission. Only in the event the Forum/State Commission or the National Commission is unable to execute its order, the same may be sent to the civil court for its execution. The High Court, therefore was not correct to hold that in each and every case the order passed by the District Forum/State Commission/National Commission is required to be sent to the civil courts for execution thereof. Furthermore, Section 27 of the Act also confers an additional power upon the Forum and the Commission to execute its order. The said provision is akin to Order 39 Rule 2-A CPC or the provisions of the Contempt of Courts Act or Section 51 read with Order 21 Rule 37 CPC. Section 25 should be read in conjunction with Section 27. A parliamentary statute indisputably can create a tribunal and might say that non-compliance with its order would be punishable by way of imprisonment or fine, which can be in addition to any other mode of recovery. The cardinal principle of interpretation of statute is that courts or tribunals must be held to possess power to execute their own order. Moreover, a statutory tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order. Further, the Act which is a self-contained code, even if it has not been specifically spelt out, must be deemed to have conferred upon the Tribunal all powers in order to make its order effective. (Paras 57 to 60)

Savitri v. *Govind Singh Rawat*, (1985) 4 SCC 337 : 1985 SCC (Cri) 556 : AIR 1986 SC 984; *Arabinda Das* v. *State of Assam*, AIR 1981 Gau 18 (FB), *relied on*

Earl Jowitt's Dictionary of English Law, 1959 Edn., p. 1797, *referred to*

The terminology used in Section 25 of the Act to the effect "in the event of its inability to execute it", is of great significance. Section 25, on a plain reading, goes to show that the provision contained therein presupposes that the Forum or the Commission would be entitled to execute its order. It, however, may send the matter for its execution to a court only in the event it is unable to do so. Such a contingency may arise only in a given situation but the same does not lead to the conclusion that the Consumer Court cannot execute its own order and by compulsion it has to send all its orders for execution to the civil courts. Such construction of Section 25 would violate the plain language used therein and, thus, must be held to be untenable. It is now a well-settled principle of interpretation of statute that plain language employed in a section must be given its ordinary meaning. (Paras 63 and 64)

H. **Consumer Protection Act, 1986 — Preamble — History of legislation of the Act restated — UNO Consumer Protection Resolution No. 39/248 dated 9-4-1985**

The Secretary General, United Nations submitted draft guidelines for consumer protection to the Economic and Social Council (UNESCO) in 1983. The General Assembly of the United Nations upon extensive discussions and negotiations among governments on the scope and content thereof adopted certain guidelines for consumer protection. The framework for the Consumer Act was provided by a resolution dated 9-4-1985 of the General Assembly of the UNO. This is known as "Consumer Protection Resolution No. 39/248". India is a signatory to the said Resolution. The Act was enacted having regard to the said Resolution. (Paras 6 to 8)

I. **Consumer Protection Act, 1986 — Preamble and Ss. 4 & 7 — Object of the Act as contained in Statement of Objects and Reasons, restated (Paras 9 and 10)**

H-M/CCTZ/27333/C

Advocates who appeared in this case :

P.P. Malhotra and H.W. Dhabe, Senior Advocates (Sanjay R. Hegde, Satya Mitra, N.D.R. Ramachandra Rao, R.S. Hegde, P.P. Singh, S.K. Kulkarni, Ms Sangeeta Kumar, Hemant Sharma, Ms Anil Katiyar, B.V. Balaram Das, Anil Kr. Jha, Ms Hemantika Wahi, S.S. Shinde, V.N. Raghupathy, Manoj Swarup, Sushil Kr. Jain, B.B. Singh and K.S. Bhati, Advocates, with them) for the appearing parties.

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

1. (2002) 6 SCC 635, *J.J. Merchant (Dr)* v. *Shrinath Chaturvedi* 429*e*
2. (2002) 4 SCC 275, *Union of India* v. *Delhi High Court Bar Assn.* 425*a-b*
3. (2002) 2 SCC 1, *Synco Industries* v. *State Bank of Bikaner & Jaipur* 429*e*
4. AIR 2001 Kant 176, *D.K. Abdul Khader* v. *Union of India* 426*c-d*
5. (2000) 7 SCC 668 : 2000 SCC (Cri) 1444, *Charan Singh* v. *Healing Touch Hospital* 428*a*
6. (1999) 5 SCC 696, *Satpal Mohindra* v. *Surindra Timber Stores* 429*g*
7. (1997) 10 SCC 729, *Common Cause, A Registered Society* v. *Union of India* 426*d-e*
8. (1997) 3 SCC 261 : 1997 SCC (L&S) 577, *L. Chandra Kumar* v. *Union of India* 430*a*
9. (1996) 6 SCC 385, *Fair Air Engineers (P) Ltd.* v. *N.K. Modi* 429*g*
10. (1995) 6 SCC 651, *Indian Medical Assn.* v. *V.P. Shantha* 429*b*
11. (1995) 3 SCC 583, *Laxmi Engg. Works* v. *P.S.G. Industrial Institute* 427*d*

12. (1994) 1 SCC 243, *Lucknow Development Authority* v. *M.K. Gupta* 428*f*
13. (1985) 4 SCC 337 : 1985 SCC (Cri) 556 : AIR 1986 SC 984, *Savitri* v. *Govind Singh Rawat* 431*f*
14. AIR 1981 Gau 18 (FB), *Arabinda Das* v. *State of Assam* 432*b*
15. (1979) 1 SCC 380, *Special Courts Bill, 1978, In re* 420*c*
16. (1971) 2 SCC 779 : (1972) 2 SCR 33, *Union of India* v. *Harbhajan Singh Dhillon* 425*e*, 425*f-g*
17. AIR 1955 SC 58 : (1955) 1 SCR 829, *Navinchandra Mafatlal* v. *CIT* 425*b-c*
18. 1940 FCR 110 : AIR 1941 FC 16, *United Provinces* v. *Atiqa Begum* 425*c*

The Judgment of the Court was delivered by

S.B. SINHA, J.— The primal question involved in this batch of appeals and the writ petitions is the constitutionality of the Consumer Protection Act, 1986 (hereinafter called "the Act").

2. Civil Appeals Nos. 4613 and 4614 of 1999 filed by the Vishwabharathi House Building Cooperative Society arise out of a judgment and order dated 18-12-1998 passed by a Division Bench of the High Court of Karnataka upholding the vires of the Consumer Protection Act, 1986 (the Act). The State of Karnataka has filed the appeal being CA No. 9927 of 1996 against the judgment and order of the Karnataka High Court questioning certain observations made therein as regards interpretation of Section 25 of the Act.

3. Dr R.D. Prabhu and Shri B. Krishna Bhat and others filed the writ petitions under Article 32 of the Constitution of India questioning the constitutionality of the said Act.

4. The contentions raised on behalf of appellants petitioners are as under:

(1)(*a*) Parliament is not empowered to establish hierarchy of courts like the District Fora, State Commission and the National Commission parallel to the hierarchy of courts established under the Constitution, namely, District Courts, High Courts and Supreme Court in the absence of a suitable amendment made in the Constitution of India in terms of Article 368 thereof.

(*b*) Such hierarchy of consumer courts established under the Act would result in conflict of decisions with the hierarchy of courts established under the Constitution dealing with similar matters.

(2) Parliament having regard to the provisions of Articles 323-A and 323-B of the Constitution of India could not enact the Act by establishing forums which are substitutes of the civil courts including the High Court.

(3) The provisions of the said Act strike at the independence of the judiciary.

(4) As the Act does not contain any provision to transfer a case from one consumer court to another and furthermore, the forum and the Commissions having no power to pass interim orders, the functioning thereof is unworkable.

(5) Parliament can only establish courts which may deal with special subjects specified therefor but not a court which will run parallel to civil courts.

5. Before adverting to the question as regard the competence of Parliament to enact the said Act, we may notice the history of legislation leading to enactment of the said Act.

6. The Secretary General, United Nations submitted draft guidelines for consumer protection to the Economic and Social Council (UNESCO) in 1983. The General Assembly of the United Nations upon extensive discussions and negotiations among governments on this scope and content thereof adopted the guidelines which inter alia provide for the following:

"Taking into account the interests and needs of consumers in all countries, particularly those in developing countries, recognizing that consumers often face imbalances in economic terms, educational level, and bargaining power, and bearing in mind that consumer should have the right of access to non-hazardous products, as well as the importance of promoting just, equitable and sustainable economic and social development, these guidelines for consumer protection have the following objectives:

(*a*) To assist countries in achieving or maintaining adequate protection for their population as consumers.

(*b*) To facilitate production and distribution patterns responsive to the needs and desires of consumers.

(*c*) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers.

(*d*) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers.

(*e*) To facilitate the development of independent consumer groups.

(*f*) To further international cooperation in the field of consumer protection.

(*g*) To encourage the development of market conditions which provide consumers with greater choice at lower prices."

7. The framework for the Consumer Act was provided by a resolution dated 9-4-1985 of the General Assembly of the United Nations Organisation. This is known as "Consumer Protection Resolution No. 39/248". India is a signatory to the said Resolution.

8. The said Act was enacted having regard to the aforementioned Resolution.

9. It seeks to provide for better protection of the interests of consumers and for the said purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer

disputes and for matters connected therewith, as would appear from the Statement of Objects and Reasons of the Act.

10. It further seeks inter alia to promote and protect the rights of consumers such as—

"(*a*) The right to be protected against marketing of goods which are hazardous to life and property;

(*b*) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(*c*) the right to be assured, wherever possible, access to variety of goods at competitive prices;

(*d*) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;

(*e*) the right to seek redressal against unfair trade practice or unscrupulous exploitation of consumers; and

(*f*) right to consumer education."

11. The legislative competence of Parliament and the State Legislatures respectively to provide for creation of courts and tribunals as envisaged in different lists contained in the Seventh Schedule of the Constitution of India are as under:

Item 77 of List I of the Seventh Schedule

"Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such court), and the fees taken therein; persons entitled to practise before the Supreme Court."

Item 78 of List I of the Seventh Schedule

"Constitution and organization (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts."

Item 79 of List I of the Seventh Schedule

"Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union Territory."

Item 95 of List I of the Seventh Schedule

"Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction."

Item 11-A of List III of the Seventh Schedule

"Administration of justice; constitution and organization of all courts, except the Supreme Court and High Courts."

Item 46 of List III of the Seventh Schedule

"Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List."

12. A bare perusal of the aforementioned provisions does not leave any manner of doubt as regard the legislative competence of Parliament to provide for creation of Special Courts and Tribunals. Administration of justice; constitution and organization of all courts, except the Supreme Court

and the High Courts is squarely covered by Entry 11-A of List III of the Constitution of India. The said entry was originally a part of Entry 3 of List II. By reason of the Constitution (Forty-second Amendment) Act, 1976 and by Section 57(*a*)(*vi*) thereof, it was inserted into List III as Item 11-A.

13. By virtue of clause (2) of Article 246 of the Constitution, Parliament has the requisite power to make laws with respect of constitution of organization of all courts except the Supreme Court and the High Court.

14. The learned counsel appearing on behalf of the petitioners could not seriously dispute the plenary power of Parliament to make a law as regard constitution of courts but as noticed supra, merely urged that it did not have the competence to create parallel civil courts.

15. The said submission has been made purported to be relying on or on the basis of the following observations made by Shinghal, J. while delivering a partially dissenting judgment in *Special Courts Bill, 1978, In re*[1]: (SCC at p. 455, para 152)

> "*152*. The Constitution has thus made ample and effective provision for the establishment of a strong, independent and impartial judicial administration in the country, with the necessary complement of civil and criminal courts. It is not permissible for Parliament or a State Legislature to ignore or bypass that scheme of the Constitution by providing for the establishment of a civil or criminal court parallel to a High Court in a State, or by way of an additional or extra or a second High Court, or a court other than a court subordinate to the High Court. Any such attempt would be unconstitutional and will strike at the independence of the judiciary which has so nobly been enshrined in the Constitution and so carefully nursed over the years."

16. The argument of the learned counsel is fallacious inasmuch as the provisions of the said Act are in addition to the provisions of any other law for the time being in force and not in derogation thereof as is evident from Section 3 thereof.

17. The provisions of the said Act clearly demonstrate that it was enacted keeping in view the long-felt necessity of protecting the common man from wrongs wherefor the ordinary law for all intent and purport had become illusory. In terms of the said Act, a consumer is entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of.

18. This Court in a large number of decisions considered the purport and object of the said Act. By reason of the said statute, quasi-judicial authorities have been created at the district, State and Central levels so as to enable a consumer to ventilate his grievances before a forum where justice can be done without any procedural wrangles and hypertechnicalities.

19. One of the objects of the said Act is to provide momentum to the consumer movement. The Central Consumer Protection Council is also to be

1 (1979) 1 SCC 380

constituted in terms of Section 4 of the Act to promote and protect the rights of the consumers as noticed hereinbefore.

20. Before proceeding further to advert to the questions raised herein, it is necessary to consider some of the provisions of the said Act.

21. Section 2 is the interpretation clause. Some of the provisions contained therein defining the meaning of words relevant for this case are as under:

"2. (1)(*b*) 'complainant' means—

(*i*) a consumer; or

(*ii*) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force; or

(*iii*) the Central Government or any State Government, who or which makes a complaint;

(*iv*) one or more consumers, where there are numerous consumers having the same interest;

(*c*) 'complaint' means any allegation in writing made by a complainant that—

(*i*) an unfair trade practice or a restrictive trade practice has been adopted by any trader;

(*ii*) the goods bought by him or agreed to be bought by him suffer from one or more defects;

(*iii*) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(*iv*) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods;

(*v*) goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods,

with a view to obtaining any relief provided by or under this Act;

(*d*) 'consumer' means any person who,—

(*i*) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(*ii*) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such

services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person;

Explanation.—For the purposes of sub-clause (*i*), 'commercial purpose' does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;

(*e*) 'consumer dispute' means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

* * *

(*g*) 'deficiency' means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

* * *

(*r*) 'unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely—

(1)-(2) * * *"

22. Section 7 of the said Act provides for constitution of the State Consumer Protection Councils to promote and protect within the State the rights of the consumers with the objects as quoted supra.

23. Section 9 provides for establishment of the Consumer Disputes Redressal Agencies. A Consumer Disputes Redressal Forum to be known as "District Forum" will be established by the State Government in each district. A Consumer Disputes Redressal Commission to be known as "the State Commission" will be established by the State Government in the State and a National Consumer Disputes Redressal Commission by the Central Government.

24. In terms of Section 10, the President of a District Forum shall be a person who is, or has been, or is qualified to be a District Judge and the Forum shall also consist of two other members who are required to be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration and one of them shall be a woman. The tenure of the members of the District Forum is fixed.

25. Section 13 of the said Act lays down a detailed procedure as regards the mode and manner in which the complaints received by the District Forum are required to be dealt with. Section 14 provides for the directions which can be issued by the District Forum on arriving at a satisfaction that the goods complained against suffer from any of the defects specified in the complaint

or that any of the allegations contained in the complaint about the deficiencies in services have been proved.

26. Section 15 provides for an appeal from the order made by the District Forum to the State Commission.

27. Section 16 provides for composition of the State Commission which reads thus:

> "*16.* (1) Each State Commission shall consist of,—
>
> (*a*) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:
>
> Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;
>
> (*b*) two other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman:
>
> Provided that every appointment under this clause shall be made by the State Government on the recommendation of a Selection Committee consisting of the following, namely:

(*i*)	President of the State Commission	Chairman
(*ii*)	Secretary of the Law Department of the State	Member
(*iii*)	Secretary in charge of the Department dealing with consumer affairs in the State	Member

> (2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the State Commission shall be such as may be prescribed by the State Government.
>
> (3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier and shall not be eligible for reappointment.
>
> (4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term."

The members of the State Commission are to be selected by a Selection Committee, the Chairman whereof would be the President of the State Commission.

28. Section 19 provides for an appeal from a decision of the State Commission to the National Commission. Section 20 deals with the composition of the National Commission, the President whereof would be a person who is or has been a Judge of the Supreme Court and such appointment shall be made only upon consultation with the Chief Justice of India. So far as the members of the National Commission are concerned, the same are also to be made on the recommendation of the Selection Committee, the Chairman whereof would be a person who is a Judge of the

Supreme Court to be nominated by the Chief Justice of India. The tenure of the office of the National Commission is also fixed by reason of sub-section (3) of Section 20.

29. By reason of the provisions of the said Act, therefore, independent authorities have been created.

30. Sections 15, 19 and 23 provide for the hierarchy of appeals. By reason of sub-sections (4), (5) and (6) of Section 13, the District Forum shall have the same powers as are vested in the civil courts for the purposes mentioned therein. Sub-sections (2) and (2-A) of Section 14 mandate that the proceedings shall be conducted by the President of the District Forum and at least one member thereof sitting together. Only in the event of any difference between them on any point or points, the same is to be referred to the other member for hearing thereon and the opinion of the majority shall be the order of the District Forum. By reason of Section 18, the provisions of Sections 12, 13 and 14 and the rules made thereunder would mutatis mutandis be applicable to the disposal of disputes by the State Commission.

31. Section 23 provides for a limited appeal to the Supreme Court from an order made by the National Commission i.e. when the same is made in exercise of its original power as conferred by sub-clause (*i*) of clause (*a*) of Section 21.

32. Section 25 provides for the enforcement of the orders by the District Forum, State Commission or the National Commission which is in the following terms:

> "25. *Enforcement of orders by the Forum, the State Commission or the National Commission.*—Every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or the National Commission, as the case may be, in the same manner as if it were a decree or order made by a court in a suit pending therein and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the court within the local limits of whose jurisdiction,—
>
> * * *
>
> and thereupon, the court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution."

33. Section 26 empowers the District Forum, the State Commission or as the case may be, the National Commission to dismiss the complaint and make an order that the complaint shall pay to the opposite party such costs not exceeding Rs 10,000 in the event it is found that the complaint was frivolous or vexatious one.

34. Section 27 provides for penalties.

35. In view of the constitutional scheme relating to legislative competence of the Parliament and State Legislature, there cannot be any doubt or dispute that the Parliament has the requisite legislative competence to enact the said Act.

36. The question as regard legislative competence of the Parliament to create such Special Tribunals as also the effect of Articles 323-A and 323-B of the Constitution is no longer res integra having regard to the recent decision of this Court in *Union of India* v. *Delhi High Court Bar Assn.*[2] wherein it was held: (SCC pp. 284-85, paras 9-13)

"*9*. We will first deal with the question as to whether Parliament has the competence to enact a law for establishing such Banking Tribunals. In order to examine the question of the competence of Parliament to enact such a law, it is pertinent to bear in mind the observations of this Court in *Navinchandra Mafatlal* v. *CIT*[3], SCR at p. 836 which are as follows:

'As pointed out by Gwyer, C.J. in *United Provinces* v. *Atiqa Begum*[4], FCR at p. 134 none of the items in the lists is to be read in a narrow or restricted sense and that *each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.* It is, therefore, clear — and it is acknowledged by Chief Justice Chagla — that *in construing an entry in a list conferring legislative powers the widest-possible construction according to their ordinary meaning must be put upon the words used therein.* ... The cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude.' (emphasis supplied)

10. Again in *Union of India* v. *Harbhajan Singh Dhillon*[5], SCR at p. 51 it was observed as follows: (SCC pp. 791-92, para 21)

'*21*. It seems to us that the function of Article 246(1), read with Entries 1-96 List I, is to give positive power to Parliament to legislate in respect of these entries. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so.'

11. In *Dhillon decision*[5] it was held that what one has to ask is whether the matter sought to be legislated is included in List II or in List III and no question has to be asked about List I. If the answer is in the negative, then it follows that Parliament has power to make laws with respect to that matter or text.

12. It has thus been clearly enunciated that the power of Parliament to enact a law, which is not covered by an entry in List II and List III, is absolute. While Articles 323-A and 323-B specifically enable the

2 (2002) 4 SCC 275
3 AIR 1955 SC 58 : (1955) 1 SCR 829
4 1940 FCR 110 : AIR 1941 FC 16
5 (1971) 2 SCC 779 : (1972) 2 SCR 33

legislatures to enact laws for the establishment of tribunals, in relation to the matters specified therein, the power of Parliament to enact a law constituting a Tribunal, like the Banking Tribunal, which is not covered by any of the matters specified in Article 323-A or 323-B, is not taken away. With regard to any of the entries specified in List I, the exclusive jurisdiction to make laws with respect to any of the matters enumerated in List I is with Parliament. The power conferred by Article 246(1) can be exercised notwithstanding the existence of Article 323-A or 323-B of the Constitution.

13. Articles 323-A and 323-B are enabling provisions which specifically enable the setting up of tribunals contemplated by the said articles. These articles, however, cannot be interpreted to mean that they prohibit the legislature from establishing tribunals not covered by these articles, as long as there is legislative competence under an appropriate entry in the Seventh Schedule. Articles 323-A and 323-B do not take away that legislative competence. The contrary view expressed by the Karnataka High Court in *D.K. Abdul Khader case*[6] does not lay down the correct law and we expressly disapprove of the same."

37. Once it is held that Parliament had the legislative competence to enact the said Act, the submissions of the learned counsel that the relevant provisions of the Constitution required amendments must be neglected.

38. The scope and object of the said legislation came up for consideration before this Court in *Common Cause, A Registered Society* v. *Union of India*[7]. It was held: (SCC p. 730, para 2)

"*2*. The object of the legislation, as the preamble of the Act proclaims, is 'for better protection of the interests of consumers'. During the last few years preceding the enactment there was in this country a marked awareness among the consumers of goods that they were not getting their money's worth and were being exploited by both traders and manufacturers of consumer goods. The need for consumer redressal fora was, therefore, increasingly felt. Understandably, therefore, legislation was introduced and enacted with considerable enthusiasm and fanfare as a path-breaking benevolent legislation intended to protect the consumer from exploitation by unscrupulous manufacturers and traders of consumer goods. A three-tier fora comprising the District Forum, the State Commission and the National Commission came to be envisaged under the Act for redressal of grievances of consumers."

39. The rights of the parties have adequately been safeguarded by reason of the provisions of the said Act inasmuch as although it provides for an alternative system of consumer jurisdiction on summary trial, they are required to arrive at a conclusion based on reasons. Even when quantifying damages, they are required to make an attempt to serve the ends of justice aiming not only at recompensing the individual but also to bring about a

6 *D.K. Abdul Khader* v. *Union of India*, AIR 2001 Kant 176
7 (1997) 10 SCC 729

qualitative change in the attitude of the service provider. Assignment of reasons excludes or at any rate minimizes the chances of arbitrariness and the higher forums created under the Act can test the correctness thereof.

40. The District Forum, the State Commission and the National Commission are not manned by lay persons. The President would be a person having judicial background and other members are required to have the expertise in the subjects such as economics, law, commerce, accountancy, industry, public affairs, administration etc. It may be true that by reason of sub-section (2-A) of Section 14 of the Act, in a case of difference of opinion between two members, the matter has to be referred to a third member and, in rare cases, the majority opinion of the members may prevail over the President. But, such eventuality alone is insufficient for striking down the Act as unconstitutional, particularly, when provisions have been made therein for appeal thereagainst to a higher forum.

41. By reason of the provisions of the said Act, the power of judicial review of the High Court, which is a basic feature of the Constitution, has not been nor could be taken away.

42. We may in this connection also notice that in *Laxmi Engg. Works* v. *P.S.G. Industrial Institute*[8] this Court held: (SCC p. 591, para 10)

> "*10*. A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these Forums/ Commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers *and* suppliers of goods and services. The forum so created is uninhibited by the requirement of court fee or the formal procedures of a court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the complainant himself; any recognized consumers' association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Governments can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for 'business-to-consumer' disputes and not for 'business-to-business' disputes. This scheme of the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal."

8 (1995) 3 SCC 583

43. In *Charan Singh* v. *Healing Touch Hospital*[9] this Court observed: (SCC p. 673, paras 11-12)

"*11*. The Consumer Protection Act is one of the benevolent pieces of legislation intended to protect a large body of consumers from exploitation. The Act provides for an alternative system of consumer justice by summary trial. The authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is one of the postulates of such a body that it should arrive at a conclusion based on reason. The necessity to provide reasons, howsoever, brief in support of its conclusion by such a forum, is too obvious to be reiterated and needs no emphasizing. Obligation to give reasons not only introduces clarity but it also excludes, or at any rate minimizes, the chances of arbitrariness and the higher forum can test the correctness of those reasons. Unfortunately we have not been able to find from the impugned order any reasons in support of the conclusion that the claim of the appellant is 'unrealistic' or 'exaggerated' or 'excessive'. Loss of salary is not the sole factor which was required to be taken into consideration.

12. While quantifying damages, Consumer Forums are required to make an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider. Indeed, calculation of damages depends on the facts and circumstances of each case. No hard-and-fast rule can be laid down for universal application. While awarding compensation, a Consumer Forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant is able to establish his charge."

44. In *Lucknow Development Authority* v. *M.K. Gupta*[10] this Court held: (SCC p. 251, para 2)

"The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked."

9 (2000) 7 SCC 668 : 2000 SCC (Cri) 1444
10 (1994) 1 SCC 243

It has further been held: (SCC pp. 254 & 252, para 3)

> The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services. ... It is a milestone in history of socio-economic legislation and is directed towards achieving public benefit.

45. Yet again in *Indian Medical Assn.* v. *V.P. Shantha*[11] this Court held: (SCC p. 670, para 33)

> "It is no doubt true that the decisions of the District Forum as well as the State Commission and the National Commission have to be taken by majority and it may be possible in some cases that the President may be in minority. But the presence of a person well versed in law as the President will have a bearing on the deliberations of these agencies and their decisions. As regards the absence of a requirement about a member having adequate knowledge or experience in dealing with the problems relating to medicine it may be stated that the persons to be chosen as members are required to have knowledge and experience in dealing with problems relating to various fields connected with the object and purpose of the Act viz. protection and interests of the consumers. The said knowledge and experience would enable them to handle the consumer disputes coming up before them for settlement in consonance with the requirement of the Act. To say that the members must have adequate knowledge or experience in the field to which the goods or services, in respect of which the complaint is made, are related would lead to impossible situations."

See also *J.J. Merchant (Dr)* v. *Shrinath Chaturvedi*[12] and *Synco Industries* v. *State Bank of Bikaner and Jaipur*[13].

46. By reason of the provisions of Section 3 of the Act, it is evident that remedies provided thereunder are not in derogation of those provided under other laws. The said Act supplements and not supplants the jurisdiction of the civil courts or other statutory authorities.

47. The said Act provides for a further safeguard to the effect that in the event a complaint involves complicated issues requiring recording of evidence of experts, the complainant would be at liberty to approach the civil court for appropriate relief. The right of the consumer to approach the civil court for necessary relief has, therefore, been provided under the Act itself.

48. The provisions of the said Act are required to be interpreted as broadly as possible. It has jurisdiction to entertain a complaint despite the fact that other forums/courts would also have jurisdiction to adjudicate upon the lis. [See *Fair Air Engineers (P) Ltd.* v. *N.K. Modi*[14] and *Satpal Mohindra* v. *Surindra Timber Stores*[15].]

11 (1995) 6 SCC 651
12 (2002) 6 SCC 635 : JT (2002) 6 SC 1
13 (2002) 2 SCC 1
14 (1996) 6 SCC 385
15 (1999) 5 SCC 696

49. The question as regards the applicability or otherwise of Articles 323-A and 323-B of the Constitution in the matter of constitution of such Tribunals came up for consideration before this Court in *L. Chandra Kumar* v. *Union of India*[16]. This Court therein clearly held that the constitutional provisions vest Parliament and the State Legislatures, as the case may be, with powers to divest the traditional courts of a considerable portion of their judicial work. It was observed that the Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and High Court apart from the authorisation that flows from Articles 323-A and 323-B in terms of Entries 77, 78, 79 and 95 of List I so far as the Parliament is concerned, and in terms of Entry 65 of List II and Entry 46 of List III so far as the State Legislatures are concerned. It was further held that power of judicial review being the basic structure of the Constitution cannot be taken away.

50. We, therefore, are clearly of the opinion that the said Act cannot be said to be unconstitutional.

51. It may be true that there does not exist any provision for transfer of case from one forum to the other or there does not exist any provision to grant injunction. Absence of such provisions in our opinion would not render the statute ultra vires the Constitution or unworkable.

52. The very fact that in a given case a party under the said Act may approach up to this Court and/or may otherwise take recourse to the remedy of judicial review, the interests of the parties must be held to have been sufficiently safeguarded.

53. The provisions relating to power to approach appellate court by a party aggrieved by a decision of the forums/State Commissions as also the power of the High Court and this Court under Articles 226/227 of the Constitution of India and Article 32 of this Court apart from Section 23 of the Act provide for adequate safeguards. Furthermore, primarily the jurisdiction of the forums/Commissions is to grant damages. In the event, a complainant feels that he will have a better and effective remedy in a civil court as he may have to seek for an order of injunction, he indisputably may file a suit in an appropriate civil court or may take recourse to some other remedies as provided for in other statutes.

54. We, therefore, agree with the judgment of the Karnataka High Court.

55. However, we are not in a position to agree with the observations of the High Court as regard the interpretation of Section 25 of the Act.

56. The High Court interpreting the said provision has made the following observations, which is impugned herein in Civil Appeal No. 9927 of 1996:

> "On reading Section 25 of the Act, in our view, it does not empower the District Forum to pass such an order. If at all the Forum wants to enforce the order, it has to send the order to the court concerned which has jurisdiction over the area, which is not done here. So, without

16 (1997) 3 SCC 261 : 1997 SCC (L&S) 577

entering into the other points raised in this, in our view, it suffices to set aside the impugned order as Annexure 'D' accordingly."

57. A bare perusal of Section 25 of the Act clearly shows that thereby a legal fiction has been created to the effect that an order made by District Forum/State Commission or National Commission will be deemed to be a decree or order made by a civil court in a suit. Legal fiction so created has a specific purpose i.e. for the purpose of execution of the order passed by the Forum or Commission. Only in the event the Forum/State Commission or the National Commission is unable to execute its order, the same may be sent to the civil court for its execution. The High Court, therefore was not correct to hold that in each and every case the order passed by the District Forum/State Commission/National Commission are required to be sent to the civil courts for execution thereof.

58. Furthermore, Section 27 of the Act also confers an additional power upon the Forum and the Commission to execute its order. The said provision is akin to Order 39 Rule 2-A of the Code of Civil Procedure or the provisions of the Contempt of Courts Act or Section 51 read with Order 21 Rule 37 of the Code of Civil Procedure. Section 25 should be read in conjunction with Section 27. A parliamentary statute indisputably can create a tribunal and might say that non-compliance with its order would be punishable by way of imprisonment or fine, which can be in addition to any other mode of recovery.

59. It is well settled that the cardinal principle of interpretation of statute is that courts or tribunals must be held to possess power to execute their own order.

60. It is also well settled that a statutory tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order. Further, the Act which is a self-contained code, even if it has not been specifically spelt out, must be deemed to have conferred upon the Tribunal all powers in order to make its order effective.

61. In *Savitri* v. *Govind Singh Rawat*[17] it has been held as follows: (SCC pp. 341-42, para 6)

> "Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim *'ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest'* (where anything is conceded, there is conceded also anything without which the thing itself cannot exist). (Vide *Earl Jowitt's Dictionary of English Law*, 1959 Edn., p. 1797.) Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation

17 (1985) 4 SCC 337 : 1985 SCC (Cri) 556 : AIR 1986 SC 984

under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties."

62. In *Arabinda Das* v. *State of Assam*[18] it has been held as follows: (AIR p. 31, para 22)

"We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt in the statute. Where the rule-making authority gives power to certain authority to do anything of public character, such authority should get the power to take intermediate steps in order to give effect to the exercise of the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule-making authority.

In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers power on the authority in its exercise of such power."

63. The terminology used in Section 25 of the Act to the effect "in the event of its inability to execute it", is of great significance. Section 25, on a plain reading, goes to show that the provision contained therein presuppose that the Forum or the Commission would be entitled to execute its order. It, however, may send the matter for its execution to a court only in the event it is unable to do so. Such a contingency may arise only in a given situation but in our considered opinion the same does not lead to the conclusion that the Consumer Courts cannot execute its own order and by compulsion it has to send all its orders for execution to the civil courts. Such construction of Section 25 in our opinion would violate the plain language used therein and, thus, must be held to be untenable.

64. It is now well-settled principle of interpretation of statute that plain language employed in a section must be given its ordinary meaning.

65. For the reasons aforesaid in Writ Petition No. 417 of 1996, Writ Petition No. 12 of 2002, Civil Appeal No. 4613 and Civil Appeal No. 4614 of 1999 are dismissed and Civil Appeal No. 9927 of 1996 is allowed. In the facts and circumstances of this case, however, there shall be no order as to costs.

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18 AIR 1981 Gau 18 (FB)

2020 SCC OnLine SC 572

In the Supreme Court of India

(BEFORE R.F. NARIMAN, S. RAVINDRA BHAT AND V. RAMASUBRAMANIAN, JJ.)

Civil Appeal No. 6932 of 2015

Director General (Road Development) National Highways Authority of India ... Appellant(s);

Versus

Aam Aadmi Lokmanch and Others ... Respondents.

With

C.A. No. 5971 of 2019

C.A. No. 4379 of 2018

C.A. No. 2741 of 2020

(Arising out of Diary No. 19018 of 2018)

C.A. No. 6862 of 2018

C.A. No. 2742 of 2020

(Arising out of SLP (C) No. 28178 of 2018)

C.A. No. 11803 of 2018

C.A. No. 2743 of 2020

(Arising out of SLP (C) No. 1706 of 2019)

C.A. No. 2744 of 2020

(Arising out of Diary No. 1632 of 2019)

Civil Appeal No. 6932 of 2015, C.A. No. 5971 of 2019, C.A. No. 4379 of 2018, C.A. No. 2741 of 2020 (Arising out of Diary No. 19018 of 2018), C.A. No. 6862 of 2018, C.A. No. 2742 of 2020 (Arising out of SLP (C) No. 28178 of 2018), C.A. No. 11803 of 2018, C.A. No. 2743 of 2020 (Arising out of SLP (C) No. 1706 of 2019) and C.A. No. 2744 of 2020 (Arising out of Diary No. 1632 of 2019)

Decided on July 14, 2020

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.:— Leave granted in SLP (C) Nos. 28178/2018, 1706/2019, Diary No. 19018 of 2018 and 1632 of 2019. With consent of counsel for the parties, they were tagged with the companion civil appeals and heard finally.

2. On 06 June, 2013, when Ms. Vishakha Wadekar, was driving her car with her young daughter, Sanskruti Wadekar she had no inkling that danger lurked round the corner of the highway; over-mining at the height of 75 x 30 ft, in Gut No. 112, resulted in the destruction of a small hill by the side of the national highway. The resultant debris and a part of the hill collapsed and slid down to the road, claiming the lives of Ms. Vishakha and her daughter. The directions made by the Pune bench of the National Green Tribunal, on an application by a registered organization, (the respondent in the appeal, the Aam Aadmi Lokmanch, hereafter “Lokmanch”) are the subject matter of the appeals (CA 6932/2015 by NHAI; CA 5971/2019; CA 11803/2018 and CA 6862/2018) before this court. The other appeals by special leave question the judgments and orders of the Bombay High Court, which upheld the regulations framed pursuant to the order of the NGT. The High Court negatived the challenge to those regulations in the writ petitions presented before it.

3. The facts in brief are that the National Highways Authority of India (hereafter “NHAI”) had entered into an agreement with M/s P.S. Toll Road (Pvt.) Ltd., a unit/undertaking of Reliance Infrastructure Ltd. (which is arrayed as the ninth respondent; PS Toll Road (Pvt.) Ltd. hereafter referred to as “the concessionaire”) on 10.03.2010 for the maintenance and operation of the Pune-Satara section of National Highway No. 4, to an extent of 140 kms. The scope of the agreement included construction of the project (i.e. the highway stretch)

as well as its operation and maintenance for a period of 24 years. The agreement included stipulations mandating safety to the highway users (clause 18.1.1). The NHAI was duty bound to appoint experienced safety consultants for carrying out safety audits of Project Highways (clause 18.1.2), the expenditure for which was to be borne by the concessionaire (clause 18.1.3). An elaborate highway monitoring mechanism was also contemplated by the agreement (clause 19.1) through which by the seventh of each month, an independent engineer was to furnish a report after due inspection (of the operation and maintenance arrangements), containing defects or deficiencies (clauses 19.2). Additionally, the independent engineer was to require the concessionaire to carry out specified tests for confirming that the highway was operated in accordance with applicable standards (clause 19.3). Other stipulations included, *inter alia*, requirements that the concessionaire had to carry out remedial measures (Clause 19.4.1) within a period of 15 days after receipt of the report of the independent engineer. The concessionaire was put to terms in that if relevant repairs or remedial measures were not undertaken, the NHAI could recover damages in terms of Clause 17.8.[1] Another obligation cast on the concessionaire was to send a periodic report of various occurrences, including "*unusual occurrences on the Project Highway*" such as death or injury to any person (clause 19.6), any obstruction, or "*flooding of Project Highway".*

4. In the meanwhile, the fifth respondent (who has filed CA 5971/2019 against the NGT's order, hereafter referred to as "Rathod") on 03.01.2011 applied to the Government of Maharashtra for a license to extract minor minerals. This license was sought in respect of land bearing survey number 112A to look more to an extent of 5 acres and 93 cents. The license was granted by the appropriate authority of the government. By clause 1 of the terms of this license, the period of the license was two months; clause 5 stated that for extraction and minor minerals digging, work could not exceed more than 20 feet down side of the land surface.

5. Apparently soon after the license was taken over, certain demands were made regarding construction of a connecting road to the village. The materials on record by way of letters written to the local panchayat are to the effect that as a result of construction of the highway and due to the passage of time the existing road had been washed away. Consequently, the 2 km stretch from the left side of the new tunnel going up to the village was virtually non-existent. The panchayat requested that the road should be strengthened and widened.

6. On 31.01.2011, the local authorities of the State government issued a show cause notice to Rathod alleging that debris were stored illegally on the site. It was alleged that this was contrary to Section 48 of the Maharashtra Land Revenue Code, 1966 (hereafter "land revenue code"). Again, on 16.06.2011, the local panchayat issued a notice (which is on the record) stating that as a result of mineral extraction, the natural flow of rainwater was being obstructed. The notice also added that two heavy machines in non-performing condition were lying idle on the land and two JCB machines were also stationed there. Rathore evidently received these notices; this is attested by his replies to the Tehsildar and other local authorities. After obtaining a report from the local officials, the Tehsildar, Bhor issued an order directing payment of Rs. 1,271,200 by Rathod for violation of the land revenue code on account of illegal extraction and use of minor minerals.

7. This activity of excavation and piling of debris, did not go unnoticed on the part of NHAI; it wrote to the Collector of Pune, pointing out that:

> *"…large scale and indiscriminate excavation in the upper side hills of New Katraj Tunnel at both ends is in progress. Due to this excavation, drainage system above and near tunnel has been affected. This may lead to seepage of water inside tunnel roof thereby collapse of walls and ceiling of tunnel resulting in collapse of tunnel and may lead to major mishap. The collapse in tunnel will block the entire traffic of NH4 from Mumbai/Pune to Bangalore and vice versa leading to chaotic situation."*

8. The letter also mentioned specifically that Rathod had been notified; it sought action from the state government.

9. In the early hours of the morning of 6th June, 2013, due to the monsoon, there was

heavy rainfall at Mauje Shindewadi Tehsil, Bhor and the surrounding areas. Water flowing through the hills at Mauje Shindewadi entered the road near the octroi post of the Pune Municipal Corporation, at Mauje Shindewadi Tehsil Bhor, District Pune, on NH-4, with great force. This created an obstacle in the form of a large sheet of water. Under these conditions, when the Alto car driven by Vishakha Wadekar and her daughter Sanskruti, was obstructed, they alighted to wade across to safety; however, the water gushed with great intensity and swept them away, resulting in their death. The resulting magisterial inquiry under Section 176, Code of Criminal Procedure resulted in a report dated 04.10.2013. The Sub-Divisional Magistrate who inquired into the incident appointed an expert, whose report was considered; he also visited the site and held several hearings. During the hearings, pursuant to notices issued to various parties, the statements of Rathod, the local police authorities, eyewitnesses (Abhay Arvind Ranade, Vineet Vasant George and relatives of the deceased), the Project Director (General Manager) of NHAI, the team leader of the independent engineering firm associated with checking quality of maintenance of the highway, etc. were recorded.

10. Soon after the incident, the Lokmanch, through its president, filed an application under Section 14(1) read with Sections 16 and 18 of the National Green Tribunal Act, 2010 (hereafter "the NGT Act"), seeking mandatory injunction to restore natural contours at the foot base of the hill that had been destroyed by Rathod. Besides, general relief by way of directions to other respondents to take necessary action for the protection of hills from destruction and for maintaining foot base design of the hills in the natural survey was sought.

11. The material produced before the NGT by the State of Maharashtra in the form of an affidavit revealed that large scale destruction of hills by individuals and concerns who had been given short term mining licenses, had occurred. According to the affidavit, there were 62 cases, and in many cases "hill-cutting" was resorted to by developers. The state had apparently imposed fines and penalties for these illegal activities.

12. The NGT, in its impugned order, commenting on the role of Rathod, held as follows, while justifying the imposition of liability upon that respondent:

> *"It appears from the record that land Survey No. 112, is owned by the Respondent Nos. 5 and 6 and their family members. There are hills in the said land. They illegally cut hills without permission and extract minor mineral, which reduced height of hill, circumference of the hill and or peripheral nature, surface of the hill in question. Acts of the Respondent Nos. 5 and 6 made the area of hill fragile, susceptible to danger to the ecology and support of natural soil. In such a case, mere recovery of additional royalty would not be a proper remedial measure. At many places, the hill cutting is noticed prior to and after the pathetic incident and now inquiry is undertaken by the concerned revenue officials."*

13. Thereafter, the NGT based on its reasoning that the regulation of some activities, especially involving anything affecting hills has to be strictly regulated, directed as follows:

> *"12. The question may arise as to what is the meaning of expression 'Hill'. General perception is that it would depend upon ocular assessment of the area, which is rounded land that is higher than the land surrounded by it, but is not expected to be as high as mountain. In other words, it is usually rounded natural elevation of land, lower than a mountain. There is no particular definition of the word 'Hill'. The Oxford Dictionary gives meaning of word 'Hill' as follows:*
>
> > *Hill - noun a naturally raised area of land, not as high or craggy as a mountain, a sloping stretch of road: they were climbing a steep hill in low gear, a heap or mound of something, a hill of sliding shingle.*
> >
> > *The wordbook has given meaning of expression 'Hill' as follows:*
> >
> > *231 "Hill is an elevation of the earth's surface that has a distinct summit. It has much less surface area than a mountain and is lower in elevation. Hills rise less than 305 metres above the surrounding area, whereas mountains always exceed that height. However, a hill is not simply Small Mountain. It is formed in a considerably different way.*

Hills may be classified according to the way they were formed and the kinds of materials they are made of. There are two types, constructional and destructional. Constructional hills are created by a built-up of rock debris or sand deposited by glaciers and wind. Oval-shaped landforms called drumlins and sand dunes are samples of this type. Destructional hills are shaped by the deep erosion of areas that were raised by disturbances in the earth's crust. Such hills may consist of limestone overlying layers of more easily eroded rock."

13. Draft Development Control Regulation Plan (DCR) of Pune is yet not approved by the PMC or Government. The cutting of hill by the Respondent Nos. 5 and 6, created destruction to render a part of land useless, including development thereof for plantation of trees. It goes without saying that the destruction of hill could not have occurred without connivance or at least purposeful act or omission by the Project Proponent i.e. NHAI (Respondent No. 9). It is in the affidavit of Mr. Rajeskumar Kundal, that agreement requires to take necessary steps for stoppage of illegal construction activity at Katraj hill top. However, a Notice dated 25th April, 2011, was issued to the Respondent No. 5 and copy of the same was marked to the Tehsildar, Bhor before occurrence of the incident. The Collector, Pune was requested to look into the matter. The authorities were thus, asked to take appropriate steps for stoppage of illegal activity in order to avoid major mishap and to ensure not to occur. They stated that one Mrs. Vishakha Vadekar, and her daughter died due to water flow, which gushed from the hill top and poured on the road.

14. We do not find any significant material to show that the Respondent No. 9 (NHAI) has taken reasonable steps to avoid the untoward incident. We do not find copies of the complaint made by NHAI to the authority. Assuming for a moment that such communications were made at the fag end of April, 2011, yet, it was responsibility of NHAI to persuade said authority or the higher authority about inaction after 2011. The incident of raining in which Mrs. Vishakha Vadekar and her daughter had flown away, is said to have occurred on 10th July, 2013. Obviously, the Respondent No. 9, appears to have kept silence for about two (2) years, inspite of knowledge that the work of hill cutting was going on. In our opinion, NHAI (Respondent No. 9) perhaps was likely to be impliedly benefited due to the illegal act of hill cutting due to availability of murum, stones and soil for the work for its project. The contractor of NHAI was, therefore, interested in keeping the fingers crossed.

15. Considering probability and circumstances appearing on record, we have no hesitation in holding that there took place degradation of environment to large extent due to hill cutting at Katraj. We have further no hesitation in holding that the hill cutting occurred due to illegal acts of the Respondent Nos. 5, 6 and with or due to act of omission of the Respondent No. 9. They are liable to pay compensation to the legal representatives of the victims of incident in question. They are also liable to pay restitution charges and penalty for causing damage to the environment, in order to avoid such incident in future.

16. We deem it proper to give certain further directions to the concerned authority. In keeping with these findings, we direct:

17. a) The Respondent Nos. 5, 6 and 9 shall pay amount of Rs. 50 Lakhs as joint penalty imposed on them for causing environmental damage in the nearby area of Katraj, due to the hill-cutting.

b) This amount shall be deposited with Collector (Pune) within six (6) weeks, else Collector can recover the amount as arrears of Land Revenue. This amount shall be deposited by Collector in special escrow account, and the amount be spent for environmental protection and conservation activities, including hill protection and conservation in the district.

c) The Respondent Nos. 5, 6 and 9 shall jointly and severally pay amount of Rs. 15 Lakhs towards compensation to the legal representatives of deceased Mrs. Vishakha Vadekar, and her daughter if identity of legal representatives is proved before the Collector. The above three (3) Respondents shall immediately within four (4) weeks, deposit such amount in the office of Collector, Pune for payment to the legal

representatives of deceased in the incident. The Collector may issue a publication for locating legal representatives of above deceased women for payment of compensation and pay to them compensation after satisfaction of identity of the legal representatives by making due proportion as provided under the relevant provisions of the Succession Act.

d) The Respondent Nos. 5, 6 and 9 shall also deposit amount of Rs. 10 Lakhs with the office of Collector for plantation of trees in order to restore damage caused to environment, though it may not be a sufficient remedy.

e) The Respondent Nos. 1, 2, 3, 4, 7 and 8 shall give instructions to the concerned revenue officials working within all districts to have regular vigil within their areas to verify whether fringes or nearby any hill or hill-top construction is/are noticed and if found to be so, due inquiry may be made as to whether it is authorized or unauthorized. So also, instructions may be issued to the Municipal authorities to ensure that no construction permission shall be given to any construction/development work, which is being proposed and is located at a distance may be of 100 ft. away from lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops, except for Bamboo cottages.

f) In case of emergency or public purpose, the Hill cutting may be done by the concerned office of the Collector/Commissioner by passing a reasoned order or if so required by Law as provided under the Environment (Protection) Act, 1986 and the Regulations thereunder."

14. Rathod, the NHAI and three other appellants (Patel India Pvt. Ltd., Fern Constructions (India) Ltd. and D.B. Realty Ltd.) have preferred appeals against the impugned order of the NGT; their grievance is from the general directions issued in the impugned order, implicating buildings near hills.

15. In the second set of matters, i.e. the appeals by special leave, the facts are that acting on the directions of the NGT, the State of Maharashtra invoked its powers under Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") and directed, by a notification/circular dated 14.11.2017 that development (relating to construction) was impermissible in an area abutting hills up to 100 feet.

16. By the impugned common judgment, the High Court held that there was no denial that the power to issue such directions or circulars existed by way of the amended Section 154 and that such power was essential. The court further held that no individual or entity could claim any absolute right and contend that he could develop or construct anywhere and that the directions contained in the notification supplemented bye-laws and building codes already in place in Mumbai and Pune. It was also observed that:

"In Regulation 2 we have the definitions and as far as Part II is concerned, that is general planning and building requirements. Regulation 11.1 says that no piece of land shall be used as site for construction of building if the site is hilly and having gradient more than 1:5. Thus, these stipulations are already in place. What the National Green Tribunal brought to the notice of the authorities is indiscriminable cutting of hills in the Katraj Ghat. This unauthorized construction by breaking of hills resulted in an accident. That is why the NGT directed that on hill tops and hill slopes and the portion at the foot of the hill and surrounding 100 feet, no construction activity should be permitted and no development permission be issued and such directions be issued to the Municipal Corporations and Municipal Councils. Bearing in mind that there are in place legal provisions restricting the development activity on hill top and hill slope zones, all that the NGT and this Government Resolution directs is that in cases where there has already been a permitted development activity within 100 feet of the hill, then, no permission for additional construction be granted nor any development be permitted by sanctioning additional Floor Space Index (FSI) or Transferable Development Rights (TDR). In the event in sanctioned development plans if area of the above nature is in buildable zone, then, for carrying out development in such zone and while granting individual development permissions, an area of 100 feet surrounding the hills should be demarcated as non-buildable. It can be used as open space, road etc. We are surprised

that an order and direction of the NGT traceable to and in accordance with the planning law it challenged before us. Further, the directions of the State Government, which are but reiteration of the existing regulations, are under challenge. The impugned Government Resolution is in consonance with the provisions of the MRTP Act and the constitutional mandate enshrined in Article 21 and 48 thereof.

24. We are not in agreement with Dr. Sathe, Mr. Godbole and Dr. Saraf that merely because such directions are issued in exercise of the powers conferred by sub-section (1) of section 154, the development Plan for the limits of the Municipal Corporations, namely Pune and Mumbai is altered or modified. We are also not impressed by their argument that by such a Government Resolution, a modification is brought about in the Development Control Regulations and all this is without recourse to the specific powers conferred by the MRTP Act. In other words, these are bypassed and by a Government Resolution, the above stand amended. In that regard our attention has been invited to the provisions in the MRTP Act enabling modifications or changes in the Development Plan and the procedure prescribed in that behalf.

25. We do not see any modification to the plan being brought about by the subject Government Resolution. If at all, the directions therein complement the provisions of the Development Control Regulations for the cities of the Mumbai and Pune or the concerned Municipal Corporation/Municipal Council areas. As it is, there was no permission to construct buildings other than a electric sub-stations, water works etc. on hill tops. As far as these slopes are concerned, by their very nature, a hill slides down and if the slope is steep, then, no construction activity can be carried out. There is no guarantee or assurance that any construction activity in such areas would be able to withstand a landslide or accidents, resulting from erosion of the hills on account of natural reasons. It is experienced that human intervention is necessarily not responsible for a landslide, mudslide etc. On account of natural causes and calamities, such events can occur. Apart from that, the occurrence increases because of human intervention including a construction activity carried out at the foot of the hill or on top thereof. It is also possible if the hill is cut from its sides indiscriminately. It is also possible if there is damage to a hill while extracting minor minerals. The hill then becomes uneven. Then, it is not possible to prevent any calamity. Hence, in order to take care of the natural calamities and which have occurred in various places in the State of Maharashtra recently and also on account of unrestricted and unregulated breaking and cutting of the hills resulting in accidents endangering human life and safety that these supplemental directions have been issued. If they are for efficient administration of the Act and if they subserve larger public interest, then no fault can be found with the Government Resolution. Each of the operative directions, namely, serial Nos. 1, 2 and 3 of this Government Resolution subserve this object and purpose. If the Government Resolution has been issued after the attention of the Government has been invited to an accident in Katraj Ghat occurring due to unauthorized and illegal cutting of hills, then, it is not as if the State Government has construed it as a command or a binding order and issued the subject Government Resolution. The attention of the State Government being invited to such illegal and unauthorized so also uncontrolled, unregulated and unrestricted hill-cutting, that in order to prevent the same, the Government stepped in. It took recourse to its power conferred by section 154 of the MRTP Act in order to prevent future occurrences of this nature. If accidents and calamities can be prevented by timely intervention of the State Government in this manner, then, we do not think that on the specious and unsubstantiated pleas of the petitioners, we should strike down the Government Resolution."

17. The NHAI in its appeal contends that the NGT fell into error in issuing sweeping directions against it without considering that was no evidence to establish that it was in any way responsible for the degradation of the environment, which led to the tragedy. It is urged by Senior Counsel Mr. P.S. Narasimha that the NGT's findings are contrary to established facts and have also resulted in grave miscarriage of justice. He highlighted that there was no material on record to establish that the NHAI was in any way culpable or had failed to perform a public duty or neglected to avert a foreseeable calamity. Elaborating on

this, it was urged that the illegal mining activity was not carried on within the right-of-way or the carriageway of the highway. What occurred was the result of an act of God, i.e. extremely heavy rains, which resulted in flooding on the highway caused entirely on account of the debris collected which acted to obstruct the smooth flow of water.

18. It was highlighted that in any case, the NHAI could not be held responsible or made liable for the occurrence which led to the tragedy. Mr. Narasimha also argued that the NGT did not return any finding that the construction of the highway was in any way contrary to environmental clearances or permissions secured by the NHAI. Therefore, the findings of the Tribunal in so far as they pertained to the neglect or alleged omission of the NHAI, were contrary to law. He urged that the findings were illogical and irrational, and deserve to be set aside.

19. The NHAI also highlights that it wrote letters to the local administration on 24.04.2011 and 15.07.2011, seeking its intervention on account of the illegal mining and activities and hill destruction, for which Rathod was responsible. However, the State government did not take any action. Likewise, Rathod did not take any remedial steps or cease the activity. The resultant tragedy entirely on account of the omissions of the state's authorities to take action and the neglect and culpable negligence on the part of Rathod, was the cause of the tragedy and the events which led to the loss of two lives. It was also emphasized that the direction to pay compensation was contrary to legal principles and undermined the law. It was argued that neither the NHAI nor its concessionaire had any control over the activities of the state, which granted the mining licences. Rathod, the licensee, had continued illegal mining in the vicinity causing the accumulation of debris. This in turn, resulted in the obstruction of a culvert which resulted in collection of a large volume of water. A huge sheet of water gushed out into the highway, sweeping away the car, tragically resulting in the death of two individuals. It was argued that in these circumstances, the NHAI could not be saddled with the responsibility of either paying damages to the dependents and legal representatives of the deceased nor could it be made liable to restore the environment through the payment of Rs. 50 lakhs or any part of it.

20. Rathod urges that the NGT's findings against him are contrary to law. He argues that the NGT did not implead those who had standing, i.e. the legal representatives of the deceased; in fact, they had filed a civil suit, claiming compensation against him, as well as the NHAI and the state, for alleged negligence and tortious liability. In those proceedings, the court is bound to record evidence and render findings based on the facts. The NGT could not thus have unilaterally, based on a one-sided view of the materials, held that he was liable.

21. It was submitted that the allegation that Rathod was primarily responsible for degradation of the hill, which clogged the culverts and water channels, resulting in the tragedy, was contrary to the facts. Mr. Vijay Verma, counsel for Rathod, relied on some portions of the magisterial report to say that the NHAI had the report of an independent engineer, who had pointed to certain deficiencies on the part of the concessionaire. Therefore, to hold him responsible for the tragedy, and direct him to pay a huge sum of Rs. 15 lakh and further pay amounts towards environmental damage, was unwarranted.

22. It was argued that the NGT could not have issued directions with respect to payment of any sums, in the absence of any application by the legal representatives of the deceased. It is further argued in Rathod's appeal that apart from issuing notice for recovery of amounts towards alleged illegal mining, neither the state authorities nor the NHAI took any positive remedial action for strengthening the culvert and the catch water drains which were in disrepair, and constructed on the hill above the tunnel for drainage of rainwater. The masonry on the culvert for draining water was choked due to lack of maintenance. Such maintenance was the sole responsibility of the concessionaire and for that, the NHAI had to be held liable. It is also highlighted that Section 18 of the NGT Act mandates that the procedure established by the statute to exercise jurisdiction had to be followed. Since the legal heirs of the deceased had not applied to the NGT for any relief and had instead approached the civil court claiming compensation on account of wilful neglect and culpable inaction on the part of NHAI, the NGT ought to have left the matter for proper decision in

accordance with the evidence led. Instead the NGT took upon itself the task of a judging the appellant as one of those responsible for the incident. It is emphasised that the mining activity carried on was in accordance with the license and if there was any irregularity that was cured on payment of fine. So far as the collection of debris which ultimately led to the overflow of water and the deaths of two individuals goes, it is argued that the proper functioning of the drainage system would have ensured that such collection of vast quantities of water would not have occurred. Therefore, the inaction of the NHAI in taking timely action and intervening with the state authorities, led to the tragic incident. The responsibility for this incident could not have been placed at the doorstep of Rathod. The actions of Rathod, it is stated were too remote and could not have been the subject of damages at all.

23. In the appeals (by special leave as well as the statutory appeals by third parties), where the grievance is on account of the directions issued by the State of Maharashtra under Section 154 of the MRTP Act, the third party appellants challenge the order of the NGT arguing that the provisions of the NGT Act, especially sections 14, and 19 do not authorise that tribunal to issue sweeping and unilateral directions requiring stoppage and cessation of all manner of building activity or developments within hundred feet of hill slopes. It is highlighted that such sweeping directions are illogical and are not based on any scientific study or analysis. It is argued that the NGT has issued general directions couched in a vague manner in para 17(e) of its order.

24. These appellants argue that the Bombay High Court also fell into error and did not appreciate that the entire basis of the Directions/Resolution of 14.11.2017 by the State of Maharashtra were the directions issued by the NGT. Highlighting various provisions of the MRTP Act, learned counsel argued that wherever development codes were formulated, they were in accordance with established principles, after following the prescribed procedure. Based upon these codes and the building regulations framed by various town planning departments, clearances and permissions/approval for development and construction were issued. It was argued that the mandatory and sweeping nature of the directions in para 17 (e) by the NGT has resulted in these directions being embodied in the impugned resolution, which has a catastrophic effect on those clearances.

25. Learned senior counsel, Mr. Shyam Divan, highlights that apart from the fact that the definition of ‘hill’ is vague, and even the regulations under the MRTP Act are silent in this regard, the NGT failed to consider that the impact of its directions and the impugned notification, in hilly terrains where the population is concentrated in particular areas, in small towns, semi urban and rural areas would be devastating inasmuch as all nature of buildings would be banned. It is pointed out that hill development is based upon consideration of individual local soil conditions, the stability of the surrounding terrain, etc. All these are taken into account by individual local town planning authorities when they permit or refuse permission to individual development or construction projects. The uniform adoption of the “no construction within the hundred feet area” rule, it is submitted, is completely contrary to well-established principles of town planning.

26. It is argued that the directions issued by the state government impugned in the writ petitions before the Bombay High Court, are contrary to the provisions of the MRTP Act inasmuch as they amount to supplanting provisions of the existing master plan and other development codes, which have the force of law and were framed after widespread consultations. It is pointed out that the provisions of the MRTP Act require that any change in such codes or master plans would have to be made after mandatory due consideration of objections, which are to be preceded by publication of the proposals. By directing the state government to follow the order in paragraph 17(e), the NGT in fact made directions contrary to law. It is argued that the state also acted contrary to the express provisions of the MRTP Act inasmuch as it did not follow the procedure required by the Act to change the master plan and the development codes.

27. It is further submitted that the NGT's directions were the basis of the state government's notification. It was argued that the state government's blind adherence to these directions amounted to abdication of its duties, was in contravention of express

provisions of the MRTP Act and also amounted to acting on the dictates of another authority. It was submitted that for these reasons, the impugned notification cannot be sustained. Counsel relied on the decision of this court in *Tamil Nadu Pollution Control Board* v. *Sterlite Industries (I) Ltd.*[2] to highlight that the NGT has a narrow and circumscribed jurisdiction in regard to issuing directions as well as ordering compensation.

28. The Lokmanch justified the order of the NGT and blamed the NHAI, the concessionaire, Rathod and the state government for not taking adequate and timely measures in public interest. It is alleged that proper channels were not created and maintained alongside the highway to avoid water clogging on the main carriageway. It is argued that existing water channels were extremely narrow and were incapable of handling significant volumes, and that even those channels were clogged due to construction debris which had fallen on the sides. It is pointed out that under Section 4 of the National Highways Act, 1956 (hereafter "Highways Act") "highways" include lands appurtenant thereto, all bridges, culverts, tunnels, causeways and other structures constructed on or over the highway and all fences, trees, posts, etc. The duty of keeping them in good repair, clearly was that of the NHAI and the concessionaire.

29. So far as the Rathod's role is concerned, learned counsel, Ms. Shilpa Chohan, submitted that the NGT acted well within its rights and acted within its jurisdiction in entertaining and proceeding with the application, under Sections 14 read with 16 and 18 of the NGT Act. The Lokmanch sought mandatory injunction to restore the natural contour at the foot base of the hills, particularly the hill that was destroyed by the private respondents. It was submitted that apart from the enquiry report of the magistrate/sub-divisional officer, a report was also commissioned by the NGT through the local *tehsildar*; that report dated 15.09.2014 disclosed that unauthorised hill destruction under the pretext of minor mineral extraction was widespread during 2011-2013. This report showed that as many as 62 cases of hill destruction (mostly indulged in by developers), came to light. Many of these occurred without obtaining any permit or authorisation and were plainly illegal.

30. It is argued further that the private respondents were permitted to extract minor minerals only for a short period. However, they exceeded not only the permit, but also went further and destroyed the hill for the purpose of mining minerals. This over-mining as well as hill destruction was not within the permission or the terms of the license. It is highlighted that "hill cutting" or hill destruction causes shortening of hills, poses a potential danger of soil erosion and reduces vegetation, forestry, flora and fauna, and deprives natural support to the earth, therefore ultimately posing an environmental hazard to nearby areas, including residential areas. It is argued that the destruction of hills results in the distortion of the flow of streams and rivers, which change their courses resulting in heavy loss to human life and also to flora and fauna, besides at times, destruction of property. It is submitted that the NGT's decision requiring payment of compensation was within its jurisdiction; to support this, learned counsel relied upon the provisions of Schedule II to the NGT Act, particularly referring to the heads of compensation relief for damages that can be claimed and granted, i.e. death, permanent, temporary, or total, or partial disability or other injury, damages to private property, expenses incurred by the government for any administrative or legal action, or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of the environment. It was submitted that the statutory basis for calculating these damages under Schedule II to the NGT Act is provided by Section 15, which empowers the NGT to provide relief and compensation to victims of pollution in terms of Schedule I for restitution of property, restitution of environment, and also importantly Section 17, which empowers the NGT to direct the payment of compensation on account of death of or injury to any person or damage to property, under all any of the heads specified in Schedule II, which is the result of any accident or is an adverse impact of any activity or operational process. It is submitted that there is nothing in the enactment which confines the jurisdiction of the NGT to adjudicate complaints, especially those relating to fatalities caused by environmental damage, to applications initiated by legal representatives or persons directly affected. It is submitted that if a particular accident or incident is so widespread as to affect an entire

area, it would be well within the jurisdiction of the NGT to entertain an application made by anyone. Learned counsel highlighted the difference in phraseology between Sections 15 and 17 on the one hand, and Section 18 on the other. It is submitted that Section 18(2) clearly is without prejudice to the provisions contained in Section 16 and primary jurisdiction can be invoked by the Tribunal upon being moved by anyone in this regard.

31. Ms. Chohan cited the decision of this court in *Mantri Technoze Pvt. Ltd.* v. *Forward Foundation*[3] to say that the NGT could legitimately issue directions which are binding on all other statutory authorities. She also relied on Section 33 of the NGT Act, emphasizing that the enactment overrides all other enactments. Reliance was also placed on the decision in *Hanuman Laxman Aroskar* v. *Union of India*.[4]

32. The State of Maharashtra supported the arguments made on behalf of the Lokmanch. It was pointed out that the jurisdiction to issue general directions to preserve and protect the environment, through restitution orders is found in Section 15(1)(c) of the NGT Act. It is also submitted that the power and jurisdiction to order compensation in the case of death, is independent and can be invoked in case of fatal accidents, as is evident from the provisions of Schedule II. The state further argues that the judgment of the Bombay High Court too is unexceptionable, inasmuch as it correctly appreciated and upheld the exercise of regulatory power under Section 154 of the MRTP Act. Counsel urged that the said provision was amended in 2015 and in the absence of any challenge to it, the exercise of power after due consideration of relevant factors, could not be countenanced.

The Issues

33. Four issues arise for consideration. Firstly, the jurisdiction of the NGT to award compensation; secondly the merits and soundness of the NGT's decision to award compensation and the legal principles applicable; thirdly, the NGT's wide directions with respect to the ban on construction in and around foothills and lastly, the *vires* of the directions/notifications issued under Section 154, MRTP Act.

I. Jurisdiction of the NGT

34. The relevant provisions of the NGT Act are extracted below:

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

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(m) "substantial question relating to environment" shall include an instance where—

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

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

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

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

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

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14. Tribunal to settle disputes.—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

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

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

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

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

provide,—

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

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

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

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

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

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

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

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

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

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

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

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

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

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

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

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

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement

of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

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

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

17. Liability to pay relief or compensation in certain cases.

(1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.

(2) If the death, injury or damage caused by an accident or the adverse impact of an activity or operation or process under any enactment specified in Schedule I cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operations and processes, the Tribunal may, apportion the liability for relief or compensation amongst those responsible for such activities, operations and processes on an equitable basis.

(3) The Tribunal shall, in case of an accident, apply the principle of no fault

18. Application or appeal to Tribunal.

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

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

(a) the person, who has sustained the injury; or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organisation; or

(f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:

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

Provided further that the person, the owner, the legal representative, agent, representative body or organisation shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal under section 16.

(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal,

finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

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

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

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

35. A plain reading of the above provisions of the NGT Act would reveal that the tribunal possesses two kinds of power and jurisdiction: one, primary jurisdiction under Sections 14-15, and appellate jurisdiction under Section 16. Under Section 14, the NGT has the power to adjudicate upon disputes relating to "*civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved*" relating to the implementation of "*the enactments specified in Schedule I*" [Section 14 (1)]. The other provisions [Sections 14(2) and (3)] are incidental to the primary jurisdiction under Section 14(1). Section 15, on the other hand, is couched in wide terms. Section 15 (1) provides that compensation or damages can be given by the NGT to "*victims of pollution and other environmental damage arising under the enactments specified in the Schedule I*" [Section 15 (1)(a)]; for restitution of property damaged [Section 15(1)(b)] and for restitution of the environment for such area or areas [Section 15(1)(c)]. Section 15(2) is procedural; Section 15(3) prescribes the period of limitation for applications. Section 15(4) enables the NGT to, having regard to the damage to public health, property and environment,

"divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit."

36. The enactments specified under Schedule I are the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Forest (Conservation) Act, 1980; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; the Public Liability Insurance Act, 1991; and the Biological Diversity Act, 2002.

37. Schedule II reads as follows:

"SCHEDULE II [See sections 15(4) and 17(1)] HEADS UNDER WHICH COMPENSATION OR RELIEF FOR DAMAGE MAY BE CLAIMED

(a) Death;

(b) Permanent, temporary, total or partial disability or other injury or sickness;

(c) Loss of wages due to total or partial disability or permanent or temporary disability;

(d) Medical expenses incurred for treatment of injuries or sickness;

(e) Damages to private property;

(f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;

(g) Expenses incurred by the Government for any administrative or legal action or to

cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;

(h) Loss to the Government or local authority arising out of, or connected with, the activity causing any damage;

(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;

(l) Loss and destruction of any property other than private property;

(m) Loss of business or employment or both;

(n) Any other claim arising out of, or connected with, any activity of handling of hazardous substance."

38. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.

39. The reference to Schedule II, in Section 15(4) is not merely by way of events which are actionable in relation to harm caused due to the acts resulting in violation of any enactment under Schedule I. The wide language of that provision enables the tribunal (NGT) to direct, *inter alia*, payment of compensation, "*having regard to the damage to public health, property and environment*". This interpretation is borne out by a reading of Section 17(2) regarding the *apportionment* of liability for payment of compensation.

40. In the decision of this court reported as *Hinch Lal Tiwari* v. *Kamala Devi*[5], this court held that ponds constituted public utility and were meant for common use. The court held that ponds could not be allotted or commercialised, and that filling up of ponds was illegal. Recently, in *Jitendra Singh* v. *Ministry of Environment*[6], the Court quoted and applied the observations in *Hinch Lal* (supra), in the context of an appeal directed against an order of the NGT which had summarily dismissed an application under Sections 14 and 15 of the NGT Act seeking directions to cease the filling up of ponds in the Greater Noida Industrial Development Area.

41. Long ago, in *State of Tamil Nadu* v. *Hind Stone*[7], this court made following observations:

"6. Rivers, Forests, Minerals and such other resources constitute a Nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the Regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957 …"

42. Likewise, in *Lafarge Umiam Mining (Pvt.) Ltd.* v. *Union of India*[8] these pertinent observations were made:

"75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognised by the concepts of "sustainable development". It is equally well settled by the decision of this Court in Narmada Bachao Andolan *v.* Union of India *that environment has different facets and care of the environment is an ongoing process. These concepts Rule out the*

formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "no go" areas (whose identification would again depend on undertaking of due diligence exercise). In such cases, the margin of appreciation doctrine would apply."

43. Recently, in *State of Meghalaya* v. *All Dimasa Students Union, Dima-Hasao District Committee*[9] this court had affirmed a part of the decision of the NGT issuing directions in respect of large-scale mining in the state of Meghalaya, on the ground that it had an adverse impact on the environment. This was despite the fact that mining and the subject of mines is not specified in the list of enactments under the first schedule. The court also approved the NGT's directions, appointing experts, to assess the impact of such mining on the environment.

44. The legal position and jurisdiction of NGT was considered by this court in *Mantri Techzone* (supra) where it was held that the NGT has "*special jurisdiction*" for "*enforcement of environmental rights.*" It was held that:

"41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishsore Lal *v.* Chairman, Employees' State Insurance Corpn. *(2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.*

45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions.

46. Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers.

As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP."

45. It is noteworthy that this court clearly held that under Section 15(1)(b) and 15(1)(c), the NGT has the power to make directions and provide for "*restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act.*" Though a direction for compensation under Section 15(1)(a) is relatable to violation of enactments specified under the first schedule, the power under Section 17 appears to be cast in wider terms.

46. As noticed earlier, Section 17 (1) refers to first schedule enactments; it talks of death of, or injury to, any person "or damage to any property or environment" which "*has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment*" in Schedule I. One of the enactments is the Environment Protection Act, 1986 (hereafter "EPA").

47. The definition of "environment" under the EPA is wide and is an inclusive one: "*environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property".*[10] Similarly, "environmental pollutant" and "environmental pollution" are defined as follows:

"environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;[11]

"environmental pollution" means the presence in the environment of any environmental pollutant;[12]

48. Section 3(1) of the EPA confers upon the Central Government, wide power in relation to protection of the environment:

"3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT.- (1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution."

49. Long back, in *M.C. Mehta* v. *Union of India*[13] this court recognized the potential harm to the environment caused by mining operations:

"Legal parameters

45. The natural sources of air, water and soil cannot be utilised if the utilisation results in irreversible damage to environment. There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms. This Court has repeatedly said that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. (See Subhash Kumar *v.* State of Bihar *[(1991) 1 SCC 598.)*

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47. The mining operation is hazardous in nature. It impairs ecology and people's right to natural resources. The entire process of setting up and functioning of mining operation requires utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that the public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and people's life, health and property, the principles of accountability for restoration and compensation have to be applied."

50. Acting under the provisions of the EPA, the Central Government had issued a notification on 14.09.2006, mandating Environmental Impact Assessment (EIA) in exercise of its power under Section 3(2) of the EPA read with Rule 5 of the rules framed thereunder. In terms of this notification, environment impact assessment and clearance was necessary for different processes and industries. Mining too, was included as part of the notification; the only exception was that minor mineral leases for an area below five hectares were exempted. Clearly, therefore, the Central Government included within the purview of the EPA, major and minor mineral extraction.

51. Several irregularities were noticed over a period of time, with regard to minor mineral extraction, including sand, and there was need for introducing stringent regulations for those activities. A report of the then Ministry of Environment and Forests (MoEF, now MoEF&CC) submitted in 2010 was critical of the prevailing norms. As a result, this court and the NGT issued orders and directives making ECs compulsory for projects less than five hectares. The Central Government too initiated measures.

52. The following observations of this court were made in *Deepak Kumar* v. *State of Haryana*[14]:

"18. Comments and inputs from various States and experts were also invited so as to prepare a report for consideration of MoEF. Based on the discussion held and subsequent inputs received, a draft report was prepared and circulated to all members for their further inputs. The report was further discussed on 29-1-2010 for its finalisation. The observations/comments made during the meeting were incorporated in the report and it was again circulated to all members for their consideration. The report so circulated was ultimately finalised. The decision taken by MoEF affects generally the mining of minor minerals including the riverbed mining throughout the country.

19. For an easy reference, we may extract the issues and recommendations made by MoEF, which are as follows:

"4.0. Issues and recommendations

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It may thus be observed that minerals have been classified into major and minor minerals based on their end use rather than level of production, level of mechanisation, export and import, etc. There do exist some minor mineral mines of silica sand and limestone where the scale of mechanisation and level of production is much higher than those of industrial mineral mines. Further, in terms of the economic cost and revenue, it has been estimated that the total value of minor minerals constitutes about 10% of the total value of mineral production whereas the value of non-metallic minerals comprises only 3%. It is, therefore, evident that the operation of mines of minor minerals need to be subject to some regulatory parameters as that of mines of major minerals.

Further, unlike India there does not exist any such system based on end usage in other countries for classifying minerals into major and minor categories. Thus, there is a need to relook at the definition of 'minor minerals' per se.

It is, therefore, recommended that the Ministry of Mines along with Indian Bureau of Mines, in consultation with the State Governments may re-examine the classification of minerals into major and minor categories so that the regulatory aspects and environment mitigation measures are appropriately integrated for ensuring sustainable and scientific mining with least impacts on environment.

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4.5. Requirement of mine plan for minor minerals

At present, most of the State Governments have not made it mandatory for preparation of mining plan in respect of minor minerals. In some States like Rajasthan, eco-friendly mining plans are prepared, which are approved by the State Mining Department. The eco-friendly mining plans so prepared, though conceptually welcome, are observed to be deficient and need to be made comprehensive in a manner as is being done for major minerals. Besides, the aspects of reclamation and rehabilitation of mined out areas, progressive mine closure plan, as in vogue for major minerals could be introduced for minor minerals as well.

It is recommended that provision for preparation and approval of mine plan, as in the case of major minerals may appropriately be provided in the rules governing the mining of minor minerals by the respective State Governments. These should specifically include the provision for reclamation and rehabilitation of mined out area, progressive mine closure plan and post mine land use.

4.6. Creation of separate corpus for reclamation/rehabilitation of mines of minor minerals

Mining of minor minerals, in our country, is by and large an unorganised sector and is practised in haphazard and unscientific manner. At times, the size of the leasehold is also too small to address the issue of reclamation and rehabilitation of mined out areas. It may, therefore, be desirable that before the concept of mine closure plan for minor minerals is adopted, the existing abandoned mines may be reclaimed and rehabilitated with the involvement of the State Government. There is thus, a need to create a separate corpus, which may be utilised for reclamation and rehabilitation of mined out areas. The respective State Governments may work out a suitable mechanism for creation of such corpus on the 'polluter pays' principle. An organisational structure may also need to be created for undertaking and monitoring these activities.

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4.8. Uniform minor mineral concession rules

The economic value of the minor minerals excavated in the country is estimated to contribute to about 9% of the total value of the minerals whereas the non-metallic minerals contribute to about 2.8%. Keeping in view the large extent of mining of minor minerals and its significant potential to adversely affect the environment, it is recommended that model mineral concession rules may be framed for minor minerals as well and the minor minerals may be subjected to a simpler regulatory regime, which is, however, similar to major minerals regime.

4.9. Riverbed mining

4.9.1. Environment damage being caused by unregulated riverbed mining of sand, bazari and boulders is attracting considerable attention including in the courts. The following recommendations are therefore made for the riverbed mining:

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5.0. Conclusion

Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However, the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict

regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need be duly noted. The Union Ministry of Mines along with the Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States."

(emphasis supplied)

20. The Report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a relook to the definition of "minor minerals" per se. The necessity of the preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.

21. Further, it was also recommended that the States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining plan should take note of the level of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, the number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in the 2010 Rules. A proper framework has also to be evolved on cluster of mining of minor minerals for which there must be a Regional Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.

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28. The Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest. The State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Government of India. Communicate the copy of this order to MoEF, Secretary, Ministry of Mines, New Delhi; Ministry of Water Resources, Central Government Water Authority; the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the Departments concerned.

29. We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF. Ordered accordingly."

53. By virtue of a notification,[15] environmental clearance is necessary even for minor mineral extraction where the area of operation is less than 5 hectares; the procedure has been outlined under Appendix XI of that notification. Clearly, therefore, mining of even minor minerals, when resorted to on a large scale (i.e. where more than a few leases or permits are granted), has a potential impact on the environment. In the facts of this case, the state had granted no less than 62 minor mineral permits in the vicinity; unauthorized activity (in the form *inter alia*, of over-mining and piling of debris) had resulted in the imposition of the penalty. Clearly, there was violation of the EPA in the present case, because Rathod's mining lease covered an area in excess of 5 hectares; it fell within the regulatory notification of 2006. There is nothing on record to show that the relevant clearance was obtained by Rathod. Plainly, therefore, the facts of the present case disclosed violation of the EPA-an enactment listed in Schedule I of the NGT Act. This meant that the

NGT's jurisdiction under Section 15(1)(a) and Section 17 could not have been disputed.

54. This court is of the considered opinion that the expression "environment" and "environmental pollution" have to be given a broader meaning, having regard to Parliamentary intent to ensure the objective of the EPA. It effectuates the principles underlying Article 48A of the Constitution of India. The EPA is in essence, an umbrella legislation enacting a broad framework for the central government to coordinate the activities of various central and state authorities established under other laws, such as the Water Act and Air Act. The EPA also effectively enunciates the critical legislative policy for environment protection. It changes the narrative and emphasis from a narrow concept of pollution control to a wider facet of environment protection. The expansive definition of environment that includes water, air and land "*and the interrelation which exist among and between water, air and land, other human creatures, plants, micro-organisms and property*" give an indication of the wide powers conferred on the Central Government. A wide net is cast over the environment related laws. The EPA also empowers the central government to comprehensively control environmental pollution by industrial and related activities. For these reasons, and in view of the above discussion, it is held that the NGT correctly assumed jurisdiction, having regard to the nature of the accident in the facts of this case.

II. Was the direction to pay compensation towards death, and damages towards restitution justified?

55. In the present case, the deceased were concededly travelling on the highway. The incident of flooding occurred, and was caused due to clogging of the water channels. The report of the sub divisional magistrate indicated that the Inspecting Engineer (Arvi Associates, a firm) had given a report after inspection. On behalf of the independent engineering firm appointed by the NHAI, an oral deposition was given before the sub-divisional officer. It was stated that the roadside channel and culvert from where water is disposed of, had been rendered screen blinded and a pipeline of 1.2 m diameter existed there for disposal of water. The necessity of remedial action was communicated to the concessionaire, before the occurrence of the accident. It was also stated that in terms of the instructions of the NHAI, the concessionaire was informed about the deficiency on 15.05.2013 and by a further letter dated 04.06.2013. An action plan for completing pre-monsoon work was sought from the concessionaire. However, the concessionaire did not submit an action plan despite lapse of one month.

56. The SDO's report noted that the culvert had been constructed from the new tunnel and was existing from 2004. Apparently a 1m diameter pipe was positioned in the culvert and had made a causeway. One hotel also had constructed an approach road and placed a 950 MM pipe. The existing drainage capacity of the octroi post and the hotel was insufficient due to heavy rains as a result of which rainwater was not totally drained. This water started accumulating on the road. Certain ramps were also constructed by Tata Motors for its convenience; they were removed by the concessionaire; nevertheless, the ramps were prepared again. The existing cross drainage provision was of a sub-culvert-type structure and the size at the time of the old highway was 1m × 1 m. The report further observed that the natural drainage and sides of hills of the highway was adversely affected and had been tampered with. The disposal of water on the right side overhead of the tunnel through the cross train on the old highway *via* the catch drain and subsequently the channels for the water flow were choked due to development work and adversely affected the clearance of rain water. The report indicates that after the accident on 06.06.2013, the local administration cleared the debris which had created obstacles, to facilitate the free flow of water into the catch drain culvert and further flow of water.

57. The legal position regarding highways is outlined in two enactments, i.e. the National Highways Act, 1956 ("the Highways Act") and the NHAI Act. The provisions of the Highways Act, to the extent they are relevant are as follows:

> *"4. National highways to vest in the Union. — All national highways shall vest in the Union, and for the purposes of this Act "highways" include—*
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> *(i) all lands appurtenant thereto, whether demarcated or not;*
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> *(ii) all bridges, culverts, tunnels, causeways, carriageways and other structures*

constructed on or across such highways; and

(iii) all fences, trees, posts and boundary, furlong and milestones of such highways or any land appurtenant to such highways.

5. Responsibility for development and maintenance of national highways.—It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.

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8A. Power of Central Government to enter into agreements for development and maintenance of national highways — (1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway.

(2) Notwithstanding anything contained in section 7, the person referred to in sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (59 of 1988) on the national highway forming subject-matter of such agreement, for proper management thereof."

58. Section 16 of the NHAI Act spells out the functions of the NHAI; it reads as follows:

"16. Functions of the Authority.— (1) Subject to the rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government. rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government."

59. Acting in furtherance of its powers, the NHAI entered into an agreement with the concessionaire for the construction, operation and maintenance of the highway in question (i.e. the stretch of 140 kms on which the accident occurred). The question is whether the NHAI, which indisputably owns and controls the highway, and on whose behalf it was constructed, and for which the maintenance and operation agreement was entered into, led to a duty of care, to the users (of the highway).

60. This issue had arisen in *Rajkot Municipal Corpn.* v. *Manjulben Jayantilal Nakum*[16] in the context of certain facts. The deceased used to travel on a railway season ticket to Rajkot to attend to his office work. One day whilst he was on the footpath on the way to his office, a roadside tree suddenly fell on him, resulting in serious injuries on the head and other parts of the body, and later died in the hospital. The High Court allowed the writ petition. This court noted the distinction between a common law duty of care owed to members of the public, and whether liability could be imposed upon a local authority for breach of its statutory duty. The court noticed previous English decisions[17] and stated that:

"18. The question emerges as to when would the breach of statutory duty under a particular enactment give rise to tortious liability? The statutory duty gives rise to civil action. The statutory negligence is sui generis and independent of any other form of tortious liability. It would, therefore, be of necessity to find out from the construction of each statutory duty whether the particular duty is general duty in public law or private law duty towards the plaintiff. The plaintiff must show that (a) the injury suffered is

within the ambit of statute; (b) statutory duty imposes a liability for civil action; (c) the statutory duty was not fulfilled; and (d) the breach of duty has caused him injury. These essentials are required to be considered in each case. The action for breach of statutory duty may belong to the category of either strict or absolute liability which is required, therefore, to be considered in the nature of statutory duty the defendant owes to the plaintiff; whether or not the duty is absolute; and the public policy underlying the duty. In most cases, the statute may not give rise to cause of action unless it is breached and it has caused damage to the plaintiff, though occasionally the statute may make breach of duty actionable per se. The burden, therefore, is on the plaintiff to prove on balance of probabilities that the defendant owes that duty of care to the plaintiff or class of persons to whom he belongs, that defendant was negligent in the performance or omission of that duty and breach of duty caused or materially contributed to his injury and that duty of care is owed on the defendant. If the statute requires certain protection on the principle of volenti non fit injuria, the liability stands excluded. The breach of duty created by a statute, if it results in damage to an individual prima facie, is tort for which the action for damages will lie in the suit. One would often take the Act, as a whole, to find out the object of the law and to find out whether one has a right and remedy provided for breach of duty. It would, therefore, be of necessity in every case to find the intention of legislature in creating duty and the resultant consequences suffered from the action or omission thereof, which are required to be considered. No action for damages lies if on proper construction of statute, the intention is that some other remedy is available. One of the tests in determining the intention of the statute is to ascertain whether the duty is owed primarily to the general public or community and only incidentally to an individual or primarily to the individual or class of individuals and only incidentally to the general public or the community. If the statute aims at duty to protect a particular citizen or particular class of citizens to which the plaintiff belongs, it prima facie creates at the same time corelative right vested in those citizens of which plaintiff is one; he has remedy for enforcement, namely, the action for damages for any loss occasioned due to negligence or for failure of it. But this test is not always conclusive.

19. Duty may be of such paramount importance that it is owed to all the public. It would be wrong to think that on an action, the duty could be enforced by way of damages when duty is owed to a section of public and cannot be enforced if an individual sustains damages to whom the Corporation owes no duty and no private interest is infringed. Breach of statutory duty, therefore, requires to be examined in the context in which the duty is created not towards the individual, but has its effect on the right of individual vis-à-vis the society. Statutory duty generally is towards public at large and not towards an individual or individuals and the corelative right is vested in the public and not in private person, even though they may suffer damages. The duty in such a case is to be enforced by way of criminal prosecution or by way of injunction at the suit under Section 192 of CPC or with leave of court under Order I, Rule 8 CPC by public-spirited person or in any appropriate manner to enforce the right and not by way of private action for damages. In that situation, the legislature, while recognising the private right vested in an injured individual, may intend that it shall be maintained solely by some special remedy provided for a particular case and not by ordinary method of an action for damages as penalty or compensation.

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24. Generally, a public authority entrusted with no statutory obligation to exercise a power, does not come under common law duty of care to do so but by conduct the public authority may place itself in such a situation that it attracts the duty of care which calls for exercise of the power. Common illustration is provided by an action in which an authority in the exercise of its functions, if it had created a danger, thereby subjecting itself to a duty of care for the safety of others which must be discharged by an exercise of its statutory power or by giving necessary warnings. It is the conduct of the authority in creating the danger that attracts the duty of care as envisaged in Sheppard *v.* Borough of Glossop *[(1921) 3 KB 132 : 1921 All ER Rep 61, CA]. The statute does not by itself give rise to a civil action but it forms the formulation on which the common law can*

build a cause of action….

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39. It can be seen that ordinarily the principle of the law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it. Where the public authority has decided to exercise a power and has done it negligently a person who has acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence. Where the damage has resulted from a negligent failure to act there may be greater difficulty in proving causation and requires examination in greater detail. …"

61. In the UK, the duty of a highway authority was described by Diplock L.J. in *Griffiths* v. *Liverpool Corporation*[18] as follows:

"The duty at common law to maintain, which includes a duty to repair a highway, was not based in negligence but in nuisance. It was an absolute duty to maintain, not merely a duty to take reasonable care to maintain, and the statutory duty which replaced it was also absolute."

62. Again, Diplock, LJ stated in *Burnside* v. *Emerson*[19] described the duty as follows:

"in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition."

63. Later, in *Haydon* v. *Kent County Council*[20] Lord Denning M.R. explained that while the duty to maintain the highway meant an absolute duty to ensure that it was in a condition to be used as a highway and to ensure safety, it did not include the duty to ensure at all times that the road surface was kept clean. It was clarified however, that the issue had to be considered in each case, and it was to be considered whether the authority had taken reasonable steps to keep it in good repair after being notified about obstruction:

"If section 41 is to be construed as capable of imposing a duty to take remedial measures to deal with ice and snow on a highway, or footway, which is in good physical repair, so that whether in particular circumstances that duty has arisen is to be decided 'as a question of fact and degree,' it would seem that the facts relevant to determining whether the duty has arisen would be essentially similar to those relevant to deciding whether a breach of the duty has been proved and whether the statutory defence under section 58 has been made out. Parliament did not define those facts for the purpose of section 41. The concept of the passing of sufficient time to make it prima facie unreasonable for the highway authority to have failed to take remedial measures must presuppose some idea of the amount and nature of the resources for dealing with snow and ice which are or ought to be available to the authority, and of the order of priority among different carriageways and footways which guides or which ought to guide the authority; and of the necessary degree of urgency in using those resources. No such guidance is given in the statute with reference to proof of the arising of the duty."

64. In *Stovin* v. *Wise*[21], the defendant emerged from a side road and ran down the plaintiff, because she was not keeping a proper look-out. When she was sued for damages, the defendant joined the County Council as a third party because the visibility at the intersection was poor and they said that the Council, which had the duty to maintain the road should have done something to improve it. The council had statutory powers which would have enabled the necessary work to be done and there was evidence that the relevant officers had decided in principle that it should be done, but they had not taken steps to do it. The House of Lords held that there was no duty of care in private law based on the statutory duty, and that "*Drivers of vehicles must take the highway network as they find it*". It was held that statutory power could not be converted into a common law duty. The council had done nothing which, apart from statute, would have attracted a common law duty of care. It had done nothing at all. The only basis on which it was a candidate for liability was that Parliament had entrusted it with general responsibility for the highways

and given it the power to improve them and take other measures for the safety of their users. Lord Hoffmann observed,

> *"In summary, therefore, I think that the minimum preconditions for basing a duty of care upon the existence of a statutory power, if it can be done at all, are, first, that it would in the circumstances have been irrational not to have exercised the power, so that there was in effect a public law duty to act, and secondly, that there are exceptional grounds for holding that the policy of the statute requires compensation to be paid to persons who suffer loss because the power was not exercised."*

65. *Stovin* (supra) and its enunciation that the existence of a public duty did not *per se* extend to a private duty of care to take special measures, unless exceptional features were proved, was followed in *Gorringe* v. *Calderdale Metropolitan Borough Council*[22]. The entire law was re-examined and the correct position, restated in a recent judgment by the UK Supreme Court in *Robinson* v. *Chief Constable of West Yorkshire Police*[23], which observed as follows:

> *"32 At common law, public authorities are generally subject to the same liabilities in tort as private individuals and bodies: see, for example*, Entick *v.* Carrington *(1765) 2 Wils KB 275 and* Mersey Docks and Harbour Board *v.* Gibbs *(1866) LR 1 HL 93. Dicey famously stated that "every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen": The Law of the Constitution, 3rd ed (1889), p 181. An important exception at common law was the Crown, but that exception was addressed by the Crown Proceedings Act 1947, section 2.*
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> *33. Accordingly, if conduct would be tortious if committed by a private person or body, it is generally equally tortious if committed by a public authority: see, for example*, Dorset Yacht Co. Ltd. *v.* Home Office *[1970] AC 1004, as explained in* Gorringe's case *2004 (1) WLR 1057, para 39. That general principle is subject to the possibility that the common law or statute may provide otherwise, for example by authorising the conduct in question:* Geddis *v.* Proprietors of Bann Reservoir *(1878) 3 App Cas 430. It follows that public authorities are generally under a duty of care to avoid causing actionable harm in situations where a duty of care would arise under ordinary principles of the law of negligence, unless the law provides otherwise.*
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> *34. On the other hand, public authorities, like private individuals and bodies, are generally under no duty of care to prevent the occurrence of harm: as Lord Toulson JSC stated in* Michael's case *[2015] AC 1732, para 97, "the common law does not generally impose liability for pure omissions". This "omissions principle" has been helpfully summarised by Tofaris and Steel, "Negligence Liability for Omissions and the Police" [2016] CLJ 128:*
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> > *"In the tort of negligence, a person A is not under a duty to take care to prevent harm occurring to person B through a source of danger not created by A unless (i) A has assumed a responsibility to protect B from that danger, (ii) A has done something which prevents another from protecting B from that danger, (iii) A has a special level of control over that source of danger, or (iv) A's status creates an obligation to protect B from that danger."*
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> *35. As that summary makes clear, there are certain circumstances in which public authorities, like private individuals and bodies, can come under a duty of care to prevent the occurrence of harm: see, for example*,
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> Barrett *v.* Enfield London Borough Council *[2001] 2 AC 550 and* Phelps *v.* Hillingdon London Borough Council *[2001] 2 AC 619, as explained in* Gorringe's case *2004 (1) WLR 1057, paras 39-40. In the absence of such circumstances, however, public authorities generally owe no duty of care towards individuals to confer a benefit upon them by protecting them from harm, any more than would a private individual or body: see, for example*, Smith *v.* Littlewoods Organisation Ltd. *[1987] AC 241, concerning a private body, applied in* Mitchell *v.* Glasgow City Council *[2009] AC 874, concerning a public authority.*
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> *36 That is so, notwithstanding that a public authority may have statutory powers or*

duties enabling or requiring it to prevent the harm in question. A well known illustration of that principle is the decision of the House of Lords in East Suffolk Rivers Catchment Board *v.* Kent *[1941] AC 74. The position is different if, on its true construction, the statutory power or duty is intended to give rise to a duty to individual members of the public which is enforceable by means of a private right of action. If, however, the statute does not create a private right of action, then "it would be, to say the least, unusual if the mere existence of the statutory duty [or, a fortiori, a statutory power] could generate a common law duty of care":* Gorringe's case *2004 (1) WLR 1057, para 23.*

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40 However, until the reasoning in the Anns case *was repudiated, it was not possible to justify a rejection of liability, where a prima facie duty of care arose at the first stage of the analysis from the foreseeability of harm, on the basis that public bodies are not generally liable for failing to exercise their statutory powers or duties so as to confer the benefit of protection from harm. Instead, it was necessary to have recourse to public policy in order to justify the rejection of liability at the second stage. That was accordingly the approach adopted by the House of Lords and the Court of Appeal in a series of judgments, including* Hill's case *[1989] AC 53. The need to have recourse to public policy for that purpose has been superseded by the return to orthodoxy in* Gorringe's case. *Since that case, a public authority's non-liability for the consequences of an omission can generally be justified on the basis that the omissions principle is a general principle of the law of negligence, and the law of negligence generally applies to public authorities in the same way that it applies to private individuals and bodies.*

41 Equally, concerns about public policy cannot in themselves override a liability which would arise at common law for a positive act carried out in the course of performing a statutory function: the true question is whether, properly construed, the statute excludes the liability which would otherwise arise: see Gorringe's case *2004 (1) WLR 1057, para 38, per Lord Hoffmann.*

42 That is not to deny that what might be described as policy considerations sometimes have a role to play in the law of negligence. As explained earlier, where established principles do not provide a clear answer to the question whether a duty of care should be recognised in a novel situation, the court will have to consider whether its recognition would be just and reasonable."

66. In *Yetkin* v. *Mahmood*[24], where injury was caused to a highway user by shrubs which had overgrown and impeded visibility, the court upheld the claim for damages. The court observed as follows:

"...The planting of vegetation in the raised beds of the central reservation is obviously a reasonable exercise of the authority's powers but to plant shrubs which will grow so large as to obscure the view and then not to ensure that they are trimmed back is a negligent exercise of those powers. The judge held that that failure was a cause of this accident. It is not suggested that he was not right so to hold. I have no doubt that, in the circumstances of this case, the local authority had a common law duty of care towards the claimant, notwithstanding her own negligence, that that duty was breached and that the breach was a cause of the accident. There was no need for the judge to consider whether the danger created by the bushes amounted to a trap or enticement. It follows in my judgment that the judge erred in dismissing the claim. He should have held that primary liability was established."

67. A similar approach was indicated by this court in *Municipal Corpn. of Delhi* v. *Sushila Devi*[25] (where a tree fell on a passer-by causing injury) the court upheld the findings that the municipal corporation was liable, stating that:

"13. By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the defendant is liable for any injury caused by the fall of the tree (see Brown *v.* Harrison *[1947 WN 191 : 63 TLR 484]*, Quinn *v.* Scott *[(1965) 1 WLR 1004 : (1965) 2 All ER 588] and* Mackie *v.* Dumbartonshire County Council *[1927 WN 247]). The duty of the*

owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In Municipal Corpn. of Delhi *v.* Subhagwanti *[AIR 1966 SC 1750] a clock tower which was 80 years' old collapsed in Chandni Chowk, Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor ought to have known the danger. "[T]he owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect", — said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such a tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as a storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable."*

68. This approach that a statutory corporation or local authority can be held liable in tort for injury occasioned on account of omission to oversee, or defective supervision of its activities contracted out to another agency, was also followed in *Vadodara Municipal Corporation* v. *Purshottam V. Muranji*[26].

69. The terms of the agreement which the NHAI entered into with the concessionaire clearly contemplated the safety of highway users (Clause 18.1.1) and an elaborate highway monitoring mechanism (Clause 19.1). The agreement also required any unusual occurrences to be reported; an independent engineer was required to, and did inspect the highway. The reports of the inspecting engineer reveal that the deficiencies by way of narrowing of water channels, and the unusual collection of debris, were noted. Even before the incident, the NHAI was alive to this; it had separately written to Rathod, and later to the local administration about it through its letter dated 15.04.2011. That letter is revealing; it *inter alia*, states that:

"During pre-monsoon rains all the excavated muck has been carried to NH4 alongwith rain water and block Satara bound traffic lane for quite some time. The problem will be severe during heavy rains of July and August.

As such safety of highway and tunnel is completely at stake due to indiscriminate cutting of hills on upper side of tunnel and both the end."

70. Having regard to the duty imposed on the NHAI by virtue of Sections 4 and 5 of the Highways Act, read with Section 16 of the NHAI Act, there can be no manner of doubt that the NHAI was responsible for the maintenance of the highway, including the stretch upon which the accident occurred. The report of the sub-divisional officer clearly shows that inspection reports were furnished to the NHAI shortly before the incident, highlighting the deficiencies; also, the NHAI's correspondence with Rathod, and the local administration, reveal that it was aware of the danger and likelihood of risk to human life, and the foreseeability of the event that actually occurred later. Further, letters addressed by the local administration and the NHAI to Rathod similarly show that it was incumbent upon him to take remedial action. The failure of the NHAI to ensure remedial action, and likewise the failure by Rathod to take measures to prevent the accident, *prima facie*, disclose their liability.

71. The absence of legal representatives or heirs of the deceased in the proceedings, or the fact that they had initiated independent civil action, in the opinion of this court, was not an impediment, nor could it have precluded the NGT from exercising its jurisdiction, given the gravity of the matter and the danger posed to the members of the public. The initiation of civil action did not mean that the NGT had to either reject the application (as far as it claimed relief for the accident), or await the outcome of the civil suit. This position is clear from the proviso to Section 18(1) which reads as follows:

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

72. The above provision clearly implies that an application without impleading the legal heirs cannot be rejected. At the most, the tribunal has to implead all legal heirs. In the present case, that procedure was not followed. However, the legal heirs have instituted a suit. The ends of justice would be served if that suit (Special Civil Suit No. 890 of 2014 before the Court of the Civil Judge Senior Division, Pune) is directed to revive and continue it; a direction is issued to the concerned court (Court of the Civil Judge Senior Division, Pune). The directions in this regard by the NGT, towards payment of compensation are to be regarded as indicative of a *prima facie* determination. Consequently, the direction to the NHAI and Rathod, jointly making them liable to pay Rs. 15 lakhs is justified. It is clarified that the civil suit will now proceed, and based on evidence, the court would finally decide the issue of liability, and make such further consequential orders or decrees as may be found necessary in this regard, towards apportioning of liability of the NHAI, Rathod, the state or any other party (including the concessionaire). This court's order shall not be treated as conclusive; the trial court shall independently proceed to evaluate the evidence and hear the parties on the merits of their submissions. The restitutionary order by the NGT, directing payment by Rathod and NHAI of Rs. 10 lakhs too, in this court's opinion, cannot be found to be at fault. It is upheld. The NHAI and Rathod shall comply with the directions of the NGT and deposit the sum of Rs. 15 lakhs with the said court within four weeks, in equal proportion. The sum Rs. 10 lakhs shall be deposited in the same proportion, in court, to be disbursed to the state government for restoring the environment and carrying out afforestation/planting of trees etc.

Point Nos III and IV: Correctness of NGT's directions contained in Para 17 (e) of its impugned order, and the legality of the order/notification of the state of Maharashtra, issued under Section 154, MRTP Act

73. As to the third point, two issues arise for consideration - firstly, the power of the NGT to issue directions banning development and building activities of the kind contained in Para 17(e) of its impugned order, and secondly, the correctness of the procedure adopted while issuing such directions, in this case.

74. In the *All Dimasa Student Union case*[27], this court considered the nature of powers and jurisdiction of NGT. The relevant discussion is as follows:

"156. What are the powers and jurisdiction of the Tribunal given under the National Green Tribunal Act, 2010 has to be looked into to consider the above submission? Insofar as jurisdiction of the Tribunal is concerned, we have already noticed Sections 14, 15 and 16 of the Act. Section 19 of the Act deals with procedure and powers of the Tribunal. Section 19 which is relevant for the present case is as follows[28]*:*

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157. Sub-section (1) of Section 19 provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. What subsection (1) meant to convey is that the Tribunal is not shackled with the procedure laid down by CPC for conducting its proceedings. Subsection (2) of Section 19 empowers the Tribunal with powers to regulate its own procedure. Section 19(2) confers vide powers on the Tribunal insofar as its procedure is concerned. Section 19(4) vests some powers as are vested in the civil court, while trying a suit, in respect of matters enumerated therein. The use of the expression "shall not be bound by the procedure laid down by CPC" is not akin to saying that procedure as laid down by CPC is in no manner relevant to the Tribunal. Further, Section 19(1) also does not mean that the Tribunal cannot follow any procedure given in CPC. One provision of CPC inserted by Act 104 of 1976 with effect from 1-2-1977 is Order 26, which is relevant for present inquiry. Order 26 Rule 10-A provides as follows:

"10-A. Commission for scientific investigations.—(1) Where any question

arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this Rule as they apply in relation to a Commissioner appointed under Rule 9."

158. Rule 10-A provides that where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court. Rule 10-A is enabling power to the courts to obtain report from such persons as it thinks fit when any question involves with the scientific investigation. The powers under Rule 10-A which are to be exercised by the Court can very well be used by NGT to obtain reports by experts. NGT as per the statutory scheme of NGT has to decide several complex questions pertaining to pollution and environment. The scientific investigation and report by experts are necessary requirements in appropriate cases to come to correct conclusion to find out measures to remedy the pollution and environment. We do not, thus, find any dearth of jurisdiction in NGT to appoint a committee to submit a report. We may further say that while asking an expert to give a report, NGT is not confined to the four corners of Rule 10 -A rather its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A as per Section 19(1) as noticed above."

75. The court also took note of Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 (framed under Sections 4(4) and 35 of the NGT Act).[29] This court then held as follows:

"160. Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure the ends of justice. Use of words "may", "such orders", "gives such directions", "as may be necessary or expedient", "to give effect to its orders", "order to prevent abuse of process", are words which enable the Tribunal to pass orders and the above words confer wide discretion.

163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in L. Hirday Narain *v.* CIT [L. Hirday Narain *v.* CIT, *(1970) 2 SCC 355], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14: (SCC p. 359)*

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164. We, thus, are of the considered opinion that there is no lack of jurisdiction in NGT to direct for appointment of committee or to obtain a report from a committee in the given facts of the case."

76. The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the *nature of the abusive practice*, its powers can also be preventive.

77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15

and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued.

78. Courts in the US, notably the US Supreme Court, have been faced with problems arising from regulatory adjudication. The scope of such decision making which resembles an adjudicatory outcome by courts, was considered in *Securities Exchange Commission* v. *Chenery Corp.*[30] This case arose from an order of the Securities Exchange Commission (SEC) refusing to approve a utility company's bankruptcy reorganization plan, due to that plan's favourable treatment of management's stock purchases during the reorganization period. The SEC originally had based its disapproval on its understanding of general corporation law principles. The Supreme Court initially struck down that decision as a misreading of the principles. On remand, the SEC reaffirmed its rejection of the reorganization plan. But this time, the SEC relied on its interpretation of the standards of the Public Utility Holding Company Act of 1935. When the Supreme Court decided the appeal for the second time, it affirmed the SEC's order. The court clarified that SEC would be allowed to establish such an interpretation by means of a particularized order rather than a general regulation and observed that:

> *"Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity. In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case by case evolution of statutory standards. And the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primary in the informed discretion of the administrative agency."*

79. Similar observations were made by this court in *PTC India* v. *Central Electricity Regulatory Commission*[31]. The court stated as follows, after analysing the provisions of the Electricity Act 2003:

> *"49. On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, "between legislative and administrative functions we have regulatory functions". A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law.*
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> *50. Applying the above test, price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of tariff fixation under Section 62 made appealable under Section 111 of the 2003 Act, though Section 61 is an enabling provision for the framing of regulations by CERC. If one takes "tariff" as a subject-matter, one finds that under Part VII of the 2003 Act actual determination/fixation of tariff is done by the appropriate Commission under Section 62*

whereas Section 61 is the enabling provision for framing of regulations containing generic propositions in accordance with which the appropriate Commission has to fix the tariff. This basic scheme equally applies to the subject-matter "trading margin" in a different statutory context as will be demonstrated by discussion hereinbelow."

80. The NGT's directions, though placed in the context of its adjudicatory role, have a wider ramification in the sense that its rulings constitute the appropriate norm which are to be followed by all those engaging in similar activities. Therefore, its orders, contextually in the course of adjudication, also establish and direct behaviour appropriate for future guidance. In these circumstances, given the panoply of the NGT's powers under the NGT Act, which include considering regulatory directions issued by expert regulatory bodies under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Biodiversity Act, 2002 it has to be held that general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT.

81. Turning next to the question of the correctness of the general directions contained in Para 17(e) of the NGT's order, this court has no manner of doubt that such directions were improper and not justified in the facts of this case. What the NGT had before it, was the report of the SDM and a report commissioned about the nature of the incident. Based on these limited inputs, the tribunal concluded-without any *rationale* and based on no scientific or technical evidence, or experts' opinion, that development and construction should not be carried out within 100 feet of a "*lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops".* The decisions of this court, including the *All Dimasa Students Union case* (f.n. 9); *Mantri Technoze Pvt. Ltd. case* (f.n.3); the *Hanuman Laxman Aroskar case* (f.n. 4) and the *Tamil Nadu Pollution Control Board case* (f.n. 2) all show that the NGT resorted to the appointment of technical and scientific experts in the relevant field, who studied the issue, made site inspections and furnished reports. Such reports were subjected to discussion by the parties before the NGT, who were also given the opportunity of objecting to or making representations against such reports. Based on a final consideration of all these materials, and the submissions of parties before it, the NGT proceeded to issue directions. This procedure was wholly overlooked by the NGT in the present case. As a result, it is held that the said tribunal's directions were improper and are procedurally indefensible. The directions contained in Para 17(e) are therefore set aside.

82. To consider the last issue, i.e. validity of the notification/direction issued by the state government, it is necessary to briefly outline provisions of the MRTP Act. The MRTP Act was framed and enacted for the purpose of use, planning and development in the regions (of Maharashtra). This was through the establishment of Regional Planning Boards, New Town Development Authorities and Special Planning Authorities, as the case may be, for specified "notified areas". The Act provides for the preparation of development plans, appointment of Special Planning Authorities for notified areas, and creation of new towns for designated areas by means of development authorities. The MRTP Act also enables compulsory acquisition of land for public purposes in respect of the plans and for purposes connected therewith. The Act provides for an elaborate procedure for preparation of the regional plan by a Regional Planning Board ("the board") and development plan by any planning authority. The board has to follow the procedure contained in Chapter II(C). Section 16 provides the procedure - the regional boards have to (after necessary survey) prepare land-use maps for the region, and prepare a draft regional plan, after which they have to publish a notice about the plan in the Official Gazette, inviting objections and suggestions from any person with respect to the draft plan. The board has to refer the objections, suggestions and representations received by it to the Regional Planning Committee ("the committee" hereafter) appointed under Section 10 for consideration and report. The committee, after giving a reasonable opportunity of being heard to the affected persons has to submit its report to the board, after which the board has to prepare the regional plan after considering the suggestions, objections and representations and the report of the committee. This is to be submitted to the State Government for approval. On approval of the plan by the State Government under Section 15, the final regional plan has to be published under Section 17.

83. Chapter III deals with the procedure for preparation of development plans by a

planning authority. Section 23 provides that the planning authority should make a declaration of its intent to prepare such a plan and publish the same in the Official Gazette, inviting suggestions or objections from the public within a period of not less than sixty days from the publication of the notice in the Official Gazette. Thereafter under Section 26, the planning authority has to prepare a draft development plan, not later than two years from the date of notice published under Section 23, and publish the notice in the Official Gazette stating that the development plan has been prepared, once again inviting objections or suggestions from any person with respect to the draft plan within a period of sixty days from the notice. Section 27 provides that the planning authority having regard to, and guided by the proposals made in the regional plan, shall not carry out any modification therein without prior concurrence of the Regional Planning Board. Section 28 mandates the planning authority to consider suggestions or objections received by it under Section 26(1) and provide a reasonable opportunity of being heard to any person including the representatives of the Government who may have filed any objections or suggestions, and thereafter modify or change the plan in such manner, as provided under Section 28(4). Section 29 further provides for modification of the draft development plan, which is of substantial nature. By this, a planning authority or the Town Planning Officer is required to publish a notice in the Official Gazette inviting objections and suggestions from any person with respect to the proposed modification not later than sixty days from the date of such notice. The section then requires the authority concerned to consider all objections and suggestions received by it and give a reasonable opportunity of being heard to any person including representatives of government departments who may have filed any objections or made any suggestions in respect of the draft development plan before making such modifications or changes in the draft development plan. Section 30 requires the planning authority to submit the draft plan to the State Government for approval, within twelve months from the date of publication of the notice under Section 26 that the draft plan has been prepared. Section 31 provides that the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette, sanction the draft development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft development plan to the planning authority for modifying the plan as it may direct, or refuse to accord sanction. It further provides that where the modifications proposed to be made by the State Government are of a substantial nature, the State Government has to follow the procedure contemplated under Section 28 to give a reasonable opportunity of hearing to the objectors before finalizing the modification.

84. Section 37 confers powers on a planning authority to carry out such modification in a final development plan as will not change its character. This power could be exercised by a planning authority after publishing a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification, not later than one month from the date of such notice. This section also enjoins the planning authority to serve notice on all persons affected by the proposed modification and, after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction. Section 40 provides for appointment of a Special Planning Authority for developing certain notified areas, and Section 40(1)(*c*) provides that the State Government may, by notification in the Official Gazette appoint Bombay Metropolitan Region Development Authority (BMRDA) established under the Bombay Metropolitan Region Development Authority Act, 1974 to be the Special Planning Authority for developing any undeveloped area specified in the notification as a notified area. Section 116 then lays down that a Special Planning Authority shall have all the powers of a planning authority as provided in Chapter VII of the MRTP Act for the special purpose of acquisition of such land in the notified area either by agreement or under the Land Acquisition Act.

85. So far as plans and developments that were approved before the impugned notification was issued, this court is of the opinion that they cannot be disturbed and the right of the applicants, be they developers, builders or owners of land or plots, cannot be prejudiced or adversely affected. This is evident from a ruling of this court in *T.*

Vijayalakshmi v. *Town Planning Member*[32]. This court stated that town planning legislations (like the MRTP Act) are regulatory; and that when a development plan is in force during the proposal for its amendment, courts should not interfere with them on the assumption that the approved plan for building or development, would not be eventually permitted. It was held that:

> *"Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force."*

86. This court has ruled, that even modification to an existing development plan, under the MRTP Act, under Section 37, is in the nature of a legislative function. This court had observed under *Pune Municipal Corpn.* v. *Promoters and Builders Assn*[33] speaking of Section 37 (1) that:

> *"4. Reading of this provision reveals that under clause (1), the Planning Authority after inviting objections and suggestions regarding the proposed amendment and after giving notice to all affected persons shall submit the proposed modification for sanction to the Government. Deliberation with the public before making the amendment is over at this stage. The Government, thereafter, under clause (2) is given absolute liberty to make or not to make necessary inquiry before granting sanction. Again, while according sanction, the Government may do so with or without modifications. The Government could impose such conditions as it deems fit. It is also permissible for the Government to refuse the sanction. This is the true meaning of clause (2). It is difficult to uphold the contrary interpretation given by the High Court. The main limitation for the Government is made under clause (1) that no authority can propose an amendment so as to change the basic character of the development plan. The proposed amendment could only be minor within the limits of the development plan. And for such minor changes it is only normal for the Government to exercise a wide discretion, by keeping various relevant factors in mind. Again, if it is arbitrary or unreasonable the same could be challenged. It is not the case of the respondents herein that the proposed change is arbitrary or unreasonable. They challenged the same citing the reason that the Government is not empowered under the Act to make such changes to the modification.*
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> *5. Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for "such inquiry as it may consider necessary" by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody.* (Union of India *v.* Cynamide India Ltd. *[(1987) 2 SCC 720], SCC paras*

5 and 27. See generally H.S.S.K. Niyami *v.* Union of India *[(1990) 4 SCC 516] and* Canara Bank *v.* Debasis Das *[(2003) 4 SCC 557 : 2003 SCC (L&S) 507].) While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See* generally ONGC *v.* Assn. of Natural Gas Consuming Industries of Gujarat *[1990 Supp SCC 397].) Therefore, the view adopted by the High Court does not appear to be correct.*

87. This issue was again underscored by this court in *Machavarapu Srinivasa Rao* v. *Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority*,[34] where it was held as follows, in respect of provisions of the Andhra Pradesh (Urban Areas) Development Act, 1975:

"20. An analysis of the above-noted provisions shows that once the master plan or the zonal development plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building, etc. or use of land for a purpose other than the one specified in the master plan/zonal development plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed under Section 12(3)."

88. In a decision which concerned change in development plan under the MRTP Act, this court observed that any changes in a development or master plan involve consultations and a high degree of expertise, in *MIG Cricket Club* v. *Abhinav Sahakar Education Society*[35]:

"28. It is well settled that the user of the land is to be decided by the authority empowered to take such a decision and this Court in exercise of its power of judicial review would not interfere with the same unless the change in the user is found to be arbitrary. The process involves consideration of competing claims and requirements of the inhabitants in present and future so as to make their lives happy, healthy and comfortable. We are of the opinion that town planning requires high degree of expertise and that is best left to the decision of the State Government to which the advice of the expert body is available. In the facts of the present case, we find that the power has been exercised in accordance with law and there is no arbitrariness in the same."

89. Now, under the provisions of the MRTP Act[36], regional plans and development plans have to take into account features such as soil conservation, preservation of natural features, prevention of flooding etc, while factoring planning for each city or area concerned. In turn, such regional and development plans would constitute the blueprint for local town planning authorities to grant or refuse permission to individual applicants. In these circumstances, the use of Section 154 of the MRTP Act, in the present case, in fact amounted to a modification of all plans - regional, development, etc. Such modification (by way of absolute prohibition in construction) was not preceded by any manner of public consultation, much less previous invitation of objections or consideration of the views of affected parties. It is in this background that one has to consider the argument of the state, which found favour with the High Court, that such notification was issued in public interest.

90. The unamended Section 154 of the MRTP Act read as follows:

"154 Control by the State Government

(1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.

(2) If in, or his connection with, the exercise of its powers and discharge of its functions by the Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State Government on such dispute shall be final."

91. Section 154 (1) was amendment by a substitution (with effect from 22.04.2015). The new provision [Section 154 (1)] reads as follows:

"154. (1) Notwithstanding anything contained in this Act or the rules or regulations made thereunder, the State Government may, for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time, such directions or instructions as may be necessary, to any Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions within the time-limit, if any, specified in such directions or instructions."

92. Directions can be issued "notwithstanding" any other provisions of the Act, "*for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time.*" No doubt, the *non-obstante* clause has an overriding effect on other provisions of the Act. However, if one keeps in mind that the preparations of regional and development plans are in terms of specific provisions which outline detailed procedures that have to be necessarily followed, in the absence of which, time and again courts have intervened and held that such modifications (without following prescribed procedure or without prescribed consultations) are illegal, the power has to be resorted to for good and adequate reasons. The direction, impugned in the present case, on the face of it, is not premised on any central or state government programmes, policies or projects. The impugned notification reads as follows:

GOVERNMENT OF MAHARASHTRA
URBAN DEVELOPMENT DEPARTMENT
Madam Cama Road
Hutatma Rajguru Chowk
Mantralaya, Mumbai 4000032
Government Resolution No. TPS-1817/ANS-90/97/UD-13
dated 14 November 2017

The Development schemes are prepared for area in jurisdiction of planning authorities under the Maharashtra Regional Development and Town Planning Act, 1966. In the context of unauthorised constructions undertaken by hill cutting, at Katraj Ghat District Pune, the Hon'ble National Green Tribunal, Pune has, by order dated 19 May 2015 in Application Number 4/2014, issued orders and instructed to inform all Mahanagar Palik/Nagarpalika in the state not to give any development permission for constructions on the hilltop and 100 feet distance from the hill slopes. A provision already exists in development control regulations that no development is permissible on the hilltop and no hill slopes having a gradient of more than 1:5. Considering the order dated 19 May 2015 of the Hon'ble National Green Tribunal in exercise of powers under section 154 of the Maharashtra Regional Town Development and Town Planning Act 1966 the following the directions were issued to all planning authorities in the state:

DIRECTIONS

1. *The planning authorities while preparing development plan for area in their jurisdiction or amending them in respect of undeveloped portion abutting the hills upto 100 feet should be shown as No development/Open space Reservation.*
2. *In the event the 100 area abutting hills, has already been developed, in that area no permission be granted for additional FSI or TDR.*
3. *In the event the 100 feet area abutting hills is under No Development Zone as per sanctioned Development plan, then while granting permission for Development for further 100 feet area abutting/contiguous thereto should be permitted only for nonbuildable purposes such as open space, road et cetera.*

In the name of and by order of the Hon'ble Governor State of Maharashtra"

93. There are several authorities for the proposition that though an administrative order need not necessarily comply with principles of natural justice such as granting hearing, yet, administrative decisions or orders have to be based on some reasons. In *Shri. Sitaram Sugar Mills Company* v. *Union of India*,[37] (which concerned the zoning regulations for the

purpose of levy sugar under the relevant statutory order, in terms of the Essential Commodities Act), the Supreme Court held as follows:

> *"Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable ultra vires.*
>
> *A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness."*

94. In *Cellular Operators Association* v. *Telecom Regulatory Authority of India*,[38] this court held that subordinate regulatory legislation, can be set aside in judicial review, if they show no *rationale* or are arbitrary:

> *"62. In view of the aforesaid, it is clear that the Quality of Service Regulations and the Consumer Regulations must be read together as part of a single scheme in order to test the reasonableness thereof. The countervailing advantage to service providers by way of the allowance of 2% average call drops per month, which has been granted under the 2009 Quality of Service Regulations, could not have been ignored by the impugned Regulation so as to affect the fundamental rights of the appellants, and having been so ignored, would render the impugned Regulation manifestly arbitrary and unreasonable.*
>
> *63. Secondly, no facts have been shown to us which would indicate that a particular area would be filled with call drops thanks to the fault on the part of the service providers in which consumers would be severely inconvenienced. The mere ipse dixit of the learned Attorney General, without any facts being pleaded to this effect, cannot possibly make an unconstitutional regulation constitutional. We, therefore, hold that a strict penal liability laid down on the erroneous basis that the fault is entirely with the service provider is manifestly arbitrary and unreasonable. Also, the payment of such penalty to a consumer who may himself be at fault, and which gives an unjustifiable windfall to such consumer, is also manifestly arbitrary and unreasonable. In the circumstances, it is not necessary to go into the appellants' submissions that call drops take place because of four reasons, three of which are not attributable to the fault of the service provider, which includes sealing and shutting down towers by municipal authorities over which they have no control, or whether they are attributable to only two causes, as suggested by the Attorney General, being network-related causes or user-related causes. Equally, it is not necessary to determine finally as to whether the reason for a call drop can technologically be found out and whether it is a network-related reason or a user-related reason.*
>
> *XXXXXX XXXXXX XXXXXX*
>
> *66. The reason given in the Explanatory Memorandum for compensating the consumer is that the compensation given is only notional. The very notion that only notional compensation is awarded, is also entirely without basis. A consumer may well suffer a call drop after 3 or 4 seconds in a voice call. Whereas the consumer is charged only 4 or 5 paise for such dropped call, the service provider has to pay a sum of rupee one to the said consumer.*
>
> *This cannot be called notional at all. It is also not clear as to why the Authority decided to limit compensation to three call drops per day or how it arrived at the figure of Re 1 to compensate inconvenience caused to the consumer. It is equally unclear as to why the calling party alone is provided compensation because, according to the Explanatory Memorandum, inconvenience is suffered due to the interruption of a call, and such inconvenience is suffered both by the calling party and the person who receives the*

call. The receiving party can legitimately claim that his inconvenience when a call drops, is as great as that of the calling party. And the receiving party may need to make the second call, in which case he receives nothing, and the calling party receives Re 1 for the additional expense made by the receiving party. All this betrays a complete lack of intelligent care and deliberation in framing such a regulation by the Authority, rendering the impugned Regulation manifestly arbitrary and unreasonable."

95. In the present case, the State of Maharashtra has not shown any material or file containing the reasons behind the directive of 14.11.2017. It is not in dispute that the direction was consequential to, and solely based on the directions of the NGT in Para 17(e). As noticed earlier, those directions were not based on any scientific evidence or report of any technical expert. Furthermore, even the impugned notification does not specify what constitutes "hills", and how they can be applied in towns and communities set in undulating areas and hilly terrain. This is not only vague, but makes the directions arbitrary as they can be applied at will by the concerned authorities. More importantly, they amount to a blanket change of all regional and development plans. While such directions can be issued, if situations so warrant, such as in extraordinary or emergent circumstances, the complete absence of any reasons why the state issued them, coupled with the lack of any supporting expert report or input, renders it an arbitrary exercise. That they are based only on the NGT's orders, only underlines the lack of any application of mind on the part of the State, while issuing them.

96. For the above reasons, we hold that the impugned judgment of the Bombay High Court cannot be sustained; it is set aside. Consequently, the directions in the notification under Section 154 (dated 14.11.2017) are hereby quashed.

97. In view of the above discussions, CA 6932/2015 and CA 5971/2019 are hereby disposed of in terms of the directions in this judgment. The other appeals by special leave by third parties, against the NGT's order, and the order of the NGT, are partly allowed in the above terms. There shall be no order on costs.

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[1] In terms of Clause 19.4.2, the measure of damages which NHAI could recover was calculable in terms of each days delay in complying with the remedial measures suggested by the engineer, based on the "*higher (a) 0.5% of the Average Daily Fee and (b) 0.1% of the cost of such repair or repair estimated by the Independent Engineer*" The same clause (17.8.1) stated that:

"Notwithstanding anything contained in this agreement, should the actual traffic exceed the design capacity during any year or part thereof and the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this agreement and the Authority shall be entitled from such date to recover damages, to be calculated and paid for each day of the delay until the breach is cured, at the higher of (a) 5% (five percent) of Average daily fee and 1% (one percent) of the cost of such repair or rectification as estimated by the Independent Engineer, for the balance period of the concession. The recovery of such damages shall be without prejudice to the rights of the Authority under this agreement, including the right of termination thereof."

[2] 2019 SCC OnLine SC 221.

[3] (2019) 18 SCC 494

[4] (2019) 15 SCC 401

[5] (2001) 6 SCC 496

[6] 2019 SCC OnLine SC 1510

[7] (1981) 2 SCC 205

[8] (2011) 7 SCC 338

[9] (2019) 8 SCC 177

[10] Section 2(a) EPA

[11] Section 2(b) EPA

[12] Section 2(c) EPA

[13] (2004) 12 SCC 118

[14] (2012) 4 SCC 629

[15] No. 3181 dated 14 August, 2018, published by the Government of India, in the Official Gazette

[16] (1997) 9 SCC 552

[17] *Gorris* v. *Scott* [(1874) 9 Exch 125] and *Kilgollan* v. *William Cooke & Co. Ltd.* (1956) 2 All ER 294, CA]

[18] [1967] 1 Q.B. 374

[19] [1968] 1 W.L.R. 1490

[20] [1978] Q.B. 343

[21] 1996 (3) All ER 801

[22] 2004 (1) WLR 1057

[23] 2019 (2) All ER 1041

[24] 2011 QB 827

[25] (1999) 4 SCC 317 at page 323

[26] (2014) 16 SCC 14

[27] See f.n.9 (supra).

[28] *"19. Procedure and powers of Tribunal.—(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.*

(2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

(3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decision;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

(j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;

(k) any other matter which may be prescribed.

(5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Penal Code, 1860 and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."

[29] The said rule reads as follows:

"24. Order and directions in certain cases. — The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."

[30] 332 U.S. 194 (1947)

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[31] (2010) 4 SCC 603

[32] (2006) 8 SCC 502

[33] (2004) 10 SCC 796

[34] (2011) 12 SCC 154

[35] (2011) 9 SCC 97

[36] Section 14 and 22

[37] (1990) 3 SCC 223

[38] (2016) 7 SCC 703