

**BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL SOUTH ZONE BENCH AT CHENNAI**

Original Application No.191 of 2024

(Memorandum of Original Application under Section 18 read with Sections
14 and 15(1) of the National Green Tribunal Act, 2010)

IN THE MATTER OF:

Yelahanka Puttenahalli Lake And
Bird Conservation Trust (Regd.)

...APPLICANT

:Vs:

State of Karnataka & 7 others

...RESPONDENTS

**INDEX TO THE TYPED SET OF DOCUMENTS FILED BY THE 2ND
RESPONDENT**

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3.	08.03.2019	Annexures M - Order passed by the Hon'ble High Court of Karnataka in W.P.No. 25189 of 2018	23
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5.	08.11.2023	Annexures O - Order passed by the Hon'ble Supreme Court in Civil Appeal Nos. 5810-5811 of 2022	98

Dated at Chennai on this the 25th August 2024



Counsel for the 2nd Respondent

**T.V. SEKAR, MS. No. 143/1980
COUNSEL FOR THE 2ND RESPONDENT
Ph: 9381059010
E-Mail: sekarvallam@gmail.com**

**BEFORE THE NATIONAL GREEN TRIBUNAL (S2)
AT CHENNAI**

I.A. No. 71 of 2024
In
O.A. No. 191 of 2024

Between
Yelhanaka- Puttenahalli
Lake and Bird Conservation
Trust (Regd)

...Applicant

-Vs-

The State of Karnataka
and others


..Respondents

AFFIDAVIT OF MR. B.S. PRAHALLAD

I B.S.Prahallad son of Sathyanarayanchar aged about 53 years having office at, B.B.M.P. offices, N.R. Square, Bengaluru-560002 do hereby Solemnly affirm and sincerely state as follows:-

1. I state that I am the Engineer in chief of the 2nd Respondent namely Bruhat Bengaluru Mahanagara Palike and I am well acquainted with the facts of the case.
2. I state that I am the herewith filing the para-wise reply in I.A.No.71 of 2024 in O.A. No. 191 of 2024
3. I pray that the para-wise reply with the Annexures may be taken on record.

Solemnly affirmed at
Bengaluru on this the 3rd day
of July 2024


 Deponent
Engineer - in - Chief
Bruhat Bengaluru Mahanagara Palike
Bengaluru

**THE NATIONAL GREEN TRIBUNAL, (SOUTHERN ZONE)
SITTING AT CHENNAI**

I.A NO: 71 of 2024

in

Original Application No.191 of 2024 (an Interlocutory Application under section 19(4) (i) of the National Green Tribunal Act, 2010

BETWEEN:

Yelahanka - Puttenahalli lake and
Bird Conservation Trust (Regd)

APPLICANT

And

The State of Karnataka and others.

RESPONDENTS

PARA-WISE REPLIES FILED ON BEHALF OF

RESPONDENT NO:2 (BBMP)

The Respondent No:02, Bruhat Bengaluru Mahanagara Palike (B.B.M.P)
Respectfully sheweth as under:

1. That the Petitioner/Applicant trust, has no cause of action against the answering Respondent to file the instant Application as no illegality whatsoever has been committed by the answering Respondent. Therefore the Interlocutory Application is not maintainable and is liable to be dismissed.

2. That the petitioner/Applicant trust, has not approached this Hon'ble Tribunal with clean hands and Pure soul rather they misled and twisted the true facts, Thus on this score alone the instant Application is liable to be dismissed.

3. That the petitioner / Applicant Trust has no locus standi to file the instant Application as they have willfully not revealed full truth and have deliberately failed to state the facts and hence the same is not entertainable.

4. That the Petitioner / Applicant Trust has not exhausted all the available forums. Hence the instant Application is not maintainable in the eyes of law.

5. That the Application filed before the Hon'ble Tribunal is liable to be dismissed as the issue of contention of the instant Application is coming under the ambit of Wild life (Protection) Act 1972, which is applicable in case of Notional parks, Sanctuaries and Tiger Reserves over which the Hon'ble Tribunal has no jurisdiction.

Para-wise Replies:

Para No. 01:The Applicant is filing the present original application before this Hon'ble Tribunal under section 18 of the National Green Tribunal act, 2010 (hereinafter referred as "the Act"), herein the situation has arisen giving rise to the substantial questions relating to the environment, as referred to in section 14 of the Act, and the same requires adjudication by this Hon'ble Tribunal, Further, there is damage caused to the environment by the activities of the Respondents and the same requires the restitution of the environment, as contemplated under section 15 of the Act, Hence, the present original application is filed before this Hon'ble Tribunal.

Reply to Para No. 01 : It is submitted by respondent No:02 that para No:01 of the interlocutory application is incorrect and hence denied. The contention made by the Applicants against Respondent No.2 that there is damage caused to environment by the activities of the Respondents and the same requires the Restitution of environment is misleading. The present application is a motivated one and is filed with a malifide intention without any basis by knowingly making false and incorrect statements and in utter disregard of facts and therefore the Application is liable to be dismissed on this ground alone.

Para No. 02: At the outset it is humbly submitted that the Yelahanka - Puttenahalli Lake - Bird Conservation reserve, is spread in an area of about 13.77 hectares and is world renowned for being home to over 150 species of birds including migratory and endangered species viz., Northern Pintail (*Anas Acuta*),

white Stork (*Ciconia Ciconia*), Northern Shoveler (*Anas Clypeata*), Garganey (*Anas Querquedula*) and Glossy Ibis (*Plegadis Falcinellus*) etc., And he said lake is declared and notified as “Bird Conservation Reserve” under Section 36-A of the Wildlife (Protection) Amendment Act., 2006 vide Notification No. FE 389 FWL 2014 Bengaluru dated 29.04.2015 issued by Department of Forest, Environment and Ecology of Government of Karnataka.

Reply to Para No. 02 : It is humbly submitted by Respondent No:02, that para No:02 of the interlocutory application is admitted and it needs no reply as it is a matter of record.

Para No. 03: The Applicant - Trust is a registered trust in the name and style of “Yelahanka Puttenahalli Lake and Bird Conservation Trust (Regd.), having Reg. No. BNG(U)/YLNK /BKIV/13/2013-2014 and having its Registered office at #9, 1ST main, Vinayaka Layout, Puttenahalli, Yelahanaka, Bengaluru - 560064 and the Chairperson of the trust is Dr. K. S. Sangunni. The said Trust is created in the year 2013 basically for the purpose of conservation and restoration of the Yelahanka Puttenahalli Lake. The Applicant- Trust largely consists of retired Professors and other respected member of the society who are interested in conservation and preservation of the environment. And the present Chairman of the Trust is the Retd. Professor of Indian Institute of Science (IISc), Bangalore.

Reply to Para No. 03 : It is submitted by Respondent No.2 that para No:03 of the interlocutory application is beyond the scope and reach of the Respondents and is admitted to the extent as is borne out from the records.

Para No. 04: That the Respondent No.2 (BBMP) , in the month of May, 2024 has illegally started digging up the Yelahanka -Puttenahalli lake and in its vicinity, and in the buffer zone, and is putting up huge Hume pipes. Due to which the sewage water has started flowing into the lake. Further, that the Storm Water Drain has been left open by the Respondent No.2/BBMP an even through it the sewage water is entering the lake. This activity of the Respondent No. 2/BBMP has caused immense damage to the lake and protected bird species in it. If the present activity of the respondent No.2/BBMP is not stopped immediately, then

the same would cause permanent damage to the lake and the environment around it, and the same would be irreversible .

Reply to Para No. 04 : It is submitted by Respondent No:02 that para No:04 of the interlocutory application is incorrect and hence denied. No digging work was done in the lake. It is refuted that the activity of the Respondent No:02 led the sewage water to flow into the lake. It is baseless to state that activity of the Respondent No.02 caused immense damage to the lake and protected bird species in it. The BBMP/ Respondent No.02 is committed in serving the residents of Bengaluru and is rendering its services at its best. When the heavy rains lashed Bengaluru city in the last two weeks of the month of May and also on many occasions in previous years, the storm water and the sewage water which had natural flow increased their size of flow and rushed into the neighbouring houses endangering the lives of residents. The residents had to spend sleepless nights, putting their lives at stake. It is submitted that the photographs / paper cuttings showing the havoc created by lashed rains are produced here with and marked as Annexure-A, Annexure-B, Annexure-C, Annexure-D, Annexure-E, Annexure-F, The over-flowing water from Attur lake together with storm water had natural flow upto a few feet less than Bengaluru - Doddaballapura Road. The S.T.P's (Sewage Treatment Plants) are set-up in the vicinity of the Puttenahalli Lake which prevent the entry of sewage water into the lake. The Photographs of S.T.P's are produced herewith and marked as Annexure-X1, Annexure-X2, Annexure-X3 and Annexure-X4. To avoid the natural flow of over flowing water from Attur lake which is high laying area and also the storm water which have a light chance of mixing sewage water in the open area, the BBMP / Respondent No.02 has taken up a work of laying Hume pipe line of 1600 mm diameter only to a length of 560.00 meters under the walking-track which is 20 meters away from the lake water spread area, This proposed pipeline can easily pass-on the water beyond Bengaluru - Doddaballapura Road, there by protecting the lives avoiding the inundation of about 300 houses in the vicinity. This activity was under taken on priority basis, keeping in view of the life threat posed to the people due to uncontrolled flow of water and also with utmost care of birds, flora and fauna of the Puttenahalli lake. Legal formalities were also strictly adhered to by seeking

permission of the forest Department and NBWL and marked as Annexure-P, Annexure-T, The scant chance of mixing the sewage water with storm water which flows further through pipeline by the side of Puttenahalli lake and enters into Yelahanka lake, is also taken care and separate pipeline of 700 mm diameter is proposed to be laid for sewage water. This clearly shows the concern and commitment of the Respondent No.02 towards the environmental care and protection. The Photographs of two separate pipelines are produced herewith and marked as Annexure-X5 and Annexure-X6. It is submitted that this laying of 2 pipelines under the walking track, which is 20.00 meters away from the water spread area does not cause any damage to the lake, birds or animals. Instead, if it is discontinued, it causes not only loss of Human life, Property, human misery but also uncontrolled natural flow of water, probably with mixed sewage will certainly pollute the water of Puttenahalli lake which causes irreparable loss to the lake, animals, birds and plant life.

Para No. 05: That the Applicant herein made a representation dated 28-05-2024. Via email, to the Respondent No. 2/BBMP, to immediately stop the illegal activity and to restore the serenity of the lake and its environment . That the Respondent No. 2/BBMP has not bothered to reply to the same , and on the other hand, has continued the illegal activity at brisk speed. Further, the Applicant herein made a representation dated 03-06-2024. to the Chief Conservator of Forest, Bangalore (Respondent No.4 herein), who is the custodian and care- Taker of the present lake, and thereby brought to its notice about the illegal activities being carried out by the Respondent No. 2/BBMP and the damage caused to the lake and environment. But surprisingly, there is no reply or any action taken by the Respondent No.4.

Reply to Para No. 05 : That para No: 05 of the interlocutory application is partially admitted pertaining to the representation made by the applicant on 28-05-2024 via email. But it is false and baseless to state that the respondent No.02 has continued the so called illegal activity at brisk speed. In spite of continued rains and the resultant threat to life and property in the vicinity, as the representations made by Respondent No.02 to NBWL are yet to be responded positively and the required

permission is yet to be obtained, the work of laying underground pipe lines is stopped at the cost human life and property.

Para No. 06: Further, That the Deccan Herald Newspaper has report the said illegal activity of the Respondent No., 2/BBMP, in its Bangalore Edition Published on 07-06-2024. That the Respondent No 25/BBMP has not taken necessary permission from the concerned authorities. Moreover, the act of the Respondent No.2/BBMP is in Violation of the law laid by the Hon'ble Supreme court of India, in the case of Mantri Tech zone Private Limited V/S Forward Foundation and Ors. (2019) 18 SCC 494) Wherein the Hon'ble Supreme Court has upheld the directions issued by the Hon'ble National Green Tribunal, Principle Bench, New Delhi in Forward Foundation and Ors. V/S State of Karnataka and Ors. (2016 SCC O Line NGT 1409)

Reply to Para No. 06 : It is submitted by Respondent No:02 that para No: 06 of the Interlocutory Application is also partially admitted pertaining to the fact that there was a report published in the daily called the Deccan Herald which is produced here with and marked as Annexure-L and Annexure-M .It is submitted that the report itself clarifies that the B.B.M.P/ Respondent No.02 had built a network of storm water drains and due to 'Vis major' or 'Act of God', the heavy rains which lashed and flooded the layout and vicinity of the Puttenahalli lake caused enormous damages to the property and made life miserable. Hence the respondent No.02 devised a plan to protect the lives and property of about 300 families living in the surrounding areas and also keeping in view the interest of puttenahalli lake, birds and animals in the lake with utmost care and concern. Process to get permission was also initiated simultaneously along with a devised strategy to protect the lives of people and property along with far-sighted thought of conserving the lake and animal as well as bird species. The act was a measure to strike a balance among many interests and their protection keeping in view that the Right to Healthy environment has been conserved as a part of the Right to Life under article 21 of the constitution of India by way of judicial pronouncements. Respondent No.02 devised to lay 02 Pipes, one of 1600 mm diameter for natural flow of water and one of 700 mm diameter for sewage water 0.6.00 meters

beneath the walking track which is about 1.00 meter above the Full Tank Level (FTL), created for civilian usage and is 20.00 meters away from Water spread area of the lake. This progress oriented act of Respondent No.02. serves the multi-purposes of protecting the lives, property, interest of the citizens as well as conserving the lake, animals and birds lives. The activity of Respondent No.02 has hardly any negative impact on the lake, birds and animals. It is submitted humbly that there will be no construction or Visible structure on the surface of the land and the activity proposed to be under taken in the larger public as well as environmental interest is, laying storm water and sewage pipe lines separately beneath the walking track which is as good as laying underground cable and U.G.D The citations referred to in the application are not relevant to the present case as the facts of these cases are not similar to the facts of the present case.

Para No. 07:Therefore, it is humbly submitted that this Hon'ble Tribunal by applying precautionary principle in order to prevent further damage to the environment including the Birds Conservation Reserve and loss of human lives, may be pleased to issue injunction against the construction and commissioning of the power plant by the Respondent No. 4 (M/s Karnataka Power Corporation Ltd.,) and also to stay/suspend the Environment Clearance SEIAA 20IND 2014 dated 01.06.2015 granted to the Respondent No. 4 by the respondent No. 2 (SEIAA). In the interest of justice.

Reply to Para No. 07 :It is humbly submitted by the Respondent No:02 that para No: 07 of the interlocutory application is a malicious and malified prayer which needs to be explicitly denied. The "Precautionary principle" does not apply to the facts and circumstances of the issue in hand. No damage is caused to the environment including the birds conservation reserve or loss of human lives. Instead the human lives, property, lake, birds and animals are conserved, saved and protected by the proposed activity of Respondent No.02.

It is humbly submitted that the Applicants /Trust had questioned the commissioning of the power plant by the respondent No.4(M/S Karnataka power corporation Ltd.,) based on the environment clearance granted by Respondent No:

02 (SEIAA) and also sought to stay/ suspend the said environment clearance. It is brought to the kind notice of the tribunal that a writ petition bearing No:25187 /2018 was filed by the Applicant/Trust in the Hon'ble high court of karnataka, Bengaluru, which was dismissed. The Hon'ble court had observed in its order as following:-

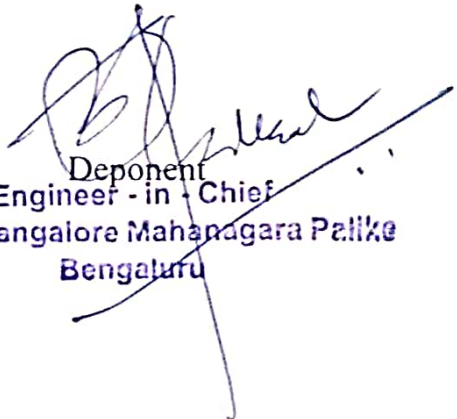
"On considering the material on record, We do not find that there is any violation of law in granting the environmental clearance. The environmental clearance is granted in a manner known to law, after following the procedure involved therein".

"Under these circumstances, we do not find any ground to proceed further. The petition is dismissed" A copy of this order is produced

Para No. 08:That the Applicant has been working with the Government and several State agencies towards the protection, restoration and rejuvenation of Puttenahalli Lake, which has been notified as a "Bird Conservation Reserve" under Section 36-A of the Wildlife (Protection) Act, 1972, in recognition of its rich flora and fauna, including the endangered and threatened migratory bird species using the lake as their habitat, When steps were being taken to restore the lake ecosystem, the applicant have become aware in the month of May 2024 about the illegal activity of digging the Yelahanka-Puttenahalli, Bird Conservation Reserve and Lakes, by the Respondent No. 2/BBMP If the said illegal activity is not immediately stopped by the specific orders of this Hon'ble Tribunal, then there is all likelihood of permanent damage and degradation of the environment would happen. Hence, it is submitted that during the pendency of the present Original Application, this I Hon'ble Tribunal may be pleased to grant injunction against the Respondents and in particular against the Respondent No.2/BBMP and there by direct not to carry out any activities in and around the Yelahanka - Puttenahalli Bird Conservation Reserve and Lakes.

Reply to Para No. 08 :It is submitted by Respondent No:02 that para No:08 of the interlocutory application is incorrect and hence denied. It is submitted that the Applicant is trying to mislead this Hon'ble Tribunal with distorted facts. If the separate pipelines are not laid for the free flow of storm water and sewage and free flow is not created, as witnessed on earlier occasion, The possible heavy rains will create havoc leading not only loss of human lives and property but also to the lake, birds as well as animals. It is therefore most respectfully stated that this interlocutory application has been filed out of sheer malice, Spite and vengence against the BBMP and the inhabitants of the locality. It is submitted that this application is a clear abuse of the process of law and Tribunal, filed with malfide intentions and ulterior motives and therefore ought to be dismissed with exemplary costs on all the above grounds.

It s most respectfully submitted that, all other averments made against the Respondent No:02 which are not specifically traversed are also rebutted as false and baseless. It is therefore most respectfully prayed that the interlocutory application be dismissed for the reasons stated above, with costs and pass such further order or orders as this Tribunal deems fit in the interest of justice and equity.


Deponent
Engineer - in - Chief
Bruhat Bangalore Mahanagara Palike
Bengaluru

Annexure - A



BMP SWM JHI
0.05.2024 15:36
8.11187, 77.57357
Amanashree California Gardens Layout



BMP SWM JHI
0.05.2024 15:36
8.11187, 77.57357
Amanashree California Gardens Layout

Annexure - B



Weather overlay for Bengaluru, Karnataka, India. It shows a temperature of 22°C (72°F) and a date of 2024-05-19 (Sun) 02:16 (AM). The overlay includes a small weather icon and a Google Maps logo.



Weather overlay for Bengaluru, Karnataka, India. It shows a temperature of 22°C (72°F) and a date of 2024-05-19 (Sun) 02:12 (AM). The overlay includes a small weather icon and a Google Maps logo.



ANNEXURE - C

After inspecting localities in Yelahanka, which were inundated following the recent showers, Shivakumar said that water had entered homes as private layouts did not make adequate arrangements to ensure flow of rainwater through storm water




 Bengaluru
 Karnataka
 India
 26°C
 79°F
 2024-05-19(Sun) 07:39(PM)



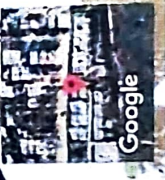
GPS Map Camera
 Bengaluru, Karnataka, India
 Villament #1 Blueberry street, Ananthapura St, Ramanaishve California Gardens
 Layout, Bengaluru, Karnataka 560064, India
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 Long 77.573692°
 19/05/24 04:37 PM GMT +05:30

Google

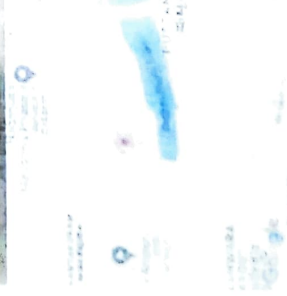
ANNEXURE E



GPS Map Camera
 Bengaluru, Karnataka, India
 Villament #1 Blueberry street, Ananthapura St. Ramanshree California Gardens
 Layout, Bengaluru, Karnataka 560064, India
 Lat 13.11179°
 Long 77.573875°
 19/05/24 04:37 PM GMT +05:30



Bengaluru
 Karnataka
 India
 2024-05-19 (Sun) 02:07(AM)
 25°C
 77°F

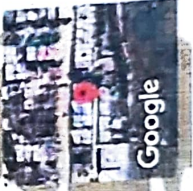




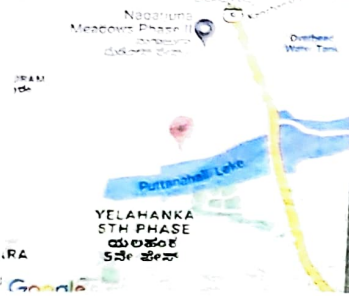
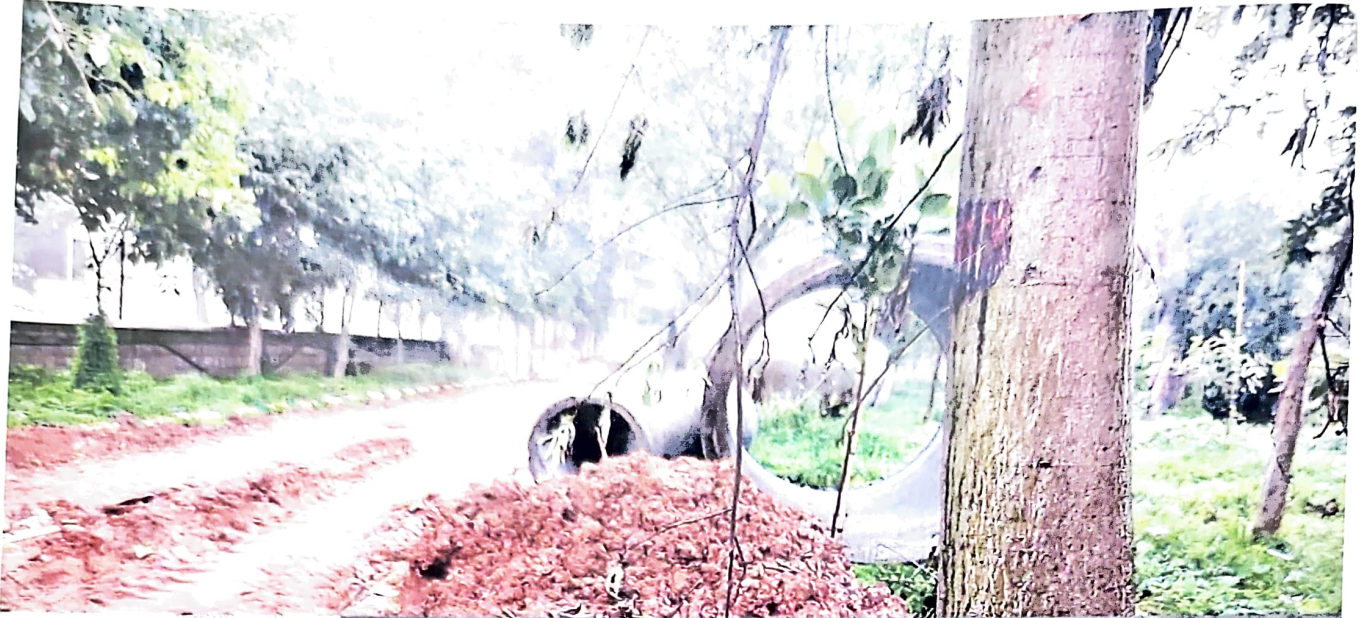
Bengaluru, Karnataka, India
 Villament #1 Blueberry street, Anantapur St, Ramanashree California Gardens
 Layout, Bengaluru, Karnataka 560064, India
 Lat 13.11179°
 Long 77.573675°
 19/05/24 04:37 PM GMT +05:30



Bengaluru, Karnataka, India
 17, Ramanashree California Gardens Layout, Bengaluru, Karnataka 560064, India
 Lat 13.111876°
 Long 77.573402°
 19/05/24 04:37 PM GMT +05:30



ANANTAPUR ST

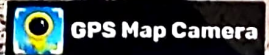


P10, Ramanashree California Gardens Layout, Bengaluru, Karnataka 560064, India

Bengaluru
Karnataka
India

2024-06-10 (Mon) 12:24 (pm)

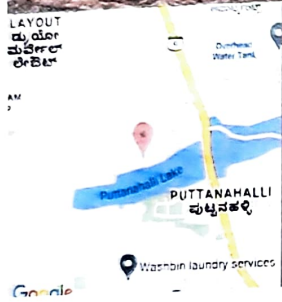
28°C
82°F



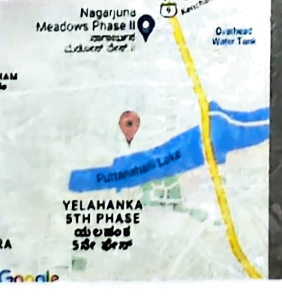
Bengaluru, Karnataka, India
P12, Ramanashree California Gardens Layout, Bengaluru, Karnataka 560064, India
Lat 13.111878°
Long 77.575371°
01/06/24 05:32 PM GMT +05:30



Google



P8, Ramanashree California Gardens Layout, Bengaluru, Karnataka 560064, India
Bengaluru
Karnataka
India
30°C
86°F
2024-06-05(Wed) 12:28(pm)



P10, Ramanashree California Gardens Layout, Bengaluru, Karnataka 560064, India
Bengaluru
Karnataka
India
28°C
82°F
2024-06-10(Mon) 12:24(pm)

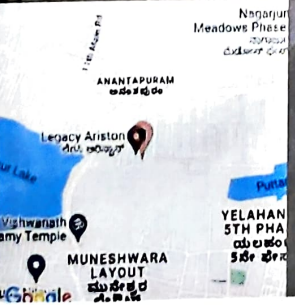
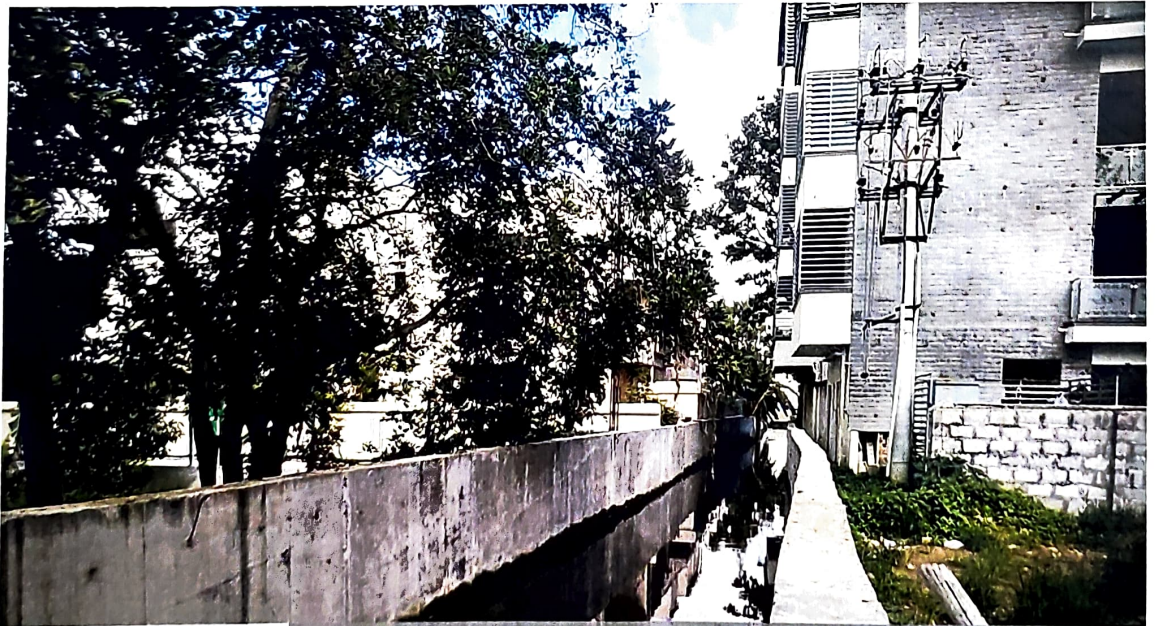


P15, Casurina Street, Ramanashree California Gardens Layout, Bengaluru, Karnataka 560064, India

Bengaluru
Karnataka
India

24°C
75°F

2024-06-16(Sun) 09:13(AM)



P15, Casurina Street, Ramanashree California Gardens Layout, Bengaluru, Karnataka 560064, India

Bengaluru
Karnataka
India

24°C
75°F

2024-06-16(Sun) 09:13(AM)



Font size A+

Download

Image View

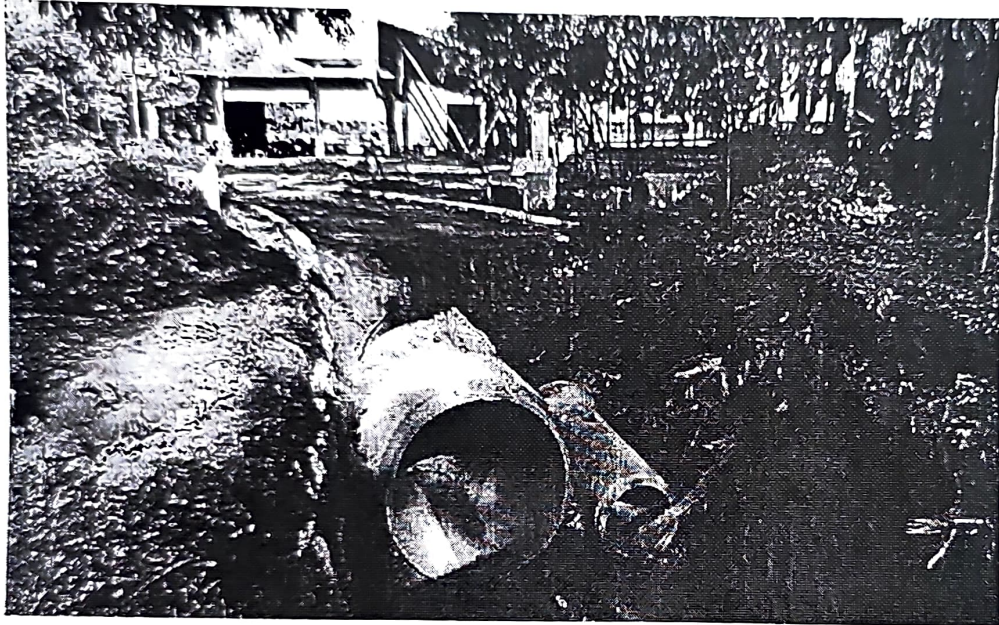
Text View

Favourite

Listen 136

After digging up Puttenahalli lake, BBMP asks for permission

'Such works are in direct violation of law'



The BBMP has excavated the walking path at Puttenahalli Lake to install a pipeline.

07/06/2024

Chiranjeevi Kulkarni, Bengaluru, DHNS BYLINE

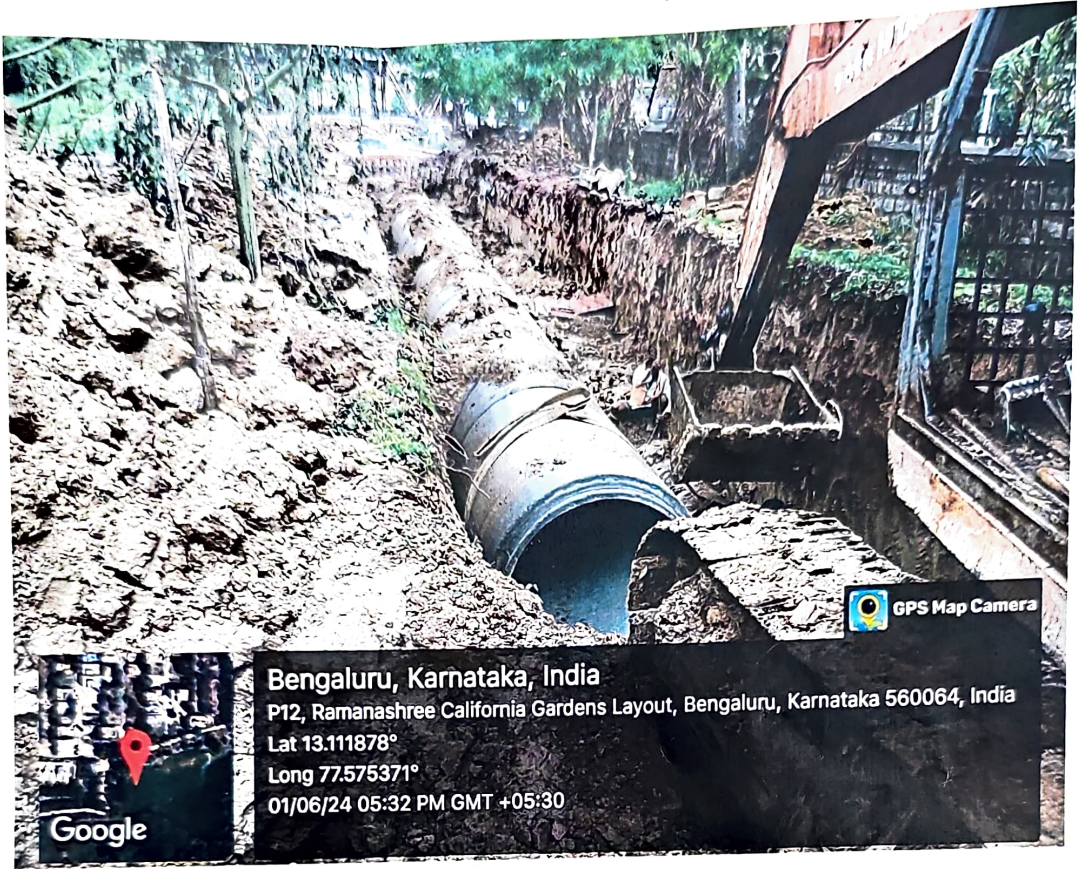
Two weeks after allowing sewage to flow into Puttenahalli Lake and more than a week after illegally digging up the walking path to lay two pipelines for sewage and stormwater, the Bruhat Bengaluru Mahanagara Palike (BBMP) submitted a letter to the Forest Department on Thursday, seeking permission for the project.

The lake was declared a bird conservation reserve after spending crores of rupees to clean up the lake bed and years of work by the Yelahanka-Puttenahalli Lake Bird Conservation Trust. Since then, more than 135 species of birds have been documented at the lake.

The BBMP had built a network of stormwater drains (SWD) that stopped near the northern boundary of the lake. However, these drains also carried sewage from northern and western neighbourhoods, which gushed into the lake during the heavy rains in the last two weeks of May.

Chiranjeevi Kulkarni

ANNEXURE - L



~~Annexure A~~

ANNEXURE M

23

1

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 8TH DAY OF MARCH, 2019

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE S. G. PANDIT

WRIT PETITION NO.25189 OF 2018 (GM-RES/PIL)

BETWEEN:

YELAHANKA PUTTENAHALLI LAKE AND
BIRD CONSERVATION TRUST (RFGD)
REG NO.BNG(U)YLNK/BKIV/13/2013-2104
#9, 1ST MAIN, VINAYAKA LAYOUT
PUTTENAHALLI, YELAHANKA
BENGALURU-560064
REPRESENTED BY ITS CHAIRPERSON
DR. K S SANGUNNI.

... PETITIONER

(BY MS MAITREYI KRISHNAN, ADVOCATE)

AND:

1. MINISTRY OF ENVIRONMENT FORESTS
AND CLIMATE CHANGE
UNION OF INDIA
INDIRA PARYAVARAN BHAVAN
JOR BAGH
NEW DELHI-110003
REPRESENTED BY ITS SECRETARY.

D.T. 6

2. STATE- LEVEL ENVIRONMENT
IMPACT ASSESSMENT AUTHORITY
ROOM NO.709, 7TH FLOOR
4TH GATE, M S BUILDING
BENGALURU-560 001
REPRESENTED BY ITS MEMBER SECRETARY.
3. DEPARTMENT OF ENVIRONMENT
ECOLOGY AND FORESTS
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BENGALURU-560 001
REPRESENTED BY ITS SECRETARY.
4. M/S. KARNATAKA POWER CORPORATION LIMITED
22/23, SUJARSHAN COMPLEX
SESHADRI ROAD
BENGALURU-560 009
REPRESENTED BY ITS MANAGING DIRECTOR.

... RESPONDENTS

(BY SMT. MADHAVI R, CGC FOR RESPONDENT NO.1
SRI. D NAGARAJ, ADVOCATE FOR RESPONDENT NO.2
SRI. D NAGARAJ, AGA. FOR RESPONDENT NO.3
SRI. UDAYA HOLLA, SENIOR COUNSEL FOR
SRI. AJAY J NANDALIKE, ADVOCATE FOR
RESPONDENT NO.4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT
THE R-1 TO CONSIDER THE REPRESENTATION SUBMITTED
BY THE PETITIONER AND INITIATE NECESSARY ACTION
AGAINST THE R-4 TOWARDS THE CANCELLATION OF THE
ILLEGAL AND VOID ENVIRONMENTAL CLEARANCE DATED

~~ANNEXURE A6~~

3

01.09.2015 ISSUED BY THE 2ND RESPONDENT HEREIN
[PLACED HEREWITH AS ANNEXURE-K].

THIS PETITION COMING ON FOR PRELIMINARY
HEARING IN 'B' GROUP THIS DAY, RAVI MALIMATH J.,
PASSED THE FOLLOWING:

ORDER

The petitioner claims to be a registered trust, which is also involved in public interest. It seeks for a writ of mandamus to direct the first respondent - Ministry of Environment, Forests and Climate Change, Union of India, to consider the representation of the petitioner vide Annexures S and T. In terms whereof under the provisions of The Environment (Protection) Act, 1986, they have sought for a direction to the first respondent to restrain the fourth respondent - M/s. Karnataka Power Corporation Limited from proceeding with the project, which is based on the environmental clearance dated 1.09.2015 in terms of Annexure K. It is contended that the grant of this environmental clearance is opposed to law and therefore, it affects public interest. Various other contentions have

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been raised with regard to the manner in which the public and environment are affected by the grant of this environment clearance.

2. The same is objected to, by the State through their statement of objections.

3. The second respondent - State Level Environment Impact Assessment Authority has narrated the manner in which the environmental clearances have been granted. The clearances have been granted on compliance with law and substantial conditions have also been imposed.

4. Respondent No.4 has supported the environmental clearances given to them. They have produced a memo enclosing various photographs to show the final stage of the Gas-based Power Plant at Yelahanka.

5. On hearing the learned counsels, we do not find any merit in this petition. Primarily as could be seen from the representation made by the petitioner, the same is a relief

~~ANNEXURE A-7~~

5

sought for to set aside the Environmental Clearance granted to respondent No.4. The said order is appealable to the National Greens Tribunal. Therefore, it is not appropriate to entertain this petition. Even otherwise, on considering the material on record, we do not find that there is any violation of law in granting the environmental clearance. The environmental clearance is granted in a manner known to law, after following the procedure involved therein.

6. Under these circumstances, we do not find any ground to proceed further. The petition is dismissed. Liberty always exists with the petitioner to pursue such remedies as available in law.

Sd/-
JUDGE

Sd/-
JUDGE

NGACT : bms

Item No.1:**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI***(Through Video Conference)***Appeal No. 14 of 2020 (SZ) &
I.A. No.90 of 2020 (SZ)****IN THE MATTER OF****Yelahanka Puttenahalli Lake and Bird
Conservation Trust (Regd).**

Reg. No. BNG(U) YLNK/BKIV/13/2013-2014
#9, 1st Mani, Vinayaka Layout, Puttenahalli,
Yelahanka, Bengaluru – 560 064. Karnataka.
Rep. by its Chairperson
Dr. K.S. Sangunni

... Appellant(s)

Versus**Ministry of Environment, Forests and Climate Change**

Union of India,
Indira Paryavaran Bhavan,
Jor Bagh, New Delhi – 110 003.
Represented by its Secretary and Ors.

...Respondent(s)

For Appellant(s): Mr. Abdul Azeem Kalebudde.

For Respondent(s): Mrs. Me. Saraswathy for R1.
Mr. Vasanth H.K. for R2.
Mr. Darpan K.M. for R3.
Mr. Sathish Parasaran, Senior Adv. along with
Mr. Ajay J Nandalike
For M/s. Pragati Law Chambers for R4.
Mr. T.V. Sekar for R5& R6.

Date of Judgment: 10th May 2022.

CORAM:

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

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

ORDER

Judgment pronounced through Video Conference. The Appeal is disposed of vide separate Judgment.

Pending interlocutory application, if any, shall stand disposed of.

**Sd/-
Justice K. Ramakrishnan, JM**

**Sd/-
Dr. Satyagopal Korlapati, EM**

**Appeal No.14/2020 (SZ)
I.A. No.90/2020 (SZ)
10th May 2022. Mn.**

NGT

Item No.1:**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI***(Through Video Conference)***Appeal No. 14 of 2020 (SZ) &
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Yelahanka, Bengaluru – 560 064. Karnataka.
Rep. by its Chairperson
Dr. K.S. Sangunni

... Appellant(s)

Versus**1) Ministry of Environment, Forests and Climate Change**

Union of India,
Indira Paryavaran Bhavan,
Jor Bagh, New Delhi – 110 003.
Represented by its Secretary.

**2) Karnataka State Level Environment Impact Assessment
Authority,**

Room No.709, 7th Floor,
4th Gate, Multi Stored Building,
Bengaluru – 560 001. Karnataka.

3) Karnataka Department of Environment, Forests and Ecology

Government of Karnataka,
Room No.708, Gate 2, Dr. Ambedkar Veedhi,
M.S. Building, Bengaluru – 560 001. Karnataka.
Rep. by its Principal Secretary.

4) M/s. Karnataka Power Corporation Limited

82, Shakti Bhawan, Race Course Road,
Bengaluru – 560 001. Karnataka.
Rep. by its Managing Director.

5) Bruhat Bengaluru Mahanagara Palike

Hudson Circle, Bengaluru – 560 002. Karnataka.
Rep. by its Commissioner.

6) Karnataka Lake Conservation and Development Authority

2nd Floor, Parisara Bhavan,
49, Church Street, Bengaluru – 560 001. Karnataka.
Rep. by its Chief Executive Officer.

...Respondent(s)

For Appellant(s): Mr. Abdul Azeem Kalebudde.

For Respondent(s): Mrs. Me. Saraswathy for R1.
Mr. Vasanth H.K. for R2.
Mr. Darpan K.M. for R3.
Mr. Sathish Parasaran, Senior Adv. along with
Mr. Ajay J Nandalike
For M/s. Pragati Law Chambers for R4.
Mr. T.V. Sekar for R5& R6.

Judgment Reserved on: 22nd March 2022.

Judgment Pronounced on: 10th May 2022.

CORAM:

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

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

Whether the Judgment is allowed to be published on the Internet – Yes/No

Whether the Judgment is to be published in the All India NGT Reporter – Yes/No

J U D G M E N T

Delivered by Justice K. Ramakrishnan, Judicial Member

1. The above appeal has been filed by the appellant challenging the Environmental Clearance (EC) granted to the 4th Respondent - M/s. Karnataka Power Corporation Limited (hereinafter referred to as '**M/s. KPCL**') by the 2nd Respondent/ State Environmental Impact Assessment Authority – Karnataka (hereinafter referred to as '**SEIAA – Karnataka**') vide their proceedings No.SEIAA 20 IND 2014 dated 01.09.2015 for establishment of 350 ($\pm 20\%$) MW capacity "Gas Based Yelahanka Combined Cycle Power Plant" at Sy. Nos.44 (p), 45,

46, 47/1-2, 48, 56/1 to 9, 57, 58, 59, 60/1-2, 61, 62/1-2, 63, 64, 65, 66/1-2, 67 of Puttenahalli Village and Sy. Nos. 24, 25, 26 (p), 28 (p) of Kenchanahalli Village, Yelahanka, Bengaluru District.

2. The appellant is an environmentalist who is said to be interested in protecting the Yelahanka - Puttenahalli Lake and Bird Conservation and it was a registered trust. According to the appellant, Puttenahalli Lake is located in Bengaluru North Taluk, Yelahanka Hobli which is part of Yelmallappa Chetty series of lakes in Bengaluru. This series of lakes flow eastward and joins Dakshina Pinakini River, which ultimately joins the Cauvery River. Yelahanka - Puttenahalli Lake is spread in an area of about 13.77 hectares and is world renowned for being home to over 120 species of birds including migratory and endangered species like Northern Pintail (*Anas Acuta*), White Stork (*Ciconia Ciconia*), Northern Shoveler (*AnasClypeata*), Garganey (*Anas Querquedula*) and Glossy Ibis (*Plegadis Falcinellus*) etc. The said lakes are an abode for resident, colonial nesting water Birds, migratory Birds, Butterflies and moths. Its avi-fauna includes endangered and migratory birds from the Northern Himalayas, Siberia, countries from Europe, Africa etc. Birds which are listed under threatened categories of International Union for Conservation of Nature (IUCN) and find it as a favourite abode during breeding season. Around 120 species of Birds spotted therein are Darters, varieties of Ducks such as Northern pintail, Garganey, Painted storks, varieties of Herons, Varieties of Egrets, Glossy Ibis etc. are spotted. Some of these birds fall under Schedule I or Schedule IV of the Wildlife (Protection) Act, 1972. The number of birds during season used to go beyond 7000. Hence, the lakes have found place as worth mentioning even in several concerned foreign journals. A proposal for declaration of Puttenahalli Tank Area as Bird

Conservation Reserve under Section 36-A of Wildlife Protection Act, 1972 was submitted by Deputy Conservator of Forests, Bangalore Urban Division, Bangalore highlighting the importance of the Puttenahalli Lake, evidenced by Annexure - A2. Later, the same was declared and notified as "Bird Conservation Reserve" under Section 36-A of the Wildlife (Protection) Amendment Act, 2006 vide Notification No. FEE 389 FWL 2014 Bengaluru dated 29.04.2015, evidenced by Annexure - A3. In the meantime, the 4th Respondent filed an application for issuance of Terms of Reference (ToR) for their project showing that as a "B - Category" project and the ToR was issued and they conducted the EIA Study and submitted the EIA Report and thereafter, the SEAC - Karnataka decided to recommend the project and ultimately, the SEIAA - Karnataka also accepted the recommendations and issued the impugned Environmental Clearance (EC).

3. When the appellant came to the know about the establishment of the same, they filed various representations to the MoEF&CC and also to the SEIAA - Karnataka, highlighting the importance of that area and suppression of fact of declaration of this lake as a protected area as "Bird Conservation Reserve" and it is within a distance of 500 Meters from the proposed project and its impact on wildlife during 2018. Since no reply has been received, they filed a Writ Petition as **W.P. No.25189 of 2018** before the Hon'ble High Court of Karnataka seeking a writ of mandamus directing the authorities to consider their representations against the grant of Environmental Clearance (EC) to the 4th Respondent for the disputed project and the Hon'ble High Court of Karnataka by order dated 08.03.2019, disposed of the writ petition, holding that the writ petition is not maintainable and the remedy of the writ petitioner is to file an appeal before the National

Green Tribunal challenging the Environmental Clearance (EC) granted and also observed that the Environmental Clearance (EC) granted was proper and not in violation of any of the laws and dismissed the same.

4. Aggrieved by the same, the appellant filed Special Leave Petition before the Hon'ble Supreme Court as **SLP (C) No.10555 of 2019** and the Hon'ble Apex Court by order dated 08.05.2019, issued notice to the respondents and the 4th Respondent appeared and filed their counter on 14.11.2019 and thereafter, after hearing both sides, the Hon'ble Apex Court by order dated 10.06.2020, allowed the Special Leave Petition by granting leave and admitted the matter as **Civil Appeal No.2552 of 2020** and the Hon'ble Apex Court also disposed of the appeal with the following directions:-

"Having heard learned counsel for the parties, we are of the view that it is just and proper for the parties to approach the National Green Tribunal for appropriate relief. The observations of the High Court on merits of the case is hereby set aside.

If the proceedings are initiated before the National Green Tribunal within a period of four weeks from today, the National Green Tribunal is requested to dispose of the same on merits."

5. It is on that basis that the appellant filed this appeal before this Tribunal along with interlocutory application [**I.A. No.48 of 2020 (SZ)**] to condone the delay in filing the appeal and receive the same. This Tribunal after considering the contentions of both parties, allowed I.A. No.48 of 2020 (SZ) by order dated 28.06.2021 and condoned the delay and received the appeal. Thereafter, the appeal was admitted.

- 6.** The Environmental Clearance (EC) granted was challenged by the appellant on the ground that by virtue of the general conditions, any project which is falling within 10 Km from the protected area under the Wildlife (Protection) Act, 1972 and Eco-sensitive Zone even if they are "B – Category" projects, the same will have to be appraised at Central level.
- 7.** In this case, Yelahanka - Puttenahalli Bird Conservation Reserve was declared and notified by the Government vide Notification dated 14.05.2015 and ignoring that notification, suppression of the fact, the 4th Respondent filed an application for Environmental Clearance (EC) for their project, making it as a "B – Category" project. By virtue of suppression of the fact, the SEIAA – Karnataka could not notice the fact that they have no jurisdiction to entertain the same and as such, the Environmental Clearance (EC) granted is not valid, as it was issued by the authority which has no jurisdiction to entertain the same.
- 8.** Further, there was no study conducted in respect of impact of the unit on the bird sanctuary and also the lake. Noise and air pollution that is likely to be caused on account of the operation of the unit will be much more on the wildlife sanctuary and no Wildlife Management Plan was obtained as per the Office Memorandum issued by the MoEF&CC in this regard.
- 9.** Further, the procedure required under the EIA Notification, 2006 was not properly followed. There was no public hearing conducted on the basis of the earlier notification issued, exempting the public hearing when a project has to be established in an industrial estate. But the same was later clarified that exemption will not apply to the Thermal Power Plants and as such, granting exemption from public hearing for

this project is against law and as such, the necessary procedure for following the same has not been properly done in this case. So, according to the appellant, the Environmental Clearance (EC) granted is vitiated and the same is liable to be set aside.

- 10.** The 4th Respondent filed counter affidavit contending that the appeal is not maintainable and the same is filed without any bonafides and the appeal was filed after nearly five years after issuance of Environmental Clearance (EC) and it is hopelessly barred by limitation. Further, a writ petition was filed by the appellant before the Hon'ble High Court of Karnataka seeking for a writ of mandamus directing the MoEF&CC to consider their representations, but they did not disclose the fact that the MoEF&CC had considered the representation of the appellant and passed suitable orders which was produced before this Tribunal as Annexure - A8. Further, another Association has filed O.A. No.57 of 2017(SZ) and that association themselves got impleaded before the Hon'ble Supreme Court and requested this Tribunal to adjourn the matter with an intention to prolong the matter. After disposal of the matter by the Hon'ble Apex Court, they filed this appeal with different grounds which they have not taken before the Hon'ble High Court of Karnataka and also before the Hon'ble Apex Court and the appellant had filed a writ petition and also this appeal in connivance with the Heritage Estate Apartment Owners Association who was the applicant in O.A. No.57 of 2017(SZ). The reliefs claimed in the Writ Petition and Special Leave Petition before the Hon'ble Apex Court are entirely different from the relief claimed in the appeal memorandum.

11. They denied the allegation of suppression of existence of bird sanctuary before the authorities and in fact, there was a misrepresentation on this aspect. Although the State Government had commenced the process of declaration of Puttenahalli Lake as part of bird sanctuary and the declaration could come into effect on the date on which it was published in the official gazette which had taken place on 10.09.2015, before which, the Environmental Clearance (EC) was granted. Only after this has been declared as bird sanctuary or bird sanctuary reserve from 10.09.2015, SEIAA will not be having jurisdiction, in view of the note provided under general conditions in the EIA Notification, 2006, till then SEIAA has got jurisdiction to entertain the same. So, as on the date of filing the application, it was not a declared bird sanctuary and they were not aware of the pendency of the proposal before the authorities as well. So, the allegation contrary to the same is not correct and denied. Further, even prior to that, the 4th Respondent was conducting a Diesel-based Thermal Power Plant in the same area since long time and it was decommissioned in 2014 and thereafter, they decided to go for a Gas-based Thermal Power Plant instead of Coal or Diesel-based Thermal Power Plant. They applied for approval for the project to the Government of Karnataka and the same was approved by the Government vide order dated 28.07.2014 evidenced by Annexure – R4 (4) document produced along with the counter. As per the EIA Notification, 2006 which was published vide S.O. 1533 (E) dated 14.09.2006, the Thermal Power Plant having a capacity less than 500 MW were classified as “B1 – Category” project requiring Environmental Clearance (EC) from the SEIAA. In accordance with Clause 6 of the EIA Notification, 2006, the 4th Respondent on 20.12.2014 submitted a letter to the 2nd Respondent along with Form – I Application and Pre-Feasibility Report and processing fee

requesting for grant of Environmental Clearance (EC) along with the request for issuance of ToR, evidenced by Annexure – R4 (5). Based on the application, the SEAC – Karnataka held their meeting on 13.01.2015 and 14.01.2015 and considered the project and they have recommended to issue Terms of Reference and accordingly, the SEIAA has issued ToR on 19.01.2015, evidenced by Annexure – R4(6). While issuing the ToR, the SEIAA stated that the project was exempted from the public hearing in accordance with law Para 7 III (1)(b) of EIA Notification, 2006, as the project was located within the notified industrial area. A detailed study was conducted on the basis of the ToR issued by an accredited consultant after making the study for a period of three months and the EIA Report was submitted to the SEIAA - Karnataka on 23.07.2015, evidenced by Annexure – R4(7) and the Detailed Project Report was also produced, evidenced by Annexure – R4(8). The SEAC - Karnataka had considered the proposal in their meeting held on 05.08.2015 and raised certain queries which were answered by the 4th Respondent vide their letters dated 10.08.2015 and 25.08.2015, evidenced by Annexure – R4(9) documents. After due consideration, the SEAC has recommended the project and on that basis, the SEIAA had issued the Environmental Clearance (EC) on 01.09.2015. The same was published in two newspapers on 06.09.2015 and 08.09.2015, evidenced by Annexure – R4(11) documents. Thereafter, starting of the unit was inaugurated by the then Hon'ble Chief Minister and the Hon'ble Minister for Power and it was broadcasted in the visual media apart from the printed media. They obtained the Consent to Establish from the Karnataka State Pollution Control Board vide their Proceedings dated 02.11.2015, evidenced by Annexure – R4 (12). They also obtained the necessary No Objection Certificate (NOC) from the various departments namely, the Department of Fisheries, Airport,

Health and Family Welfare Department, Ministry of Defence etc. which were produced as Annexure - R4(13 Series). The work was entrusted to the Bharat Heavy Electricals Limited on 03.11.2015 and the Letter of Award of the work to the BHEL was produced as Annexure - R4(14). The civil work in that area has been completed and the plant is presently in a process of being commissioned. They produced the various stage of the project by producing certain photographs, evidenced by Annexure - R4(15). Required water for the project will be supplied by the BWSSB from a tertiary treated sewage water treatment plant at Jakkur. They also made arrangements with GAIL India Limited for transportation and supply of Natural gas to the power plant. The estimate cost of the project is Rs.2022.52 Crore, of which, Rs.1518.90 Crore has already been spent. There were no residential areas at the time when the original plant was established and industrial estate was established where large scale industries are functioning. Slowly, due to urbanisation, buildings have come up in these areas.

- 12.** Further, they denied the allegations regarding the encroachment into the water body and constructions made thereon. They approached the Hon'ble High Court on 11.06.2018 by filing Writ Petition with certain reliefs which was dismissed by the Hon'ble High Court holding that they ought to have filed an appeal before the National Green Tribunal under Section 16 of the NGT Act, 2010 and writ is not the remedy and also observed that there was no environment impact in establishing the project and the Environmental Clearance (EC) granted was proper. Aggrieved by the same, they filed Special Leave Petition before the Hon'ble Apex Court as SLP (C) No.10555 of 2019 instead of approaching the National Green Tribunal and while that matter was pending, the Heritage Estate Apartment Owners

Association also filed an application for impleadment and the Hon'ble Apex Court allowed the Association to join as intervenor, but not as applicant/respondent and thereafter, allowed the Special Leave Petition and it was numbered as Civil Appeal No.2552 of 2020 and the appeal was disposed of by setting aside the order of the Hon'ble High Court of Karnataka and relegating the appellant to approach the National Green Tribunal within four weeks and if it is filed within that time, with a direction to the Tribunal to consider the matter on merits. They denied the allegation of suppression of material fact and lack of jurisdiction on the part of the SEIAA, irregularity in not conducting public hearing on the basis of the subsequent clarification issued by the MoEF&CC and impact on the Puttenahallai Lake on account of the operation of this unit.

- 13.** They further contended that this is a new project established with all new modern technologies and also adopting the ZLD System and as such, there is no possibility of discharging any effluents or sewage into the water body arises. The appellant is not entitled to raise questions which were not raised before the Hon'ble High Court of Karnataka as well as Hon'ble Apex Court. The procedure for grant of Environmental Clearance (EC) has been strictly adhered to by the authorities while granting the Environmental Clearance (EC). They have conducted all necessary studies on the basis of the ToR issued and the same has been properly appreciated by the SEAC as well as SEIAA and it was granted. They will maintain all pollution control standard and there will not be any possibility of air or sound pollution arising on account of the operation of the unit.

14. Since the Environmental Clearance (EC) was granted prior to the declaration of Puttenahalli Lake as "Bird Conservation Reserve", the SEIAA has got jurisdiction and there is no necessity to treat this as a "A - Category" project to be considered at Central level. The Natural Gas-based power plant is more environment friendly than the diesel-based thermal power plant which was operated earlier and this will not pose any threat to the environment or eco-system of the lake. The report of the MoEF&CC clearly states that the storm water drain which was flowing between the Puttenahalli and Yelahanka Lakes is carrying sewage from the Puttenahalli Lake downstream to Yelahanka Lake. The said sewage had spilled over and flooding to the surrounding areas including the site of the 4th Respondent and on request from the Bruhat Bengaluru Mahanagara Palike (BBMP) in order to reduce the sewage spillage, the 4th respondent had constructed the box type drain to ensure the flow of water from one lake to another. They denied the allegations that construction of box type drain had obstructed the flow of sewage and this was done in violation of the directions issued. The power plant is situated in a notified industrial area under Karnataka Industrial Area Development Act, by Notification dated 26.09.1985 and the 2nd Respondent vide letter dated 19.01.2015 had exempted the project from conducting public hearing. The Environmental Clearance (EC) granted was proper and there is no necessity to set aside the same and they prayed for dismissal of the appeal.

15. The 2nd Respondent/SEIAA - Karnataka filed their counter affidavit in a tabular form which reads as follows:-

Most Respectfully Showeth:

I, Kiran Kumar B.S, aged about 40 years, son of B.S. Shivaiah currently working as the Scientific Officer Grade-I, Forest Ecology and Environment Department, Karnataka Government Secretariat and assisting the State Level Environment Impact Assessment Authority, Karnataka, Bengaluru do hereby solemnly affirm and state on oath that i am familiar with the facts and circumstances of the present matter. I state that the contents of the present reply are true and correct and are verifiable from official records and nothing material has been concealed there from.

Para NO	Facts In Brief	Remarks
4.	<p>It came to the knowledge of the Applicant that the Karnataka State Environmental Impact Assessment Authority has granted environment clearance to the Respondent No. 4/ (M/s Karnataka Power Corporation Ltd.) vide SEIAA 20 IND 2014 on 01.09.2015 for the establishment of a "Gas based Combined Cycle Power Plant" in various survey numbers of Puttenahalli village and as well as of Kenchenahalli village, Yelahanka, Bengaluru District, Karnataka. It is submitted that the establishment and functioning of the Gas based Power Plant would wreck havoc and would completely destroy the pristine conditions of Yelahanka Puttenahalli Lake and the surrounding areas. A true copy of the Letter No. SEIAA 20 IND 2014 dated 01.09.2015 issued by State Level Environment Impact Assessment Authority, Karnataka granting environment Clearance is herein annexed as ANNEXURE A-4) (pages 151-157)</p>	<p>Application submitted by the 3rd Respondent, Karnataka Power Corporation Ltd. has been duly considered by the State Level Expert Appraisal Committee in accordance with law and based on the information furnished in the statutory application. The Committee have recommended for issue of Environmental Clearance based on which the State Level Environment Impact Assessment Authority have issued Environmental Clearance vide letter No. SEIAA 20 IND 2014 dated 01.09.2015 .</p>
7.	<p>It is submitted that the Environmental Impact Assessment Notification, 2006 ("EIA, 2006) issued by the Respondent No. 1, places the "Gas based Combined Cycle Power Plant" under the category 1(d) and further that as its configuration is of 350 (+/- 20) MW and is less than 500 MW, it is classified as a "Category B" Project, and the said project would prima facie falls within the jurisdiction of State-level Environment Impact Assessment Authority (SEIAA) for the purpose of granting clearances. However, in respect of the instant "Gas based Combined Cycle Power Plant", is situated at a distance of just around 500 metres from the Puttenahalli Bird Conservation Reserve. Further that the Power Plant is surrounded by the Yelahanka Puttenahalli Lake which is a declared and notified "Bird Conservation Reserve" under the provisions of Section 36-A of the Wildlife (Protection) Amendment Act, 2006 and thus, due to this extra-ordinary situation of the region being eco-sensitive, the conditions mentioned in the 'General Conditions' of the EIA Notification, 2006 are attracted and as such, the SEIAA loses its jurisdiction to deal with the proposal and the proposal can only be dealt with and cleared at the Central Level by the Ministry of Environment, Forest and Climate Change (MoEFCC)/ Respondent No. 1 herein and not</p>	<p>The project proposal has been considered by State Level Environment Impact Assessment Authority and State Level Expert Appraisal Committee based on the information furnished by the project proposal in the statutory application. With regard to applicability of the General Condition, it is to be brought to the notice of Hon'ble Tribunal that the Notification No. FEE 389 FWL 2014 dated 29.04.2015, declaring "Puttenahalli Lake Birds Conservation Reserve" has come in to effect from the date of publication of</p>

	<p>otherwise.</p> <p>(A true copy of the Environmental Impact Assessment Notification, 2006 ("EIA, 2006) is herein annexed as ANNEXURE A-6) (pages 160-177)</p> <p>(The true copies of the photographs showing the vicinity of the Puttenahalli Bird Conservation Reserve and the Power Plant are herein annexed as ANNEXURE A-7) (pages 178 to 201)</p>	<p>the said Notification. The said Notification has been published in Part IVA of the Karnataka Gazette which came to be published on 10th September 2015. A copy of the Gazette Notification of 10.09.2015 is annexed as R1.</p> <p>Whereas, the Environmental Clearance to the project in question has been issued on 1st September 2015. Therefore, the project in question do not attract the General Conditions specified in the Notification No. S.O. 1533(E) dated 14.09.2006. Therefore, consideration of the said proposal for issue of Environmental Clearance was well within the jurisdiction of SEIAA, Karnataka. Hence, the averments made in this para are far from truth and misleading.</p>
8.	<p>It is clear from a reading of the EIA Notification, 2006 that though a project may be categorized as 'Category B' project under the EIA Notification, 2006, if it falls within 10 kms distance from a protected area, so declared, under the Wildlife (Protection) Act, 1972, then it has to be appraised at the Central Level by the MoEF as though it is a 'Category A' project. Hence, it is apparent that the Environmental Clearance issued by the SEIAA has been issued without jurisdiction and is non-est in the eyes of law.</p>	<p>The Environmental Clearance issued by the Respondent No.4, State Level Environment Impact Assessment Authority to the Respondent No.3, KPCL is well within the law and hence valid. Hence the grounds in this para untenable.</p>
9.	<p>It is submitted that the Yelahanka Puttenahalli Lake is a declared "Bird Conservation Reserve" and it is a protected area under the Wildlife (Protection) Act, 1972. The present Gas based Power Plant falls at about 500 meters from the Protected</p>	<p>As per para 7</p>

	<p>Area/ Bird Conservation Reserve, and hence, the general conditions to the EIA Notification, 2006 would apply and the project becomes a 'Category A' project, and over which the MoEF alone has the jurisdiction to appraise and issue environmental clearances. This is mandated so as to ensure that special attention is paid to the unique issues that require to be addressed regarding the impact of an activity on a 'protected area' under the Wildlife Protection Act, 1972 so that floral and faunal diversity is not adversely affected and that the habitat of protected species is not destroyed as a result of the proposed activity. For the said reasons, certain projects including the present "Gas based Combined Cycle Power Plant" are prohibited from being set up within 10 kilometres radius of the 'protected area' and only the MoEF is empowered to deal with the issue regarding grant of environment clearance.</p>	
10	<p>It is submitted that the said "Gas based Combined Cycle Power Plant" is located within 500 meters from the Yelahanka-Puttenahalli Lake. Further, it is submitted that instead of approaching the Ministry of Environment, Forests and Climate Change (MoEFCC), the Respondent No. 4/ KPCL has approached the Karnataka State Environmental Impact Assessment Authority (SEIAA) for the grant of environmental clearance. The SEIAA, without taking into consideration that it does not have the jurisdiction to consider the said application, and without any application of mind, issued environmental clearance on 01.09.2015. Thus, the grant of environmental clearance to the Gas Based Power Plant Project is by the SEIAA is illegal as per the guideline mentioned in EIA Notification, 2006. It is therefore submitted that the clearance dated 01.09.2015 is void <i>ab initio</i> and is a nullity, with no validity in law. Therefore, the Respondent No. 4 has no right to continue with the construction of the Gas Based Combined Cycle Power Plant.</p>	As per para 7
13	<p>Further, it is submitted that the Public hearing has not been conducted as required by the EIA Notification 2006. Hence, the Environment Clearance dated 01.09.2015 has been granted in violation of the EIA Notification 2006. The MoEFCC vide its Office Memorandum dated 04.04.2016 has clarified as follows:-</p> <p><i>"6. So a Thermal Power Plant, Cement Plant or Integrated Steel Plant even if located in notified Industrial Regions/ Zones cannot be granted exemption from the public consultation, as that is not the intent of the EIA Notification, 2006.</i></p>	As per para 7 (i) (III) (i) of the Notification No. S.O. 1533 (E) dated 14.09.2006, all projects/ activities located within industrial estates / parks are exempted from the process of public consultation. Therefore, the averments made in para are untenable

	<p><i>7. It is accordingly clarified that the category of projects and activities mentioned in the Annexure of this O.M will require Public consultation in the process of Environment Impact Assessment and environmental clearance irrespective of its location in or outside a notified industrial areal estate/ region."</i></p> <p>A true copy of the Office Memorandum dated 04.04.2016 issued by the MoEFCC clarifying the EIA Notification 2006 is herein annexed as ANNEXURE A-9. (pages 213 to 216)</p>	
28	<p>It is submitted that the Respondent No. 4 prepared the EIA Report in contravention of the Terms of Reference and as well deliberately provided misleading and false information. The Respondent No. 4 KPCL, in the Environmental Impact Assessment Report, makes the following false/ misleading statement:</p> <p><i>"4.8.4. Flora of the Project Area:</i></p> <p><i>The field survey to conduct studies for baseline data were made using standard methods for which the sampling sites were selected based on topography and floristic composition within the study area. Plants of ornamental, fodder, timber species and medicinal use were listed. Sanctuaries, National park, Biosphere reserve and Migratory routes have not occurred in the study area. "</i></p> <p>The above statement can be contradicted to a statement made in another paragraph of the same EIA Report submitted by the Respondent no. 4/ KPCL. The said paragraph is as follows:-</p> <p><i>"5.6.3. Impact on Yelahanka and Puttenahalli Lakes:</i></p> <p><i>Puttenahalli Lake is a 10-hectare water body which is to the Western side of the proposed plant and Yelahanka lake is about 120 Hectares and is to the Eastern side of the plant near Yelahanka, 14 km north of Bangalore. These lakes were once outside the Bangalore city and were breeding centers for darters, painted storks, black-crowned night herons, purple herons, pond herons egrets, Asian open bill stork, Eurasian spoonbills, spot-billed pelicans, little grebes, little cormorants, spot-billed ducks, purple moorhens and common sandpipers. "</i></p> <p>A true copy of the relevant portions of the Environmental Impact Assessment Report dated Nil submitted by the KPCL/ Respondent No. 4 is herein annexed as ANNEXURE A-24) (pages 414 to 427)</p>	<p>Application submitted by the 3rd Respondent, Karnataka Power Corporation Ltd. has been duly considered by the State Level Expert Appraisal Committee in accordance with law and based on the information furnished in the statutory application. The Committee have recommended for issue of Environmental Clearance based on which the State Level Environment Impact Assessment Authority have issued Environmental Clearance. Therefore, the averments in this para are untenable.</p>

<p>29.</p>	<p>It is further submitted that the data and information given in the Questionnaire for Environmental Appraisal dated 23.07.2015 by the KPCL, regarding the existence of the National Parks/ Wildlife Sanctuaries is false and misleading. The relevant portion of the Questionnaire for Environmental Appraisal appended to the EIA Report submitted by the Respondent No. 4/ KPCL is as follows:-</p> <p>"VI. Whether any of the following exist within 7 km. of the periphery of the project site. If so, please indicate aerial distance and the name of the eco-system as given under the Table.</p> <table border="1" data-bbox="365 712 1079 1303"> <thead> <tr> <th data-bbox="365 712 487 1075">S. No.</th> <th data-bbox="487 712 738 1075">Name</th> <th data-bbox="738 712 925 1075">Area falling within 7 km periphery of project (ha.)</th> </tr> </thead> <tbody> <tr> <td data-bbox="365 1075 487 1249"></td> <td data-bbox="487 1075 738 1249">National Park/ Wildlife Sanctuary</td> <td data-bbox="738 1075 925 1249">None</td> </tr> <tr> <td data-bbox="365 1249 487 1303">xxx</td> <td data-bbox="487 1249 738 1303">Xxx</td> <td data-bbox="738 1249 925 1303">xxxx</td> </tr> </tbody> </table> <p>A true copy of the Questionnaire for Environmental Appraisal dated 23.07.2015 appended to the EIA Report submitted by the Respondent No. 4 (KPCL) is herein annexed as ANNEXURE A-25. (Pages 428-442)</p>	S. No.	Name	Area falling within 7 km periphery of project (ha.)		National Park/ Wildlife Sanctuary	None	xxx	Xxx	xxxx	<p>Application submitted by the 3rd Respondent, Karnataka Power Corporation Ltd. has been duly considered by the State Level Expert Appraisal Committee in accordance with law and based on the information furnished in the statutory application. The Committee have recommended for issue of Environmental Clearance based on which the State Level Environment Impact Assessment Authority have issued Environmental Clearance. Therefore, the averments in this para are untenable.</p>
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<p>31.</p>	<p>That under Clause 8 (vi) of the Notification, 2006, the suppression of facts and submission of false facts ought to result in cancellation of the clearance, issued to the concerned proponent and the Ministry of Environment, Forests and Climate Change has failed to take any steps in this regard, despite the Petitioner/Trust having submitted representations in regard to the said illegalities on several occasions. That by suppressing or concealing the presence of the Puttenahalli Lake Bird Conservation Reserve, the project proponent has suppressed data which is material to appraisal of the project; since it determines the very jurisdiction of the authority to deal with the appraisal of the application itself. It is submitted that this concealment and submission of misleading data is clear evidence of violation of the EIA Notification, 2006 and the subject clearance ought to be cancelled by the MoEF</p>	<p>Application submitted by the 3rd Respondent, Karnataka Power Corporation Ltd. has been duly considered by the State Level Expert Appraisal Committee in accordance with law and based on the information furnished in the statutory application. The Committee have recommended for issue of Environmental Clearance based on which the State</p>									

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	<p>forthwith. Due to the fraud played by the project proponent, they illegally enriched themselves by securing the clearance order without proper appraisal and assessment as mandated by law. It is respectfully submitted that the present issue is not merely one of jurisdiction (i.e. whether the project is to be treated as a 'Category A' or 'Category B'), but rather an issue which raises serious concern on the manner in which Form -I is scrutinized. Environment Impact Assessment Reports are prepared, the quality of data and study, the nature of appraisal by the SEIAA and the general lack of seriousness on the part of all the key actors in the Environmental Clearance process to implement the EIA Notification in letter and spirit. In such a situation, an immediate action needs to be taken in order to prevent environmental degradation caused by the Respondent No.4.</p>	<p>Level Environment Impact Assessment Authority have issued Environmental Clearance. Therefore, the averments in this para are untenable.</p>
32.	<p>It is submitted that heat, air, noise and light pollution from the subject "Gas based Combined Cycle Power Plant" will have a direct bearing on the birds in the 'protected area'. In fact, changes in air temperature due to stack emissions results in affecting the migratory pattern of birds itself and the deposition of pollutants on the waterbody etc., are issues that require specific consideration. However, the EIA report is silent on these issues and despite being a prohibited activity, the construction of the "Gas based Combined Cycle Power Plant" is going unabated.</p>	<p>As per Para 28</p>
39.	<p>It is further submitted that the present environment clearance dated 01.09.2015 is issued by the SEIAA without conducting mandatory public hearing. It is submitted that the EIA Notification, 2006 mandates public hearing for all projects covered in the schedule to the Notification, unless specifically exempted. It is submitted that exemption has been envisaged under the Notification, 2006 to small scale projects that are located inside industrial estates that have obtained permission under entry 7 (c) of the EIA Notification, 2006. The logic or reasoning behind this is that project so located inside the Industrial Estate would be subjected to public hearing at the time of conducting public hearing for the industrial estate itself and since its location and capacity etc., should be part of the EIA of the industrial estate. However, the SEIAA has failed to take note of this fact in granting environment clearance to the present "Gas based Combined Cycle Power Plant". It is further submitted that the MoEFCC has also issued OM dated 04.04.2016, further clarifying that projects such as "Gas based Combined Cycle Power Plants", would require environmental clearance even if located inside industrial estates on account of</p>	<p>As per para 7 (i) (III) (i) of the Notification No. S.O. 1533 (E) dated 14.09.2006, all projects/activities located within industrial estates / parks are exempted from the process of public consultation. Therefore, the averments made in para are untenable.</p>

	their environmental footprint.	
A.	<p><u>Grounds:</u></p> <p>It is submitted that the present Appeal is filed by the Appellant-Trust in the public interest so as to preserve and conserve the pristine environment in and around the Yelahanka- Puttenahalli Lake. The Applicant-Trust made representations to the Ministry of Environment, forest and Climate Change (MoEFCC) questioning the Environment Clearances granted to ' Gas based Combined Cycle Power Plant' on 01.09.2015. It is submitted that under the pretext of the said clearances, the M/s. Karnataka Power Corporation Ltd. is constructing the Gas based Power Plant between the two lakes viz., Yelahanka lake and Puttenahalli Lakes, which would lead to immense environmental degradation and as well adversely affect the flow of water into the said lake through rajakaluves. The said Power Plant is being constructed within the vicinity of 500 mts of the lakes, hence the power to grant environmental clearances is only with the MoEFCC and not SEIAA. Therefore, the Applicant made appropriate representations to be MoEFCC to reconsider the same. Whereas, the said representations were neither considered nor acted upon by the MoEFCC. Thus, the Applicant was constrained to move the High Court of Karnataka at Bengaluru seeking mandamus to the MoEFCC to consider the representations. Whereas, the High Court erred and thereby summarily upheld the Environmental Clearances and dismissed the writ petition filed by the Applicant. Thus, the Applicant being aggrieved by the same approached the Hon'ble Supreme Court of India by filing special leave petition in SLP(C) No. 10555/2019. The Hon'ble Supreme Court by its Order dated 10.06.2020 has remitted the matter to this Hon'ble Tribunal to decide the same on merits. The relevant portion of the order is as follows:-</p> <p style="padding-left: 40px;"><i>"Having heard learned counsel for the parties, we are of the view that it is just and proper for the parties to approach the National Green Tribunal for appropriate relief The observation of the High Court on merits of the case is hereby set aside.</i></p> <p style="padding-left: 40px;"><i>If the proceedings are initiated before the National Green Tribunal within a period of four weeks from today, the National Green Tribunal is requested to dispose of the same on merits. "</i></p>	As per para 7

<p>It is submitted that the Department of Forest, Environment and Ecology, Government of Karnataka has issued a Notification No. FEE 389 FWL 2014 Bengaluru dated 29.04.2015 notifying the Puttenahalli lake as a "Bird Conservation Reserve" under Section 36-A of the Wildlife (Protection) Act, 1972 and thus, to protect the lake and its rich flora and fauna, including the endangered and threatened migratory bird species using the lake as their habitat. It is submitted that the Petitioner/ Trust has worked with the Lake Development Authority in preparation of the Detailed Project Report for the Lake which comprises of the recommendations from the Indian Institute of Science, Bengaluru. The said report was submitted to the Forest Department. Thus, in the light of this it is submitted that the General Conditions specified in the EIA Notification 2006 would apply and the Gas based Power Plant would be classified as 'Category A' project. The relevant provision is as follows:-</p> <p style="text-align: center;"><i>"General Condition (GC):</i></p> <p style="text-align: center;"><i>Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as notified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries. "</i></p> <p>Thus, by virtue of Clause 4(ii) of the EIA Notification, 2006 it is only the Ministry of Environment, Forest and Climate Change, Government of India which has the power to deal with grant of environment clearance. The relevant Clause 4(ii) is as follows:-</p> <p style="text-align: center;"><i>"4. Categorization of projects and activities:-</i></p> <p style="text-align: center;"><i>(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;"</i></p> <p>Therefore, prima facie the present environment clearance granted by the SEIAA is void ab initio and the SEIAA has</p>	<p>The project proposal has been considered by State Level Environment Impact Assessment Authority and State Level Expert Appraisal Committee based on the information furnished by the project proposal in the statutory application. With regard to applicability of the General Condition, it is to be brought to the notice of Hon'ble Tribunal that the Notification No. FEE 389 FWL 2014 dated 29.04.2015, declaring "Puttenahalli Lake Birds Conservation Reserve" has come in to effect from the date of publication of the said Notification. The said Notification has been published in Part IVA of the Karnataka Gazette which came to be published on 10th September 2015. Whereas, the Environmental Clearance to the project in question has been issued on 1st September 2015. Therefore, the project in question do not attract the General Conditions specified in the Notification No. S.O. 1533(E) dated 14.09.2006. Therefore, consideration of the said proposal for issue of Environmental Clearance was well within the jurisdiction of SEIAA, Karnataka. Hence, the averments</p>
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	erred in granting approval to the said Gas based Power Plant.	made in this para are far from truth and misleading.
F.	It is submitted that the protected area being located in the vicinity of a project site, would attract the General Conditions of the EIA Notification, 2006 general condition. Thus, it is clear that though a project may be categorized as 'Category B Project' under the EIA Notification, 2006, if it falls within the specified distance from a 'protected area' under the Wildlife (Protection) Act, 1972, then it has to be appraised at the Central Level by the MoEF as though it is a 'Category A Project'. It is submitted that the Puttenahalli lake is declared as a "11Bird Conservation Reserve" under Section 36 -A of the Wildlife (Protection) Act, 1972 by the Government of Karnataka on 29.04.2015 Thus, the present environmental clearance granted is bad in law.	As per para 7
H.	It is submitted that the M/s. Karnataka Power Corporation Ltd. instead of approaching the Ministry of Environment, Forests and Climate Change (MoEFCC) to seek environmental clearance under the EIA Notification, 2006; has erroneously approached the Karnataka State Environmental Impact Assessment Authority (hereinafter referred to as the SEIAA) seeking for an environmental clearance in respect of the said "Gas based Combined Cycle Power Plant". The SEIAA, without taking into consideration that it did not have the jurisdiction to consider the said application, and without any application of mind, issued environmental clearance dated 01.09.2015. This calls for the interference of this Hon'ble Tribunal.	As per para 7
N.	It is submitted that it is clear that the said "Gas based Combined Cycle Power Plant, cannot be permitted in the present location, i.e in the immediate vicinity of the protected area under the Wildlife (Protection) Act, 1972 and in its eco-sensitive zone. It is submitted that even for projects that are permitted in the eco-sensitive zones, the law has mandated that permission has to be obtained from the National Board for Wildlife (NBWL), so that issues relating to wildlife and habitat conservation can be properly examined and impact of the activity on the protected area can be assessed. This has been mandated by this Hon'ble Supreme Court by its order dated 04.12.2006 passed in W.P.(C) No. 460 of 2004 that held that all proposals within 10 KM of a 'protected area' be referred to the NBWL. The MoEFCC to prevent assessment of such projects at the state level, has issued OM dated 20.08.2014 clearly stating this requirement. However, in the instant case, the SEIAA has	As per para 7

	<p>not even referred the proposal to the NBWL and has illegally granted the subject clearance to the project proponent and no permission has been obtained from the National Board for Wildlife as mandated by law, despite which, the project proponent is continuing with construction activity at a brisk pace. This calls for immediate interference of this Hon'ble Tribunal.</p>	
P.	<p>It is further submitted that the present environment clearance dated 01.09.2015 is issued by the SEIAA without conducting mandatory public hearing. It is submitted that the EIA Notification, 2006 mandates public hearing for all projects covered in the schedule to the Notification, unless specifically exempted. It is submitted that exemption has been envisaged under the Notification, 2006 to small scale projects that are located inside industrial estates that have obtained permission under entry 7 (c) of the EIA Notification, 2006. The logic or reasoning behind this is that project so located inside the Industrial Estate would be subjected to public bearing at the time of conducting public hearing for the industrial estate itself and since its location and capacity etc., should be part of the EIA of the industrial estate. However, the SEIAA has failed to take note of this fact in granting environment clearance to the present "Gas based Combined Cycle Power Plant". It is further submitted that the MoEFCC has also issued OM dated 04.04.2016, further clarifying that projects such as "Gas based Combined Cycle Power Plants" would require environmental clearance even if located inside industrial estates on account of their environmental footprint. Thus, this calls for the indulgence of this Hon'ble Tribunal.</p>	As per Para 7
T.	<p>It is submitted that the Respondent No. 4 (KPCL) has deliberately concealed and/or submitted a false and misleading information to the State Level Environment Impact Assessment Authority- Karnataka (SEIAA) and thereby illegally obtained the present Environmental Clearance dated 01.09.2015. It is stated that an Application for Environmental Clearances in prescribed Form No. 1 is submitted by the Respondent No. 4/ Karnataka Power Corporation Ltd. to the Karnataka State Environment Impact Assessment Authority on 20.12.2014. Therein, the Respondent No. 4 deliberately gives misleading information, they are as follows (only relevant Serial nos. are mentioned):-</p> <p>Form-1</p> <p>I) Basic Information:</p>	As per Para 28

<u>S.</u> <u>N</u> <u>o</u>	<u>Item</u>	<u>Details</u>
X X	XX	XX
6.	Category of Project i.e., 'A' or 'B'	'B' (Gas based power plant of less than 500 MW capacity)
7.	Does it attract the general condition? If yes, please specify.	No
8.	Does it attract the specific condition? If yes please specify	No.
X X X	XXX XX	XXX
2 1	Whether the proposal involves approval/clearance under: a) The Forest (Conservation) Act, 1980. b) The Wildlife (Protection) Act, 1972 c) The CRZ Notificatio	No

	n, 1991		
x x x x	XX XXX	xxxx	
2 3.	Forest Land involved (hectares)	Establishment of the plant and facilities does not involve forest land. However, KPCL, has sought transfer of approx. 6 hectares of forest land, located adjacent to the site, for plantation purpose.	
Xxxx:xxxx			
III) Environmental Sensitivity:			
S. N o.	Areas	Nam e/ Identi ty	Aerial distance (within 15 kms) from)2T0)20SCd project location boundary
1	xx	xx	xx

	2.	Aerial which are important or sensitive for ecological reasons: wetlands, watercourses or other water bodies, coastal zones, biosphere, mountains, forests	None	Not applicable	
	3.	Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting over wintering, migration.	None	Not Applicable	
x	xxx		xxx	xxx	
x					

- 16.** The appellant field rejoinder more or less reiterating their contentions raised in their appeal memorandum. The Terms of Reference was issued on 19.01.2015 where, it was specifically mentioned that *"The study should cover an area of 10 Km radius around the proposed plant site If ecologically sensitive attributes fall within 10 Km radius of the project boundary, proponent shall describe the sensitivity (distance, area and significance) and propose the additional points based on significance for revenue and acceptance by the SEAC. A map marking the location of such areas (existing or proposed) duly authenticated by the Chief Wildlife Warden. Ecologically sensitive attributes includes:*

- a. National Parks
- b. Wildlife Sanctuaries Game Reserve
- c. Tiger Reserve/Elephant Reserve
- d. Breeding Grounds
- e. Habitat for migratory birds
- f. Area with threatened (rare, vulnerable, endangered) flora/fauna.
- g. Wetlands
- h. Zoological Gardens
- i. Reserved Forests/Protected Forests.
- j. Any other closed/protected area under the Wildlife (Protection) Act, 1972, any other locally applicable."

17. A reference was made to the questionnaire dated 23.07.2015 submitted by the 4th Respondent regarding the proposal of bird conservation reserve. But in Form - I Application, they have categorically mentioned that there is no such eco-sensitive area available within 10 Kms. They also reiterated the importance of the lake and also the various office memorandums issued in respect of consideration of issuance of Environmental Clearance (EC). Further, they also reiterated that when the clarificatory office memorandum was issued clarified that the earlier office memorandum exempting public hearing in respect of projects to be established in an industrial area is not applicable to the Thermal Power Plant and certain other categories and it must relate back to the date of original notification and as such, exempting public hearing for this purpose is illegal and on that ground, the appeal has to be allowed and the Environmental Clearance (EC) will have to be set aside. So, they prayed for allowing the appeal.

18. Heard the learned counsels Mr. Abdul Azeem Kalebudde for the appellant, Mrs. Me. Saraswathy counsel for the 1st Respondent, Mr. Vasanth H.K. for 2nd Respondent, Mr. Darpan K.M. through Mr. Rajat Jonathan Shaw for 3rd Respondent, Mr. Sathish Parasaran, Senior Advocate along with Mr. Ajay J Nandalike for 4th Respondent and Mr. T.V. Sekar for Respondents No.5 & 6.

19. The learned counsel appearing for the appellant challenged the Environmental Clearance (EC) on the ground that the existence of Puttenahalli Bird Sanctuary Conservation Reserve was suppressed in the Form – I Application and the impact of the project on Bird Sanctuary could not be considered by the authorities on account of the same. Further, the public hearing was exempted which is against the EIA Notification and also the Office Memorandum issued by the MoEF&CC on 04.04.2016 by way of clarification whereby, they have clarified that the exemption granted from public hearing for projects in the industrial estate will not be applicable to certain categories of project which includes Thermal Power Plant. Since it is in the nature of clarification, it will relate back to the date of original EIA Notification itself and non-conduct of public hearing is fatal. Further, they have encroached into the storm water drain and made certain construction which was reflected in the report submitted by the Regional Office of the MoEF&CC to the MoEF&CC, New Delhi, enquiry of which was conducted on the basis of the representations made by them.

20. The learned counsel for the appellant had relied on the decisions reported in **Hanuman Laxman Aroskar Vs. Union of India**¹, **S.B. Bhattacharjee Vs. S.D. Majumdar & Ors.**², **S.S. Grewal Vs. State of Punjab & Ors.**³, **Commissioner of Income Tax, Bombay & Ors. Vs. Podar Cement Private Limited & Ors.**⁴ and **Gram Panchayat Navlakh Umbre Vs. Union of India & Ors.**⁵ of the Hon'ble High Court of Bombay by Judgment dated 28.06.2012 in support of their case.

21. On the other hand, the learned counsel appearing for the SEIAA – Karnataka argued that as on the date of application is being filed and also the ToR was issued, the Puttenahalli Bird Sanctuary Conservation Reserve was not declared under the provisions of the Wildlife (Protection) Act, 1972 and it was only notified only on 10.09.2015 and the Environmental Clearance (EC) was granted on 01.09.2015, which is prior to the declaration of Bird Sanctuary Conservation Reserve. Further, the public hearing was exempted on the basis of the earlier notification issued by the MoEF&CC and a clarification was issued in the year 2016 viz., Office Memorandum dated 04.04.2016, by which time, the Environmental Clearance (EC) itself was granted in 2015 and as such, exemption granted from public hearing is perfectly justifiable as on the date of consideration of the application for Environmental Clearance (EC). Whenever, there was any necessity for obtaining clarification, SEAC has called for those things and the same was submitted by the project proponent and only after consideration of the same, the SEAC has recommended the project and the SEIAA had granted the Environmental Clearance (EC). So,

¹ **(2019) 15 SCC 401**

² **(2007) 10 SCC 513**

³ **1993 Suppl (3) SCC 234**

⁴ **(1997) 5 SCC 482**

⁵ **PIL No.115 of 2010**

there was no illegality committed by them in considering the same. There was no suppression of fact and the existence of various lakes including these two lakes, as lakes available within 10 Km was mentioned in the Form - I Application and also impact of the same was studied by an accredited agency while preparing the EIA Report and this aspect was considered and discussed by the SEAC and SEIAA before issuing the Environmental Clearance (EC). So, the Environmental Clearance (EC) granted is legal and there is no necessity to set aside the same on the grounds alleged by the appellant.

22. Mr. Sathish Parasaran, the learned Senior Advocate appearing for the 4th Respondent argued that the State of Karnataka had given approval for the 4th Respondent for setting up a 350 MW capacity Combined Cycle Power Plant using natural gas as fuel on 28.07.2014 and the 4th Respondent filed an application for Environmental Clearance (EC) before the SEIAA - Karnataka on 20.12.2014 and the SEAC in their meeting held on 13.01.2015 and 14.01.2015, considered the project and decided to issue ToR and the SEIAA - Karnataka had issued the ToR vide Letter dated 19.01.2015. The 4th Respondent submitted the EIA Report prepared by the consultant accredited by the MoEF&CC to the SEIAA - Karnataka on 23.07.2015 and the SEAC - Karnataka had considered the project in their two meetings held on 05.08.2015 and 06.08.2015 and certain clarifications were sought for from the 4th Respondent and the same were given on 10.08.2015 and it was again considered by the SEAC - Karnataka on 25.08.2015 along with answers given to the queries raised by the 2nd Respondent. Thereafter, they recommended the project for Environmental Clearance (EC) and the SEIAA - Karnataka approved the same and decided to grant Environmental Clearance

(EC) and the same was granted vide their proceedings dated 01.09.2015. The 4th Respondent published the issuance of Environmental Clearance (EC) in two newspapers on 06.09.2015 and 08.09.2015. The Karnataka State Pollution Control Board has given the Consent to Establish to the 4th Respondent vide their proceedings dated 02.11.2015 and they entrusted the work to the Bharat Heavy Electricals Limited (BHEL) vide their Letter of Award dated 03.11.2015. The Heritage Estate Apartment Owners Association filed O.A. No.57 of 2017(SZ) alleging certain violations. The appellant filed representations dated 25.01.2018, 08.03.2018 and 24.04.2018 before the MoEF&CC regarding the issuance of Environmental Clearance (EC) granted alleging certain violations. After nearly two years and nine months of issuance of Environmental Clearance (EC), the appellant filed a writ petition as W.P. No.25189 of 2018 before the Hon'ble High Court of Karnataka seeking a writ of mandamus directing the MoEF&CC to consider their representations dated 25.01.2018, 08.03.2018 and 24.04.2018 and this was filed on 11.06.2018. In view of the representations made, officials of the MoEF&CC made a site visit of the 4th Respondent project area on 05.09.2018 and the Regional Office of the MoEF&CC gave a report regarding the issues raised by the appellant vide their report dated 03.10.2018. The Hon'ble High Court of Karnataka dismissed the writ petition by Judgment dated 08.03.2019 and aggrieved by the same, a Special Leave Petition was filed before the Hon'ble Supreme Court by the appellant on 22.04.2019 and the applicant in O.A. No.57 of 2017 (SZ) filed an intervening application before the Hon'ble Apex Court in that case and the same was allowed by the Hon'ble Apex Court by order dated 13.01.2020 and thereafter, the civil appeal was disposed of directing the appellant to approach the National Green Tribunal

within four weeks and if it is filed within four weeks, then the Tribunal was requested to consider the same on merits.

23. According to the learned Senior Advocate, at the time of filing the application, there was no declared protected area within 10 Km of the project area. A bird sanctuary conservation reserve though notified on 29.04.2015, it was published only on 10.09.2015 and only thereafter, it will come into effect and it can be treated as existence of bird sanctuary in that area for applying general conditions. Further, the public hearing was also exempted by virtue of the Office Memorandum issued by the MoEF&CC in the year 2014 and the alleged clarification was only in year 2016, by the time, Environmental Clearance (EC) was granted in favour of the 4th Respondent by the SEIAA - Karnataka and as such, it cannot be said to be a vitiating circumstances and by virtue of the clarification issued later, what was done in accordance with the existing law cannot be undone by the authorities or by the Tribunal. Further, in O.A. No.57 of 2017 (SZ), this Tribunal appointed a Joint Committee and the Joint Committee had considered the impact of the project on the bird sanctuary and certain remediation measures have been provided and this Tribunal directed the 4th Respondent to carry out the same in order to protect the bird sanctuary and as such, there is no necessity for setting aside the Environmental Clearance (EC) for this purpose on this ground. So according to them, the regulating authorities have considered all these aspects.

24. The 4th Respondent also filed further additional written submissions wherein they have mentioned the nature of protective measures that they have taken for the purpose of protecting the environment and also to avoid possible pollution that is likely to be caused on account

of the operation of the unit. They further mentioned that it is only in the construction phase and all necessary precautions have been taken to avoid any pollution likely to be caused during construction phase and they will take all necessary precautionary measures to avoid any pollution likely to be caused on account of their operation at the operation stage as well.

25. The learned Senior Advocate had relied on the decision reported in **Municipal Corporation of Greater Mumbai Vs. Anil Shantaram Khoje & Ors.**⁶ and **B.K. Srinivasan & Ors. Vs. State of Karnataka & Ors.**⁷ in support of their case.

26. They have also given notes regarding the advantage of the present power plant that is likely to be established by the 4th Respondent when compared to the erstwhile diesel-based power plant which was decommissioned by them.

27. The learned counsel for Respondents No.5 & 6 argued that there was no collusion between them and the 4th Respondent in granting permission for cutting trees. Trees were cut on the basis of the permission granted under the provisions of the Karnataka Preservation of Trees Act, 1976 and for the purpose of removing certain species viz., Silver Oak, Acacia and Mango, no permission is required under Section 8 of the Karnataka Preservation of Trees Act, 1976 and in respect of certain trees, permission is required. Permissions were granted as per Order No.YA/UV/PR-532/2015-16 dated 01.03.2016 and Order No.YA/UV/PR-61/2015-16 dated 17.05.2016. There was no lapse on their part and as per the

⁶ (2016) 15 SCC 726

⁷ (1987) 1 SCC 658

environmental norms, 33% of the total area will be reserved for tree plantation and the 4th Respondent had undertaken for planting saplings within their project area. So, they prayed for dismissal of the appeal.

28. We have considered the pleadings, submissions made by the learned counsel for both sides and the documents and written submissions submitted by the learned counsel for parties.

29. The points that arise for consideration are:-

- i.** Whether the Environmental Clearance (EC) granted in favour of the 4th Respondent vide proceedings dated 01.09.2015 for establishing a Natural Gas-based Thermal Power Plant in the disputed area is liable to be set aside for any of the reasons stated in the appeal memorandum or the submissions made by the learned counsel for the appellant at the time of hearing?
- ii.** If the Tribunal feels that there is no necessity to set aside the Environmental Clearance (EC), is there any necessity to issue any further directions, applying "*Precautionary Principle*" and if so, what is the nature of directions to be issued to protect environment?
- iii.** Relief and costs.

POINTS:

30. It is an admitted fact that the Environmental Clearance (EC) in this case was granted in the year 2015 by proceedings of the 2nd Respondent dated 01.09.2015. It is also an admitted fact that the present appellant sent certain representations during 2018 to the MoEF&CC seeking interference with the issuance of Environmental Clearance (EC) to the 4th Respondent. Since no reply has been received, the appellant filed writ petition as W.P. No.25189 of 2018 before the Hon'ble High Court of Karnataka seeking the following reliefs:-

"(i) Direct the 1st Respondent to consider the representations submitted by the petitioner and initiate necessary action against the 4th Respondent towards the cancellation of the illegal and void environmental clearance dated 01.09.2015 issued by the 2nd Respondent herein

(ii) Direct the 3rd Respondent to ensure that all steps are taken and necessary financial allocations are made towards preservation of the Puttenahalli Bird Reserve.

(iii) Pass any other orders in the interest of justice and equity."

31. It is also an admitted fact that the above said writ petition was dismissed by the Hon'ble High Court of Karnataka by Judgment dated 08.03.2019, on the ground that the remedy of the writ petitioner/appellant herein is to challenge the same before the National Green Tribunal by way of an appeal as it is an appealable order and also observed that there was no violation of law committed by the authorities in granting the Environmental Clearance (EC) and it was granted in the manner known to law following the procedure provided

therein. Aggrieved by the same, the appellant filed Special Leave Petition before the Hon'ble Apex Court as SLP (Civil) No.10555 of 2019 seeking the following reliefs:-

"(i) Grant the petitioners Special Leave to Appeal against the judgment and final order dated 08.03.2019 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition No. 25189 of 2018 (GM-RES/PIL)

(ii) Pass such other order or orders as this Hon'ble Court may deem fit in the interest of justice and equity."

32. The Hon'ble Supreme Court earlier issued notice in the Special Leave Petition and after hearing both sides, leave was granted and it was numbered as **Civil Appeal No.2552 of 2020** and disposed of the appeal as follows:-

"ORDER

Leave granted.

The petitioners filed a writ petition No.25189 of 2018 before the High Court of Karnataka at Bangalore challenging the Order granting environmental clearance dated 01.09.2015 by State Level Environmental Impact Assessment Authority in favour of respondent No.4. The High Court has rightly held that the said order is appealable to the National Green Tribunal. While holding so, the Division Bench has observed that there is no violation of any law in granting environmental clearance, without considering the rival contentions of the parties.

Having heard learned counsel for the parties, we are of the view that it is just and proper for the parties to approach the National Green Tribunal for appropriate relief. The observation of the High Court on merits of the case is hereby set aside.

If the proceedings are initiated before the National Green Tribunal within a period of four weeks from today, the National Green Tribunal is requested to dispose of the same on merits.”

33. It is thereafter that the appellant filed the present appeal along with I.A. No.48 of 2020 (SZ) to condone the delay and receive the appeal and after hearing both sides, this Tribunal by order dated 28.06.2021, condoned the delay and received the appeal and also admitted the matter, after considering the order passed by the Hon'ble Apex Court in the clarification application filed by the 4th Respondent herein in Civil Appeal No.2552 of 2020 as M.A. No. 1527 of 2020 dated 09.09.2020 and this Tribunal heard the matter in detail.

34. The grounds on which the Environmental Clearance (EC) was challenged were as follows:-

- a. There was material suppression of fact of the proposed Puttenahalli Bird Sanctuary Conservation Reserve which is situated within 500 m from the project site and if it is disclosed the SEIAA would be losing jurisdiction and the matter has to be considered at Central level.
- b. Public hearing was exempted on the basis of the earlier Office Memorandum of 2014, as the project area is situated within the industrial estate which was later clarified by the MoEF&CC itself vide their Office Memorandum of 2016 and as such, dispensation of public hearing is illegal.

- c. Impact of the project on Puttenahalli Bird Sanctuary Conservation Reserve has not been considered by the SEIAA – Karnataka as well.

- 35.** It is true in the decision reported in **Hanuman Laxman Aroskar Vs. Union of India**⁸, the Hon'ble Apex Court has held that when there is a suppression of material fact which will have impact on environment on account of establishment of the project and that could not have been considered by the SEIAA or SEAC, then it will be a ground for setting aside the Environmental Clearance (EC) granted.
- 36.** Admittedly, in this case, though there was some proposal pending with the Government to declare the Puttenahalli Lake as Bird Sanctuary but that was not declared at that time when the application for Environmental Clearance (EC) was filed by the 4th Respondent. So, it was not a declared or notified protected area under the Wildlife (Protection) Act, 1972 as amended from time to time.
- 37.** Admittedly, the Government had proposed to declare this a Wildlife Sanctuary only on 29.04.2015 and it was further mentioned in the said notification itself that Puttenahalli Lake Bird Conservation Reserve will come into effect from the date of publication of this notification and that notification reads as follows:-

"FOREST, ENVIRONMENT AND ECOLOGY SECRETARIAT

NOTIFICATION

No: FEE 389 FWL 2014 Bengaluru, dated: 29-04-2015.

Whereas the Government of Karnataka in exercise of the powers conferred by Section 36-A of the Wildlife (Protection) Act, 1972 (Amendment in 2006) (Central Act 53 of 1972) has considered the area, situation limits and extent of forest areas which are specified in the Schedule- I and are comprising only Government

⁸ (2019) 15 SCC 401

lands as shown in Schedule-II to declare as "**Puttenahalli Lake Birds Conservation Reserve**" as it is of ecological, fauna, floral and geomorphological importance and for the purpose of protecting propagating and developing wildlife therein or its environment and to protect the important habitats like fresh water swamps, along with important species of birds like Darters, Painted storks, Black-crowned Night Herons, Purple Herons, Pond Herons, Egrets, Asian Open bill Storks, Eurasian Spoonbills, Spot-billed Pelican, Little Grebe, Little Cormorant Spot-billed Ducks, Purple Moorhen and other water-birds. The 'avifauna' of this lake also includes some of the endangered and migratory birds from the Northern Himalayas and Siberia, many species which are listed under threatened category of IUCN. Apart from this the Puttenahalli Lake also supports species like *Acacia auriculiformis*, *Acacia nilotica*, *Albizia* species. *Anthocephalus chinensis* Kadamba, *Lagerstroemia flosreginae*, *Muntingia calabura*, *Pithecellobium dulce*, *Santalum album* and clumps of *Bamboo Dendrocalamus strictus*, *Bougainvillea illea* species. *Pongamia glabra*, *Phoenix sylvestris*, *Santalum album* and *lantana*, Reedbeds of *Typha* grow in several large patches within the tank.

And now, the Government of Karnataka consider its necessary to declare the area as a Conservation Reserve in view of the following aspects:-

i) Puttenahalli lake area which is proposed for "Puttenahalli Bird Conservation Reserve" hosted 127 species of birds which included both wetland and waterfowl species of birds:

ii) further by virtue of their biological richness they are potentially of high value to human societies, help in maintaining the ecological stability of the area and are significant in conserving biological diversity. The uniqueness of the services they offer to human society is precious:

iii) due to biotic and climatic intervention, there is a threat of degradation of rich natural forest and to the wildlife of the area. Hence, there is a need to conserve this precious and irreplaceable unique wealth given by our nature;

The Puttenahalli Lake Birds Conservation Reserve does not include any private and Patta lands on the date of publication of this Notification. Puttenahalli Lake situated in Puttenahalli and Attur villages of Yelahanka Hobli has been in the custody of Karnataka Forest Department for the past 25 years. And, whereas all the rights within the boundaries of the Puttenahalli Lake to be constituted as "Puttenahalli Lake Birds Conservation Reserve" are vested with the State Government.

SCHEDULE-I

Name of the District : Bengaluru Urban.
Taluk : Bengaluru North.
Area : 37 Acres or 14.98 ha.

SCHEDULE- II

Extent and Legal status of the lake

District	Taluk	Hoble	Village	Sy. No.	Extent		Status
					(A-g)	(ha.)	
Bengaluru Urban	Bengaluru North	Yelahanka	Puttenahalli	36	29A-14g	11.88	Tank
			Attur	49	7A-26g	3.10	Tank
Total Area :					37 Acres	14.98	Tank

Now, therefore, in exercise of the powers-conferred by Section 36-A of the Wildlife (Protection) Act, 1972 (Central Act, 53 of 1972) the Government of Karnataka hereby declares that the areas specified in the **Schedule-II** above whose boundary descriptions are mentioned in the **Annexure-I** below, shall be a Conservation Reserve and called as "**Puttenahalli Lake Birds Conservation Reserve**" with effect from the date of publication of this notification.

ANNEXURE-I**Boundary Description:**

North : Starting from southwest corner of survey No, 50 of Attur village with co-ordinates (N -13°11'118". E - 77°57'275"), the boundary line runs East and north along its southern and eastern boundary till it meets the Attur and Puttenahalli village common boundary point at the southwest corner of survey No.37 of Puttenahalli village with co-ordinates (N-13°11'184", E -77°57'486"). Then the line runs along the eastern and southern boundaries of survey No.37, 38, 39 & 40 of Puttenahalli Village to the south corner of later surey No. Then the lines continuous along the north and eastern boundary of Survey No. 40 to reach its eastern most corner with co-ordinates (N -13°11'445". E - 77°57'903"). and further touches the western side of Doddaballapura - Bengaluru main road.

East : From the above point the boundary line runs along south and western side of Doddaballapura - Bengaluru main road till it meets north-eastern corner of survey No. 69 of Puttenahalli village with co-ordinates (N -13°11'119", E - 77°57'969").

South : Then the line passes in west direction along the northern boundary of survey No. 69 & 35 of Puttenahalli village till it meets the Puttenahalli and Attur village common Boundary point at the north-east corner of survey No. 48 of Attur village. Then further the line runs in west direction along the northern boundary of survey No. 48 and 47 of Attur village till it meets north-west corner of survey. No. 47 of Attur village.

West : From the above point the lines runs in north direction along the eastern boundary of survey No.51 of Attur village till it meets starting point.

By Order and in the name of the Governor
of Karnataka
S.P. PATIL
Under Secretary to Government Forest,
Environment and Ecology Department."

सत्यमेव जयते

38. It is also an admitted fact that this was notified in the official gazette only on 10.09.2015 and only from that date, this bird sanctuary conservation reserve will come into effect in the eye of law. In this case, the Environmental Clearance (EC) was granted on 01.09.2015 prior to that Notification.

39. The Note on EIA Notification, 2006 on general conditions which reads as follows:-

"Note:-

General Condition (GC):

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified by the Central Pollution Control Board from time to time, (iii) Eco-sensitive areas as notified under section 3 of the Environment (Protection) Act, 1986, such as, Mahabaleshwar Panchgani, Matheran, Pachmarhi, Dahanu,

Doon Valley, and (iv) inter-State boundaries and international boundaries:

Provided that the requirement regarding distance of 10 km of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or U.Ts sharing the common boundary in case the activity does not fall within 10 kilometres of the areas mentioned at item (i), (ii) and (iii) above."

- 40.** So, it is clear from this that only if there is any notified protected area like National Park, Bird Sanctuary, etc. as on the date of filing the application within a distance of 10 Km, then only (even if it is a "B - Category" project), it will have to be considered at Central level. In this case, as on the date of filing the application during 2014 by the project proponent, this was not notified as protected area. So under such circumstances, it cannot be said that there was a material suppression of fact by the 4th Respondent in the Form – I Application.
- 41.** Further, in the Form – I Application, the 4th Respondent had specifically mentioned about ten lakes including Yelahanka Lake, of which, Puttenahalli is part as water body available within 10 Km. Further, impact of the project on Puttenahalli Lake was also considered in the EIA report and in view of the fact that the Natural Gas-based Thermal Power Plant, the impact will be less and minimal and they also provided mitigation plan for this purpose. Further, even on the basis of the representations made by the appellant, the MoEF&CC has sent a team to consider this aspect and they have submitted the report produced by the 4th Respondent as Annexure – A3 along with their memo which reads as follows:-



भारत सरकार
Government of India
पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय
Ministry of Environment, Forest & Climate Change
क्षेत्रीय कार्यालय (दक्षिणी जोन), बंगलूर - 560 034
Regional Office (Southern Zone), Bangalore - 560 034



4th Floor, E & F- Wings, Kendriya Sadan,
17th Main Road, II Block
Koramangala.

EP/12.1/83/KAR- 892.

Dated: 03.10.2018

To

Dr. S. Kerketta
Director - IA (I)
3rd Floor, Vayu Wing,
Indira Paryayaran Bhawan, Jor Bagh Road,
Aliganj, New Delhi - 110 003.

Subject: i. 350 MW Gas based Yelahanka Combined cycle power plant near villages Puttonahalli and Kenchenahalli, Yelahanka, District Bangalore by M/s Kavanataka Power Corporation Limited - reg. Public Grievance;

ii. Unusual rain with white powder like particles at Udipi on 03.08.2018 - reg.

Ref. No: i. J-14014/05/2018-IA-I (T) dt. 30.07.2018.
ii. J-14014/09/2018-IA-I (T) dt. 31.08.2018.

Sir,

This has reference to your letters of above mentioned subjects and references. The undersigned is directed to enclosed herewith the site visit reports of the above said representations for necessary action at your end.

Yours faithfully,

Encl: as above.

(Dr. S. Prabhakar)
Scientist - C

Site visit report of Puttenahalli lake – carried out in response to the Ministry's directives on establishment of a 350 MW Gas based Combined Cycle Power Plant near Puttenahalli and Kenchenahalli villages, Yelahanka, District Bengaluru by M/s Karnataka Power Corporation Limited – reg.

With reference to a Public Grievance bearing Registration No. MOEAF/P/2018/00130 dated 21.02.2018, the Ministry had requested this office, vide its Letter No. J-14014/05/2018-1A.1(T) dated 30.07.2018, to submit a factual report on the issues of environmental destruction around Yelahanka Puttenahalli Lake Birds refuge and pollution caused in the vicinity due to establishment of a 350 MW Gas based Combined Cycle Power Plant by M/s Karnataka Power Corporation Limited (KPCL).

Accordingly, a site visit was made on 05.09.2018 by the following officials of this office: Dr. S. Prabhu, Scientist 'C' and Dr. Dola Bhattacharjee, Research Officer (Env.). Subsequently, detailed discussions were held with the project proponent [represented by Shri. I.S. Haveri (Chief Engineer), Shri. Sankarappa (Superintending Engineer) and team] and the complainant [represented by Dr. K.S. Sangummi, Chairperson of the Yelahanka Puttenahalli Lake and Bird Conservation Trust].

1. About the Public Grievance:

The Yelahanka Puttenahalli Lake and Bird Conservation Trust had represented to the Ministry against establishment of a 350 MW Gas based Combined Cycle Power Plant by M/s KPCL in the vicinity of Puttenahalli Lake Birds Conservation Reserve alleging that it is an illegal establishment located within 10 km of the Birds Conservation Reserve and was not taken up for public consultation.

In brief, it was claimed that since the project is coming up within 10 km of a declared Birds Conservation Reserve, the environmental clearance granted by the SEIAA is null and void because such projects attract general conditions of the EIA Notification (2006) and should be appraised at the central level by the Ministry (MoEF&CC) in New Delhi. It was also said in the representation that the project is coming up without considering its impacts on the adjacent residential area and the Yelahanka Lake Wetland (between the Puttenahalli Lake and Yelahanka Lake). Further, it was alleged that the M/s KPCL has constructed a concrete canal destroying the wetland ecosystem.

The representation exclaimed that since the project is coming up over a site adjacent to the Yelahanka lake and residential establishments, the proponents will not be able to develop a greenbelt all around their premises because of paucity of space. It was also alleged that the project proponents are discharging treated water into Yelahanka Lake affecting the water quality of the lake.

The Yelahanka Puttenahalli Lake and Bird Conservation Trust claimed that the EIA report submitted by the project proponent is silent about the environmental destructions this project will bring with it (forecasting) and also has not envisaged the measures (including the emergency situations, risks etc.) the proponents would have to take up for safeguarding the environment and requested the MoEF&CC to initiate action toward conservation of the protected wildlife area.

2. Site visit report:

2.1. Location of the lake and the proposed project of M/s KPCL.

Puttenahalli lake is a water body that is spread across an approximate area of over 11 ha (1,10,793 sq. m as per the Google Earth Pro geospatial software application) and situated close

to Puttenahalli and Attur villages of Yelahanka Hobli, Bengaluru North Taluk, Bengaluru urban district of Karnataka. The lake is a well known refuge for a variety of birds that flock here during breeding season. Once pristine, the Puttenahalli Lake has almost dried up at present albeit waterways (pipelines) seen (along the eastern boundary) bringing in sewage from surrounding areas (Plc. 1- a and b). This lake is known to have had connections with Attur Lake (to its west) and Yelahanka Lake (to its east through the Yelahanka Lake Wetland) (http://www.indiaenvironmentportal.org.in/files/file/Survey_on_Lake_Encroachments.pdf).

In the north-eastern direction of the Puttenahalli Lake, M/s KPCL (<350 m from lake periphery) & M/s Karnataka Power Transmission Corporation (KPTC) (<200 m lake periphery) have established power generation and transmission stations partly on the Yelahanka Lake Wetland, between the Puttenahalli Lake and Yelahanka Lake (Fig. 1). Earlier, M/s KPCL had a diesel power generating unit in this area (since 1994), which is non-functional since 2013.

2.2. Environmental clearance and other statutory clearances

On 20th December 2014, M/s KPCL approached SEIAA, Karnataka seeking prior environmental clearance for establishment of a 350±20% MW capacity Gas based Combined Cycle Power Plant. Since the proposed power generation capacity of the project is <500 MW, as per the EIA Notification (2006), the project proponents required prior environmental clearance from the Karnataka State Environment Impact Assessment Authority (SEIAA). Accordingly, the proposal was considered by SEAC and ToRs were issued on 19th January 2015 for conducting EIA studies. Consequently, EIA studies were undertaken by M/s MANTEC Consultants Pvt. Ltd. (New Delhi) and report submitted by the proponent on 23rd July 2015. As the project is coming up within a notified industrial area (as also pointed in the EC Letter), no public consultation was conducted. Based on the SEAC meeting held on 5th-6th August 2015 and SEIAA meeting held on 29th August 2015, environmental clearance was granted to the project proponent for the establishment of a 350±20% MW capacity Gas based Combined Cycle Power Plant vide its letter No. SEIAA 20 IND 2014 dated 01.09.2015 over a preoccupied (since 1994) plot area of 26.4 ha (Annex. 1).

It was gathered from the site visit to M/s KPCL that the proponents have obtained required statutory permits including consent for establishment from the Karnataka State Pollution Control Board, height clearance from the Airport Authority of India, Ministry of Defense, etc.

2.3. Declaration of Puttenahalli Lake Birds Conservation Reserve

Meanwhile, on 10th September 2015, the 150th Volume (37th issue) of Karnataka Gazette was published (). A Notification No. FLE. 389 FWL 2014 Bengaluru, dated: 29-04-2015, came into print declaring the Puttenahalli lake area (37 Acres or 14.98 ha) as 'the Puttenahalli Lake Birds Conservation Reserve' with effect from the date of publication of this notification and all the rights within the boundaries of the reserve are, therefore, vested with the State Government.

Since, the environmental clearance was granted to the proposed project on 1st September 2015 (nine days prior to publication of the Karnataka Gazette), M/s KPCL started establishing facilities for the Gas based Combined Cycle Power Plant over the notified industrial area (plot area = 26.4 ha) that falls within 10 Km of the (soon after-) declared Birds Conservation Reserve. At present, they have completed 90% of the establishment work (Pic. 2) and the plant is likely to be commissioned by November 2018.

2.4. Consideration of impacts of the project on adjacent residential area and the Yelahanka Lake Wetland

Upon detailed scrutiny of the EIA report (submitted to this office by the project proponent) it was noted that although the report is inconclusive, dispersion modeling (AERMOD) studies were carried out by the consultants for estimating the impact of pollution from this plant on ambient air quality levels around various receptors (upto 996 m from the project site). The report describes that construction activities at the project site will likely to have insignificant impact on the aquatic ecosystems of Puttenahalli and Yelahanka lakes as runoff from construction area will be discharged through a catchment pit/tank, thereby reducing suspended solids in the runoff. The report also proposes mitigative measures asserting that green-belt will be developed around the premises of the project (work underway, Pic. 3), fish fingerlings will be ranched to Puttenahalli and Yelahanka lakes in consultation with the Fisheries Department and studies will be conducted regarding the impact of the plant on these lakes once in every two years for a period of 10 years after commissioning the plant. In the event of any adverse effects, necessary actions will be taken up by the authority.

During the site visit it was noted that a storm-water drain is flowing across their property over the Yelahanka Lake Wet land (between the Puttenahalli Lake and Yelahanka Lake) carrying sewage from Puttenahalli lake downstream towards the Yelahanka Lake in the east. It was gathered that sewage spill from this storm-water drain flooded the property of M/s KPCL in the past. To tackle the situation, the project proponent has concretized the drain (Pic. 4 and Pic. 3), narrowing it to the extent that the Yelahanka Lake Wet land is not getting the required water supply to sustain the wetland ecosystem. In addition, it appears that the area has undergone extensive change in land use pattern (Fig. 1 to 4) in recent times (including laying of roads along sides of the Yelahanka lake in 2012-13) that might have brought about alteration in the supply of required quantity of water to the wetland. Factors like soil type, management history, climate and soil landscape processes had possibly played considerable role as well, in debilitating the ecosystem (Pic. 5). The project proponent was asked to submit monitoring reports on water quality parameters from Puttenahalli lake and the storm-water drain. The report clearly shows that both the water bodies (lake and drain) are receiving untreated sewage surrounding areas.

The EIA report proposed to concretize this storm-water drain and develop green belt over the area. The environmental clearance neither have a mention of the same nor about the lakes or wetland. However, as per the directions of Honourable NGT (Original Application No. 222 of 2014 - Forward Foundation & Ors. Vs. State of Karnataka & Ors.), a buffer zone of 50 m is to be maintained from the edge of any primary storm-water drain (Rajkulawas) and the

area would be treated as no construction zone (including raising of boundary wall) for all intent and purposes. This is therefore, in non-compliance to the directive of the Honourable NGT.

2.5. Discharge of treated water into Yelahanka Lake affecting the water quality of the lake.

The project is yet to be commissioned. During the site visit it was gathered that wastewater treatment plant (STP) is being constructed (reported capacity = 180 m³) to treat the waste water. There are plans to implement zero-discharge facilities. The proponent was, however, requested to monitor water quality parameters from the Yelahanka lake and submit report to this office.

At present, the generated sewage is being treated in soak pits.

3. Other observations

It may be rational to mention that in the above mentioned notification (Notification No: FEE 389 FWL 2014 Bengaluru, dated: 29-04-2015), boundaries of the conservation reserve are described as follows:

Puttenahalli Lake Birds Conservation Reserve's boundary descriptions are mentioned as --
"North : Starting from southwest corner of survey No. 50 of Attur village with co-ordinates (N -13°11'118", E - 77°57'275"), the boundary line runs East and north along its southern and eastern boundary till it meets the Attur and Puttenahalli village common boundary point at the southwest corner of survey No.37 of Puttenahalli village with co-ordinates (N-13°11'184", E - 77°57'486"). Then the line runs along the eastern and southern boundaries of survey No.37, 38, 39 & 40 of Puttenahalli Village to the south corner of later survey No. Then the lines continuous along the north and eastern boundary of Survey No. 40 to reach its eastern most corner with co-ordinates (N -13°11'445", E - 77°57'903"), and further touches the western side of Doddaballapura - Bengaluru main road. East : From the above point the boundary line runs along south and western side of Doddaballapura - Bengaluru main road till it meets north-eastern corner of survey No. 69 of Puttenahalli village with co-ordinates (N -13°11'119", E - 77°57'969"). South : Then the line passes in west direction along the northern boundary of survey No. 69 & 35 of Puttenahalli village till it meets the Puttenahalli and Attur village common Boundary point at the north-east corner of survey No. 48 of Attur village. Then further the line runs in west direction along the northern boundary of survey No. 48 and 47 of Attur village till it meets north-west corner of survey No. 47 of Attur village. West : From the above point the lines runs in north direction along the eastern boundary of survey No.51 of Attur village till it meets starting point".

Upon verification of the GPS points described in the Notification, using Decision Support System (DSS) on GIS platform facilities in this office, it was understood that the notified points are inaccurate and following is the GPS location of the Puttenahalli Lake, as noted using DSS facilities - N -13°06'46.53", E - 77°34'44.63" (near to its north-eastern boundary, Fig. 4 [*]).

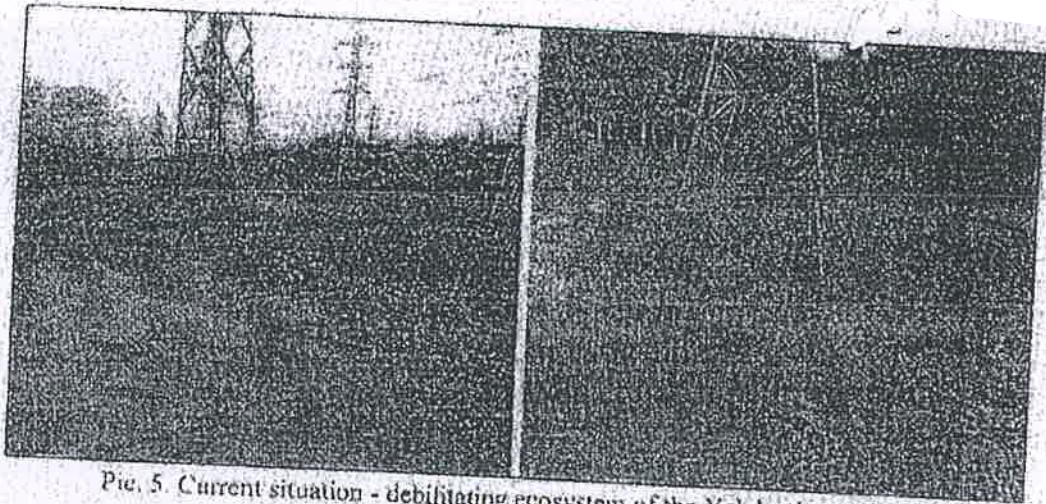


Fig. 5 Current situation - debilitating ecosystem of the Yelahanka wetland.

Karnataka is one of the most progressive and industrialized States in the country (http://densme.gov.in/dips/state_wise_dips/state_profile_karnataka_11316.pdf). To meet the growing needs of the state and its people, M/s KPCL (a State owned public limited company) has several plans for power generation from hydel, thermal, gas, solar, wind and other energy sources. Although power generation by the company is considerably inclined towards coal, due to its adverse impacts to the environment it is expected to encourage this proposed gas-fired power generation project as compared to coal it can reduce the emissions of particulate matters, CO₂, NO_x and SO₂ to the ambient air. However, development at the expense of environment is not acceptable. Therefore it is inevitable that the project proponents take that extra care not to damage the existing ecosystem and protect wildlife including the reported bird population of the area. Under the situation, we may request the project proponents to:

- i. Comply with the directives of NGT and other statutory bodies.
- ii. Undertake a comprehensive study on wildlife diversity in the area and submit report towards its conservation within a period six months.
- iii. Mounds of construction rubbish (especially excavated earth) were seen deposited over the Yelahanka wetland (within M/s KPCL's property). This area should be cleared off the debris and ecosystem be restored.
- iv. Undertake study on transformation in topography/ slope of the project area at a post-construction scenario and determine mitigative measures asserting restoration of the wetland.
- v. Undertake routine monitoring of groundwater quality within the project area and its neighbourhood, Yelahanka and Puttenahalli Lakes as well as from the wetland area.
- vi. Regular monitoring of ambient air quality parameters and noise level shall be carried out in the core and buffer zones of the project and report submitted along with half yearly environmental compliance reports.
- vii. Periodic (half-yearly) uploading of the status report of compliance to the stipulated environmental clearance conditions, including results of monitored parameters, should be done on your website.
- viii. Undertake programs to raise public awareness towards conservation of wetland/lake ecosystems and about the pros and cons of the proposed gas-fired power generation project.

Dr. Dola Bhattacharjee,
(Research Officer)

Dr. S. Prabhu,
(Scientist 'C')

42. So, there is no suppression of material fact as alleged by the appellant by the project proponent which vitiates the proceedings of issuance of Environmental Clearance (EC) in this matter on that ground.

43. The Office Memorandum relied on by the learned counsel for the appellant namely, F.No. J-11013/41/2006-IA-II (part) dated 20.08.2014 produced as Annexure - 5 along with the appeal memorandum is also not applicable to the facts of the case, as that relates to the eco-sensitive zones and protected areas already notified under the Wildlife (Protection) Act, 1972 and Environment (Protection) Act, 1986 respectively and in such cases, certain directions have been issued as to how this will have to be dealt with. But in this case, Puttenahalli Bird Conservation Reserve was declared only after issuance of Environmental Clearance (EC) dated 01.09.2015 namely, 10.09.2015. So, as on the date of consideration of the application by the SEAC - Karnataka or by the SEIAA - Karnataka, it was not a notified protected area under the Wildlife (Protection) Act, 1972 or eco-sensitive zone declared under the Environment (Protection) Act, 1986. The project will have to be appraised by the authorities on the basis of the law that was in existence at that time of consideration, subsequent developments happened will not have impact on the assessment already made by the authorities. So, on that ground, there is no necessity to set aside the Environmental Clearance (EC) granted as prayed for by the appellant.

44. The next contention raised by the appellant was that the exemption of public hearing for this project is illegal, as the MoEF&CC itself had later clarified vide their Office Memorandum dated 04.04.2016 that

Office Memorandum dated 16.05.2014 exempting public hearing and 10.12.2014 will not be applicable to the Thermal Power Plant, Cement Plant or Integrated Steel Plants which are proposed to be located in the notified industrial regions. This being a clarificatory in nature, this will relate back to the date of notification and as such, clearance granted is bad in law and on that ground, the same is liable to be set aside.

- 45.** The learned counsel for the appellant had relied on the decisions reported in **S.S. Grewal Vs. State of Punjab & Ors.**⁹, **Commissioner of Income Tax, Bombay & Ors. Vs. Podar Cement Private Limited & Ors.**¹⁰ and **Gram Panchayat Navlakh Umbre Vs. Union of India & Ors.**¹¹ of the Hon'ble High Court of Bombay by Judgment dated 28.06.2012 in support of their contentions.
- 46.** There is no dispute regarding the dictum laid down in those decisions that if any amendment is of clarificatory or explanatory in nature, then it will have retrospective operation. But in those cases whatever was done prior to that has not been upset by the Hon'ble Apex Court.
- 47.** Further, in the decision reported in **Municipal Corporation of Greater Mumbai Vs. Anil Shantaram Khoje & Ors.**¹² and **B.K. Srinivasan & Ors. Vs. State of Karnataka & Ors.**¹³, it has been observed that "(i) Where a law, whether Parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions

⁹ **1993 Suppl (3) SCC 234**

¹⁰ **(1997) 5 SCC 482**

¹¹ **PIL No.115 of 2010**

¹² **(2016) 15 SCC 726**

¹³ **(1987) 1 SCC 658**

made to it by various processes. Whether law is viewed from the standpoint of the 'conscientious good man' seeking to abide by law or from the stand point of Justice Holmes's 'unconscientiously bad man' seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. (ii) Delegated or subordinate Legislation is all pervasive and there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by Parliamentary legislation. But unlike Parliamentary Legislation which is publicly made, delegated or subordinate Legislation, is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is therefore, necessary that subordinate Legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. (iii) Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate Legislation itself prescribes the manner of publication such a mode of publication may be sufficient, if reasonable. If the subordinate Legislation, does not prescribe the mode of publication or if the subordinate Legislation prescribes a plainly unreasonable mode of publication it will take effect only when it is published from the customarily recognized official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate Legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient."

48. It is further observed in the decision that *"The effect of the non-performance of a duty imposed by a statute in the manner prescribed by the statute is not discovered by a simple answer to the question whether the statute is mandatory or directory. These are not simple chemical reactions. The question whether a statutory requirement is mandatory or directory cannot itself be answered easily."*

49. Further, it may be mentioned here that the exemption from the public hearing of projects within the notified industrial estate was issued by the MoEF&CC vide their O.M. No.J-11013/36/2014-IA-I dated 16.05.2014 and another notification dated 10.12.2014 and this was modified by the MoEF&CC vide their O.M. F.No. J-11013/36/2014-IA-I dated 04.04.2016 whereby, they have mentioned as follows:-

"6. It is evident from the Notification of 2001 as mentioned above and provisions at Item 7 (C) of the EIA Notification, 2006 regarding size of the industrial estates, the intent of the Notification has been to grant exemption from public consultation for small industrial units located in industrial estates of 500 to 1000 Ha area. The industrial units or activities itself located on an area of 500 Ha in industrial estate or regions of 10,000 Ha. has not been in the intent to be granted exemption from public consultation. So, a Thermal Power Plant, Cement Plant, or integrated Steel Plant even if located in notified industrial regions/zones cannot be granted exemption from the public consultation, as that is not the intent of the EIA Notification, 2006."

50. With the above observations, they have modified the earlier notifications mentioned above. So, as on the date of consideration of the project, O.M. dated 16.05.2014 and 10.12.2014 were in existence and clarification given in 2016 by virtue of the O.M. mentioned above will not invalidate the acts done by the authorities prior to this clarification issued.

- 51.** For example, even in a case where the amendment has been carried out in a pleading which has already been allowed on the basis of the then existence of law and if ultimately some clarification has been issued as to how the earlier amendment has to be considered, that will not be invalidated the already allowed amendment and consequential act done pursuant to the law or procedure that was existence in that time.
- 52.** So under such circumstances, merely because the appeal was filed in the year 2020 on the basis of the directions issued by the Hon'ble Supreme Court permitting the appellant to file an appeal challenging the Environmental Clearance (EC) granted in the year 2015, the Tribunal has to consider the situation which was prevailing at the time when the application for Environmental Clearance (EC) was filed, whether the procedure followed by the authorities for granting the Environmental Clearance (EC) is legal or not and not subsequent developments happened after the clearance was granted.
- 53.** So, under such circumstances, subsequent clarification issued by the MoEF&CC in respect of exemption of public consultation after the Environmental Clearance (EC) was granted is not a ground to set aside the Environmental Clearance (EC) already granted, applying the procedure which was in existence as on the date of consideration of the project as contended by the counsel for the appellant.
- 54.** So, we are not inclined to accept that contention as a ground for setting aside the Environmental Clearance (EC) granted complying with the procedure that was in existence as on the date of its consideration by authorities.

55. As regards the impact of the unit on the Bird Sanctuary Conservation Reserve is concerned, there was another case filed before this Bench by the Heritage Estate Apartment Owners Association as O.A. No.57 of 2017 (SZ) and this Tribunal by Judgment dated 28.06.2021, disposed of the matter on the basis of the recommendations made by the Joint Committee appointed by this Tribunal. The contention of the appellant was also considered by this Tribunal that the authorities have not considered the impact of the project on Puttenahalli Bird Conservation Reserve declared by the State of Karnataka on 29.04.2015 which came into effect by issuing notification dated 10.09.2015. The Joint Committee in that case has submitted a report which was extracted in Para (22) of that Judgment which reads as follows:-

"REPORT OF JOINT COMMITTEE IN THE MATTER OF O.A. NO. 57 OF 2017 (HERITAGE ESTATE APARTMENT OWNERS ASSOCIATION) SUBMITTED BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE, CHENNAI, AS PER ORDERS DATED 19.08.2020.

1.0 PREAMBLE

In the Original Application No. 57 of 2017(SZ), filed by Heritage Estate Apartment Owners Association Vs. UOI & Ors, the Hon'ble National Green Tribunal (NGT), Chennai issued an order on 19.08.2020 with the following directions:

"13. However, considering the circumstances, in order to ascertain the possible impact of the work that is being done by the 3rd respondent on environment, we feel it appropriate to appoint a joint committee comprising of 1) Senior officer from Regional Office, Ministry of Environment, Forest and Climate Change (MoEF&CC), Bangalore, 2) Senior officer from State Environment Impact Assessment Authority (SEIAA), Karnataka

3) Senior officer from Office of the Principal Chief Conservator of Forests, Head of Forest Force (HoFF) to be deputed by the Principal Chief Conservator of Forest not below the rank of Chief Conservator of Forest and 4) a Senior Scientist from Central 6 Pollution Control Board, Regional Office, Bangalore to go in to the question as to whether there was any possibility of any environmental degradation likely to be caused on account of the establishment of the 3rd respondent unit in the disputed area and whether there were any violations committed by the 3rd respondent in carrying out the construction

activities against the terms and conditions of the environment clearance or the consent to establish granted by the Karnataka State Pollution Control Board, is there any impact on livelihood on account of the activities of the 3rd respondent unit on the Yelahanahalli Lake and Bird Sanctuary and if there is any violation found assess the environment compensation and also suggest the remedial measure for restoration of damage, if any caused."

Further, vide Order dated 18.09.2020, Hon'ble NGT appointed the Regional Office, Ministry of Environment, Forests and Climate change (MoEF & CC), Bangalore as the nodal agency for co-ordination and for providing all necessary logistics for the committee constituted by' this Tribunal as per order dated 19.08.2020 in the above matter.

In compliance of above mentioned order, the Regional Office, Ministry of Environment, Forests and Climate Change (MoEF&CC), Bangalore, vide letter No. F.NO. EP/12.07/NGT/53/KAR dated 18/09/2020 has requested the concerned Department Authorities to nominate senior officials for the Committee to complete the task as directed by the Hon"ble NGT.

2.0 Inspection of the Joint Committee

On receipt of the nominations visited to M/S KPCL, Yelahanaka was made on 21.10.2020 by the Joint Committee. Following Members have attended:

- 1. Shri Subhash Malkhede, IFS, Additional Principal Chief Conservator of Forests (Wildlife), Dept of Forests, Ecology and Environment, Government of Karnataka*
- 2. Shri Kiran Kumar B S. Scientific Officer, Grade-I State Environment Impact Assessment Authority, Dept of Forests, Ecology and Environment, Government of Karnataka*
- 3. Shri Vivek, K, Senior Environmental Engineer/Scientist, D, CPCB, Bangalore.*
- 4. Shri E. Thirunavukkarasu, Scientist „E“ Integrated Regional Office, Ministry of Environment, Forests and Climate Change.*

The officials of M/s KPCL present during the day of inspection were:

- 1. Shri C. Venugopala, Technical Director.*
- 2. Shri. Chinna Somaiah, Chief Engineer (Civil Design)*
- 3. Shri. Krishna Murhtys, Chief Engineer (Thermal Design) (Additional charge)*
- 4. Shri. C. M Divakar, Chief Engineer (Civil)*
- 5. Shri K. SHankarappa, Superintending Engineer (M)*
- 6. SHri Pulakeshi, Executive Engineer (M)*

3.0 About M/s KPCL, Yelanhanka

Karnataka Power Corporation Ltd. (KPCL) is a state owned Public Limited Corporation and is in the business of generation of electric power. KPCL has a total installed capacity of about 6500 MW consisting of Hydro-Electric

stations. Thermal Power Plants (TPP) windmills and Solar PV plants.

KPCL owns & has been operating a 128 MW DG based power plant located at Yelahanka near Bangalore which runs on fuels such as Diesel/LSHS/LSFO. The plant has not been utilized optimally due to high cost of power generation and non-availability of continuous supply of LSHS fuel. The generation from DG plant had stopped since August, 2013 on high product cost and its pollution potential.

Considering the proximity to the GAIL pipeline network, KPCL planned try implement a natural gas fired combined cycle power plant of 1x350+20%MW capacity by abandoning the existing DG plant to increase the efficiency and to reduce atmospheric sulphur dioxide & suspended particulate matter emission from the DG plants.

Government of Karnataka vide its order no. EN.28 PPC 2014 dated 27.07.2014 has accorded approval for establishing first block ref gas based Combined Cycle Power Plant of 350+20% X(W capacity at Yelahanka with RLNG as the fuel. The main plant equipment consists of Gas Turbine Generator (GTG) and auxiliaries, Heat Recovery Steam Generator (HRSG) and auxiliaries including main stack, Steam Turbine Generator (STG) and auxiliaries, and gas forwarding station including gas booster station.

On 20th December 2014. M/s KPCL approached Karnataka State Environment Impact Assessment Authority (SEIAA), Karnataka seeking prior environmental clearance for establishment of a 350-k20% MW capacity Gas based Combined Cycle Power Plant. Since the proposed power generation capacity of the project is <500 MW, as per the Environment Impact Assessment (EIA) Notification 2006 and its amendments, the project proponents required prior environmental clearance from the State Environment Impact Assessment Authority (SEIAA). Accordingly, the proposal was considered by State Expert Appraisal Committee (SEAC) and Terms of References (ToR) were issued on 9th January 2014 for conducting EIA studies. Consequently, EIA studies were undertaken through M/s MANTEC Consultants Pvt. Ltd, New Delhi and report was submitted by the proponent on 23rd July 2014. As the project is coming up within a notified industrial area, the SEAC has exempted the public consultation. Based on the SEAC meeting held on 5th-6th August 2014 and SEIAA meeting held on 29th August 2014. Environmental clearance was granted to the project proponent for the establishment of a 350-£20% MW" capacity Gas based Combined Cycle Power Plant vide its letter No. SEIAA 20 IND 2014 dated 01.09.2014 over a plot area of 26.4 ha out of 120 acres of land available within the premises of Yelahanka Diesel Power Plant.

Consent to establish was granted by the KSPCB vide Lr. NO. KSPCB/CFE/CEO/KPCL/2015-16/ HI 33 dated 02.11.2015

Water Requirement/ Source: The total raw water requirement of the plant is around 14400M³/day (approximately 600 M3/h). Bangalore Water Supply and

Sewerage Board vide letter No. BWSSB/CE (NI & NW)/TA/323/2014-15 dated 02.02.2015 has permitted 22 MLD tertiary treated water for the project including initial allotment of around 12-15 MLD tertiary treated water from Jakkur STP which is approximately 6 to 8 km away from the Plant. Storage tanks of 114000M³ have been provided to store the tertiary treated water drawn from the sewage treatment plant.

Fire Protection System: Fire protection system of the plant consists of hydrant system for different areas of the plant, high velocity water spray protection system for transformers & turbine lube oil tanks, medium velocity water sprays system for cable galleries, portable extinguishers and hand appliances for extinguishing small fires in different areas of the plant, carbon dioxide flooding system for GTG and the local electrical containers / control cubicles room and mobile fire tender. Adequate number of Heat rise detectors and smoke detectors have been provided at strategic locations.

4.0 DISCUSSION WITH PETITIONERS

During the visit of Joint Committee, representative of, petitioner's association including Shri. Uttang, Shri Upadhyay, Shri Arunkumar, Shri Siddarth Patil, Shri R.K. Menon, Shri Balasundaram, Mrs Archana and Mrs Aarthi Patiar met the Committee and requested for an opportunity to be heard by the Joint Committee. Though it was not part of the ToRs given by the Hon'ble NGT, the Committee decided to hear them on humanitarian ground. They expressed that often there is loud whistle like noise from the activity and noise from cooling tower, was found to be around 90 dB (A). They have alleged that KPCL has deliberately hidden the existence of nearby habitations in the application submitted for obtaining EC. The representative's views are that there is sufficient area available and KPCL might have planned the installation of power plant leaving maximum distance from the existing residences. Further, stated that since the public hearing was exempted, they could not get chance to convey their views, the lighting provided at the site is intense and disruptive to residents at night. Further, there was a fire accident in the plant in October, 2020 which has scared them and there is fear that it may reoccur endangering the lives.

The Committee noted that M/s KPCL, Forest, Ecology and Environment, Government of Karnataka, KSPCB have submitted reply on the above issues before the Hon'ble NGT. As regards the fire accident, the Joint Committee has not gone into details as it is not covered under the ToRs given by the Hon'ble Tribunal and it is also learnt that in O.A No. 229/2020, suo moto cognizance taken by the Hon'ble Tribunal has constituted another Committee to look into the fire incident happened in KPCL and submission of report.

Deliberations of the Committee

It was noted during the visit of the Joint Committee that the establishment of the plant has almost been over and trial run has been started few weeks ago and there was a fire accident in the Gas Turbine Generator area and

hence the trail run was stopped. Hon“ble NGT in the order dated 19.08.2020 directed the Joint Committee to look into the following:

- a) whether there was any possibility of any environmental degradation likely to be caused on account of the establishment of the 3rd respondent unit in the disputed area
- b) whether there were any violations committed by the 3rd respondent in carrying out the construction activities against the terms and conditions of the environment clearance or the consent to establish granted by the Karnataka State Pollution Control Board
- c) is there any impact on livelihood on account of the activities of the 3rd respondent unit on the Yelahanahalli Lake and Bird Sanctuary and
- d) if there is any violation found assess the environment compensation and also suggest the remedial measure for restoration of damage, if any caused.

In order to deliberate on the above given Terms of References (ToR), the Committee, after inspection of the plant, had discussion with the officials of KPCL and also examined various documents like EIA, EMP, On Site Emergency Plan, various permissions obtained, compliance of EC and Consent orders. Based on the above, each ToR has been deliberated in detail and following are the observations/comments:

Whether there was any possibility of any environmental degradation likely to be caused on account of the establishment of the 3rd respondent unit in the disputed area

The likely pollutions from a power plant are air pollution, noise pollution, water pollution and thermal Pollution.

Air Pollution

A Combined Cycle Power Plant (CCPP), using natural gas, is much more environmentally compatible as compared to coal- based power plant of similar capacity. In the absence of coal handling, ash handling and ash disposal areas, fugitive dust emissions and release of pollutants in stack emissions would be significantly lower. As re-gasified LNG is proposed to be used as the only fuel at this plant, particulate matter emissions will be eliminated.

Further, as Sulphur content in the natural gas is very low (less than 24 ppm, w/w) SO₂ emission from the combustion of fuel will also be negligible. Dry Low NO_x(DLN) Burners, consisting of two-stage premixed combustor are provided to control NO_x emission below 25 ppm level which is well within the limits Of 75 PPM as notified under the E (P) Rules, 1986. A stack height of 60 m [against 45m suggested by regulatory agencies] has been provided to release the exhaust gases to atmosphere to avoid local dispersion. Continuous On — line stack emission monitoring equipment has been provided for monitoring of exhaust emission which is to be connected to the servers of KSPCB and CPCB for their monitoring.

It is reported that water sprinkling was carried out regularly during construction of the project for ie dust suppression. The reports of Ambient Air Quality monitoring carried out through third party laboratories during construction phase were

examined and observed that the particulate matter which is the main source of dust pollution was within the permissible limit.

Noise Pollution

The major sources of noise pollution in the power plant are air inlet & exhaust gas streams, steam turbine generator, other rotating equipment, combustion induced noises, flow induced noises, steam safety valves. The inlet air and exhaust gas streams have been provided with silencers for noise reduction. The steam turbine generator is housed in a closed building thereby reducing the transmission of noise to the outside environment. Action has been initiated to install the acoustic enclosure to Gas Booster Compressor (GBC) as part of efforts to bring down the noise levels.

The noise level monitoring carried out by the KPCL through third party during construction period revealed that the noise levels were within the permissible limit. However, actual impact on ambient noise levels during the normal operations of all the heavy equipment will envisage a correct picture on noise generation at the plant boundaries with respect to prescribed limits. KPCL need to finalise noise monitoring locations in consultation with the KSPCB, especially noise level shall be monitored along the boundary on northern side where the habitation is located.

The loud whistle noise often generated from the turbine house and the noise generated from cooling tower need to be examined and appropriate control measure shall be provided in consultation with KSPCB, if warranted, prior to the commencement of commercial operation of the plant.

As per the EC "green belt consisting of 3 tiers of plantation of native species around plant and at least 100 m width shall be raised. Wherever 100m width is not feasible a 50 m width shall be raised. Tree density shall not be less than 2500 per ha with survival rate not less than 70%. Heavy foliage indigenous tree species such as Mahgoni, Honge, Neem, Akashmallige, Kadamba, Ficus, Ashoka etc shall be planted. The plantation area shall not be less than 33% of the total project areas."

As per the records, at present green belt development has been carried out in an area of about six acres. On the Northern side where the habitation is existing, the KPCL has carried out plantation in about 50m width and many places along the boundary it is yet to be carried out. KPCL has reported that an area of approximately 9 acres (approx 33% of total land area) has been identified for plantation and green belt development in a phased manner. KPCL shall carry out minimum 50 m width of Green belt consisting of 3 tiers of plantations with tall tree variety along the compound wall to further decrease the impact of sound level below the specified norms. Priority in green belt development shall be given on the sides where the habitation is located. Since raising tall tree cover takes a couple of years, KPCL shall explore installation of suitable additional measures to control the noise level at source including measures to install barriers between the source and the habitation prior to the commencement of operation.

Water Pollution

The sources of water pollution from the power plant are cooling tower blow down, HRSG blow down. effluent from DM plant

„water treatment (WT) plant. .All the blow down water and effluent will be led to the guard pond for pH correction and also dilution if required with water drawn from the tertiary water storage tank to the standards as stipulated by Pollution Control Board. The water collected in the guard pond will be used for plant cleaning, gardening. freighting etc.

The effluents are proposed to be treated through a 5.5 MLD Zero Liquid Discharge Plant comprising of main components like HRSCC (High Rate Solid Contract Clarifier), HRO Plant (High Rate Solid Contract Clarifier), HRO plant (Hight Recovery Reserve osmosis plant) and Evaporator Crystallizer and sludge generated is proposed to be disposed through TSDF facility . KSPCB has not given any permission to discharge the treated wastewater outside the premises/ to the Yelahanka Lake. The ZLD plant is under installation and hence a mobile R.O plant for the treatment ref effluent has been provided. The treated water from the mobile R.O is reused in the plant, while the rejects are sent to a CETP, as reported

Thermal Pollution

The combined cycle power plant envisages installation of unfired heat recovery steam generators to utilize the heat content of the exhaust gas from the gas turbines. Heat Recovery Steam Generator (HRSG) has been installed to recover heat from the gas turbine exhaust gas which will reduce the temperature of the exhaust gas to the lowest possible value, thereby reducing the thermal heat discharge into the atmosphere.

Solid Waste

The activity is likely to generate hazardous wastes such as cotton waste, used spent oil etc. and KPCL shall obtain Authorisation from KSPCB for disposal of these hazardous waste.

It is noted that the EIA Report has been prepared by the consultant based on the Terms of References given by the SEAC, Karnataka and all aspects of the area surrounding the project including the biodiversity of Puttenahalli lake has been considered while making the EIA report. The EIA report has suggested EMP for mitigating all likely pollution problems anticipated from the plant and KPCL has installed abatement measures. KPCL shall ensure proper operation of abatement measures as per the EMP. Proper implementation of EMP, DMP and the suggestions given above may mitigate the likely environmental degradation from the operation of the plant.

As per the documents / monitoring reports on air, water and noise submitted by the KPCL, the construction phase has not caused any environmental degradation. However, the high noise level generated intermittently from the trial operation as reported by the petitioner need to be examined and appropriate control measures shall be

provided in consultation with KSPCB, if warranted, prior to the commencement of commercial operation of the plant.

Whether there were any violation committed by the 3rd respondent in carrying out the construction activities against the terms and conditions of the environment clearance or the consent to establish granted by the Karnataka State Pollution Control Board.

The Joint Committee examined the compliance status of EC conditions and consent order and observed that no violations have been committed by the 3rd Respondent. At present green belt developed in an area of six acres and it is planned to carry out in a phased manner in another three acres to reach 33 %. However, the distance between boundary wall to plant is less than 50m, hence, as per the EC, a linear plantation to form a green belt all along the boundary is not possible. The officers of KPCL assured that once the construction is complete, there would be large vacant spaces between a building which shall be planted using shade bearing, flowering tree species. Piezometers are to be installed for monitoring Groundwater prior to the commencement of operation. During the operation phase of the project, KPCL has to carry out regular mock drills on the safety aspect and regular health check-up of the people living in the villages within a radius of 10 km from the plant, as per the EC.

Is there any impact on livelihood on account of the activities of the 3rd respondent unit on the Yelahahalli Lake and Bird Sanctuary.

Puttenahalli Lake is a 10-hectare water body which is to the South-West side of the plant and Yelahanka Lake is to the Eastern side of the plant. It is reported in the EIA report that these lakes were once outside the Bangalore city and were breeding centres for darters, painted storks, black-crowned night herons, purple herons, pond herons, egrets, Asian open bill storks, Eurasian spoonbills, spot-billed pelicans, little grebes, little cormorants, spot-billed ducks, purple moorhens and common sandpipers, due to large scale urbanization and release of untreated urban domestic waste, the bird population visiting these lakes has dwindled and now only local species like night herons, purple herons, pond herons, egrets are seen extensively.

The major air pollutant expected from the project will be Nox emissions. As Dry Low Nox burners are installed to reduce the formation of Nox, EIA predicts the maximum concentration of Nox to be $1\mu\text{g}/\text{m}^3$ within 1 km from the project site and incremental concentration of Nox at the Jarakabande reserve Forest during March-May 2015 has been computed as $11\mu\text{g}/\text{m}^3$ thus the long-term incremental ground level concentration of Nox in the surrounding environment due to plant operation will be very low. Thus, impact of the emissions on terrestrial ecosystems is likely to be insignificant.

The Effluents are proposed to be treated through Zero Liquid Discharge Plant and reused. KSPCB has not given any permission to discharge the treated wastewater outside the premises/ to the Yelahanka Lake. Thus,

possibility of causing pollution by the effluent to the lake is eliminated

As per the recommendation of EIA, KPCL shall, in consultation with Fisheries Department, release about 50,000 fish lings of "Dodda Gende (Major Carps)" and other local variety every year to Puttenahalli and Yelahanka Lakes to maintain a healthy fish population. And studies shall be conducted regarding the Impact of the Plant on the Fish population in the above lakes once in every two years for a period of 10 years after the commissioning of the Plant. In the event of any adverse effects due to the establishment of the plant, necessary mitigate measures shall be taken.

It is to be mentioned that a storm-water drain is flowing across their property over the Yelahanka Lake Wet land (between the Puttenahalli Lake and Yelahanka Lake) carrying sewage from Puttenahalli lake downstream towards the Yelahanka Lake in the east. It was gathered that sewage spill from this storm-water drain flooded the property of M/s KPCL in the past and hence the area surrounding nala is not being used optimally. To tackle the situation, KPCL has concretized the drain (Fig. 1, 2 and 3) In addition, it appears that factor like laying of roads along sides of the Yelahanka lake in 2012-13 might

have brought about alteration in the supply of required quantity of water to the wetland and lead to debilitating the ecosystem.

It is submitted that the Puttenahalli lake Bird Conservation Reserve has a conservation Reserve Management Committee formed under the provisions of Sec. 36B of the wildlife (Protection) Act 1972. The committee is supposed to suggest measures to Chief Wildlife Warden, Karnataka measures to be taken to preserve wetland as suitable habitat for both residential and migratory birds visiting the Puttenahalli Lake and adjoining landscape. Concretizing drains carrying water from Puttenahalli lake flowing to Yelahanka lake through a wetland was undesirable. However, no new structures, changing of existing wetland by removing or adding to existing flora and fauna should be done without the consultation of Chief Wildlife Warden.

In-order to protect and conserve the wetland, KPCL shall undertake study on restoration of the wetland and implement restoration measures in consultation with Department of Forest, Ecology and Environment, Government of Karnataka.

If there is any violation found assesses the environment compensation and also suggest the remedial measures for restoration of damage, if any caused.

No such violations which invites compensation or remedial measures has been noticed by the Joint Committee.

6.Other Observations: As regards the safety and onsite emergency preparedness, it is noted that KPCL has carried out On site emergency management plan and

submitted to SEAC/SEIAA< Karnataka while obtaining EC. The Joint Committee has not gone in detail as it is not covered under the ToRs given by the Hon“ble Tribunal and also it is learnt that Hon“ble Tribunal has constituted another Committee in O.A. No. 229/2020 to look into the fire incident happened in KCPL and submission of report.

7.0 CONCLUSION AND RECOMMENDATIONS

After detailed deliberations, the joint Committee had made the following conclusion and recommendations.

As per the documents/monitoring reports on air, water and noise submitted by the KPCL, the construction phase has not caused any environmental degradation. However, following are suggested for better environmental Management.

- *KPCL need to finalize the noise monitoring locations in consultation with the KSPCB, especially noise level shall be monitored along the boundary on northern side where the habitation is located.*
- *The loud whistle noise often generated from the turbine house and the noise generated from cooling towers need to be examined and appropriate control measures shall be provided in consultation with KSPCB, if warranted, prior to the commencement of commercial operation of the plant.*
- *KPCKL shall carry out minimum 50m width of green belt consisting of 3 tier of plantations with tall tree variety along the compound wall at all possible places to further decrease the impact of sound levels below the specified norms. Priority in green belt development shall be given on the sides where the habitation is located. Since raising tall tree cover will take couple of years, KPCL shall explore installation of suitable additional measures to control the noise level at source including measures to install barriers between the source and the habitation prior to the commencement of operation.*
- *In order to protect and conserve the wetland, KPCL shall undertake study on restoration of the wetland and implement restoration measures in consolation with Department of Forest, Ecology and Environment, Government of Karnataka.*
- *KPCL shall ensure that the ZLD plant proposed for effluent shall be installed and commissioned prior to the commencement of commercial operation of the plant*
- *KPCL shall ensure proper operation of pollution abatement measures as per the Environmental Management Plant (EMP) and safety measures as per on-site Emergency plan.”*

56. All the impacts of the project and the remedial measures to be taken have been considered by the Tribunal in that case on the basis of the recommendations made by the Joint Committee appointed by this Tribunal including (i) a Senior Office from the Regional Office,

MoEF&CC, Bangalore, (ii) a Senior Office from the SEIAA – Karnataka, (iii) a Senior Officer from the office of Principal Chief Conservator of Forest, Head of Forest Force to be deputed by the Principal Chief Conservator of Forest not below the rank of Chief Conservator of Forest and (iv) a Senior Scientist from the Regional Office, CPCB, Bangalore to go into the question and it is on that basis, the final orders have been passed in that case.

57. After considering the documents produced and submissions made by the parties therein, this Tribunal had disposed of the matter with the following directions:-

"30. In the result application is disposed of as follows:

i) The applicant is not entitled to get any other reliefs claimed in the application, in view of the report submitted by the Committee.

ii) The 3rd respondent is directed to strictly comply with the recommendations made by the joint committee to avoid present or future possible pollution that is apprehended by the applicant.

iii) The 3rd respondent is directed to provide necessary pollution control mechanisms in order to curb the possible pollution that is likely to be caused during the construction process in consultation with Karnataka State Pollution Control Board to avoid possible sound pollution or other pollution, which is apprehended by the applicant.

iv) As regard the wet land maintenance and restoration is concerned, the 3rd respondent is directed to conduct a study in coordination with the Officer not below the rank of Chief Conservator of Forests to be deputed by Forest Department along with a scientist from Indian Institute of Science, Bangalore and the 3rd respondent is directed to carry out those recommendations in its letter and spirit so as to protect the environment and the wet land ecology available in that area.

v) *The Pollution Control Board is also directed to incorporate all necessary pollution control mechanisms to curb possible pollution that is likely to be caused on account of operation of 3rd respondent-unit and other necessary conditions on Precautionary Principle at the time of their commencement including air, water, noise and thermal pollution, while issuing the consent to operate. The 3rd respondent is directed to strictly comply with those conditions as well.*

vi) *The Pollution Control Board is directed to conduct periodical monitoring during the construction process of the 3rd respondent-unit so as to ascertain, as to whether all pollution control mechanisms are being strictly adhered to and the pollution norms are strictly followed and if there is any violation found, they are directed to take appropriate action against 3rd respondent in accordance with law.*

vii) *As regards the validity of environment clearance is concerned, this Tribunal has not expressed any opinion in this application and that will be considered by the Tribunal while considering the Appeal No. 14 of 2020 filed by Puttenhalli Lake conservation Trust against the environment clearance which is pending before this Tribunal.*

viii) *Considering the circumstances, parties are directed to bear their own costs in the application. 31. The registry is directed to communicate this order to the Pollution Control Board, Chief Conservator of Forests, Scientist from Indian Institute of Science, Bangalore for their information and compliance of the direction."*

58. This Tribunal had directed the Project Proponent to carry out the recommendations including the wetland maintenance and restoration, on the basis of the study to be conducted in co-ordination with the officer not below the rank of Chief Conservator of Forest and as such, there is no necessity to impose any further conditions in this regard.

59. The 4th Respondent is only liable to carry out the recommendations of the Joint Committee and directions issued by this Tribunal in O.A. No.57 of 2017 (SZ) so as to mitigate the possible impact, if any, on the Puttenahalli Bird Conservation Reserve in its letter and spirit.

60. As regards the encroachment into the storm water drain is concerned, it is seen from the report produced by the appellant themselves that it is on the basis of the request made by the Bruhat Bengaluru Mahanagara Palike (BBMP) that they have provided the box type vents to regulate the sewage water that is passing through the storm water drain to avoid overflow in that area. So under such circumstances, it cannot be said that there was any encroachment made by the project proponent in that area.

61. In view of the discussions made out, we do not find any merit in the appeal and the same can be disposed of with the following directions:-

- a. The prayer for setting aside the Environmental Clearance (EC) granted to the 4th Respondent - M/s. Karnataka Power Corporation Limited by the State Environmental Impact Assessment Authority - Karnataka/ 2nd Respondent vide their proceedings No.SEIAA 20 IND 2014 dated 01.09.2015 is hereby rejected.
- b. The 4th Respondent - M/s. Karnataka Power Corporation Limited is directed to carry out the directions issued by this Tribunal in **Original Application No. 57 of 2017 (SZ) (Heritage Estate Apartment Owners Association Vs. Union of India & Ors.)** and also the conditions imposed in the Environmental Clearance (EC) as well as Consent to Establish, in its letter and spirit.

62. The points are answered accordingly.

63. **In the result, the appeal is disposed of with the following directions:-**

(i) The prayer for setting aside the Environmental Clearance (EC) granted to the 4th Respondent - M/s. Karnataka Power Corporation Limited by the State Environmental Impact Assessment Authority - Karnataka/ 2nd Respondent vide their proceedings No.SEIAA 20 IND 2014 dated 01.09.2015 is hereby rejected.

(ii) The 4th Respondent - M/s. Karnataka Power Corporation Limited is directed to carry out the directions issued by this Tribunal in **Original Application No. 57 of 2017 (SZ) (Heritage Estate Apartment Owners Association Vs. Union of India & Ors.)** and also the conditions imposed in the Environmental Clearance (EC) as well as Consent to Establish, in its letter and spirit.

(iii) Considering the circumstances, parties are directed to bear their respective costs in the appeal.

(iv) The Registry is directed to communicate this order to the official respondents for their information and compliance of directions.

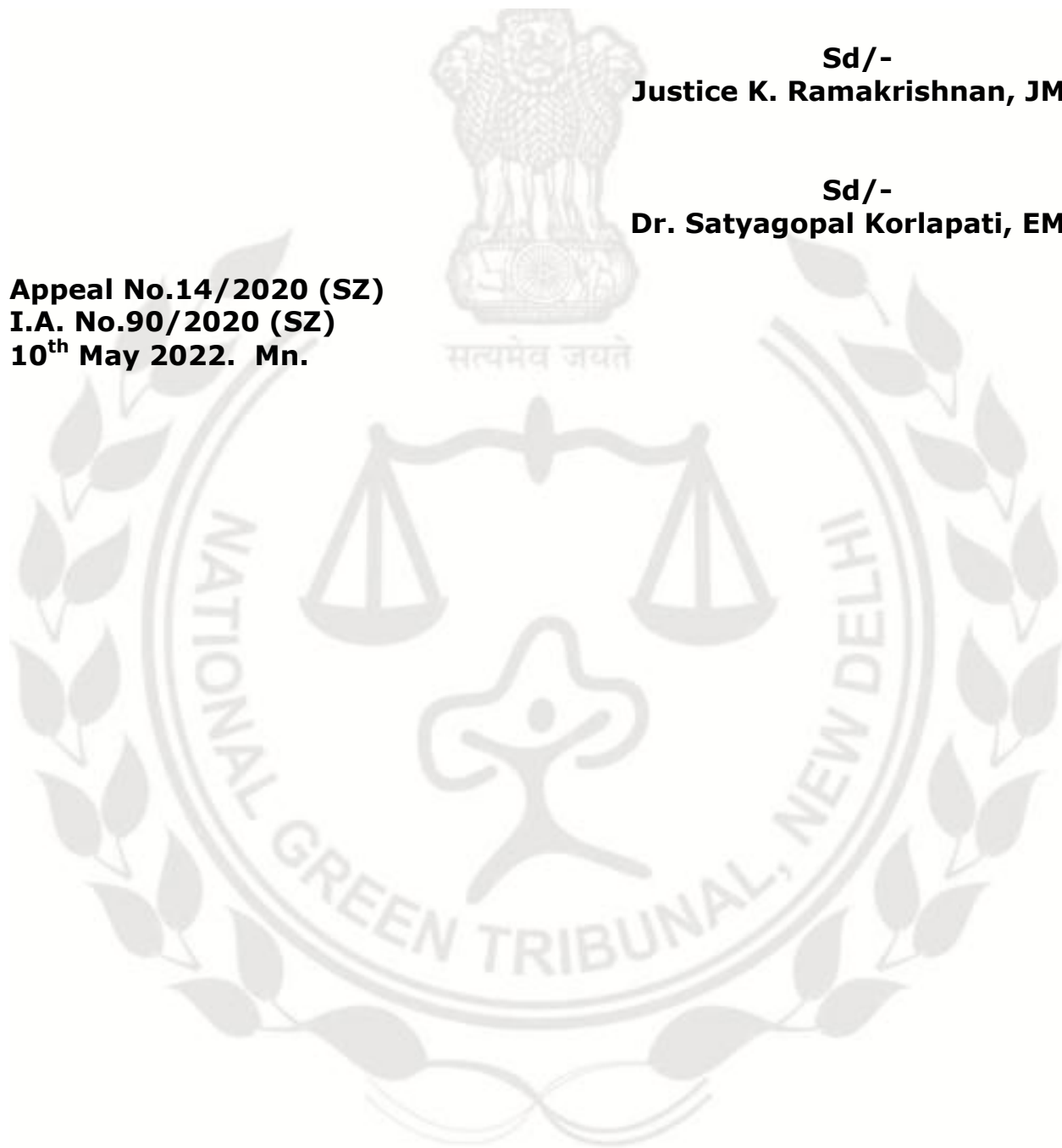
64. With the above observations and directions, this appeal is disposed of without cost.

65. Since the appeal is disposed of, **I.A. No.90 of 2020 (SZ)** seeking injunction is also disposed of.

Sd/-
Justice K. Ramakrishnan, JM

Sd/-
Dr. Satyagopal Korlapati, EM

Appeal No.14/2020 (SZ)
I.A. No.90/2020 (SZ)
10th May 2022. Mn.



NGT

ANNEXURE - ~~1~~ 0

ITEM NO.21

COURT NO.3

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5810-5811/2022

YELAHANKA PUTTENAHALLI LAKE AND
BIRD CONSERVATION TRUST (REGD.)

APPELLANT(S)

VERSUS

MINISTRY OF ENVIRONMENT & ORS.

RESPONDENT(S)

(IA No. 46918/2023 - APPLICATION FOR VACATION OF INTERIM ORDER
IA No. 121626/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT

IA No. 108956/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES

IA No. 72691/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES

IA No. 121627/2022 - PERMISSION TO FILE LENGTHY LIST OF DATES
IA No. 121625/2022 - STAY APPLICATION)

Date : 08-11-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Appellant(s) Mr. Abdul Azeem Kalebudde, AOR

For Respondent(s) Mr. Gurmeet Singh Makker, AOR
Ms. Ruchi Kohli, Adv.
Mr. Chinmayee Chandra, Adv.
Ms. Swarupama Chaturvedi, Adv.
Mr. Madhav Sinhal, Adv.

Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Satish Parasaran, Sr. Adv.
Mr. Ajay J Nandalike, Adv.
Mr. Chandrashekhar A. Chakalabbi, Adv.
Ms. Tanya John, Adv.
Ms. Arya Kumar, Adv.
Mr. S. K. Pandey, Adv.
Mr. Awanish Kumar, Adv.
Mr. Anshul Rai, Adv.
Mr. Abhinav Garg, Adv.
M/S. Dharmaprabhas Law Associates, AOR

Mr. Anand Sanjay M Nuli, Adv.
Mr. Suraj Kaushik, Adv.

P.T.O

Mr. Dharam Singh, Adv.
Mr. Nanda Kumar K B, Adv.
M/S. Nuli & Nuli, AOR

UPON hearing the counsel, the Court made the following
O R D E R

Having heard the learned counsel for the parties, we are inclined to permit the respondents to commence trial run for a period of six months from the date of commission. During this period, the concerned Pollution Control Board will monitor the ambient air quality at different and appropriate locations including the Bird Sanctuary, which is stated to be located at the distance of about 5 kilometers. Data periodically collected, will be analysed and the report will be submitted to this Court within a period of five and half months from the date of commission. In case, it is noticed that the ambient air quality is getting affected due to the power plant, it will be open to the appellant and the concerned Pollution Control Board to move an appropriate application before this Court.

Re-list in the month of July 2024.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
ASSISTANT REGISTRAR