

2348

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE, PUNE  
OA NO. 70/2021**

**In the matter of:**

Brackish Water Research Centre

... Applicant

Versus

Gujarat Pollution Control Board and Ors.

... Respondents

**INDEX VOL II**

S No.	Particulars	Page No.
	VOL – II	2348
4.	<b><u>Annexure R8/35:</u></b> Chart tabulating the records and information submitted by R-8/HIL to the Joint Committee	2349 - 2350
5.	<b><u>Annexure R8/36:</u></b> Copy of the MOU dated 20.12.2023 signed between R-8/HIL and Government of Gujarat	2351 - 2352
6.	<b><u>Annexure R8/37:</u></b> Copy of SC Judgement in <i>Sterlite Industries (India) Limited vs. Union of India, (2013) 4 SCC 575</i>	2353 - 2384
7.	<b><u>Annexure R8/38:</u></b> Copy of SC Judgement in <i>Goel Ganga Developers India Pvt. Ltd. vs Union of India, (2018) 18 SCC 257</i>	2385 - 2416
8.	<b><u>Annexure R8/39 (Colly.):</u></b> Copies of Orders dated 27.04.2022, 03.06.2022, 15.07.2022, 29.07.2022, 05.09.2022, 12.09.2022, 04.11.2022, 18.11.2022, 16.12.2022 and 08.05.2023 passed by Supreme Court	2417 - 2440
9.	<b><u>Annexure R8/40:</u></b> Copy of NGT Judgement in <i>Hanuman Ram vs State of Rajasthan, 2021 SCC Online NGT 4038</i>	2441 - 2453
10.	<b><u>Annexure R8/41:</u></b> Copy of NGT Judgement in <i>Protection of Environment and Public Service Committee v. Union of India, MANU/GT/0294/2022</i>	2454 - 2518

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DATE: 05.01.2024

PLACE: NEW DELHI

**LIST OF DOCUMENTS AND RECORDS SUBMITTED BEFORE JOINT COMMITTEE BY HINDALCO INDUSTRIES LIMITED**

S N	Description	Date of submission
<b>PART A</b>		
1.	Each product wise details of production quantity, raw material, consumption for each product and justification of gap/balance mass/material	28.01.2022
2.	Each By-product generation quantity	28.01.2022
3.	Water consumption, wastewater generation and treated wastewater disposal (KL/Day)	28.01.2022
4.	Fuel consumption	28.01.2022
5.	Hazardous waste generation and its management/disposal	28.01.2022
<b>PART B</b>		
6.	Manufacturing process of each product and by-product	28.01.2022
7.	Mass/Material balance data of manufacturing activity consists of raw material input to product/by-product/waste (solid, liquid, gaseous) output	28.01.2022
8.	Raw Material consumption per unit of product output	28.01.2022
9.	Water consumption per unit of product output	28.01.2022
10.	Waste water generation per unit of product output	28.01.2022
11.	Fuel Consumption per unit of product output	28.01.2022
12.	Hazardous waste generation per unit of product output	28.01.2022
<b>Part A</b>		
1.	Annual consumption and generation, comparison with cca-raw material, water, fuel, products, by-products, effluents and hazardous wastes	07.02.2022
2.	Emp against environment clearance (EC)	07.02.2022
3.	CCA & CCA amendments received since inception in chronological order	07.02.2022
4.	CCA compliance in last 5-years	07.02.2022
5.	EC compliance of all 6 ecs in last 5-years	07.02.2022
<b>PART B – GPCB</b>		
1.	Waste aspects along with occupational health and safety measures taken	08.02.022
2.	Environmental clearance comparison 2009 vs. 2017	08.02.022
3.	Overall environment management plan in the unit in terms of air, water and hazardous waste	08.02.022
4.	Waste water treatment & sludge generation and sludge composition generating from various sources and its quantity, collection, treatment, storage, handling and disposal management details	08.02.022
5.	Change in effluent quantity due to expansion and effluent discharge mechanism in CRZ	08.02.022
<b>PART C – GPCB</b>		
1.	All GPCB, CPCB, forest department- comment(s), SCN, NOD, closure notices and related compliance status from September 2016-september 2021	09.02.2022

2.	CER spent by unit as per the provision of EIA notification, 2006	09.02.2022
<b>PART D – GPCB</b>		
1.	Last 5 years schedule-1 Audit Report- along with recommendations and compliance of points from 2017 to 2021.	24.02.2022
2.	Details of quantity of various Hazardous waste generated for last 5 years and quantity disposal along with details to whom disposed and the rule 9 permission	24.02.2022
3.	Form G expenditure details we have submitted for only 1-year. Previous 2- years also required.	24.02.2022
4.	Annual Consumption and Generation, Comparison with CCA – Raw material, Water, Fuel, products, By-products, effluents and hazardous wastes with min-max	24.02.2022
<b>DATA SUBMISSION MADE TO CPCB</b>		
1.	Plant layout	03.03.2022
2.	Effluent and water treatment flow diagrams	03.03.2022
3.	Tertiary water recycling unit	03.03.2022
4.	Gpcb observations and responses (action taken report)	03.03.2022
5.	Secured landfill – capacity and closure details	03.03.2022
6.	Intimation document on fertilizer shutdown	03.03.2022
7.	Lead anode and cathode manifest	03.03.2022
8.	Export permission for all hazardous waste	03.03.2022
9.	Communications with forest department	03.03.2022
10.	Used insulation manifest details	03.03.2022
11.	Details of Hazardous waste handling	03.03.2022
<b>DATA SUBMISSION MADE TO CPCB</b>		
1.	Photographs of internal Roads - Newly Developed	12.03.2022
2.	Coal Area Photographs	12.03.2022
3.	Improvement actions against High PM10 observed on 23.01.2021 by Schedule 1 Auditor	12.03.2022
4.	Road Sweeping Machine Details	12.03.2022
5.	Plantation Details- Total Nos planted, Coverage Area and photographs	12.03.2022
6.	Copper Slag Statement for Jan21 to Jan22 showing generation, sale and sector-wise sale	12.03.2022
7.	Justification for higher used oil generation on FY21	12.03.2022
8.	Last Calibration and next due dates of calibration of OCEMS	12.03.2022
1.	Coal Quantity exceeding CCA Limit	13.03.2022
2.	Water consumption, Effluent generation, Domestic effluent along with dates of amendments in CCA quantity	13.03.2022
3.	Copper Slag Statement for Jan21 to Jan22 showing generation, sale and sector-wise sale	13.03.2022



## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered on 20<sup>th</sup> December 2023 at Gandhinagar, as part of Investment Promotion Activity for Vibrant Gujarat Global Summit 2024

Between

Hindalco Industries Limited

And

Government of Gujarat.

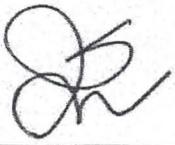
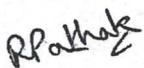
Hindalco Industries Limited wishes to establish the following project in Gujarat.

Sr. No.	Project	Proposed Location	Proposed Inv. (Rs. in Cr.)	Proposed Employment	Proposed Year of Commencement
1.	Hindalco E-waste and Secondary Copper Recycling Project - Copper Tube and Copper Alloy Rod Project	Waghodia	2450	800	FY25
2	Environmental Improvement Projects	Dahej	500	10	FY26

Government of Gujarat would facilitate Hindalco Industries Limited to obtain necessary permissions / registrations / approvals / clearances etc. from the concerned departments of the State, as per the existing policies / rules and regulations of the State Government.



This Memorandum of Understanding is made to facilitate Hindalco Industries Limited for establishment of the aforesaid Project(s) in Gujarat in a time bound manner.

For and on behalf of Government of Gujarat	For and on behalf of Hindalco Industries Limited
Signature: 	Signature: 
Name: S. J. Haider, IAS	Name: Rohit Pathak
Title: Additional Chief Secretary (Industries and Mines Department)	Title: Senior President
Contact no. 07923250701	Contact no. +919702009876
Email ID: secimd@gujarat.gov.in	Email ID: rohit.pathak@adityabirla.com
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Department: Industries and Mines	

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA

575

(2013) 4 Supreme Court Cases 575

(BEFORE A.K. PATNAIK AND H.L. GOKHALE, JJ.)

a STERLITE INDUSTRIES (INDIA) LIMITED  
AND OTHERS .. Appellants;

*Versus*

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeals Nos. 2776-83 of 2013<sup>†</sup>, decided on April 2, 2013

b A. Environment Protection and Pollution Control — Polluter pays principle — Closure of polluting plant or direction to pay compensation for loss suffered by citizenry due to harm caused to environment — Factors to be considered and balanced — Sustainable development — Considerations of — Remedial action to restore environmental damage caused by polluting plant concerned/improve environment — Possibility of, without closure of plant

c — Environmental impact assessment (EIA) for setting up copper smelter plant by appellant Company and environmental clearance by authorities being valid, rational and as per procedure — But plant while operating failing to maintain emission and effluent standards and operating without renewal permission and thereby causing air and water pollution which could have been averted — High Court therefore quashing environmental clearance and directing closure of plant — But when matter coming to Supreme Court, appellant removing 29 out of 30 pollution-causing deficiencies at plant pointed out by NEERI (National Environmental Engineering and Research Institute)

e — Considering: (a) economic importance of plant and need of sustainable development in public interest, (b) that authorities could exercise their discretion under R. 5(1)(v), 1986 Rules at any later stage to shift the plant if they felt the need therefor without closing down plant, (c) well-settled principles and grounds for judicial review and intervention, (d) that pollution could be checked/remedied without the plant being closed down, and (e) paying capacity of plant to pay compensation — Held, the plant should not be closed down but instead appellant Company should pay compensation of Rs 100 crores to remedy environmental damage caused/improve environment as directed — Therefore, High Court order directing closure of plant, set aside — Clarified that State Pollution Control Board (i.e. TNPCB) can issue directions to appellant Company including a direction for closure of the plant, for the protection of environment in accordance with law, if found necessary at any stage — Also clarified that award of Rs 100 crores as compensation would not bar any other claim by any person that may be available under law — Constitution of India — Arts. 21, 32, 47, 48-A, 226 and 136 — Air (Prevention and Control of Pollution) Act, 1981 — S. 21 — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 25, 3,

f

g

h <sup>†</sup> Arising out of SLPs (C) Nos. 28116-23 of 2010. From the Judgment and Order dated 28-9-2010 of the High Court of Judicature of Madras in WPs Nos. 15501-502 of 1996, 5769 of 1997, 16861 of 1998, WMPs Nos. 8044-46 of 1999 and WP No. 15503 of 2006

576

SUPREME COURT CASES

(2013) 4 SCC

**16 and 18 — Environment (Protection) Act, 1986 — Ss. 3(1) & (2) — Environment (Protection) Rules, 1986 — Rr. 5(1)(v) & (3) — Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, R. 19**

**B. Environment Protection and Pollution Control — Pollutants/ Polluting industry — Compensation on basis of polluter pays principle — Manner of determination of amount — Paying capacity of polluter — Reckoning of — Closure of plant, when not desirable**

**C. Environment Protection and Pollution Control — Polluter pays principle — Compensation awarded under, for causing harm to environment for a particular period, held, not to affect any claim for damages for the aforesaid period or any other period that may lie in a civil court or any other forum in accordance with law**

**D. Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Judicial review/Quashment of — Grounds and scope for judicial intervention — Principles summarised**

— Held, Environmental Impact Assessment (EIA) done and environmental clearance granted by expert authorities can only be quashed on well-recognised principles of judicial review i.e. only if there is any illegality, irrationality or procedural impropriety in granting such permission (which is not the case here) — However, if after setting up of plant, the plant begins/continues to pollute environment, fundamental right under Art. 21 of Constitution can always be invoked — But as remedies were available to remedy damage caused/improve environment without closing the plant, High Court should not have directed closure of plant (and as per latest record, plant had already removed 29 out of 30 pollution-causing deficiencies pointed out by NEERI) — Environment (Protection) Act, 1986 — Ss. 3(1) & (2) — Environmental clearance granted under — Grounds and scope of judicial intervention — Evidence Act, 1872 — S. 45 — Expert opinion — EIA (Environment Impact Assessment) — Grounds for judicial review

**E. Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Ground of procedural impropriety — When can be resorted to, to quash environmental clearance — Held, ground of procedural impropriety can be resorted to, to quash environmental clearance only when a mandatory requirement is violated — As requirements of comprehensive EIA and public hearing prior to grant of environmental clearance were not mandatory (as per prevalent notification), High Court could not have quashed environmental clearance on said grounds — Environment (Protection) Act, 1986, Ss. 3(1) & (2)**

**F. Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Grant of environmental clearance/NOC for setting up of plant/industry — If valid and proper in present case**

— (a) There being no public hearing on issue of environmental effects of setting up of plant at location where it was set up (which was opposed at

- a three other places in India), (b) EIA being conducted speedily by taking only data of one season, (c) authorities reducing requirement of green belt around plant from 250 m to 25 m, and (d) plant being located within 25 km of ecologically sensitive area (i.e. islands of Gulf of Munnar) as notified under S. 35(1), 1972 Act — Against this Supreme Court found that requirement of public hearing and comprehensive EIA were not mandatory as per prevalent notification (EIA Noti. dt. 27-1-1994), though later notification (i.e. EIA Noti. dt. 10-4-1997) requiring mandatory public hearing and comprehensive EIA — Rapid EIA being permissible under prevalent notification, whereunder EIA could be done by taking data of only one season — All procedures regarding rapid EIA were complied with as per prevalent notification — It could not be shown as to how by reducing green belt from 250 m to 25 m around the plant area any procedure was violated or there was any irrationality — Rather plant had installed air control utilities such that it satisfied ambient air quality standards prescribed by State Pollution Control Board (i.e. TNPCB) — Therefore, held, there was no illegality, irrationality, or procedural impropriety in granting environmental clearance to the project of appellant — Regarding location, no notification prohibiting setting up of industry in said area had been issued under R. 5(1)(v), 1986 Rules — Thus as and when Central Government issues a notification under R. 5(1)(v), 1986 Rules, prohibiting or restricting location of plant, steps may be taken by all concerned for shifting of the industry subject to content of notification and subject to legal challenge by industry concerned — Air (Prevention and Control of Pollution) Act, 1981 — S. 21 — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 25, 3, 16 and 18 — Wild Life (Protection) Act, 1972 — Ss. 35(1) & (4) — Notification under S. 35(4) not having been issued — Effect — Environment (Protection) Rules, 1986, Rr. 5(1)(v) & (3)
- e G. Environment Protection and Pollution Control — Sustainable development — Polluting plant — Relief of setting aside order of closure — Said relief, when can be given even if there was suppression and misrepresentation of material facts by polluting plant (appellant) — EIA Noti. dt. 27-1-1994 — Para 2(c) and Explan. Note, Para 5 — EIA Noti. dt. 10-4-1997 — Constitution of India, Arts. 226, 32 and 136
- f H. Environment Protection and Pollution Control — Non-Governmental Organisations (NGOs) and Third Sector — Appreciation expressed by Supreme Court for work done by writ petitioners and intervenor for prosecuting these proceedings in genuine public interest

Allowing the appeal in the terms below, the Supreme Court

*Held:*

- g The environmental clearance for setting up the plant of the appellant Company was granted to the appellants under Section 3(1) of the Environment (Protection) Act, 1986 (1986 Act). The prevalent Environmental Impact Assessment (EIA) notification issued under Section 3(2)(v), 1986 Act, and Rule 5(3) of the Environment (Protection) Rules, 1986, by the Central Government was EIA Notification dated 27-1-1994. The language of Para 2(c),
- h EIA Notification dated 27-1-1994 did not lay down that a public hearing was a must for giving environmental clearance when the appellants' case was under

consideration. In the present case the environmental clearance was thus granted by MoEF on 16-1-1995 in accordance with the procedure laid down by the EIA Notification dated 27-1-1994 well before the issuance of the EIA Notification dated 10-4-1997 providing for mandatory public hearing in accordance with the procedure laid down in Schedule IV. Therefore, the High Court could not have allowed the writ petitions challenging the environmental clearances on the ground that no public hearing was conducted before the grant of the environmental clearances. (Paras 28 to 29, 2, 7 and 22).

Para 5 of the Explanatory Note, EIA Notification dated 27-1-1994 clarified that project proponents could furnish a rapid EIA report to the Impact Assessment Agency based on one season data, for examination of the project and a comprehensive EIA report could be submitted later, if so asked for by the Impact Assessment Agency. Therefore, the High Court could not have allowed the writ petitions on the ground that environmental clearance was issued to the appellant Company on the basis of inadequate rapid EIA, particularly when the Union of India in its affidavit had clearly averred that the environmental clearance was granted after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis in accordance with the procedure laid down in EIA Notification dated 27-1-1994 (as amended on 4-5-1994). The High Court has noticed some decisions of the Supreme Court on sustainable development, precautionary and polluter pays principles and public trust doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well-recognised principles of judicial review: for e.g. the High Court could interfere on the ground of illegality, irrationality, *Wednesbury* unreasonableness, or on the ground of procedural impropriety. However, on the ground of procedural impropriety, the High Court can quash the environmental clearance only if it is satisfied that the breach was of a mandatory requirement in the procedure. In the absence of a mandatory requirement of public hearing and a mandatory comprehensive EIA report, the High Court could not have interfered with the decision of the Central Government granting environmental clearance on the ground of procedural impropriety. No materials have been produced to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision or that the decision of MoEF to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA.

(Paras 30 to 33, 8 and 18 to 21)

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

*Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647; *Tirupur Dyeing Factory Owners Assn. v. Noyyal River Ayacutdars Protection Assn.*, (2009) 9 SCC 737; *M.C. Mehta v. Union of India*, (2009) 6 SCC 142; *East Coast Railway v. Mahadev Appa Rao*, (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483; *Belize Alliance of Conservation Non-Governmental Organisations v. Deptt. of the Environment*, (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC); *Northern Jamaica Conservation Assn. v. Natural Resources Conservation Authority*, Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC); *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), referred to

*National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), cited

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA

579

a It is for the authorities under the 1986 Act and Rules and the notifications issued thereunder to determine the scope of the project, the extent of the screening and the assessment of the cumulative effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review. (Para 34)

*Belize Alliance of Conservation Non-Governmental Organisations v. Deptt. of the Environment*, (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC), *relied on*

b *Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage)*, (2001) 2 FC 461 (Can), *approved*

c The TNPCB (State Pollution Control Board) while granting the consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 added the requirement that the location of the unit should be 25 km away from ecologically sensitive area without noting that the area for plant concerned was within 25 km from ecologically sensitive area. Since, however, the consent order was granted to the appellant Company to establish its plant in the said area, and the plant has in fact been established there, the High Court could not have come to the conclusion that the appellant Company had violated the consent order and based thereon directed closure of the plant. The Gulf of Munnar is an ecologically sensitive area [having been so notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986] and the Central Government may in exercise of its powers under Rule 5(1)(v), 1986 Rules, prohibit or restrict the location of industries and carrying on processes and operations to preserve the biological diversity of the Gulf of Munnar. As and when the Central Government issues an order under Rule 5, 1986 Rules, then appropriate steps may have to be taken by all concerned for shifting the industry depending upon the content of the order or notification and subject to the legal challenge by the industries. (Paras 37, 38, 6 to 6.3, 12 and 14 to 26)

e NEERI (National Environmental Engineering and Research Institute) Report of 1998, *referred to*

f Various conditions have been imposed on the plant/industry of the appellants to ensure that air pollution control measures are installed for the control of emissions generated from the plant and that the emissions from the plant satisfies the ambient air quality standards prescribed by the TNPCB and development of green belt contemplated under the environmental management plan around the battery limit of the industry of the appellants was an additional condition that was imposed by the TNPCB in the no-objection certificate dated 1-8-1994. If the TNPCB after considering the representation of the appellants has reduced the requirement of width of the green belt from a minimum of 250 metres to a minimum of 25 metres around the battery limit of the industry of the appellants and it is not shown that this power which has been exercised was vitiated by procedural breach or irrationality, the High Court in exercise of its powers of judicial review could not have interfered with the exercise of such power by the TNPCB. (Paras 39.1, 9 and 13)

*Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *referred to*

h It is for the administrative and statutory authorities empowered under the law to consider and grant environmental clearance and the consents to the appellants for setting up the plant and where no ground for interference with the decisions of the authorities on well-recognised principles of judicial review is made out, the High Court could not interfere with the decisions of the authorities to grant

the environmental clearance or the consents on the ground that had the authorities made a proper environmental assessment of the plant, the adverse environmental effects of the industry could have been prevented. If, however, after the grant of environmental clearance under the 1986 Act and Rules and the notifications issued thereunder and after the consents granted under the Air Act and the Water Act, the industry begins to/continues to pollute the environment so as to affect the fundamental right to life under Article 21 of the Constitution, the High Court could still direct the closure of the industry by virtue of its powers under Article 21 of the Constitution if it came to the conclusion that there were no other remedial measures to ensure that the industry maintains the standards of emission and effluent. (Paras 40 and 18)

*M.C. Mehta v. Union of India*, (1987) 4 SCC 463, *relied on*

The High Court relied on the report of NEERI (National Environmental Engineering and Research Institute) of 2005 to hold that the plant site itself is severely polluted and the ground samples level of arsenic justified classifying the whole site of the plant of the appellant as hazardous waste. The NEERI Report of 2005 did show that the emission and effluent discharged from the appellants' plant affected the environment but the report read as whole does not warrant a conclusion that the plant of the appellants could not possibly take remedial steps to remedy/improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants. As per the joint inspection carried out by TNPCB and CPCB as per Supreme Court, directions, out of the 30 directions issued by the TNPCB, the appellant Company has complied with 29 directions and only one more direction under the Air Act remains to be complied with. As the deficiencies in the plant of the appellants which affected the environment as pointed out by NEERI have now been removed, the impugned order of the High Court directing closure of the plant of the appellants is liable to be set aside. (Paras 41 to 44, 10, 14 and 23)

*Sterlite Industries (I) Ltd. v. Union of India*, (2011) 13 SCC 769; *Sterlite Industries (I) Ltd. v. Union of India*, (2011) 13 SCC 773, *relied on*

*Sterlite Industries (I) Ltd. v. Union of India*, (2011) 13 SCC 772; *Sterlite Industries (I) Ltd. v. Union of India*, (2011) 10 SCC 254; *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *referred to*

*National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *reversed*

NEERI (National Environmental Engineering and Research Institute) Reports of 2005, 1998, 1999, 2003 and 2011; Joint Inspection Report of TNPCB and CPCB, September 2012, *referred to*

There is no doubt that there has been misrepresentation and suppression of material facts made in the SLP by the appellants, but to decline relief to the appellants in this case would mean closure of the plant of the appellants. The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile and construction industries and infrastructure, etc. The plant of the appellants has about 1300 employees and it also provides employment to a large number of people through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates huge revenue to the Central and State Governments in terms of excise, custom duties, income tax and VAT. It also contributes to 10% of the total cargo volume of Tuticorin Port. For these considerations of public interest, it will not be a proper exercise of the discretion under Article 136 of the Constitution to refuse relief on the grounds of

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA

581

misrepresentation and suppression of material facts in the SLP.

(Paras 48, 11 and 15 to 17)

- a *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC); *Hari Narain v. Badri Das*, AIR 1963 SC 1558; *G. Narayanaswamy Reddy v. Govt. of Karnataka*, (1991) 3 SCC 261; *Dalip Singh v. State of U.P.*, (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324; *Abhyudya Sanstha v. Union of India*, (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241, referred to

- b The NEERI Reports of 1998, 1999, 2003 and 2005 show that the plant of the appellant did pollute the environment through emissions which did not conform to the standards laid down by the TNPCB under the Air Act and through discharge of effluent which did not conform to the standards laid down by the TNPCB under the Water Act. On account of some of these deficiencies, TNPCB also did not renew the consent to operate for some periods and yet the appellants continued to operate its plant without such renewal. For such damages caused to the environment from 1997 to 2012 and for operating the plant without a valid renewal for a fairly long period, the appellant Company obviously is liable to compensate by paying damages. (Para 45)

- c Considering the magnitude, capacity and prosperity of the appellant Company, the appellant Company is directed to pay compensation of Rs 100 crores. The aforesaid amount will be deposited with the Collector of Thoothukudi District who will invest it in a fixed deposit. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu. (Paras 47 and 50)

*M.C. Mehta v. Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37, followed

NEERI (National Environmental Engineering and Research Institute) reports of 1998, 1999, 2003 and 2005; Annual Report 2011 of the Sterlite Industries, at pp. 20 and 21, referred to

- e The efforts of writ petitioners before the High Court and the intervenor before the Supreme Court are appreciated for having taken up the cause of the environment both before the High Court and the Supreme Court and for having assisted the Supreme Court on all dates of hearing with utmost sincerity and hard work. Voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of the environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervenor before the Supreme Court not only ventured but also put in their best for the cause of the general public. (Para 49)

*Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212, relied on

- g The impugned common judgment of the High Court is, therefore, set aside and it is made clear that the present judgment will not stand in the way of the TNPCB issuing directions to the appellant Company, including a direction for closure of the plant, for the protection of environment in accordance with law. It is also made clear that the direction for payment of compensation of Rs 100 crores by the present judgment against the appellant Company for the period from 1997 to 2012 will not stand in the way of any claim for damages for the aforesaid period or any other period in a civil court or any other forum in accordance with law. (Paras 50 and 51)

- h *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), reversed

SS-D/51576/C

Advocates who appeared in this case :

P.P. Malhotra, Additional Solicitor General, S. Guru Krishna Kumar, Additional Advocate General, C.A. Sundaram, C.U. Singh, Raj Panjwani and V. Prakash, Senior Advocates (Ms Rohini Musa, Zafar Inayat, Yogesh V. Kotemath, S. Raghunathan, Mahesh Agarwal, Rishi Agarwal, E.C. Agarwala, Ms Radhika Gautam, Abhinav Agrawal, Ms Rashmi Nandakumar, Rahul Chowdhury, Ms Anitha Shenoy, Ms Vimla Sinha, Yasser Rauf, B. Krishna Prasad, Subramonium Prasad, Ms Manju Jana, Shivaji M. Jadhav, Vijay Panjwani, G. Devedoss, M.S.M. Asaithambi, G. Ananthaselvam, M. Yogesh Kanna, R. Veeramani, A. Prasanna Venkat, S. Beno Bencigar, P. Somasundaram, Abhay Kumar, V.N. Subramaniam, V. Senthila Kumar, K. Krishna Kumar and M.A. Chinnasamy, Advocates) for the appearing parties and Vaiko alias V. Gopalsamy, Respondent-in-Person.

**Chronological list of cases cited**

	<i>on page(s)</i>	
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11. WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), <i>National Trust for Clean Environment v. Union of India (reversed)</i>	583f-g, 584a-b, 584b-c, 585f-g, 587a-b, 587b, 587d, 589f, 593a, 599c, 600c, 603f, 606d, 606f-g	e
12. (2009) 9 SCC 737, <i>Tirupur Dyeing Factory Owners Assn. v. Noyyal River Ayacutdars Protection Assn.</i>	590c-d	
13. (2009) 6 SCC 142, <i>M.C. Mehta v. Union of India</i>	590c-d	
14. Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC), <i>Northern Jamaica Conservation Assn. v. Natural Resources Conservation Authority</i>	591e	f
15. (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC), <i>Belize Alliance of Conservation Non-Governmental Organisations v. Deptt. of the Environment</i>	591d, 596e	
16. (2001) 2 FC 461 (Can), <i>Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage)</i>	596e-f	
17. (1996) 5 SCC 647, <i>Vellore Citizens' Welfare Forum v. Union of India</i>	590c	g
18. (1996) 3 SCC 212, <i>Indian Council for Enviro-Legal Action v. Union of India</i>	606c	
19. (1991) 3 SCC 261, <i>G. Narayanaswamy Reddy v. Govt. of Karnataka</i>	589g-h	
20. (1987) 4 SCC 463, <i>M.C. Mehta v. Union of India</i>	600b	
21. (1987) 1 SCC 395 : 1987 SCC (L&S) 37, <i>M.C. Mehta v. Union of India</i>	604g-h	
22. AIR 1963 SC 1558, <i>Hari Narain v. Badri Das</i>	589g	h
23. (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), <i>Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.</i>	595d-e	

The Judgment of the Court was delivered by

**A.K. PATNAIK, J.**— Leave granted.

*a* **Facts**

*b* **2.** The relevant facts very briefly are that the appellant Company applied and obtained “no-objection certificate” on 1-8-1994 from the Tamil Nadu Pollution Control Board (for short “the TNPCB”) for setting up a copper smelter plant (for short “the plant”) in Melavittan Village, Tuticorin. On 16-1-1995, the Ministry of Environment and Forests, Government of India, granted environmental clearance to the setting up of the plant of the appellants at Tuticorin subject to certain conditions including those laid down by the TNPCB and the Government of Tamil Nadu. On 17-5-1995, the Government of Tamil Nadu granted clearance subject to certain conditions and requested the TNPCB to issue consent to the proposed plant of the appellants. Accordingly, on 22-5-1995, the TNPCB granted its consent under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (for short “the Air Act”) and under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (for short “the Water Act”) to the appellants to establish the plant in the SIPCOT Industrial Complex, Melavittan Village, Tuticorin Taluk.

*c* **3.** The environmental clearance granted by the Ministry of Environment and Forests, Government of India, and the consent orders under the Air Act and the Water Act granted by the TNPCB were challenged before the Madras High Court in WPs Nos. 15501-503 of 1996 by the National Trust for Clean Environment. While these writ petitions were pending, the appellants set up the plant and commenced production on 1-1-1997. Writ Petition No. 5769 of 1997 was then filed by V. Gopalsamy, General Secretary, MDMK Political Party, Thayagam, praying for, inter alia, a direction to the appellants to stop forthwith the operation of the plant. Writ Petition No. 16861 of 1998 was also filed by Shri K. Kanagaraj, Secretary, CITU District Committee, District Thoothukudi, for directions to the State of Tamil Nadu, the TNPCB and the Union of India to take suitable action against the appellant Company for its failure to take safety measures due to which there were pollution and industrial accidents in the plant.

*e* **4.** A Division Bench of the High Court heard Writ Petitions Nos. 15501-503 of 1996, Writ Petition No. 5769 of 1997 and Writ Petition No. 16861 of 1998 and by the common judgment dated 28-9-2010<sup>1</sup>, allowed and disposed of the writ petitions with the direction to the appellant Company to close down its plant at Tuticorin. By the common judgment, the High Court also declared that the employees of the appellant Company would be entitled to compensation under Section 25-FFF of the Industrial Disputes Act, 1947 and directed the District Collector, Tuticorin, to take all necessary and immediate steps for the re-employment of the workforce of the appellant Company in some other companies/factories/organisations so as to protect their livelihood

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*h* <sup>1</sup> *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

and to the extent possible take into consideration their educational and technical qualifications and also the experience in the field.

5. Aggrieved, the appellant has filed these appeals against the common judgment dated 28-9-2010<sup>1</sup> of the Division Bench of Madras High Court and on 1-10-2010, this Court passed an interim order<sup>2</sup> staying the impugned judgment of the High Court.

***Contentions on behalf of the appellants***

6. Mr C.A. Sundaram, learned Senior Counsel appearing for the appellants, submitted that one of the grounds stated in the impugned judgment<sup>1</sup> of the High Court for directing closure of the plant of the appellants was that the TNPCB had stipulated in the consent order dated 22-5-1995 that the appellant Company has to ensure that the location of the unit should be 25 km away from the ecologically sensitive area and as per the report of NEERI (National Environmental Engineering and Research Institute) of 1998 submitted to the High Court, the plant is situated within 25 km from four of the twenty-one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, which are at distances of 6 km, 7 km and 15 km respectively from Tuticorin where the plant is located:

6.1. He submitted that there is no notification issued by the Central Government under Rule 5(1) of the Environment (Protection) Rules, 1986 prohibiting or restricting the location of an industry in Tuticorin area. He submitted that the Government of Tamil Nadu, however, had issued a Notification dated 10-9-1986 notifying its intention under Section 35(1) of the Wild Life (Protection) Act, 1972 to declare the twenty-one islands of the Gulf of Munnar as a marine national park, but no notification has yet been issued by the Government of Tamil Nadu under Section 35(4) of the aforesaid Act declaring the twenty-one islands of the Gulf of Munnar as a national park.

6.2. He explained that prior to the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986, some environmental guidelines had been issued by the Ministry of Environment and Forests, Department of Environment, Government of India, in August 1985 and one of the guidelines therein was that industries must be located at least 25 km away from the ecologically sensitive areas and it is on account of these guidelines that the TNPCB in its consent order dated 22-5-1995 under the Water Act had stipulated that the plant of the appellants should be situated 25 km away from ecologically sensitive areas. He submitted that this stipulation was made in the consent order under the Water Act because the plant was likely to discharge effluent which could directly or indirectly affect the ecologically sensitive areas within 25 km of the industry, but in the consent

1 *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

2 *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC), wherein it was directed:

“List on 18-10-2010. Interim stay of the impugned judgment of the High Court till then.”

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 585

a order issued on 14-10-1996 to operate the industry, this stipulation was removed and instead it was stipulated in Clause 20 that the unit shall re-use the entire quantity of treated effluent in the process and ensure that no treated effluent is discharged into inland surface water or on land or sewer or sea as proposed by the unit.

b 6.3. He submitted that in any case the consent for establishment issued under the Water Act by the TNPCB would show that the appellant Company was given the consent to establish its copper smelter project in SIPCOT Industrial Complex irrespective of the distance at which the SIPCOT Industrial Complex was located from any ecologically sensitive area and in the SIPCOT Industrial Complex, many other chemical industries are located and the High Court appears to have lost sight of this aspect of the consent given by the TNPCB to establish the plant.

c 7. Mr Sundaram submitted that the second ground given by the High Court for directing closure of the plant of the appellants was that this being a project exceeding Rs 50 crores, environmental clearance was required to be obtained from the Ministry of Environment and Forests, Government of India, after a public hearing which was a mandatory requirement but no materials were produced before the High Court to show that there was any such public hearing conducted before the commencement of the plant of the appellant Company. He submitted that when the environmental clearance was granted to the appellant Company the Environmental Impact Assessment (for short "EIA") Notification dated 27-1-1994 was in force and this notification did not make public hearing mandatory and only stated that comments of the public may be solicited if so recommended by the Impact Assessment Agency within 30 days of the receipt of the proposal. He submitted that the High Court, therefore, was not correct in taking a view that a public hearing was mandatory during EIA before environmental clearance was given by the Ministry of Environment and Forests, Government of India. He clarified that by a subsequent Notification dated 10-4-1997, a public hearing was made compulsory but by the time this notification came into force environmental clearance had already been granted to the plant of the appellants on 16-1-1995.

f 8. Mr Sundaram submitted that the High Court also took the view in the impugned judgment<sup>1</sup> on the basis of the report of the NEERI of 1998 that there was undue haste on the part of the governmental authorities in granting permissions and consents to the appellant Company. He submitted that in an explanatory note to the EIA Notification dated 27-1-1994 the Central Government has clarified that rapid EIA could also be conducted for obtaining environment clearance for any new project/activity and therefore g the State Government while granting no-objection certificate by its Letter dated 1-8-1994 asked the appellants to conduct rapid EIA based on one season data and the appellants carried out rapid EIA study based on the data collected by the M/s Tata Consultancy Service (TCS). He relied on the

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<sup>1</sup> *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

affidavit dated 1-12-1998 filed on behalf of the Ministry of Environment and Forests, Government of India to submit that rapid EIA before granting clearance to the plant of the appellant was conducted in accordance with the guidelines. a

9. Mr Sundaram submitted that the third ground on which the High Court directed closure of the plant of the appellants was that the TNPCB stipulated a condition in Clause 20 of the no-objection certificate that the appellants will develop a green belt of 250 metres width around the battery limit of the industry as contemplated under the environmental management plan but subsequently the appellant Company submitted a representation to TNPCB requesting TNPCB to reduce the requirement of green belt from 250 metres to the width of 10-15 metres as development of the green belt of 250 metres width requires a land of around 150 acres and TNPCB in its meeting held on 18-8-1994 relaxed this condition and stipulated that the appellant Company will develop a green belt of minimum width of 25 metres. He submitted that the land allocated by SIPCOT to the appellants was not sufficient to provide a green belt of 250 metres width around the plant and hence this was an impossible condition laid down in the no-objection certificate and for this reason the appellants approached the TNPCB to modify this condition and the TNPCB reduced the width of the green belt to 25 metres. He further submitted that generally, the TNPCB and the Ministry of Environment and Forests, Government of India, have been insisting on a green belt of 25% of the plant area and the appellants could not be asked to provide a green belt of more than 25% of the plant area. b c d

10. Mr Sundaram submitted that the last ground, on which the High Court directed closure of the plant of the appellants is that the plant of the appellants has caused severe pollution in the area as has been recorded by NEERI in its report of 2005 submitted to the High Court and the groundwater samples taken from the area indicate that the copper, chrome, lead cadmium and arsenic and the chloride and fluoride content is too high when compared to the Indian drinking water standards. He referred to the reports of NEERI of 1998, 1999, 2003 and 2005 submitted to the High Court and the report of NEERI of 2011 and also the joint inspection report of TNPCB and CPCB of September 2012 submitted to this Court, to show that the finding of the High Court that the plant of the appellants had caused severe pollution in the area was not correct. He vehemently submitted that though there were no deficiencies in the plant of the appellants, the TNPCB in its affidavit has referred to its recommendations as if there were deficiencies. He submitted that the recommendations made by the TNPCB were only to provide the best of checks in the plant against environmental pollution with a view to ensure that the plant of the appellants becomes a model plant from the point of view of the environment, but that does not mean that the plant of the appellants had deficiencies which need to be corrected. He submitted that the reports of NEERI of 2005 and 2011 referred to accumulation of gypsum and phosphogypsum, which come out from the plant of the appellants as part of the slag but the opinion of CPCB in its letter dated 17-11-2003 to the TNPCB e f g h

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 587

a is that such slag is non-hazardous and can be used in cement industries, for filling up lower level area and as building/road construction material, etc. and has no adverse environmental effects.

b 11. Mr Sundaram finally submitted that since none of the grounds given by the High Court in the impugned judgment<sup>1</sup> for directing closure of the plant of the appellants are well-founded, it is a fit case in which this Court should set aside the impugned judgment<sup>1</sup> of the High Court and allow the appeals. He submitted that the plant of the appellants produces 2,02,000 metric tonnes of copper which constitute 39% of the total of 5,14,000 metric tonnes of copper produced in India and that 50% of the copper produced by the plant of the appellants is consumed in the domestic market and the balance 50% is exported abroad. He also submitted that the plant provides direct and indirect employment to about 3000 people and yields a huge revenue to both the Central and State Governments. He submitted that c closure of the plant of the appellants, therefore, would also not be in the public interest.

***Contentions on behalf of the respondent-writ petitioner***

d 12. Mr V. Gopalsamy, who was the writ petitioner in Writ Petition No. 5769 of 1997 before the High Court, appeared in person and supported the impugned judgment<sup>1</sup> of the High Court. He submitted that the TNPCB in its no-objection certificate dated 1-8-1994 as well as in its consent order dated 22-5-1995 under the Water Act clearly stipulated that the appellant Company shall ensure that the location of its unit should be 25 km away from the ecologically sensitive area and the Government of Tamil Nadu in their affidavit dated 27-10-2012 have stated that all the 21 islands including the e four near Tuticorin in the Gulf of Munnar marine national park are ecologically sensitive areas. He submitted that NEERI in its report of 1998 has observed that four out of twenty-one islands, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, are at distances of 6 km, 7 km and 15 km respectively from Tuticorin. He further submitted that merely because a condition has been subsequently imposed on the appellant Company by f TNPCB not to discharge any effluent to the sea, the restriction of minimum 25 km distance from the ecologically sensitive area from location of the unit of the appellants cannot be lifted particularly when the Government of Tamil Nadu as well as the Central Government are treating the Gulf of Munnar as a marine national park and extending financial assistance for the development of its ecology. He submitted that the proposal for issuance of a declaration g under Section 35(4) of the Wild Life (Protection) Act, 1972 is pending for concurrence of the Central Government and, therefore, the ecological balance in the area of Gulf of Munnar would be disturbed if the plant of the appellants continues at Tuticorin and the High Court was right in directing closure of the plant of the appellants located at Tuticorin.

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<sup>1</sup> *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

13. Mr V. Gopalsamy submitted that the High Court was similarly right in directing closure of the plant of the appellants on the ground that the appellants did not develop a green belt of 250 metres width around their plant as stipulated in the no-objection certificate dated 1-8-1994 of the TNPCB and instead represented to the TNPCB and got the green belt reduced to only 25 metres width. He submitted that considering the grave adverse impact on the environment by the plant of the appellants, a 250 metres width of green belt was absolutely a must but the TNPCB very casually reduced the green belt from 250 metres width to 25 metres. He submitted that it will be seen from the joint report of the TNPCB and CPCB filed pursuant to the order dated 27-8-2012<sup>3</sup> of this Court that as a condition of the renewal of the consent order, the appellant Company has been asked to develop a green belt to an extent of 25% of the total area of 172.17 ha which works out to 43.04 ha and yet the TNPCB has found development of green belt of 26 ha as sufficient compliance. He submitted that the appellants would, therefore, be required to develop a green belt of 17.04 ha more for compliance with the condition for renewal of consent stipulated by the TNPCB.

14. Mr V. Gopalsamy submitted that for their plant, the appellants have been importing copper concentrate from Australian mines which are highly radioactive and contaminated and contains high levels of arsenic, uranium, bismuth, fluorine and experts of environment like Mark Chernaik have given a report on the adverse impacts of the plant of the appellants at Tuticorin on the environment. In this context, he also submitted that an American company, namely, the Asarco producing copper had to be closed down on account of such adverse environmental effects. He submitted that the claim of the appellants that their plant has no deficiencies and that it does not have any impact on the environment is not correct and different reports of the NEERI would show that the plant of the appellants is continuing to pollute the

<sup>3</sup> *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), wherein it was directed:

“1. Mr C.A. Sundaram, learned Senior Counsel states that pursuant to the order passed by this Court on 9-5-2012, the petitioner is taking effective steps to ensure strict compliance with the various conditions attached to the consent given by the Tamil Nadu Pollution Control Board. He further submits that the entire procedure for compliance with the conditions for consent will be completed by 31-8-2012.

2. The learned counsel appearing for the Tamil Nadu Pollution Control Board submits that, in fact, the Board was ready with an affidavit to be filed in Court today. However, in case the petitioner is able to achieve satisfactorily the required standards in the conditions imposed by the Tamil Nadu Pollution Control Board by 31-8-2012, the Board shall submit a detailed status report thereafter. The learned counsel appearing for the Central Pollution Control Board, in our opinion, has rightly made a submission that the Central Pollution Control Board shall also participate in the inspection to be carried out jointly by the Tamil Nadu Pollution Control Board and Central Pollution Control Board.

3. Let the inspection be completed by 14-9-2012. The joint report be submitted to the Court in a sealed cover. The Tamil Nadu Pollution Control Board is permitted to file any additional affidavit if deemed necessary by the said Board. However, advance copy of the same shall be given to the petitioner, the learned counsel for the Central Pollution Control Board as well as to the other respondents.

4. List the matter on 1-10-2012.”

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 589

air and has also affected the groundwater of the area by discharging effluent and the High Court, therefore, rightly directed the closure of the plant.

- a 15. Mr Gopalsamy submitted that the appellants had initially proposed to establish the plant in Gujarat but this was opposed vehemently and the appellants decided to shift the establishment of the plant to Goa but because of opposition the plant could not be established in Goa. He submitted that the appellants thereafter intended to set up the plant at Ratnagiri in Maharashtra and invested Rs 200 crores in construction activities after obtaining environmental clearance but because of the opposition of the farmers of Ratnagiri, the Maharashtra Government had to revoke the licence granted to the appellants. He submitted that the appellants have been able to set up the plant at Tuticorin in Tamil Nadu by somehow obtaining environmental clearance from the Ministry of Environment and Forests, Government of India, without a public hearing and the consents under the Water Act and the
- b
- c Air Act from the TNPCB and the High Court rightly allowed the writ petitions and directed closure of the plant of the appellants.

- d 16. Mr V. Prakash, learned Senior Counsel appearing for the writ petitioner, National Trust for Clean Environment, in Writ Petitions Nos. 15501-503 of 1996 before the High Court, submitted that the appellants had made a false statement in the synopsis at p. (B) of the special leave petition that it has been consistently operating for more than a decade with all necessary consents and approvals from all the statutory authorities without any complaint. He submitted that similarly in Ground IV at p. 45 of the special leave petitions the appellants have falsely stated that the High Court has erred in not appreciating that the appellants had got all the statutory approvals/consent orders from the authorities concerned as also the Central
- e Government and the State Government. He submitted that the report of NEERI of 2011 would show that the appellants did not have valid consent during various periods including the period when it filed the special leave petitions. He submitted that the appellants did not also inform this Court that when they moved this Court on 1-10-2010 to stay the operation of the impugned order<sup>1</sup> of the High Court, the plant of the appellants had already
- f stopped operation. He vehemently argued that due to misrepresentation of the material facts by the appellants in the special leave petitions as well as suppression of the material facts, this Court was persuaded to pass the stay order dated 1-10-2010<sup>2</sup>. He argued that on this ground alone this Court should refuse to grant relief to the appellants in exercise of its discretion under Article 136 of the Constitution.

- g 17. Mr V. Prakash relied on the decisions of this Court in *Hari Narain v. Badri Das*<sup>4</sup>, *G. Narayanaswamy Reddy v. Govt. of Karnataka*<sup>5</sup> and

1 *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

2 *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC)

4 AIR 1963 SC 1558

5 (1991) 3 SCC 261

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590

SUPREME COURT CASES

(2013) 4 SCC

*Dalip Singh v. State of U.P.*<sup>6</sup> and *Abhyudya Sanstha v. Union of India*<sup>7</sup> for the proposition that this Court can refuse relief under Article 136 of the Constitution where the appellants have not approached this Court with clean hands and have made patently false statements in the special leave petition. a

18. Mr Prakash next submitted that the main ground that was taken in the writ petitions before the High Court by the National Trust for Clean Environment was that the Ministry of Environment and Forests, Government of India, and the TNPCB had not applied their mind to the nature of the industry as well as the pollution fallout of the industry of the appellants and the capacity of the unit of the appellants to handle the waste without causing adverse impact on the environment as well as on the people living in the vicinity of the plant. He submitted that this Court has already held that a right to clean environment is part of the right to life guaranteed under Article 21 of the Constitution and has explained the precautionary principle and the principle of sustainable development in *Vellore Citizens' Welfare Forum v. Union of India*<sup>8</sup>, *Tirupur Dyeing Factory Owners Assn. v. Noyyal River Ayacutdars Protection Assn.*<sup>9</sup> and *M.C. Mehta v. Union of India*<sup>10</sup>. He submitted that these principles, therefore, have to be borne in mind by the authorities while granting environmental clearance and consent under the Water Act or the Air Act, but unfortunately both the Ministry of Environment and Forests, Government of India, and the TNPCB have ignored these principles and have gone ahead and hastily granted environmental clearance and the consent under the two Acts. He submitted that, in the present case, the appellants have relied on the rapid EIA done by Tata Consultancy Service, but this rapid EIA was based on the data which is less than the month's particulars and is inadequate for making a proper EIA which must address the issue of the nature of the manufacturing process, the capacity of the manufacturing facility and the quantum of production the quantum and nature of pollutants, air, liquid and solid and handling of the waste. b c d e

19. Mr Prakash referred to the report of NEERI of 1998 submitted to the High Court to show that the inspection team of NEERI collected waste water samples from the plant of the appellants and an analysis of the waste water samples indicate that the treatment plant of the appellants was operating inefficiently as the levels of arsenic, selenium and lead in the treated effluent as also the effluent stored in the surge ponds were higher than the standards stipulated by the TNPCB. He also referred to the report of NEERI of February 1999 in which NEERI has stated that the treated effluent quality did not conform to the standards stipulated by the TNPCB. f

20. Mr Prakash further submitted that the counter-affidavit of the Union of India filed on 1-12-1998 before the High Court also does not disclose whether, apart from the rapid EIA of Tata Consultancy Services, there was g

6 (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324

7 (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241

8 (1996) 5 SCC 647

9 (2009) 9 SCC 737

10 (2009) 6 SCC 142

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STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 591

a any independent evaluation of the rapid EIA by the environmental impact assessment authority, namely, the Ministry of Environment and Forests. He submitted that the TNPCB in its no-objection certificate dated 1-8-1994 has stipulated in Clause 18 that the appellants have to carry out rapid EIA (for one season other than monsoon) as per the EIA Notification dated 27-1-1994 issued by the Ministry of Environment and Forests, Government of India, and furnish a copy to the TNPCB and this clause itself would show that TNPCB had not applied its mind as to whether there was a sufficient rational analysis of the nature of the industry, nature of pollutants, quantum of fallout and the plan or method for handling the waste. He submitted that since there was no application of mind by either the Ministry of Environment and Forests, Government of India, before granting the environmental clearance or by the TNPCB before granting the consents under the Water Act and the Air Act, the environmental clearance and the consent orders are liable to be quashed.

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c 21. In support of his submissions, Mr Prakash cited *East Coast Railway v. Mahadev Appa Rao*<sup>11</sup>, for the proposition that for a valid order there has to be application of mind by the authority, and in the absence of such application of mind by the authority, the order is arbitrary and is liable to be quashed. He cited the decision of the Lords of the Judicial Committee of the Privy Council in *Belize Alliance of Conservation Non-Governmental Organisations v. Deptt. of the Environment*<sup>12</sup>, WIR at para 69 in which it has been observed that EIA is expected to be comprehensive in treatment of the subject, objective in its approach and must meet the requirement that it alerts the decision-maker to the effect of the activity on the environment and the consequences to the community.

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e 22. Mr Prakash also relied on the judgment of the Supreme Court of Judicature of Jamaica in *Northern Jamaica Conservation Assn. v. Natural Resources Conservation Authority*<sup>13</sup> to argue that a public hearing was a must for grant of environmental clearance and submitted that as there was no public hearing in this case and there was inadequate EIA before the grant of the environmental clearance for the plant of the appellants, the High Court has rightly directed closure of the plant of the appellants.

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g 23. Finally, Mr Prakash submitted that the finding of the High Court that the plant of the appellants continues to pollute the environment has been substantiated by the inspection report which has been filed in this Court by NEERI as well as the TNPCB from time to time. In particular, he referred to the joint inspection report of the TNPCB and CPCB to show that the directions issued by the TNPCB to improve solid waste disposal has not been complied with. He submitted that one of the conditions of the consent order of the TNPCB was that no slag was to be stored in the premises of the plant but huge quantity of slag has been stored in the premises of the plant and the direction to dispose at least 50% more than the monthly generation quantities of both slag and gypsum has not been complied with. He vehemently argued

h 11 (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483

12 (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC)

13 Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC)

that unless the plant is shut down, the appellants will not be able to clear the huge quantity of slag and gypsum lying in the plant premises. He submitted that it is not correct as has been submitted on behalf of the appellants that the slag is not a hazardous waste containing arsenic and will certainly jeopardise the environment. He argued that there was therefore no other option for the High Court but to direct closure of the plant of the appellants to ensure clean environment in the area. a

***Contentions on behalf of the authorities***

24. Mr S. Guru Krishna Kumar, learned counsel appearing for the TNPCB as well as the State of Tamil Nadu, relying on the affidavit filed on behalf of the State of Tamil Nadu on 29-10-2012 submitted that the Gulf of Munnar consisting of 21 islands in 4 groups was notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986 as this group of islands consisted of territorial waters between them and the proposal to declare Gulf of Munnar as a marine national park under Section 35(4) of the said Act was sent by the Chief Wild Life Warden to the State Government for approval on 30-4-2003 but the declaration under Section 35(4) of the said Act has not been finally made. He further submitted that all the 21 islands including the 4 islands in the Gulf of Munnar are therefore ecologically sensitive areas. He submitted that notwithstanding the fact that four of the islands were near Tuticorin, the TNPCB gave the consent under the Water Act to the appellants to set up the plant at Tuticorin because the plant has a zero effluent discharge. He also referred to the compliance affidavit of the TNPCB filed on 8-10-2012 to show that the TNPCB is monitoring the emissions from the plant of the appellants to ensure that the National Ambient Air Quality Standards are maintained. b c d e

25. Mr Vijay Panjwani, learned counsel appearing for CPCB, made a reference to Sections 3, 16 and 18 of the Water Act which relate to the CPCB and submitted that it was not for the CPCB but for the TNPCB to issue no-objection certificate and consent in respect of the plant set up in the State of Tamil Nadu. He submitted that under Rule 19 of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, however, improvement notices can be issued by the CPCB to any person to remedy the contravention of the Rules. f

***Contentions on behalf of the intervenor***

26. Mr Raj Panjwani, learned counsel for the intervenor, submitted that a marine biosphere is an ecologically sensitive area and if in the consent order a condition was stipulated that the plant of the appellants has to be situated beyond 25 km from ecologically sensitive area, this condition has to be complied with. He further submitted that in any case the appellants are liable to compensate for having damaged the environment. g

***Findings of the Court***

27. Writ Petition No. 15501 of 1996, Writ Petition No. 15503 of 1996 and Writ Petition No. 5769 of 1997 had been filed for quashing the environmental clearances dated 16-1-1995 and 17-5-1995 granted by the h

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 593

a Ministry of Environment and Forests, Government of India, to the appellants for setting up the plant at Tuticorin and by the impugned judgment<sup>1</sup>, the High Court has not quashed the environmental clearance but has allowed the three writ petitions. Hence, the first question which we will have to decide is whether the High Court could have interfered with the environmental clearances granted by the Ministry of Environment and Forests, Government of India, and the Government of Tamil Nadu, Department of Environment?

b **28.** The environmental clearance for setting up the plant was granted to the appellants under the Environment (Protection) Act, 1986:

**28.1.** Sub-section (1) of Section 3 of the Environment (Protection) Act, 1986 provides that:

c **“3. Power of Central Government to take measures to protect and improve environment.**—(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.”

d **28.2.** Sub-section (2) of Section 3 further provides that in particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the matters specified therein. One such matter specified in clause (v) of sub-section (2) is:

**“3. (2)(v)** restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards.”

e **28.3.** Rule 5(3) of the Environment (Protection) Rules, 1986 accordingly empowers the Central Government to impose prohibitions or restrictions on the location of an industry or the carrying on processes and operations in an area, by notification in the Official Gazette. In exercise of these powers under Section 3(2)(v) of the Environment (Protection) Act, 1986 and Rule 5(3) of the Environment (Protection) Rules, 1986, the Central Government has issued a Notification dated 27-1-1994 imposing restrictions and prohibitions on the expansion and modernisation of any activity or new projects being undertaken in any part of India unless environmental clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified in the said notification.

f **29.** Para 2 of the Notification dated 27-1-1994 lays down the requirements and procedure for seeking environmental clearance of projects, and clause (c) of Para 2 provides that the Impact Assessment Agency could solicit comments of the public within thirty days of receipt of proposal, in public hearings, arranged for the purpose, after giving thirty days' notice of such hearings in at least two newspapers, and after completion of public hearing, where required, convey its decision. The language of this notification did not lay down that the public hearing was a must. The impact

h <sup>1</sup> *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

assessment was done by Tata Consultancy Services as per the requirements then existing and the Government of India has granted the environmental clearance on 16-1-1995. The Notification dated 27-1-1994, however, was amended by Notification dated 10-4-1997 and it was provided in clause (c) of Para 2 of the notification that the Impact Assessment Agency shall conduct a public hearing and the procedure for public hearing was detailed in Schedule IV to the notification by the amendment Notification dated 10-4-1997. Admittedly, in this case, the environmental clearance was granted by the Ministry of Environment, Government of India, on 16-1-1995 in accordance with the procedure laid down by the Notification dated 27-1-1994 well before the Notification dated 10-4-1997 providing for mandatory public hearing in accordance with the procedure laid down in Schedule IV. As there was no mandatory requirement in the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the Notification dated 27-1-1994 as amended by the Notification dated 4-5-1994 that a public hearing has to be conducted before grant of environmental clearance, the High Court could not have allowed the writ petitions challenging the environmental clearances on the ground that no public hearing was conducted before grant of the environmental clearances.

30. An explanatory note regarding the EIA Notification dated 27-1-1994 was also issued by the Central Government and Para 5 of the explanatory note clarified that project proponents could furnish rapid EIA report to the Impact Assessment Agency based on one season data, for examination of the project and comprehensive EIA report may be submitted later, if so asked for by the Impact Assessment Agency and this was permitted where comprehensive EIA report would take at least one year for its preparation. In Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petitions Nos. 15501-503 of 1996, the allegation of the writ petitioner that the Ministry of Environment and Forests have accorded environmental clearance without applying its mind and without making any analysis of the adverse impacts on the marine ecological system has been denied and it has been further stated that after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis, the project was examined as per the procedure laid down in the EIA Notification dated 27-1-1994 (as amended on 4-5-1994) and the project was accorded approval on 16-1-1995 subject to specific conditions. As the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the Notification dated 27-1-1994 as amended by the Notification dated 4-5-1994 and as explained by the explanatory note issued by the Government of India permitted rapid EIA in certain circumstances, the High Court could not have allowed the writ petitions on the ground that environmental clearance was issued to the appellant Company on the basis of inadequate rapid EIA, particularly when the Union of India in its affidavit had clearly averred that the environmental clearance was granted after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 595

Pollution Control Board and risk analysis in accordance with the procedure laid down in EIA Notification dated 27-1-1994 (as amended on 4-5-1994).

- a 31. The High Court has noticed some decisions of this Court on sustainable development, precautionary and polluter pays principles and public trust doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well-recognised principles of judicial review as has been held by a three-Judge Bench of this Court in *Lafarge Umiam Mining (P) Ltd. v. Union of India*<sup>14</sup>, SCC at p. 380. To quote *Environmental Law* edited by David Woolley, Q.C., John Pugh-Smith, Richard Langham and William Upton, Oxford University Press:
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“The specific grounds upon which a public authority can be challenged by way of judicial review are the same for environmental law as for any other branch of judicial review, namely, on the grounds of illegality, irrationality, and procedural impropriety.”

- c Thus, if the environmental clearance granted by the competent authority is clearly outside the powers given to it by the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 or the notifications issued thereunder, the High Court could quash the environmental clearance on the ground of illegality. If the environmental clearance is based on a conclusion so unreasonable that no reasonable authority could ever have come to the decision, the environmental clearance would suffer from *Wednesbury*<sup>†</sup> unreasonableness and the High Court could interfere on the ground of irrationality. And, if the environmental clearance is granted in breach of proper procedure, the High Court could review the decision of the authority on the ground of procedural impropriety.
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- e 32. Where, however, the challenge to the environmental clearance is on the ground of procedural impropriety, the High Court could quash the environmental clearance only if it is satisfied that the breach was of a mandatory requirement in the procedure. As stated in *Environmental Law* edited by David Woolley, Q.C., John Pugh-Smith, Richard Langham and William Upton, Oxford University Press:
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“It will often not be enough to show that there has been a procedural breach. Most of the procedural requirements are found in the regulations made under primary legislation. There has been much debate in the courts about whether a breach of regulations is mandatory or directory, but in the end the crucial point which has to be considered in any given case is what the particular provision was designed to achieve.”

- g As we have noticed, when the plant of the appellant Company was granted environmental clearance, the Notification dated 27-1-1994 did not provide for mandatory public hearing. The explanatory note issued by the Central Government on the Notification dated 27-1-1994 also made it clear that the

h 14 (2011) 7 SCC 338

† *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)

project proponents may furnish rapid EIA report to the IAA based on one season data (other than monsoon), for examination of the project comprehensive EIA report was not a must. In the absence of a mandatory requirement in the procedure laid down under the scheme under the Environment (Protection) Act, 1986 at the relevant time requiring a mandatory public hearing and a mandatory comprehensive EIA report, the High Court could not have interfered with the decision of the Central Government granting environmental clearance on the ground of procedural impropriety.

33. Coming now to the ground of irrationality argued so vehemently by Mr V. Prakash, we find that no materials have been produced before us to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision. As we have already noticed, in Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petitions Nos. 15501-503 of 1996, it has been stated that the Ministry of Environment and Forests have accorded environmental clearance after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis, and that the project was examined as per the procedure laid down in the EIA Notification dated 27-1-1994 (as amended on 4-5-1994) and only thereafter the project was accorded approval on 16-1-1995. No material has been placed before us to show that the decision of the Ministry of Environment and Forests to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA.

34. In *Belize Alliance of Conservation Non-Governmental Organisations v. Deptt. of the Environment*<sup>12</sup> cited by Mr Prakash, the Lords of the Judicial Committee of the Privy Council have quoted with approval the following words of Linden, JA with reference to the Canadian legislation in *Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage)*<sup>15</sup>, FC at p. 494:

“The Court must ensure that the steps in the Act are followed, but it must defer to the responsible authorities in their substantive determinations as to the scope of the project, the extent of the screening and the assessment of the cumulative effects in the light of the mitigating factors proposed. It is not for the Judges to decide what projects are to be authorised but, as long as they follow the statutory process, it is for the responsible authorities.”

The aforesaid passage will make it clear that it is for the authorities under the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 and the notifications issued thereunder to determine the scope of the project, the extent of the screening and the assessment of the cumulative

12 (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC)

15 (2001) 2 FC 461 (Can)

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 597

a effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review.

b 35. The next question that we have to decide is whether the High Court was right in directing closure of the plant of the appellants on the ground that the plant of the appellants is located at Tuticorin within 25 km of four of the twenty-one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli. The reason given by the High Court in coming to this conclusion is that the TNPCB had stipulated in the consent order dated 22-5-1995 that the appellant Company has to ensure that the location of the unit should be 25 km away from ecologically sensitive area and as per the report of NEERI, the plant of the appellants was situated at a distance of 6 km of Vanthivu, 7 km of Kasuwar and 15 km of Karaichalli and c Villanguchalli and these four villages are part of the twenty-one islands in the Gulf of Munnar. Hence, the High Court directed closure of the plant because the appellant Company has violated the condition of the consent order dated 22-5-1995 issued by the TNPCB under the Water Act.

d 36. The consent order dated 22-5-1995 issued by the TNPCB under Section 25 of the Water Act states as follows:

“Consent to establish or take steps to establish is hereby granted under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988) (hereinafter referred to as ‘the Act’) and the rules and orders made thereunder to

e The Chief Project Manager,  
M/s Sterlite Industries (India) Limited  
(Copper Smelter Project)  
SIPCOT Industrial Complex,  
Meelavittam Village, Tuticorin Taluk,  
V.O. Chidambaraner District

f (hereinafter referred to as ‘the applicant’) authorising him/her/them to establish or take steps to establish the industry in the site mentioned below:

SIPCOT Industrial Complex,  
Meelavittam Village, Tuticorin Taluk,  
V.O. Chidambaraner District.”

g The aforesaid extract from the consent order dated 22-5-1995 of the TNPCB issued under the Water Act makes it clear that the appellant Company was given consent to establish its plant in the SIPCOT Industrial Complex, Meelavittam Village, Tuticorin Taluk. Along with the consent order under the Water Act, special conditions were annexed and Clause 20 of the special conditions reads as follows:

h “20. (i) 1 km away from the water resources specified in GOMs No. 213 E&P Deptt., dt. 30-3-1989.

(ii) 25 km away from ecological/sensitive areas.

(iii) 500 metres away from high tide line.”

37. On the one hand, therefore, the appellants were given consent to establish their plant in the SIPCOT Industrial Complex, which as per the NEERI report is within 25 km of four of the twenty-one islands in the Gulf of Munnar. On the other hand, a condition was stipulated in the consent order that the appellants have to ensure that the location of the unit is 25 km away from ecologically sensitive area. It thus appears that the TNPCB while granting the consent under the Water Act for establishment of the plant of the appellants in the SIPCOT Industrial Complex added the above requirement without noting that the SIPCOT Industrial Complex was within 25 km from ecologically sensitive area. Since, however, the consent order was granted to the appellant Company to establish its plant in the SIPCOT Industrial Complex and the plant has in fact been established in the SIPCOT Industrial Complex, the High Court could not have come to the conclusion that the appellant Company had violated the consent order and directed closure of the plant on this ground.

38. This is not to say that in case it becomes necessary for preservation of ecology of the aforesaid four islands which form part of the Gulf of Munnar, the plant of the appellants cannot be directed to be shifted in future. We find from the affidavit filed on behalf of the State of Tamil Nadu on 29-10-2012 that the Gulf of Munnar consisting of 21 islands including the aforesaid four islands have been notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986 and a declaration may also be made under Section 35(4) of the said Act declaring the Gulf of Munnar as a marine national park. We have, therefore, no doubt that the Gulf of Munnar is an ecologically sensitive area and the Central Government may in exercise of its powers under clause (v) of sub-rule (1) of Rule 5 of the Environment (Protection) Rules, 1986 prohibit or restrict the location of industries and carrying on processes and operations to preserve the biological diversity of the Gulf of Munnar. As and when the Central Government issues an order under Rule 5 of the Environment (Protection) Rules, 1986 prohibiting or restricting the location of industries within and around the Gulf of Munnar marine national park, then appropriate steps may have to be taken by all concerned for shifting the industry of the appellants from the SIPCOT Industrial Complex depending upon the content of the order or notification issued by the Central Government under the aforesaid Rule 5 of the Environment (Protection) Rules, 1986, subject to the legal challenge by the industries.

39. The next question with which we have to deal is whether the High Court could have directed the closure of the plant of the appellants on the ground that though originally the TNPCB stipulated a condition in the "no-objection certificate" that the appellant Company has to develop a green belt of 250 metres width around the battery limit of the plant, the appellants made representation to the TNPCB for reducing the width of the green belt and the TNPCB in its meeting held on 18-8-1994 relaxed this condition and required the appellants to develop the green belt with a minimum width of 25 metres:

39.1. We find on a reading of the no-objection certificate issued by the TNPCB that various conditions have been imposed on the industry of the

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 599

a appellants to ensure that air pollution control measures are installed for the control of emissions generated from the plant and that the emissions from the plant satisfy the ambient air quality standards prescribed by the TNPCB and development of green belt contemplated under the environmental management plan around the battery limit of the industry of the appellants was an additional condition that was imposed by the TNPCB in the no-objection certificate. If the TNPCB after considering the representation of the appellants has reduced the width of the green belt from a minimum of 250 metres to a minimum of 25 metres around the battery limit of the industry of the appellants and it is not shown that this power which has been exercised was vitiated by procedural breach or irrationality, the High Court in exercise of its powers of judicial review could not have interfered with the exercise of such power by the State Pollution Control Board.

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e **39.2.** The High Court in the impugned judgment<sup>1</sup> has not recorded any finding that there has been any breach of the mandatory provisions of the Air Act or the Rules thereunder by the TNPCB by reducing the green belt to 25 metres. Nor has the High Court recorded any finding that by reducing the width of the green belt around the battery limit of the industry of the appellants from 250 metres to 25 metres, it will not be possible to mitigate the effects of fugitive emissions from the plant. The High Court has merely held that the TNPCB should not have taken such a generous attitude and should not have in a casual way dealt with the issue permitting the appellant Company to reduce the green belt particularly when there have been ugly repercussions in the area on account of the incidents which took place on 5-7-1997 onwards. It was for the TNPCB to take the decision in that behalf and considering that the appellant's plant was within a pre-existing industrial estate, the appellant could not have been singled out to require such a huge green belt.

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h **40.** This takes us to the argument of Mr Prakash that had the Ministry of Environment and Forests, Government of India, applied its mind fully before granting the environment clearance and had the TNPCB applied its mind fully to the consents under the Air Act and the Water Act and considered all possible environmental repercussions that the plant proposed to be set up by the appellants would have, the environmental problems now created by the plant of the appellants would have been prevented. As we have already held, it is for the administrative and statutory authorities empowered under the law to consider and grant environmental clearance and the consents to the appellants for setting up the plant and where no ground for interference with the decisions of the authorities on well-recognised principles of judicial review is made out, the High Court could not interfere with the decisions of the authorities to grant the environmental clearance or the consents on the ground that had the authorities made a proper environmental assessment of the plant, the adverse environmental effects of the industry could have been prevented. If, however, after the environmental clearance is granted under the Environment (Protection) Act, 1986, and the Rules and the notifications

<sup>1</sup> *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

issued thereunder and after the consents granted under the Air Act and the Water Act, the industry continues to pollute the environment so as to affect the fundamental right to life under Article 21 of the Constitution, the High Court could still direct the closure of the industry by virtue of its powers under Article 21 of the Constitution if it came to the conclusion that there were no other remedial measures to ensure that the industry maintains the standards of emission and effluent as laid down by law for safe environment (see *M.C. Mehta v. Union of India*<sup>16</sup> in which this Court directed closure of tanneries polluting the waters of River Ganga).

41. We have, therefore, to examine whether there were materials before the High Court to show that the plant of the appellants did not maintain the standards of emission and effluent as laid down by the TNPCB and whether there were no remedial measures other than the closure of the industry of the appellants to protect the environment. We find on a reading of the impugned judgment<sup>1</sup> of the High Court that it has relied on the report of NEERI of 2005 to hold that the plant site itself is severely polluted and the ground samples level of arsenic justified classifying the whole site of the plant of the appellant as hazardous waste.

42. We extract hereinbelow the relevant observations of NEERI in its report of 2005 relating to air, water and soil environment in the executive summary:

*“Air environment*

The emission factors of SO<sub>2</sub> from sulphuric acid plant — I (SAP-I) and sulphuric acid plant — II (SAP-II) were 0.55 kg/MT of H<sub>2</sub>SO<sub>4</sub> manufactured which is well within the TNPCB stipulated limit of 2kg/MT of H<sub>2</sub>SO<sub>4</sub> manufactured.

The acid mist concentration of SAP-I was 85 mg/Nm<sub>3</sub>, which exceeds the TNPCB limit of 50 mg/Nm<sub>3</sub>. The acid mist concentration from SAP-II was 42 mg/Nm<sub>3</sub>, which is well within the TNPCB limit. In view of the exceeding of TNPCB limit for acid mist, it is recommended that the performance of acid mist eliminators may be intermittently checked. It is further recommended to install a tail gas treatment plant to take care of occasional upsets.

Out of the seven DG sets, one (6.3 MW) was monitored for particulate matter (PM) emissions. The level of PM was 115 mg/Nm<sub>3</sub> (0.84 gm/kWh) which is within the TNPCB stipulated limit of 150 mg/Nm<sub>3</sub> for thermal power plants of 200 MW and higher capacity (165 mg/Nm<sub>3</sub>) but higher than that stipulated for diesel engines/gen sets up to 800 kW capacity (0.3 gm/kWh). Therefore TNPCB may decide whether the present PM emissions from the DG sets of 6.3 MW capacity is within the limit or otherwise.

The fugitive emissions were monitored at four sites to assess the status of air quality with respect of SO<sub>2</sub>, NO<sub>2</sub> and SPM. The results of

<sup>16</sup> (1987) 4 SCC 463

<sup>1</sup> *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 601

a analysis at all fugitive emission monitoring sites indicate that the levels of gaseous pollutants SO<sub>2</sub> and NO<sub>2</sub>, were below the respective NIOSH/OSHA standards for work place environment. The levels of SPM were also within the stipulated TNPCB standards for industrial areas.

b Impact of stack and fugitive emissions on surrounding air quality was also assessed by monitoring SO<sub>2</sub>, NO<sub>2</sub> and SPM levels at five monitoring locations. The levels of SPM, SO<sub>2</sub> and NO<sub>2</sub> at all the five sites were far below the TNPCB standards of 120 µg/Nm<sub>3</sub> for SO<sub>2</sub> as well as NO<sub>2</sub> and 500 µg/Nm<sub>3</sub> for SPM for industrial zone.

*Water environment*

c Surface water samples were collected and analysed for physico-chemical, nutrient demand parameters. The physico-chemical characteristics and nutrient demand parameters i.e. with special reference to pH (7.9-8.0), TDS (120-160 mg/L), COD (11-18 mg/L) and levels of heavy metals viz. Cd, Cr, Cu, Pb, Fe, Mn, Zn and As in surface water, were found within the prescribed limits of drinking water standards (IS: 10500-1995).

d Total eight groundwater samples were collected (seven from hand-pumps and one from dug well) to assess the groundwater quality in the study area. The analysis on physico-chemical characteristics of groundwater samples collected from various locations showed high mineral contents in terms of dissolved solids (395-3020mg/L), alkalinity (63-210 mg/L), total hardness (225-2434 mg/L), chloride (109-950 mg/L), sulphate (29-1124 mg/L) and sodium (57-677 mg/L) as compared to the drinking water standards (IS:10500-1995). Thus, it could be concluded that water in some of the wells investigated is unfit for drinking. The concentrations of nutrient demand parameters revealed that phosphate was in the range 0.1-0.3 mg/L while nitrate was in the range 1-7.5 mg/L at all sampling locations which is within the limits stipulated under drinking water standards (IS:10500-1995). The levels of chromium, copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards (IS:10500-1995), other heavy metal concentrations viz. iron, manganese, zinc and arsenic were found in the range 0.01-0.05 mg/L, ND-0.01 mg/L and ND-0.08 mg/L respectively which are within the drinking water standards (IS:10500-1995).

e To assess the impact on groundwater quality due to secured and fill sites and other waste disposal facilities, five samples were collected from monitoring wells (shallow bore wells located around the waste disposal sites). The physico-chemical characteristics of well water around secured landfill site and gypsum pond showed mineral contents higher than the levels stipulated in IS: 10500-1995 in terms of dissolved solids (400-3245 mg/L), alkalinity (57-137 mg/L), hardness (290-1280 mg/L), chloride (46-1390 mg/L), sulphate (177-649 mg/L) and sodium (9-271 mg/L). The results of nutrient demand parameters showed phosphate in the range 0.1-0.5 mg/L while nitrate was in the range 0.8-11.7 mg/L at all sampling locations, which are within the levels stipulated in IS:10500-

1995, whereas level of arsenic was found in the range of ND-0.08 mg/L as against the stipulated limit of 0.05 mg/L under drinking water standards (IS:10500-1995). The levels of cadmium, chromium, copper and lead were also found to exceed the drinking water standards in some of the wells. a

The hourly composite wastewater samples were collected at six locations. During the sample collection, flow monitoring was also carried out at the inlet and final outlet of the effluent treatment plant (ETP). The concentrations of total dissolved solid (TDS) and sulphate exceed the limit stipulated by the TNPCB for treated effluent. All the other parameters are within the consent conditions prescribed by TNPCB. The treated effluent is being recycled back in the process to achieve zero discharge. b

*Soil environment*

Soil samples were also analysed for level of heavy metals. The soil samples at the plant site showed presence of As (132.5 to 163.0 mg/kg), Cu (8.6 to 163.5 mg/kg), Mn (283 to 521.0 mg/kg) and Fe (929.6 to 1764.6 mg/kg). Though there is no prescribed limit for heavy metal contents in soil, the occurrence of these heavy metals in the soil may be attributed to fugitive emission, solid waste dumps, etc.” c

It will be clear from the extracts from the Executive Summary of NEERI in its report of 2005, that while some of the emissions from the plant of the appellants were within the limits stipulated by the TNPCB, some of the emissions did not conform to the standards stipulated by TNPCB. It will also be clear from the extracts from the executive summary relating to water environment that the surface water samples were found to be within the prescribed limits of drinking water (IS:10500-1995) whereas groundwater samples showed high mineral contents in terms of dissolved solids as compared to the drinking water standards, but concentrations of nutrient demand parameters revealed that the phosphate and nitrate contents were within the limits stipulated under drinking water standards and levels of chromium, copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards, whereas the heavy metal concentrations, namely, iron, manganese, zinc and arsenic were within the drinking water standards. Soil samples also revealed heavy metals. Regarding the solid waste out of slag in the plant site, the CPCB has taken a view in its communication dated 17-11-2003 to TNPCB that the slag is non-hazardous. Thus, the NEERI report of 2005 did show that the emission and effluent discharged affected the environment but the report read as whole does not warrant a conclusion that the plant of the appellants could not possibly take remedial steps to improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants. d  
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**43.** In fact, this Court passed orders on 25-2-2011<sup>17</sup> directing a joint inspection by NEERI (National Environmental Engineering Research Institute) with the officials of the Central Pollution Control Board (for short h

<sup>17</sup> *Sterlite Industries (I) Ltd. v. Union of India*, (2011) 13 SCC 769

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 603

a “the CPCB”) as well as the TNPCB. Accordingly, an inspection was carried out during 6-4-2011 to 8-4-2011 and 19-4-2011 to 22-4-2011 and a report was submitted by NEERI to this Court. On 18-7-2011, this Court directed<sup>18</sup> the Tamil Nadu Government and the TNPCB to submit their comments with reference to the NEERI report. On 25-8-2011, this Court directed<sup>19</sup> TNPCB to file a synopsis specifying the deficiencies with reference to the NEERI report and suggest control measures that should be taken by the appellants so that this Court can consider the direction to be issued for remedial measures b which can be monitored by the TNPCB. Accordingly, the TNPCB filed an affidavit dated 30-8-2011 along with the chart of deficiencies and measures to be implemented by the appellants and on 11-10-2011, this Court directed<sup>20</sup> the TNPCB to issue directions, in exercise of its powers under the Air Act and the Water Act to the appellants to carry out the measures and remove the deficiencies indicated in the chart. Pursuant to the order dated 11-10-2011<sup>20</sup>, c the TNPCB issued directions to the appellants and on 17-1-2012, the appellants claimed before the Court that they have removed the deficiencies pointed out by the TNPCB and on 27-8-2012, this Court directed<sup>3</sup> that a joint inspection be carried out by TNPCB and CPCB and completed by 14-9-2012 and a joint report be submitted to this Court.

d **44.** The conclusion in the joint inspection report of CPCB and TNPCB is extracted hereinbelow:

“Out of the 30 directions issued by the Tamil Nadu Pollution Control Board, the industry has complied with 29 directions. The remaining Direction 1(3) under the Air Act on installation of bag filter to converter is at the final stage of erection, which will require further 15 working days to fully comply as per the industry’s revised schedule.”

e From the aforesaid conclusion of the joint inspection report, it is clear that out of the 30 directions issued by the TNPCB, the appellant Company has complied with 29 directions and only one more direction under the Air Act was to be complied with. As the deficiencies in the plant of the appellants which affected the environment as pointed out by NEERI have now been removed, the impugned order<sup>1</sup> of the High Court directing closure of the plant of the appellants is liable to be set aside. f

g **45.** We may now consider the contention on behalf of the intervenors that the appellants were liable to pay compensation for the damage caused by the plant to the environment. The NEERI reports of 1998, 1999, 2003 and 2005 show that the plant of the appellant did pollute the environment through emissions which did not conform to the standards laid down by the TNPCB under the Air Act and through discharge of effluent which did not conform to the standards laid down by the TNPCB under the Water Act. As pointed out by

18 *Sterlite Industries (I) Ltd. v. Union of India*, (2011) 13 SCC 772

19 *Sterlite Industries (I) Ltd. v. Union of India*, (2011) 13 SCC 773

20 *Sterlite Industries (I) Ltd. v. Union of India*, (2011) 10 SCC 254

h <sup>3</sup> *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC)

<sup>1</sup> *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

604

SUPREME COURT CASES

(2013) 4 SCC

Mr V. Gopalsamy and Mr Prakash, on account of some of these deficiencies, TNPCB also did not renew the consent to operate for some periods and yet the appellants continued to operate its plant without such renewal. This is evident from the following extracts from the NEERI Report of 2011: a

“Further, renewal of the consent to operate was issued vide the following proceedings numbers and validity period:

<i>TNPCB proceeding</i>	<i>Validity up to</i>
No. T7/TNPCB/F.22276/RL/TTN/W/2007 dated 7-5-2007	30-9-2007
No. T7/TNPCB/F.22276/RL/TTN/A/2006 dated 7-5-2007	
No. T7/TNPCB/F.22276/URL/TTN/W/2008 dated 19-1-2009	31-3-2009
No. T7/TNPCB/F.22276/URL/TTN/A/2008 dated 19-1-2009	
No. T7/TNPCB/F.22276/URL/TTN/W/2009 dated 14-8-2009	31-12-2009
No. T7/TNPCB/F.22276/URL/TTN/A/2009 dated 14-8-2009	

Thereafter, the TNPCB did not renew the consents due to non-compliance with the following conditions:

*Under the Water Act, 1974*

(i) The unit shall take expedite action to achieve the time-bound target for disposal of slag, submitted to the Board, including BIS clearance before arriving at disposal to cement industries, marine impact study before arriving at disposal for landfill in abandoned quarries. e

(ii) The unit shall take expedite action to dispose the entire stock of the solid waste of gypsum.

*Under the Air Act, 1981*

(i) The unit shall improve the fugitive control measure to ensure that no secondary fugitive emission is discharged at any stage, including at the points of material handling and vehicle movement area.” f

For such damages caused to the environment from 1997 to 2012 and for operating the plant without a valid renewal for a fairly long period, the appellant Company obviously is liable to compensate by paying damages. g

46. In *M.C. Mehta v. Union of India*<sup>21</sup>, a Constitution Bench of this Court held: (SCC pp. 420-21, para 31)

“31. ... The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is h

STERLITE INDUSTRIES (INDIA) LTD. v. UNION OF INDIA (*Patnaik, J.*) 605

a engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.”

b The Constitution Bench in the aforesaid case further observed that the quantum of compensation must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it.

47. In the Annual Report 2011 of the appellant Company, at pp. 20 and 21, the performance of its copper project is given. We extract hereinbelow the paragraph titled “Financial Performance”:

c “PBDIT for the financial year 2010-2011 was Rs 1043 crores, 40% higher than PBDIT of Rs 744 crores for the financial year 2009-2010. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realisation.”

d Considering the magnitude, capacity and prosperity of the appellant Company, we are of the view that the appellant Company should be held liable for a compensation of Rs 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and according to us, any less amount, would not have the desired deterrent effect on the appellant Company. The aforesaid amount will be deposited with the Collector of Thoothukudi District, who will invest it in a fixed deposit with a nationalised bank for a period of five years. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu.

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h 48. We now come to the submission of Mr Prakash that we should not grant relief to the appellants because of the misrepresentation and suppression of material facts made in the special leave petition that the appellants have always been running their plant with statutory consents and approvals and misrepresentation and suppression of material facts made in the special leave petition that the plant was closed at the time the special leave petition was moved and a stay order was obtained from this Court on 1-10-2010<sup>2</sup>. There is no doubt that there has been misrepresentation and suppression of material facts made in the special leave petition but to decline relief to the appellants in this case would mean closure of the plant of the appellants. The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile, construction and infrastructure, etc. The plant of the appellants has about 1300 employees and it also provides employment to a large number of people

2 *Sterlite Industries (I) Ltd. v. Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC)

through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates a huge revenue to the Central and State Governments in terms of excise, custom duties, income tax and VAT. It also contributes to 10% of the total cargo volume of Tuticorin Port. For these considerations of public interest, we do not think it will be a proper exercise of our discretion under Article 136 of the Constitution to refuse relief on the grounds of misrepresentation and suppression of material facts in the special leave petition. a

49. Before we part with this case, we would like to put on record our appreciation for the writ petitioners before the High Court and the intervenor before this Court for having taken up the cause of the environment both before the High Court and this Court and for having assisted this Court on all dates of hearing with utmost sincerity and hard work. In *Indian Council for Enviro-Legal Action v. Union of India*<sup>22</sup>, this Court observed that voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervenor before this Court not only ventured but also put in their best for the cause of the general public. b

50. In the result, the appeals are allowed and the impugned common judgment<sup>1</sup> of the High Court is set aside. The appellants, however, are directed to deposit within three months from today a compensation of Rs 100 crores with the Collector of Thoothukudi District, which will be kept in a fixed deposit in a nationalised bank for a minimum of five years, renewable as and when it expires, and the interest therefrom will be spent on suitable measures for improvement of the environment, including water and soil, of the vicinity of the plant of the appellants after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu. In case the Collector of Thoothukudi District, after consultation with TNPCB, finds the interest amount inadequate, he may also utilise the principal amount or part thereof for the aforesaid purpose after approval from the Secretary, Environment, Government of Tamil Nadu. By this judgment, we have only set aside the directions of the High Court in the impugned common judgment<sup>1</sup> and we make it clear that this judgment will not stand in the way of the TNPCB issuing directions to the appellant Company, including a direction for closure of the plant, for the protection of environment in accordance with law. c d e f

51. We also make it clear that the award of damages of Rs 100 crores by this judgment against the appellant Company for the period from 1997 to 2012 will not stand in the way of any claim for damages for the aforesaid period or any other period in a civil court or any other forum in accordance with law. g

22 (1996) 3 SCC 212

<sup>1</sup> *National Trust for Clean Environment v. Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad) h

Annexure R/8/38  
2385

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA

257

(2018) 18 Supreme Court Cases 257

- a (BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)  
GOEL GANGA DEVELOPERS INDIA PRIVATE  
LIMITED .. Appellant;
- Versus
- b UNION OF INDIA THROUGH SECRETARY MINISTRY OF  
ENVIRONMENT AND FORESTS AND OTHERS .. Respondents.  
Civil Appeals No. 10854 of 2016 with Nos. 10901 of  
2016 and 5157-58 of 2018<sup>†</sup>, decided on August 10, 2018

c **A. Environment Law — Environment Clearance/NoC/Environment  
Impact Assessment (EIA) — Specific Clearances — Development Projects —  
Environment Impact Assessment (EIA) Notification, 2006 — Construction  
in violation of the environmental clearance (EC), as in the present case, in  
violation of the clearance granted under Noti. dt. 4-4-2011 — Establishment  
and Effect of — “Built-up area” under Notis. dt. 4-4-2011 and 14-9-2006 —  
Concept of floor space index (FSI)/floor area ratio (FAR) — Non-relevance of,  
for computation of “built-up area” for which EC is granted**

d **— Imposition of damages of Rs 100 crores or 10% of project cost,  
whichever was higher, for violation of environmental clearance in addition  
to Rs 5 crore damages imposed by NGT, instead of directing demolition —  
Detailed coercive directions issued to ensure deposit of these damages within  
six months**

e **— Held, the concept of FSI or non-FSI may be relevant for the purposes  
of building plans under municipal laws and regulations but it has no linkage  
or connectivity with the grant of EC and both will have an equally deleterious  
effect on the environment — When EC is granted for a particular construction  
it includes both FSI and non-FSI areas — Held, the built-up area under the  
Noti. dt. 14-9-2006 means all constructed area which is not open to the sky and  
the built-up area under the Noti. dt. 4-4-2011 means all covered area including  
basement and service areas**

f **— EC dt. 4-4-2008 was granted to the project proponent for construction  
of built-up area 57,658.42 sq m, whereas the total construction raised by it was  
1,00,002.25 sq m — Rejecting the contention of project proponent that while  
calculating the built-up area the constructions mentioned in Rr. 15.4.1.1(a), (b)  
and (c), 17.7.3 and 15.4.2 of the Pune Municipal Corporation Development  
Control Rules, 1982 were to be excluded, held, the construction raised  
g by the project proponent was in violation of the environmental clearance  
granted to it — However, considering that the project proponent had already  
taken money and a large number of flats and shops had already been**

h <sup>†</sup> Arising from the Judgment and Order in *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC  
OnLine NGT 4213 [National Green Tribunal, (Western Zone) Pune Bench, Application No. 184  
of 2015 (WZ), dt. 27-9-2016] and *Tanaji Balasaheb Gambhire v. Union of India* [National Green  
Tribunal, (Western Zone) Pune Bench, Review Application No. 35 of 2016, dt. 8-1-2018]

occupied and persons belonging to the middle class had invested their life's earnings, demolition not ordered/directed — However, inter alia, damages of Rs 100 crores or 10% of the project cost, whichever was higher, in addition to Rs 5 crores as levied by NGT, imposed on the project proponent — Words and Phrases — “Built-up area” — Pune Municipal Corporation Development Control Rules, 1982, Rr. 15.4.1.1(a), (b) & (c), 17.7.3 and 15.4.2 (Paras 14, 17, 53, 58.2, 66.1, 66.2 and 66.9)

**B. Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Review petition — Who can hear and where — Held, the powers of review which NGT exercises are akin to those of a civil court — In terms of Or. 47 R. 5 CPC, a review petition should normally be heard by the same Bench which passed the original order**

— Further, this normal rule should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter — Further, under sub-rule (2) of R. 22 of 2011 Rules the matter should ordinarily be heard at the same place of sitting where it was originally decided, however, this is not a mandatory direction — National Green Tribunal (Practices and Procedure) Rules, 2011 — Rr. 22(2) and 22(3) — Civil Procedure Code, 1908 — Or. 47 R. 5 — Practice and Procedure — Review (Paras 36, 38 and 40)

**C. Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Exercise of power of review — Impermissibility of, when appeal already pending**

— Statutory appeal was pending in the Supreme Court against the original order when the respondent's review application, inter alia, praying for demolition of the illegal structures and enhancement of compensation, was taken up for hearing by NGT — In the present case, held, project proponent/appellant had not only challenged original order of NGT on the ground that he had not violated EC but also on the ground that the damages awarded were highly excessive — Therefore, the Bench hearing the review application erred in holding that review application was maintainable — Civil Procedure Code, 1908 — Or. 47 R. 1(2) — Practice and Procedure — Review (Paras 7, 45 and 47)

**D. Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer — Damages for carrying out construction in violation of environmental clearance (EC) — Quantification of — Carbon footprint as basis**

— Rejecting the contention that damages should be assessed on the basis of “carbon footprint”, held, the courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles — However, in a case where expert evidence is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, court may rely upon

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA

259

a such data — Evidence Act, 1872 — S. 45 — Words and Phrases — “Carbon footprint” (Paras 59 to 63)

**E. Environment Law — Environment (Protection) Rules, 1986 — Rr. 3 to 5 — EIA Notifications issued under — Cannot be varied/abrogated by officials of MoEF — Environment (Protection) Act, 1986, S. 4**

b **F. Public Accountability, Vigilance and Prevention of Corruption — Corruption/Abuse of Power — Environmental Clearance/NoC — Improper grant of — Fine imposed upon the PMC and direction given by NGT to PMC to take appropriate action against the erring officials, and directions to enquire into conduct of other officials concerned, also upheld**

c The project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m.

d The project proponent applied for environmental clearance (EC) for the project and in the proposal dated 27-6-2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. EC was granted to the project proponent on 4-4-2008.

The original applicant filed an application before the National Green Tribunal (“NGT”, for short) claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance (“EC”, for short) granted for the project and also in violation of the various municipal laws.

e The case of the project proponent was that the term “built-up area” is synonymous with “floor space index” or FSI and that the constructed area, which is exempted from FSI area, or is a non-FSI area, is not a part of the “built-up area”. The project proponent contended that while calculating the built-up area, the constructions mentioned in Rules 15.4.1.1(a), (b) and (c) and Rule 17.7.3 of the Pune Municipal Corporation Development Control Rules, 1982 (“DCR”, for short), in addition to the areas specifically exempted under Rule 15.4.2 are to be excluded. It was contended that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008. The stand of the Union of India and the original applicant was that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006.

g The issues involved in this appeal were:

1. Whether the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance.

2. Whether NGT could have entertained a review application/reviewed its order dated 27-9-2016, when an appeal against the same was already pending before the Supreme Court?

h

*Held :*

Under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as “built-up area”. There is no exception for non-FSI area. (Para 16)

a

Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. (Para 17)

b

c

***Notification dated 4-4-2011***

It is not at all necessary to decide whether the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests is clarificatory or is in substitution of the original notification of 2006. There is no ambiguity with regard to the definition of “built-up area” even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. (Para 19)

d

***Clarification dated 7-7-2017***

The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. Since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by the office memorandum dated 7-7-2017 issued by the Joint Director, Ministry of Environment, Forests and Climate Change. (Para 22)

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*Common Cause v. Union of India*, (2017) 9 SCC 499, *relied on*

***Environmental clearance (EC) for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017***

SEIAA has laid down general conditions for pre-construction phase and the first condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. (Para 27)

g

In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to grant EC by treating the project as falling under Category B-2. Furthermore, the EC

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GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA

261

- a dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. (Para 28)

*Allegations made by the original applicant against various officials*

- b The law is well settled that no person can be condemned unheard. It would, therefore, not be fair to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. (Para 30)

However, as far as their official capacity is concerned, NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and therefore, directions given by NGT in its order dated 27-9-2016 in this regard, upheld. (Para 31)

- c Prima facie, the Principal Secretary, Environment Department, Government of Maharashtra has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. His actions need to be looked into and, therefore, direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned, upheld. (Paras 32 and 66.8)

- d *Challenge to the order dt. 8-1-2018 passed in Tanaji Balasaheb Gambhire, 2018 SCC OnLine NGT 302*

Section 19(4)(f) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT. (Para 34)

- e A review petition should normally be heard by the same Bench which originally decided the matter. A review petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. (Para 38)

- f Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of the Supreme Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. (Para 39)

- g According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall "ordinarily" be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to

2390



262

SUPREME COURT CASES

(2018) 18 SCC

the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. (Para 40)

*Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*, (1980) 2 SCC 167 : 1980 SCC (Tax) 222, referred to a

In terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. (Para 43)

*Malthesh Gudda Pooja v. State of Karnataka*, (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473, relied on

*Malthesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 919; *Malthesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 918, referred to b

As far as the facts of this case are concerned, the original applicant could have raised all issues which he raised in the review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in the Supreme Court as he has done now. In this context, once the Supreme Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application. (Para 45) c

The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before the Supreme Court. (Para 47)

*Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4217; *Tanaji Gambhire v. Union of India*, 2017 SCC OnLine NGT 1954, referred to d

On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter. (Para 51) e

*Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4201; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4204; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4205; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4206; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4219; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4203; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4207; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4208; *Tanaji Balasaheb Gambhire v. Union of India*, 2015 SCC OnLine NGT 838; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 1330; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4209; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4215; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4210; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4211; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4202; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4212; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4214, referred to f

***Is demolition the only answer?***

Now there are 807 flats and 117 shops which are either constructed or under construction. Keeping in view the interest of these third parties who were not parties before NGT, in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. (Para 53) g

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GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA

263

a The project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse. (Para 54)

b The project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. (Para 64)

d The base year has been fixed as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws. (Paras 64 and 66.9)

e The project proponent is granted six months' time to deposit the amount of damages imposed above in the Registry of the Supreme Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to the project proponent to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of the Court. (Para 66.13)

g *Whether the original applicant is entitled to special damages?*

This litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted. (Para 57)

*Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213, partly reversed

*Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302, reversed

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VN-D/61010/S

Advocates who appeared in this case :

A.N.S. Nadkarni, Additional Solicitor General, Ranjit Kumar, R.P. Bhatt, Kavin Gulati and Jayant Bhushan, Senior Advocates (Venkita Subramoniam T.R., Rahat Bansal, Braj K. Mishra, Vijay Kumar, Rohit Gupta, Ms Aparna Jha, Ms Kriti Sondhi, Shriram P. Pingle, Ms Rashmi Dhongde, Nitin Lonkar, Ms Sonali Suryavanshi, Nilesh Bhandari, Ashok Jain, Gurmeet Singh Makker, Divya Prakash Pande, Salvador Santosh Rebello, Niraj Kumar, Rahul Garg, Ridhi Kackkar, Ranjesh Kr. Sinha, Gaurav Rawal, Mukesh Verma, Pawan Kr. Shukla, Ms Vasudha Zutshi, Yash Pal Dhingra, Kunal Cheema, Nishant Ramakantrao Katneshwarkar, Ninad Laud, Kush Chaturvedi, Ms Anshula Grover, Anjuman Tripathy, Somay Kapoor, Ms Priyashree Sharma, Parth Singh Chaudhary and Aman Verma, Advocates) for the appearing parties.

**Chronological list of cases cited**

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8. 2016 SCC OnLine NGT 4213, *Tanaji Balasaheb Gambhire v. Union of India (partly reversed)* 265e-f, 266e, 266e-f, 267a, 275a-b, 275c, 275f-g, 276a, 283c, 284d, 287g, 288a, 288b-c
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GOEL GANGA DEVELOPERS (INDIA) (P) LTD. 265  
v. UNION OF INDIA (*Deepak Gupta, J.*)

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25. 2009 SCC OnLine Kar 918, *Malthesh Gudda Pooja v. State of Karnataka* 279b-c
- b 26. (1980) 2 SCC 167 : 1980 SCC (Tax) 222, *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi* 278g-h

The Judgment of the Court was delivered by

**DEEPAK GUPTA, J.**— Applications for intervention/impleadment are allowed. Application for amendment of grounds of appeal in Civil Appeal No. 10854 of 2016 is allowed.

c 2. These matters are being decided by one judgment since they all arise out of one original application filed by Shri Tanaji Balasaheb Gambhire (hereinafter referred to as “the original applicant”) before the National Green Tribunal (“NGT”, for short) being Application No. 184 of 2015.

d 3. The original applicant filed an application before NGT claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance (“EC”, for short) granted for the project and also in violation of the various municipal laws. It was prayed that the illegal structures be demolished; the State Level Environment Impact Assessment Authority (SEIAA) and the Maharashtra State Pollution Control Board be directed to initiate appropriate action against the project proponent for violation of the Environment Impact Assessment (EIA) Notification, 2006; the Union of India be directed to take action against SEIAA; and lastly, it was prayed that the project proponent be directed to pay/deposit a heavy amount of compensation in the environment relief fund. NGT vide its order dated 27-9-2016<sup>1</sup> allowed the application in the following terms: (*Tanaji Balasaheb case*<sup>1</sup>, SCC OnLine NGT para 54)

f “54. For the aforesaid reasons, the applicant succeeds in his legal pursuit to challenge the non-compliance of EC conditions by Respondent 9 and obtain certain directions. Hence the Application is allowed and we issue following directions:

g 1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition

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1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several Environmental Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board. a

2. In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent 9-PP by the officer of PMC, we impose fine of Rs 5 lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs 5 lakhs shall be paid within one month. b

3. We direct the Chief Secretary, State of Maharashtra and the competent authority to take notice of the conduct of the officers concerned who have misled the Department of Environment in the matter relating to interpretation of FSI and BUA in terms of which order dated 31-5-2016 has been issued in particular the Principal Secretary, Department of Environment who has authored the order dated 31-5-2016. c

4. PMC, DoE and SEIAA are directed to pay cost of Rs 1 lakh each to the applicant within 4 weeks.” d

4. Aggrieved by the aforesaid order of NGT, the project proponent filed Civil Appeal No. 10854 of 2016. Pune Municipal Corporation (“PMC”, for short) also challenged the said order insofar as it adversely affects PMC by filing Civil Appeal No. 10901 of 2016.

5. Review application being Application No. 35 of 2016 was filed by the original applicant before NGT. This application was partly allowed on 8-1-2018<sup>2</sup> and Direction 1 in the original order dated 27-9-2016<sup>1</sup> was modified and substituted as under: (*Tanaji Balasaheb case*<sup>1</sup>, SCC OnLine NGT para 54) e

“54. ...‘1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC, whichever is less, for restoration and restitution of environment damage and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several environment laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.’ ” f g

6. Thereafter, the project proponent filed IA No. 8000 of 2018 for permission to amend its appeal permitting it to challenge the order passed in review application dated 8-1-2018<sup>2</sup>, which we have allowed. h

<sup>2</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

<sup>1</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA (*Deepak Gupta, J.*)

267

7. Appeal being Diary No. 3911 of 2018 was filed by the original applicant challenging the original order dated 27-9-2016<sup>1</sup> as well as the order dated 8-1-2018<sup>2</sup> passed in review application praying that demolition of the illegal structures be ordered and the compensation be enhanced to Rs 500 crores.

*The factual matrix*

8. The facts briefly stated are that the project proponent purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m. From the documents placed on record, it is apparent that as per the Development Control Plan for the city of Pune, 3 roads of the width of 36 m, 30 m and 18 m bisected this plot into two which for the sake of convenience were referred to as Plot No. 1 and Plot No. 2. As per the Development Plan, there are certain statutory reservations in addition to the roads and some land has to be left out or reserved for schools, cultural centres, open areas, etc. The remaining area is referred to as the “balance plot area” which in this case works out to 46,993.79 sq m. Out of this “balance plot area” 15% is to be reserved for amenity space and another 10% area is to be compulsorily left out as open space leaving “net plot area” of 41,455.21 sq m. Prima facie these calculations do not appear to be correct. However, this will not impact the merits of the case. Be that as it may, the undisputed fact is that FSI has to be calculated on the “net plot area”. We may, at this stage, point out that the aforesaid figures are based on the written submissions submitted on behalf of the Union of India by the learned Additional Solicitor General and these figures have not been disputed before us.

9. On 12-3-2007, the project proponent applied for sanction of layout and building proposal plan on an area of 15,141.70 sq m, originally depicted as Plot No. 3 and the sanctioned FSI was 15,313.16 sq m. Thereafter, on 5-9-2007, revised layout plan was submitted for an area measuring 28,233.23 sq m and the sanctioned FSI was 39,526.54 sq m. The project proponent applied for EC for the project and in the proposal dated 27-6-2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. The EC was granted to the project proponent on 4-4-2008. Paras 2 and 3 of the communication granting EC read as under:

“2. The project proponent is proposing for construction of group housing project at Sl. Nos. 35 to 40, Village Vadgaon Budruk, Singhad Road, Pune, Maharashtra at a cost of Rs 10,737.14 lakhs. The project involves construction of 12 buildings with stilt, basement plus 11 floors for 552 flats, 50 shops and 34 offices. The total plot area is 79,100.00 sq m. Total built-up area as indicated is 57,658.42 sq m. Total water requirement will be 745 KLD and 400 KLD of waste water will be generated from

<sup>1</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

<sup>2</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302



the buildings which will be treated in sewage treatment plant. The treated waste water will be used for landscaping, DG set cooling and horticulture purpose. The solid waste generated from the buildings will be 1500 kg/day and disposed as per the MSW Rules, 2000. The parking space is proposed for parking of 1072 cars.

a

3. EAC after due consideration of the relevant documents submitted by the project proponent and additional clarifications furnished in response to its observations have recommended the grant of environmental clearance for the project mentioned above subject to compliance with EMP and other stipulated conditions. Accordingly, the Ministry hereby accords necessary environmental clearance for the project under Category 8(a) of the EIA Notification, 2006 subject to the strict compliance with the specific and general conditions mentioned below:”

b

10. EC was granted, subject to certain conditions. We may refer to certain relevant conditions which read as under:

c

*“Part A—Specific conditions*

I. Construction phase

\* \* \*

v. Permission to draw and use groundwater for construction work shall be obtained from competent authority prior to construction/operation of the project.

d

\* \* \*

5. In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry.”

***Concept of “built-up area” under the Notification dated 14-9-2006***

e

11. It is not disputed that EC was granted for built-up area of 57,658.42 sq m. The main dispute is with regard to the interpretation of the term “built-up area”. The case of the project proponent is that the term “built-up area” is synonymous with “floor space index” or FSI and that the constructed area, which is exempted from FSI area or is a non-FSI area is not a part of the “built-up area”. On the other hand, the submission made by the original applicant as well as by the learned Additional Solicitor General appearing for the Ministry of Environment, Forests and Climate Change is that the built-up area will cover all constructed area and the concept of FSI area or non-FSI area is totally alien to environmental laws.

f

12. The learned Senior Counsel for the project proponent has drawn our attention to the Development Control Rules for Pune Municipal Corporation, Pune, 1982 (“DCR”, for short). Under DCR, no building can be constructed without grant of building permission/commencement certificate by Pune Municipal Corporation. There is a detailed procedure for obtaining the building permission/commencement certificate wherein layout plans, building plans, etc. have to be submitted. The main emphasis was on Rule 2.13 of DCR, which defines “built-up area” as follows:

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GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA (*Deepak Gupta, J.*)

269

a “2.13. *Built-up area*.—Area covered immediately above the plinth level by the building or external area of any upper floor whichever is more excepting the areas covered by Rule 15.4.2.”

Rule 2.39 defines “floor area ratio” as follows:

b “2.39. *Floor area ratio (FAR)*.—The quotient obtained by dividing the total covered area (plinth area) on all floors excluding exempted areas as given in Rule 15.4.2 by the area of the plot.

$$\text{FAR} = \frac{\text{Total converted area on all floors}}{\text{Plot area}}$$

*Note*.—The term FAR is synonymous with floor space index (FSI).”

13. Strong reliance is placed on Rule 15.4.2, which reads as under:

c “15.4.2. In addition to Rules 15.4.1.1(a), (b) and (c) and 17.7.3, the following shall not be included in covered area or FAR and built-up area calculations:

(a) A basement or cellar space under a building constructed on stilts and used as parking space, and air conditioning plant rooms used as accessory to the principal use;

d (b) Electric cabin or substation, watchman’s booth of maximum size of 1.6 sq m with minimum width or diameter of 1.2 m, pump house, garage shaft, space required for location of fire hydrants, electric fittings and water tanks;

(c) Projection as specifically exempted under these Rules;

e (d) Staircase room and/or lift rooms above the topmost storey, architectural features, chimneys, elevated tanks of dimensions as permissible under these Rules;

*Note*.—The shaft provided for lift shall be taken for covered area calculations only on one floor up to the minimum required as per these Rules;

f (e) One room admeasuring 2 m × 3 m on the ground floor of cooperative housing societies or apartment owners/cooperative societies buildings and other multi-storeyed buildings as office-cum-letter box room;

g (f) Rockery, well and well structures, plant, nursery, water pool, swimming pool, (if uncovered) platform round a tree, tank fountain, bench, chabutra with open top and unenclosed sides by walls, ramps, compound wall, gate, slide, swing, overhead water tank on top buildings;

(g) (*Deleted*);

(h) Sanitary block subject to provision of Rule 15.4.1(a) and built-up area not more than 4 sq m.”

h 14. The contention of the learned Senior Counsel appearing for the project proponent is that while calculating the built-up area the constructions mentioned in Rules 15.4.1.1(a), (b) and (c) and Rule 17.7.3 in addition to the

areas specifically exempted under Rule 15.4.2 are to be excluded. He submits that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008.

15. On the other hand, the stand of the Union of India and the original applicant is that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006. The building/construction projects are covered by Item 8 of the schedule to the EIA Notification dated 14-9-2006. Construction of a project which is covered under the schedule can be commenced only after obtaining EC in terms of Para 2 of the said notification. The schedule itself categorises the various projects and activities into two categories being “Category A” and “Category B”. “Category A” projects require clearance by the Central Government in the Ministry of Environment, Forests and Climate Change on the recommendation of the Expert Appraisal Committee to be constituted by the Central Government whereas those activities which form “Category B” of the schedule including modernisation and expansion of such projects require EC from the State/Union Territory Environment Impact Assessment Authority (SEIAA) and such authority is required to base its decision on the recommendation of the State/Union Territory Level Expert Appraisal Committee (SEAC). There is further division of “Category B” into B-1 and B-2. B-1 projects require Environmental Impact Assessment (EIA) Report to be prepared and scoping to be done whereas B-2 projects do not require any Environmental Impact Assessment Report. Item 8 of the schedule, with which we are concerned, reads as follows:

(1)	(2)	(3)	(4)	(5)
8		<i>Building/Construction projects/Area development projects and townships</i>		
(a)	Building and construction projects		≥20,000 sq m and <1,50,000 sq m of built-up area#	#(built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
(b)	Townships and area development projects		Covering an area ≥50 ha and or built-up area ≥1,50,000 sq m ++	++All projects under Item 8(b) shall be appraised as Category B-1.”

16. From a bare perusal of the two hashtags (#) in Columns 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines “built-up area” to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as “built-up area”. There is no exception for non-FSI area.

- a 17. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission
- b should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble, etc.,
- c all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built-up area in terms of the EIA Notification dated 14-9-2006.
- d

*Notification of 4-4-2011*

18. Our attention has been drawn to the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests. By means of this notification, the words of Column 5 against Item 8(a) have been replaced and substituted as under:

- e “The built-up area for the purpose of this Notification is defined as ‘the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects’.”

This notification clearly defines “built-up area” as all constructed area including basement and service areas without any exception.

- f 19. The learned Senior Counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in
- g substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of “built-up area” even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. We may again re-emphasise that this definition also is
- h in consonance with the concept of grant of EC for construction as explained

2400

272

SUPREME COURT CASES

(2018) 18 SCC

above and it is obvious that the concept of FSI or non-FSI area is alien to environmental laws.

**Clarification dated 7-7-2017**

20. Strong reliance has been placed by the project proponent on the office memorandum dated 7-7-2017 issued by Dr Ashish Kumar, Joint Director, Ministry of Environment, Forests and Climate Change. The said office memorandum reads as follows:

F. No. 22-35/2017-IA.III

Government of India

Ministry of Environment, Forests and Climate Change

(Impact Assessment Division)

\*\*\*\*\*

Indira Paryavaran Bhawan

Jor Bag Road, Aliganj,

New Delhi - 110 003

Dated 7-7-2017

**OFFICE MEMORANDUM**

*Sub.: Clarification on the date of applicability of Notification No. S.O.(E) 695 dated 4-4-2011 issued by MoEF & CC defining "built-up area" of the project.*

The Ministry is in receipt of a reference dated 3-4-2017 from Confederation of Real Estate Developers Association of India (CREDAI) seeking clarification on the abovementioned subject. CREDAI has requested that the definition of built-up area (BUA) given vide Notification No. S.O. 695(E) dated 4-4-2011 should have prospective effect.

2. The matter has been examined in the Ministry. BUA defined in Notification No. S.O. 1533 (E) dated 14-9-2006 mentions at Item 8(a) Columns 4 and 5 "built-up area for covered construction, in the case of facilities open to sky, it will be the activity area".

3. The Ministry has further defined BUA vide its Notification No. S.O. 695 (E) dated 4-4-2011 which reads as, "the built-up or covered area on all the floors put together including its basement and other service areas, which are proposed in the building or construction project".

4. The definition provided in the Ministry's notification will have its effect from the prospective date of the notification only. The projects which are not covered in the period of above notifications should be assessed as per the definition of built-up area provided in the building bye-laws or Development Control Regulation (DCR) of the local authorities in the States.

5. This issues with approval of competent authority.

sd/-

(Dr Ashish Kumar)

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All States/UTs/SIEAAs/MoEF & CC Divisions

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA (*Deepak Gupta, J.*)

273

a 21. It is urged on the basis of the aforesaid memorandum that prior to the Notification dated 4-4-2011, the built-up area had to be calculated and assessed as per the building bye-laws or the Development Control Regulations of the local authorities in the States. On behalf of the original applicant, it has been urged that this memorandum is meaningless and that it has been issued when the matter was pending before NGT, at the instance of one of the Directors of the project proponent, Shri Atul Goel, who was Joint Secretary of Confederation of Real Estate Developers Association of India (CREDAI), Pune.

b 22. Without going into this aspect of the matter, we are clearly of the view that such an office memorandum could not and should not have been issued. The Notification dated 14-9-2006 is a statutory notification issued in terms of Rule 5(3) of the Environment (Protection) Rules, 1986 which provides that before such a notification is issued, the Central Government has to give notice of its intention of issuing a notification and objections to the same are invited. No doubt the Central Government is empowered in public interest to dispense with the requirement of notice but this obviously has to be done in exceptional cases. The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011 to which we have adverted above. These two decisions of the Central Government d which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. We are of the view that since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by this office e memorandum.

f 23. We are also of the view that the so-called office memorandum is not at all clarificatory in nature. As held by us above, the notification of 2006 with regard to "built-up area" was absolutely clear and needed no clarification. We fail to understand how the concept of built-up area as understood in the building bye-laws or DCR could be introduced into the notification of 2006 by this office memorandum which virtually made the notification of 2006 totally redundant. Therefore, we quash the office memorandum dated 7-7-2017.

g 24. This is not the first time that we have noticed such clarificatory communications being issued by the officials of the Ministry of Environment, Forests and Climate Change, which virtually have the effect of nullifying the statutory provisions and notifications. We have adverted to some of these communications in our judgment in *Common Cause v. Union of India*<sup>3</sup>. We expect the officials of the Ministry of Environment, Forests and Climate Change to take a stand which prevents the environment and ecology from being damaged, rather than issuing clarifications which actually help the project proponents to flout the law and harm the environment.

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2402

25. In view of the above, we are clearly of the view that the EC granted to the project proponent on 4-4-2008 was for constructing a total built-up area of 57,658.42 sq m and this would include all covered construction not open to the sky. No artificial division on the basis of FSI and non-FSI area can be made. Therefore, NGT was fully justified in coming to the conclusion that the construction raised by the project proponent was in total violation of the EC granted to it.

*Environmental clearance dated 20-11-2017*

26. The project proponent has drawn our attention to the EC for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017. We may note that this clearance indicates that the existing construction comprises of 738 flats and 115 shops which have been completed, 69 flats and 2 shops which are under construction, meaning thereby that 807 flats and 117 shops are already in existence and in addition thereto 454 more flats and cultural centre are sought to be constructed. This will take the total number of flats to 1261 and number of shops to 117. We may also notice that SEIAA has laid down general conditions for pre-construction phase and the first condition is as follows:

“(1) This environmental clearance (EC) is issued for total built-up area of 1,47,219.45 m<sup>2</sup> as approved by local planning authority. It is noted that the total proposed construction area is 1,47,219.45 m<sup>2</sup> which includes the area of previous EC (dated 4-4-2008) 57,658.42 m<sup>2</sup> and the proposed expansion area of 89,561.03 sq m. However, the above area of 1,47,219.45 sq m is notional as the non-FSI area component of the previous EC is not included in 1,47,219.45 m<sup>2</sup>. After considering the non-FSI area of the previous EC, the total built-up area becomes 1,81,230.94 m<sup>2</sup>. SEIAA has also taken note of the clarification issued by MoEF and CC vide office memorandum dated 7-7-2017, stating the definition of built-up area will be assessed as per the building bye-laws or DCR of the local authorities in the States.”

27. The aforementioned condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. The project proponent has raised construction in Plot No. 1 of an FSI area measuring 48,424.66 sq m, and non-FSI area measuring 46,088.47 sq m. Therefore, the total construction raised in Plot No. 1 is 94,513.13 sq m. In Plot No. 2, the construction raised on an FSI area is 630.55 sq m and on the non-FSI area is 4,858.57 sq m and, therefore, the total construction already raised in Plot No. 2 is 5489.12 sq m. The total construction raised by the project proponent is 1,00,002.25 sq m against the built-up area of 57,658.42 sq m mentioned in the EC of 4-4-2008. This could not have been ignored by SEIAA.

28. In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA (*Deepak Gupta, J.*)

275

- a grant EC by treating the project as falling under Category B-2. Furthermore, the EC dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. The EC completely lost sight of the fact that the order dated 31-5-2016 was quashed and set aside by NGT in its order dated 27-9-2016<sup>1</sup>. We may note that the official who passed the order on 31-5-2016 was the same official, who held the office of Member-Secretary of SEIAA, which granted environmental clearance on 20-11-2017. Therefore, the EC dated 20-11-2017 was beyond the authority of SEIAA and was granted under a totally false assumption and the same is therefore quashed and set aside.

c *Allegations made by the original applicant against various officials*

- c 29. NGT in its order dated 27-9-2016<sup>1</sup>, has found that there was suppression of facts by the officers of PMC. NGT also directed the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers who were misleading the Department of Environment. Costs were imposed on PMC, Department of Environment and SEIAA. This has been challenged before us by PMC.

- d 30. The original applicant, both in his original application filed before NGT and in appeal filed before us as well as in other proceedings, has made serious allegations against individual officers of PMC as well as SEIAA and specially the Principal Secretary, Environment Department, Government of Maharashtra. However, for reasons best known to the original applicant, none of these individuals has been made a party in personal capacity in these proceedings. The law is well settled that no person can be condemned unheard. It would, therefore, not be fair on our part, to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. Therefore, we refrain from commenting on the conduct of the officials in their individual capacity.

- f 31. However, as far as their official capacity is concerned, we are of the view that NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and we, therefore, uphold the directions given by NGT in its order dated 27-9-2016<sup>1</sup> in this regard. In view of what we have discussed above, it is more than apparent that despite notifications of 2006 and 2011 being clear and unambiguous, the officials of PMC have given an interpretation which was tailor-made to suit the project proponent. This was being done even before the clarification of 7-7-2017 was issued. This clearly indicates that some officials of PMC were espousing the case of the project proponent at the cost of the environment.

- g 32. We may also observe that prima facie we are of the view that the Principal Secretary, Environment Department, Government of Maharashtra

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1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. In the original order dated 27-9-2016<sup>1</sup>, NGT held as follows: (*Tanaji Balaseheb case*<sup>1</sup>, SCC OnLine NGT para 42)

“42. From the extracted portion of the order dated 31-5-2016 of Principal Secretary, Environment Department, it is seen that he has declared construction of 18 buildings on the site instead of 12 buildings is permissible which, according to him, only a changes on configuration of buildings. This opinion undoubtedly is based on his erroneous conclusion that total BUA which is nothing but FSI consumed i.e. 48,617.14 sq m which is within the EC limit as against the actual construction activity which has exceeded over 1,00,000 sq m BUA. Hence, we set aside that order/communication dated 31-5-2016.”

The official holding the post of Principal Secretary must have been aware of these directions because he was a party to the proceedings before NGT. Despite that, while granting fresh EC on 20-11-2017, this official noticed that reference to the Environment Department for verification of files was withdrawn vide letter dated 31-5-2016 and the matter has been considered afresh. When the letter dated 31-5-2016 had been quashed the obvious result would be that action had to be taken in accordance with the earlier directions in the 27th meeting of SEAC III (Non-MMR) held from 10-3-2015 to 13-3-2015 and the 87th meeting of SEIAA held on 10-8-2015 to 12-8-2015. This was not done. His actions need to be looked into and, therefore, we uphold the direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned. We further direct the Chief Secretary to file detailed report in respect of the conduct of the then Principal Secretary, Department of Environment to NGT within 3 months which will thereafter pass appropriate directions in the matter.

***Challenge to the order dated 8-1-2018 passed in Tanaji Balasaheb Gambhire v. Union of India*<sup>2</sup>**

33. This order has been challenged both by the project proponent by amending the appeal and by the original applicant by filing a separate appeal.

34. Section 19(4)(f) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT.

35. Rule 22(2) of the National Green Tribunal (Practices and Procedure) Rules, 2011 provides that a review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the order unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by

<sup>1</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

<sup>2</sup> 2018 SCC OnLine NGT 302

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA (*Deepak Gupta, J.*)

277

a the Tribunal sitting at any other place. Sub-rule (3) of Rule 22 provides that ordinarily review application shall be disposed of by circulation.

36. Since the powers of review which NGT exercises are akin to those of a civil court, it would be pertinent to refer to the relevant portions of Order 47 of the Civil Procedure Code, 1908, which read as follows:

b “1. *Application for review of judgment.*—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

c and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.

d (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

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e 5. *Application for review in court consisting of two or more Judges.*—

f Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the court shall hear the same.”

g 37. The project proponent has urged various grounds to challenge the order passed in the review application. The first ground is that whereas the original order was passed by a Bench comprising of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, the review application was heard and decided by a Bench comprising of Justice U.D. Salvi and Dr Nagin Nanda. It has been urged that Dr Justice Jawad Rahim continues to be a Judicial Member of NGT and, in fact, was sitting in the Western Bench at Pune on 8-1-2018 when the impugned judgment<sup>2</sup> in review was pronounced by NGT.

h 38. We are clearly of the view that a review petition should normally be heard by the same Bench which originally decided the matter. A review

2 *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. In the present case, the review application was based mainly on the contention that the affidavit dated 18-5-2016 was not taken into consideration by the Bench.

39. It is well known that parties raise various contentions in their pleadings or in their evidence. On many occasions when arguments are heard many of the pleas are not urged. Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of this Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. If a party urges that some of the contentions urged by it have not been taken into consideration then it has to file a review application and it is but obvious that such review application should be heard by the same Bench which had originally heard the matter.

40. Sub-rule (3) of Rule 22 of the National Green Tribunal (Practices and Procedure) Rules, 2011 clearly lays down that a review application shall be disposed of by circulation. If the review application is to be disposed of by circulation then there is no problem in the matter being circulated before the very same Bench which had earlier heard the matter. This can be done even at a place which may be different from the original place of hearing. It is only if the Bench decides to give oral hearing in the review application and notice is issued to the opposite party that sub-rule (2) of Rule 22 will come into operation. According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall "ordinarily" be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. The normal rule that the same Bench should hear the review application should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter.

41. In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by V.R. Krishna Iyer, J., "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon"<sup>4</sup>. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra-court appeal to another

4 *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*, (1980) 2 SCC 167, p. 173, para 14 : 1980 SCC (Tax) 222

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA (*Deepak Gupta, J.*)

279

a Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency.

b 42. We may refer to the judgment of this Court in *Malthesh Gudda Pooja v. State of Karnataka*<sup>5</sup>. In that case, a writ appeal was disposed<sup>6</sup> of by a Division Bench comprising of Hon'ble V. Gopala Gowda and L. Narayana Swamy, JJ., at the Dharwad Circuit Bench of the Karnataka High Court. Thereafter, a review petition was filed before a Bench comprising of Hon'ble K. Sreedhar Rao and Ravi Malimath, JJ. An objection was raised that the review petition should be heard by the same Judges who had originally heard the matter but this objection was overruled and the review petition was allowed<sup>7</sup> and the appeal was ordered to be listed afresh before the Division Bench. This appeal was listed before the Dharwad Circuit Bench consisting of Hon'ble D.V. Shailendra Kumar and N. Ananda, JJ. This Bench held that the order of review passed was a nullity since the Judges who had heard the review should not have heard the same especially when the Judges of the original Bench were available. The matter came to this Court and this Court after referring to Order 47 Rule 5 CPC and Rule 5 of the High Court of Karnataka Rules, 1959 and taking note of the fact that the Chief Justice of the Karnataka High Court had passed an order that the review petition be listed as per roster held as follows: (SCC pp. 341-42, paras 18-20)

d "18. Order 47 Rule 5 of the Code and Chapter 3 Rule 5 of the High Court Rules require, and in fact mandate that if the Judges who made the order in regard to which review is sought continue to be the Judges of the Court, they should hear the application for review and not any other Judges unless precluded by death, retirement or absence from the Court for a period of six months from the date of the application. An application for review is not an appeal or a revision to a superior court but a request to the same court to recall or reconsider its decision on the limited grounds prescribed for review. The reason for requiring the same Judges to hear the application for review is simple. Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision was rendered. They will be able to appreciate the point in issue, when the grounds for review are raised. If the matter should go before another Bench, the Judges constituting that Bench will be looking at the matter for the first time and will have to familiarise themselves about the entire case to know whether the grounds for review exist. Further, when it goes before some other Bench, there is always a chance that the members of the new Bench may be influenced by their own perspectives, which need not necessarily be that of the Bench which decided the case.

h 5 (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473

6 *Malthesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 919

7 *Malthesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 918

19. Benjamin Cardozo's celebrated statement in *The Nature of Judicial Process* (pp. 12-13) is relevant in this context:

'There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognise and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired convictions ... In this mental background every problem finds its setting. We may try to see things as objectively as we please. Nonetheless, we can never see them with any eye except our own.'

20. Necessarily, therefore, when a Bench other than the Bench which rendered the judgment, is required to consider an application for review, there is every likelihood of some tendency on the part of a different Bench to look at the matter slightly differently from the manner in which the authors of the judgment looked at it. Therefore the rule of consistency and finality of decisions, makes it necessary that subject to circumstances which may make it impossible or impractical for the original Bench to hear it, the review applications should be considered by the Judge or Judges who heard and decided the matter or if one of them is not available, at least by a Bench consisting of the other Judge. It is only where both Judges are not available (due to the reasons mentioned above) the applications for review will have to be placed before some other Bench as there is no alternative. But when the Judges or at least one of them, who rendered the judgment, continues to be members or member of the court and available to perform normal duties, all efforts should be made to place it before them. The said requirement should not be routinely dispensed with."

43. A perusal of the above judgment leaves no manner of doubt that this Court has held that in terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. We may reiterate the reasons given by this Court. These are:

43.1. The Judges who heard the matter originally have applied their mind and would know best the facts and legal position;

43.2. They will be in the best position to appreciate the matter in issue when a review is filed;

43.3. If the matter goes before another Bench that Bench will have to virtually hear the matter afresh;

43.4. Most importantly, when the matter goes to a new Bench the members of the new Bench may go by their own perspective and philosophy which may be totally different to that of the Bench which originally heard the matter.

44. We may again re-emphasise that judicial discipline, judicial traditions and consistency in pronouncements require that the Bench which heard the matter originally should hear the review petition unless it is virtually impractical for the original Bench to hear the matter, or where the members of the original Bench recuse.

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA (*Deepak Gupta, J.*)

281

a 45. Another ground raised is that the statutory appeal was already pending in this Court against the original order when the review application was taken up for hearing. It is contended, on the basis of Order 47 Rule 1(2) CPC, that review application should not have been taken up for hearing because the original applicant could have before this Court taken up all the points which he had taken in his review application. It is also contended that this is not a case where there is an error apparent on record and as such the power of review could not have been exercised. As far as the facts of this case are concerned, we are clearly of the view that the original applicant could have raised all issues which he raised in review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in this Court as he has done now. In this context, once this Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application.

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d 46. We may add that on 21-12-2016<sup>8</sup>, the review application itself was listed before the Bench of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, which adjourned the matter to 25-1-2017 to hear it regarding maintainability of the review application in view of the statutory appeal provided under the National Green Tribunal Act, 2010. However, the matter got listed before the other Bench and on 25-7-2017<sup>9</sup>, the said Bench considered this objection raised by the project proponent in terms of Order 47 Rule 1 CPC and the Bench held as follows: (*Tanaji Gambhire case*<sup>9</sup>, SCC OnLine NGT)

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f “Having perused the record, we find that the appellant is seeking quashing of the order of compensation in totality and the review applicant is seeking enhancement of the compensation granted by the Tribunal. We do not see any commonality in the grounds resorted to by the applicant and appellant in the said appeal. Exception to sub-clause (2) of Order 47 Rule 1 of the Code of Civil Procedure, therefore, does not come to the help of Respondent 9. We are, therefore, of the considered opinion that the review application is maintainable. Plea of non-maintainability of the review application is rejected.”

g 47. We are of the view that the aforesaid finding is incorrect. The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before this Court. We are, therefore, clearly of the opinion that the Bench hearing the review application erred in holding that the review application was maintainable despite the appeal pending before this Court.

h 48. We may also note that the Bench which heard the review has rejected all other grounds of review mainly on the ground that there is no error apparent on the face of the record but has only dealt with the issue of enhancement

<sup>8</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4217

<sup>9</sup> *Tanaji Gambhire v. Union of India*, 2017 SCC OnLine NGT 1954

2410

of damages to be imposed on the basis of “carbon footprint” relying on the affidavit dated 18-5-2016. The Bench noted that this affidavit had not been taken into consideration by the earlier Bench. How could the latter Bench hearing the review application know whether any reference was made to this affidavit at the time of original hearing or not? In fact, the project proponent urges that this affidavit was never filed on 18-5-2016.

49. Here, it would be pertinent to mention that according to the original applicant he was given oral permission by the Bench to file such an affidavit on 23-2-2016. We have perused the order dated 23-2-2016<sup>10</sup> and find that it makes no mention of any such request being made. If there is no such request then the question of issuing an oral direction to file such an affidavit does not arise. We may also add that after 23-2-2016, the matter was listed on numerous occasions i.e. 16-3-2016<sup>11</sup>, 5-4-2016<sup>12</sup>, 18-4-2016<sup>13</sup>, 22-4-2016<sup>14</sup>, 2-5-2016<sup>15</sup> and 5-5-2016<sup>16</sup> before NGT. In none of the orders there is any reference to carbon footprint or to any affidavit to be filed by the original applicant. If an oral permission had been given, obviously the original applicant would have either filed an application or would have made a request that he wants to file such an affidavit.

50. The affidavit in question is dated 18-5-2016 and it is alleged that it was filed on 18-5-2016. The matter was listed for hearing on 19-5-2016<sup>17</sup> on which date also there is no reference to any such affidavit. It would be pertinent to note that in between the project proponent had filed an MA No. 389 of 2016 before the Principal Bench stating that an interim order dated 23-12-2015<sup>18</sup> had been passed against it and the matter was not being heard and, therefore, it may be heard by a Bench presided over by Dr Justice Jawad Rahim, who apparently was holding Court in the Pune Bench at that time and the Principal Bench allowed the same on 2-5-2016<sup>19</sup> directing that the matter be listed before the Bench presided over by Dr Justice Jawad Rahim. On 19-5-2016, the original applicant sought time stating that he had filed review application against the order dated 2-5-2016<sup>19</sup> before the Principal Bench praying that the matter should be heard by the earlier Bench presided over by Justice U.D. Salvi and, therefore, the matter could not be heard by Dr Justice Jawad Rahim on that day and was further adjourned to 23-5-2016. There is no reference to carbon footprint in the order dated 19-5-2016<sup>17</sup>. On 23-5-2016<sup>20</sup>, the matter was heard by the Bench presided over by Dr Justice Jawad Rahim and the orders reserved.

10 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4201

11 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4204

12 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4205

13 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4206

14 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4219

15 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4203

16 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4207

17 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4208

18 *Tanaji Balasaheb Gambhire v. Union of India*, 2015 SCC OnLine NGT 838

19 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 1330

20 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4209

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA (*Deepak Gupta, J.*)

283

a In this order also there is no reference to the affidavit with regard to carbon footprint. If the filing of the affidavit would have been brought to the notice of the Bench, it would have recorded in the order that some fresh affidavit had been filed. Subsequently, the project proponent, who is the contesting respondent, filed an application on 20-7-2016 praying that in the meantime he had obtained permission of the Environment Department and SEIAA to which we have adverted hereinabove.

b **51.** The original applicant sought time to file counter-affidavit. The matter was adjourned<sup>21</sup> to 28-7-2016 for rehearing deleting the same from reserved list since there were subsequent developments. On 28-7-2016<sup>22</sup>, the matter was got adjourned to 2-8-2016 on which date<sup>23</sup> some execution application for implementation of the interim orders was taken up and direction was issued to PMC. The matter was again taken up on 8-8-2016<sup>24</sup>, 19-8-2016<sup>25</sup> and 24-8-2016<sup>26</sup> when the hearing was closed and judgment was pronounced through videoconferencing on 27-9-2016<sup>1</sup>. In none of these orders any mention was made for carbon footprint or to the affidavit on the basis of which the review application was filed. On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter on 23-5-2016<sup>20</sup> or on 24-8-2016<sup>26</sup> on which dates the original application was reserved for orders.

e **52.** We are of the considered view that the review application should have been heard by a Bench headed by Dr Justice Jawad Rahim who was admittedly available and in fact continues to be a member of NGT. Therefore, we are constrained to set aside the order passed in *Tanaji Balasaheb Gambhire v. Union of India*<sup>2</sup> dated 8-1-2018.

f ***Is demolition the only answer?***

**53.** The next issue which arises is that what we should do with the construction. A large number of flats are already occupied and a large number of persons have paid money for occupying these flats. The learned counsel appearing for those persons who have purchased the flats urged that the flats should not be demolished otherwise they shall be put to great monetary loss.

g <sup>21</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4215

<sup>22</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4210

<sup>23</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4211

<sup>24</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4202

<sup>25</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4212

<sup>26</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4214

h <sup>1</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

<sup>20</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4209

<sup>2</sup> 2018 SCC OnLine NGT 302

As pointed out above, now there are 807 flats and 117 shops which are either constructed or under construction. These flats are 1, 1.5 and 2 BHK flats and small shops and offices. The project proponent has already taken money from these persons and a large number of flats and shops have already been occupied and even where the remaining flats and shops are not occupied, persons belonging to the middle class have invested their life's earnings in this project. Keeping in view the interest of these third parties who were not parties before NGT, we are of the view that in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. Normally, this Court is loath to legalise illegal constructions but in the present case we have no option but to do so.

54. We hasten to clarify that the project proponent cannot be permitted to build any more flats. What we are permitting him to do is to only complete construction of 807 flats, 117 shops/offices and cultural centre including the clubhouse. We make it clear that he shall not be allowed to build the two buildings in which he was to construct 454 tenements, and will obviously have to return the money with interest @ 9% p.a. to the individual(s) who have invested in the same. There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of NGT dated 27-9-2016<sup>1</sup> that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse.

*Whether the original applicant is entitled to special damages?*

55. On behalf of the original applicant various issues were raised before us which had not been raised before NGT and find no mention either in the original order or even in the order under review. We are not considering those issues. It was urged that the project proponent has reduced the area of cultural centre. This averment is not correct as pointed out by the Senior Counsel appearing for the Union of India. The development plan is not only for the area under the project but covers a much larger area where more than one builder and projects may be involved. It is not the responsibility of only one builder to provide the entire community services and these have to be provided pro rata by all developers of projects in the area. It was also alleged that the builder had built 3 basements which are illegal.

56. On the other hand, it was contended by the learned Senior Counsel for the project proponent that one of the basements has already been blocked and the other two basements shall also not be put in use and would be completely blocked off. We make it clear that PMC and SEIAA will ensure that the project proponent blocks the basements in such a manner that they can never be put to any use. Another argument raised by the original applicant was that the project proponent had stated that though he would not use any groundwater, however, it has utilised the groundwater and violated the condition of the EC. Reliance

1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA (*Deepak Gupta, J.*)

285

a is placed on certain photographs showing water being pumped. On the other hand, on behalf of the project proponent it has been urged that this water was being pumped out from the excavated area when the building was built and the water level had risen. We cannot decide this disputed question of fact in these proceedings.

b 57. We may also point out that in this case the original applicant has tried to project the case as if he is filing the case in the public interest and has prayed for certain general directions. He has also claimed special damages for himself. The main grievance of the original applicant is with regard to the violation of the EC and according to him these violations started in the year 2009. The original applicant had applied for a flat in the project in question and had issued notice to the project proponent on 21-10-2011 about deficiency in service. This notice was replied to on 17-11-2011. Thereafter, the original applicant filed Consumer Complaint No. 95 of 2012 on 22-2-2012. This complaint was decided on 20-11-2014. Thereafter, the order of the District Consumer Disputes Redressal Forum was challenged before the State Consumer Disputes Redressal Commission both by the project proponent and original applicant in February 2015. It appears that thereafter there were complaints and counter-complaints filed by the parties against each other and the project proponent filed a civil suit for defamation against the original applicant on 2-12-2015 and it was only thereafter on 7-12-2015 an application was filed in NGT by the original applicant. We are highlighting these facts only to emphasise the fact that this litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted.

e *Quantification of damages*

58. We need to decide and re-assess the issue of damages since the original applicant has also challenged the original order of NGT. While assessing the damages we may note certain facts:

f 58.1. The EC was granted on 4-4-2008 but construction commenced after issuance of consent to establish dated 20-6-2009 and the EC would be valid for a period of 5 years from the date of such consent i.e. up to 19-6-2014;

58.2. The EC dated 4-4-2008 was granted for construction of built-up area of 57,658.42 sq m, whereas admittedly, as of now the constructed built-up area is 1,00,002.25 sq m. Therefore, there is clear-cut violation of the terms of the EC;

g 58.3. Any construction raised after 19-6-2014 is without any EC especially since we have held that EC granted on 20-11-2017 is invalid.

*Carbon footprint*

h 59. The main case of the original applicant is that the damages should be assessed on a scientific basis by calculating the damage caused to the environment by the project proponent on the basis of "carbon footprint". In the

absence of detailed submissions, we find ourselves totally unequipped to go into this aspect of the matter.

**60.** In the original application filed by the original applicant before NGT, there is no reference to carbon footprint. Even when evidence was initially led, no reference was made to the same. The concept of carbon footprint was introduced by the original applicant only in his affidavit dated 18-5-2016. In fact, according to the project proponent, this affidavit was not even filed on 18-5-2016. It appears to us that there is no order of NGT specifically permitting the original applicant to file such an affidavit. The submission of the original applicant is that he was orally permitted to file the same. These disputed questions would have been only decided by the Original Bench and, therefore, we have already set aside the order passed in *Tanaji Balasaheb Gambhire v. Union of India*<sup>2</sup> dated 8-1-2018.

**61.** The courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles. We find that no such principles have been accepted or established in the present case. When there are no pleadings in this regard we fail to understand how the concept of carbon footprint can be introduced after evidence has been closed, at the stage of arguments. We cannot assess the impact in actual terms and, therefore, we can only impose damages or costs on principles which have been well settled by law.

**62.** We may also note that the method to which the original applicant referred to is not part of any law, rule or executive instructions. This method is no doubt used to compensate and impose damages on nations but we cannot apply this method while imposing damages on a person who violates the EC. We may also add that the calculation made by the original applicant in his affidavit dated 18-5-2016 filed before NGT are based on assumptions some of which we have not found to be correct, namely — (1) use of groundwater; (2) reduction of cultural centre space; (3) construction of basements, etc.

**63.** We may make it clear that we are not laying down the law that damages cannot be assessed on the basis of carbon footprint. In a case where expert evidence in this behalf is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, the Court may, in the facts and circumstances of the case, rely upon such data but, in the present case, there is no such reliable material.

**64.** Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats

2415

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.  
v. UNION OF INDIA (*Deepak Gupta, J.*)

287

a and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more. We also make it clear that while calculating  
b the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the  
c base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the  
d above for contravening mandatory provisions of environmental laws.

e **65.** Normally, this Court is not inclined to grant ex post facto EC. However, in the peculiar facts of this case, we direct that once the project proponent deposits the amount of damages as directed by us then the project proponent may approach the appropriate authority for grant of EC. The authority may impose such conditions for grant of EC as it deems necessary.

***Findings and directions***

**66.** We summarise our findings and directions as follows:

f **66.1.** That built-up area under the notification of 14-9-2006 means all constructed area which is not open to the sky.

**66.2.** Built-up area under the Notification of 4-4-2011 means all covered area including basement and service areas.

**66.3.** The communication dated 7-7-2017 is totally illegal and accordingly quashed.

**66.4.** The original application cannot be treated as a public interest litigation.

g **66.5.** We are not taking note of the allegations levelled against the individuals who have not been arrayed as parties.

**66.6.** That the order dated 27-9-2016<sup>1</sup> of NGT is upheld except insofar as Direction 1 is concerned.

**66.7.** The order in review application passed by NGT on 8-1-2018<sup>2</sup> is held to be totally illegal and is accordingly set aside.

h <sup>1</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213  
<sup>2</sup> *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

2416

**66.8.** We uphold the original order dated 27-9-2016<sup>1</sup> holding that the construction raised by the project proponent was in violation of the environmental clearance granted to it on 4-4-2008. We uphold the fine imposed upon PMC and the direction given to PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra and in addition, direct that the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27-9-2016 and will submit his report to NGT within three months from today.

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**66.9.** We impose damages of Rs 100 crores or 10% of the project cost, whichever is higher, on the project proponent and in addition thereto, project proponent will pay Rs 5 crores as levied by NGT in its order dated 27-9-2016<sup>1</sup>.

**66.10.** Project proponent shall not be permitted to raise construction of two buildings having 454 tenements.

**66.11.** We direct that the project proponent shall only be permitted to complete construction of a total 807 flats, 117 shops/offices and cultural centre including clubhouse.

c

**66.12.** The project proponent will only be permitted to seek environmental clearance for completion of the project subject to payment of costs in the aforesaid terms and it may be granted ex post facto environmental clearance in the peculiar facts of the case, on such terms and conditions as the environmental authority deems fit and proper.

d

**66.13.** The project proponent is granted six months' time to deposit the amount of damages imposed in terms of Direction 66.9 supra in the Registry of this Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd. as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to M/s Goel Ganga Developers India Pvt. Ltd. to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd. and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of this Court.

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**66.14.** The matter be listed on 22-10-2018 for issuing appropriate directions as to how the amount of damages are to be utilised;

**67.** All the appeals are disposed of in the aforesaid terms. Pending application(s), if any, shall also stand disposed of.

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1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

ITEM NO.4 +14

COURT NO.7

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). 2862-2863/2022

TARAPUR INDUSTRIAL MANUFACTURERS ASSOCIATION (TIMA)Appellant(s)

VERSUS

AKHIL BHARTIYA MANGELA SAMAJ PARISHAD &amp; ORS. Respondent(s)

(IA No.54337/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.54338/2022-STAY APPLICATION )

WITH

C.A. No. 3018/2022 (XVII)

IA No.60090/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.60087/2022-STAY APPLICATION)

C.A. No. 3031-3032/2022 (XVII)

(IA No.60235/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.60236/2022-EX-PARTE STAY and IA No.60238/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

ITEM NO. 14

CIVIL APPEAL Diary No(s). 11485/2022

FOR ADMISSION and IA No.60894/2022-STAY APPLICATION and IA No.60892/2022-PERMISSION TO FILE APPEAL )

WITH

Diary No(s). 10637/2022 (XVII)

(FOR ADMISSION and IA No.60459/2022-STAY APPLICATION and IA No.60451/2022-PERMISSION TO FILE APPEAL)

Date : 27-04-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER  
HON'BLE MR. JUSTICE VIKRAM NATH

For the parties:

Mr. Abhishek manu Singhvi, Sr. Adv.  
Mr. C.A. Sundaram, Sr. Adv.  
Mr. Devashish Bharuka, AOR  
Mr. Sarvshree, Adv.  
Mr. Justine George, Adv.  
Mr. Sanjiv Goel, Adv.

Mr. Pinaki Mishra, Sr. Adv.  
Ms. Nina Nariman, Adv.  
Mr. Vinod Khera, Adv.  
Dr. Brij Bhushan K. Jauhari, Adv.  
Mr. O.P. Singh, Adv.  
Mr. Gaurav Sharma, Adv.  
Mr. Aman Garg, Adv.  
Mr. J.R. Garg, Adv.  
Ms. Purnima Jauhari, AOR

Mr. Shyam Divan, Sr. Adv.  
Mr. Gopal Jain, Sr. Adv.  
Ms. Nandini Gore, Adv.  
Ms. Natasha Sahrawat, Adv.  
Ms. Neha Khandelwal, Adv.  
Mr. Yash Dubey, Adv.  
Mr. Adith Deshmukh, Adv.  
M/S. Karanjawala & Co., AOR

Mr. Saurabh Kirpal, Sr. Adv.  
Ms. Diksha Rai, AOR  
Mr. Ankit Agarwal, Adv.  
Ms. Gulnar A. Mistry, Adv.  
Ms. Teresa R. Daulat, Adv.  
Mr. Rishir Daulat, Adv.

Mr. Basava Prabhu Patil, Sr. Adv.  
Mr. Ravi Bharuka, Adv.

Mr. Rohan Shah, Adv.  
Mr. Ajay Bhargava, Adv.  
Ms. Vanita Bhargava, Adv.  
Mr. Trishala Trivedi, Adv.  
Mr. Srisabari Rajan, Adv.  
Ms. Shweta Kabra, Adv.

Mr. Mukesh Verma, Adv.  
Mr. Yash Pal Dhingra, Adv.

Ms. Anitha Shenoy, Sr. Adv.  
Ms. Srishti Agnihotri, AOR  
Ms. Aarti Krupa Kumar, Adv.  
Ms. Ayushma Awasthi, Adv.  
Ms. Sanjana Grace Thomas, Adv.

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

Diary No. 12669, 12657, 12484 & 13099 of 2022 etc. are taken on board and be tagged with C.A. Nos. 2862-2863/2022 etc. subject to curing of defects, if any .

Diary No(s). 11485 and 10637/2022 be also tagged with C.A. Nos. 2862-2863/2022 etc..

Permission to file Appeal(s) is granted.

Issue notice.

Until further orders, the enhanced compensation in terms of the impugned order dated 24.01.2022 is stayed and the Direction No. (vii) contained in paragraph 852 of the impugned judgment dated 24.01.2022 is also stayed.

Counter affidavit, if any, be filed within eight weeks.

The amount in terms of the order dated 17.09.2020 shall be deposited within a period of eight weeks from today with the Maharashtra Pollution Control Board.

(NEELAM GULATI)  
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)  
COURT MASTER (NSH)

ITEM NO.7

COURT NO.5

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 Diary No(s). 8427/2022

(Arising out of impugned final judgment and order dated 24-01-2022  
in OA No. 64/2016 passed by the National Green Tribunal)

AARTI DRUGS LTD.

Appellant(s)

VERSUS

MAHARASHTRA POLLUTION CONTROL BOARD &amp; ORS.

Respondent(s)

(IA No.81320/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.81319/2022-STAY APPLICATION and IA  
No.81321/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.82125/2022-  
EXEMPTION FROM FILING AFFIDAVIT and IA No.81318/2022-PERMISSION TO  
FILE APPEAL and IA No.82123/2022-PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES )

Date : 03-06-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MS. JUSTICE HIMA KOHLI  
(VACATION BENCH)

For Petitioner(s) Mr. Kapil Sibal, Sr. Adv.  
Mr. Pinaki Mishra, Sr. Adv.  
Mr. Mandeep Kalra, Adv.  
Ms. Radhika Narula, Adv.  
Ms. Divya Singh Pundir, Adv.  
Ms. Kanak Malik, Adv.  
Mr. Rishabh Lekhi, Adv.  
Mr. Kanay Pisal, Adv.  
Ms. Shrishti, Adv.  
Mr. Aparajita Jamwal, Adv.  
Mr. Kushy John, Adv.  
Ms. Jasmine Damkewala, AOR

For Respondent(s) Ms. Srishti Agnihotri, AOR  
  
M/s. Karanjawala & Co., AOR

Signature Not Verified  
Digitally signed by  
GEETA AHUJA  
Date: 2022.06.03  
18:43:12 IST  
Reason:

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

Permission to file appeal is granted.

Issue notice.

Tag with C.A. No.8313/2019.

Until further orders, there shall be stay of  
the impugned order.

(Geeta Ahuja)  
Assistant Registrar-cum-PS

(Ranjana Shailey)  
Court Master

ITEM NO.15

COURT NO.15  
S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CIVIL APPEAL Diary No(s). 19303/2022

2422  
SECTION XVII

(Arising out of impugned final judgment and order dated 24-01-2022 in OA No. 64/2016 passed by the National Green Tribunal)

SEQUENT SCIENTIFIC LTD.

Petitioner(s)

VERSUS

MAHARASHTRA POLLUTION CONTROL BOARD & ORS.

Respondent(s)

(IA No.91196/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.91191/2022-STAY APPLICATION and IA No.91188/2022-PERMISSION TO FILE APPEAL)

Date : 15-07-2022 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Petitioner(s) Ms. Praveena Gautam, AOR  
Mr. Pawan Shukla, Adv.  
Mr. Raja Ram, Adv.  
Mr. Aman S. Sharma, Adv.  
Mr. K.K. Gautam, Adv.

For Respondent(s) Ms. Nandini Gore, Adv.  
Ms. Sonia Nigam, Adv.  
Ms. Natasha Sahrawat, Adv.  
Ms. Neha Khandelwal, Adv.  
Mr. Yash Dubey, Adv.  
Ms. Manvi Rastogi, Adv.  
For M/S. Karanjawala & Co., AOR  
  
Mr. Mandeep Kalra, Adv.  
Ms. Radhika Narula, Adv.  
Ms. Divya Singh Pundir, Adv.  
Ms. Kanak Malik, Adv.  
Mr. Rishabh Lekhi, Adv.  
Ms. Shrishti, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Permission to file appeal is granted.

Issue notice.

Tag with C.A. No.8313/2019.

Until further orders, there shall be stay of the impugned order.

Signature Not Verified  
Digitally signed by Dr. Mukesh Nigam  
Date: 2022.07.16  
13:10:22 IST  
Reason: I am the author of this digital signature.

(NEHA GUPTA)  
SENIOR PERSONAL ASSISTANT

(RAM SUBHAG SINGH)  
BRANCH OFFICER

2423

ITEM NO.8

COURT NO.14  
S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CIVIL APPEAL Diary No.11091/2022

SECTION XVII

(Arising out of impugned final judgment and order dated 24-01-2022 in OA No. 64/2016 passed by the National Green Tribunal)

HAREN TEXTILES PVT. LTD.

Petitioner(s)

VERSUS

AKHIL BHARTIYA MENGELA SAMAJ PARISHAD & ORS.

Respondent(s)

(IA No.80179/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.80178/2022-STAY APPLICATION and IA No.80180/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.80177/2022-PERMISSION TO FILE APPEAL)

Date : 29-07-2022 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Petitioner(s) Mr. Mandeep Kalra, Adv.  
Ms. Radhika Narula, Adv.  
Ms. Divya Singh Pundir, Adv.  
Ms. Kanak Malik, Adv.  
Mr. Rishabh Lekhi, Adv.  
Ms. Shrishti, Adv.  
Ms. Jasmine Damkewala, AOR

For Respondent(s) M/S. Karanjawala & Co., AOR  
  
Ms. Meenaz Kakalia, Adv.  
Ms. Srishti Agnihotri, AOR  
Ms. Sanjan Grale Thomas, Adv.  
  
Mr. Mukesh Verma, Adv.  
Mr. Pankaj Kumar Singh, Adv.  
Mr. Pawan kumar Shukla, Adv.  
Mr. Yashpal Dhingra, AOR

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

Issue notice.

Ms. Meenaz Kakalia, learned counsel waives notice for respondent No.1.

To be tagged with Civil Appeal No.4527 of 2022.

Until further orders, there shall be stay of the impugned order.

Signature Not Verified  
Digitally signed by Dr. Mukesh Nag  
Date: 2022.08.02 17:21:10 IST  
Reason:

(NEHA GUPTA)  
SENIOR PERSONAL ASSISTANT

(ANJU KAPOOR)  
COURT MASTER (NSH)

2424

ITEM NO.10

COURT NO.13

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 Diary No(s). 24765/2022

(Arising out of impugned final judgment and order dated 15-07-2022 in OA No. 764/2018 15-07-2022 in OA No. 155/2020 passed by the National Green Tribunal)

PARDESI DEVELOPERS PVT. LTD.

Petitioner(s)

VERSUS

KISSAN UDEY SAMITI & ORS.

Respondent(s)

(IA No.122516/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.122515/2022-EX-PARTE STAY and IA No.122514/2022-PERMISSION TO FILE APPEAL)

Date : 05-09-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s)

Mr. Mohit Chaudhary, Adv.  
Ms. Puja Sharma, Adv.  
Mr. Kunal Sachdeva, Adv.  
Mr. Chowdhary Zulfikar Ali, Adv.  
Ms. Tripti Poddar, Adv.  
Mr. Sanyukta Gupta, Adv.  
Ms. Mahima Ahuja, Adv.  
Mr. Prakhar Mithal, Adv.  
Mr. Prakhyat Gargasya, Adv.  
M/S. Kings And Alliance Llp , AOR

For Respondent(s)

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

Permission to file appeals is granted.

Signature Not Verified  
Digitally signed by  
GEETA AHUJA  
Date: 2022.09.05  
18:24:32 IST  
Reason:

Learned counsel for the petitioner relied on the order passed by this Court dated 03.06.2022 and submit that the facts in the present case are identical with the facts of the said case.

2425

In that view of the matter, issue notice.

Tag with C.A. No. 8313 of 2019.

In the meantime, the operation of the impugned judgment shall remain stayed.

(SONIA GULATI)  
SENIOR PERSONAL ASSISTANT

(ANJU KAPOOR)  
COURT MASTER (NSH)

ITEM NO.3 COURT NO.13 SECTION XVII REVISED

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 Diary No(s). 16756/2022

(Arising out of impugned final judgment and order dated 24-01-2022 in OA No. 64/2016 passed by the National Green Tribunal)

M/S BAJAJ HEALTHCARE LTD. Petitioner(s)

VERSUS

AKHIL BHARTIYA MENGELA SAMAJ PARISHAD & ORS. Respondent(s)

( IA No. 100950/2022 - CONDONATION OF DELAY IN REFILEING / CURING THE DEFECTS IA No. 100954/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 100948/2022 - PERMISSION TO FILE APPEAL  
IA No. 100953/2022 - STAY APPLICATION)

WITH

Diary No(s). 19259/2022 (XVII)  
(IA No.92313/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.92312/2022-STAY APPLICATION and IA No.92314/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.106739/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.92311/2022-PERMISSION TO FILE APPEAL and IA No.106737/2022-APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 9284/2022 (XVII)  
( IA No.81313/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.81312/2022-STAY APPLICATION and IA No.81314/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.105934/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.81311/2022-PERMISSION TO FILE APPEAL and IA No.105931/2022-APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 10072/2022 (XVII)  
(FOR ADMISSION and I.R. and IA No.94631/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.94630/2022-STAY APPLICATION and IA No.94636/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.107432/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.94629/2022-PERMISSION TO FILE APPEAL and IA No.107428/2022-APPROPRIATE ORDERS/DIRECTIONS)

Signature Not Verified  
Digital Signature  
GEE/ASH/11  
Date: 2022.09.26  
09:59:40 IST  
Reason:

Diary No(s). 12071/2022 (XVII)  
( IA No.88349/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.88348/2022-EX-PARTE STAY and IA No.88350/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.109085/2022-EXEMPTION

FROM FILING AFFIDAVIT and IA No.88346/2022-PERMISSION TO FILE APPEAL and IA No.109078/2022-APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 16960/2022 (XVII)  
( IA No.90988/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.90985/2022-STAY APPLICATION and IA No.90983/2022-PERMISSION TO FILE PETITION (SLP/TP/WP/..))

Diary No(s). 17394/2022 (XVII)  
( IA No.85074/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.85073/2022-STAY APPLICATION and IA No.106784/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.85075/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.85072/2022-PERMISSION TO FILE APPEAL and IA No.106782/2022-APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 19051/2022 (XVII)  
( IA No.95258/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.95256/2022-STAY APPLICATION and IA No.95259/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.106828/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.95254/2022-PERMISSION TO FILE APPEAL and IA No.106826/2022-APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 25010/2022 (XVII)  
( IA No.117135/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.117134/2022-STAY APPLICATION and IA No.117137/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.117130/2022-PERMISSION TO FILE APPEAL and IA No.117133/2022-CONDONATION OF DELAY IN FILING APPEAL)

Date : 12-09-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s) Mr. Virag Gupta, Adv.  
Mr. Vishal Arun Mishra, Adv.  
Ms. Harshita Nigam, Adv.  
Mr. Hitesh Shahi, Adv.  
Mr. Ujjwal Bhardwaj, Adv.  
Mr. B. K. Pal, AOR

3.1-3.7 Mr. Mandeep Kalra , AOR  
Mr. Ashish Yadav, Adv.  
Ms. Radhika Narula, Adv.  
Ms. Divysingh Pundir, Adv.  
Ms. Kanak Malik, Adv.  
Mr. Rishabh Lekhi, Adv.

3.8

Mr. Pinaki Misra, Sr. Adv.  
Mr. Mandeep Kalra , AOR  
Mr. Ashish Yadav, Adv.  
Ms. Radhika Narula, Adv.  
Ms. Divysingh Pundir, Adv.  
Ms. Kanak Malik, Adv.  
Mr. Rishabh Lekhi, Adv.

For Respondent(s) M/s. Karanjawala & Co., AOR

Ms. Anitha Shenoy, Sr. Adv.  
Ms. Srishti Agnihotri, AOR  
Ms. Sanjana Grace Thomas, Adv.  
Ms. Ayushma Awasthi, Adv.  
Ms. Aarthi Krupa Kumar, Adv.  
Ms. Namrata Caleb, Adv.  
Ms. Mantika Vohra, Adv.

Mr. Mukesh Verma, Adv.  
Mr. Yash Pal Dhingra, AOR

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

Permission to file appeal is granted.

Delay, if any, is condoned.

Issue notice.

Tag with Civil Appeal No.8313/2019.

Until further orders, there shall be stay of judgment  
and orders dated 17.09.2020 and 24.01.2022 passed by the  
National Green Tribunal, New Delhi.

(Geeta Ahuja)  
Asth. Registrar-Cum-Ps

(Anju Kapoor)  
Court Master

ITEM NO.3

COURT NO.13

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 Diary No(s). 16756/2022

(Arising out of impugned final judgment and order dated 24-01-2022  
in OA No. 64/2016 passed by the National Green Tribunal)

M/S BAJAJ HEALTHCARE LTD.

Petitioner(s)

VERSUS

AKHIL BHARTIYA MENGELA SAMAJ PARISHAD &amp; ORS.

Respondent(s)

( IA No. 100950/2022 - CONDONATION OF DELAY IN REILING / CURING  
THE DEFECTS IA No. 100954/2022 - EXEMPTION FROM FILING C/C OF THE  
IMPUGNED JUDGMENT

IA No. 100948/2022 - PERMISSION TO FILE APPEAL

IA No. 100953/2022 - STAY APPLICATION)

WITH

Diary No(s). 19259/2022 (XVII)

(IA No.92313/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.92312/2022-STAY APPLICATION and IA  
No.92314/2022-EXEMPTION FROM FILING AFFIDAVIT and IA  
No.106739/2022-EXEMPTION FROM FILING AFFIDAVIT and IA  
No.92311/2022-PERMISSION TO FILE APPEAL and IA No.106737/2022-  
APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 9284/2022 (XVII)

( IA No.81313/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.81312/2022-STAY APPLICATION and IA  
No.81314/2022-EXEMPTION FROM FILING AFFIDAVIT and IA  
No.105934/2022-EXEMPTION FROM FILING AFFIDAVIT and IA  
No.81311/2022-PERMISSION TO FILE APPEAL and IA No.105931/2022-  
APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 10072/2022 (XVII)

(FOR ADMISSION and I.R. and IA No.94631/2022-EXEMPTION FROM FILING  
C/C OF THE IMPUGNED JUDGMENT and IA No.94630/2022-STAY APPLICATION  
and IA No.94636/2022-EXEMPTION FROM FILING AFFIDAVIT and IA  
No.107432/2022-EXEMPTION FROM FILING AFFIDAVIT and IA  
No.94629/2022-PERMISSION TO FILE APPEAL and IA No.107428/2022-  
APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 12071/2022 (XVII)

( IA No.88349/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.88348/2022-EX-PARTE STAY and IA No.88350/2022-  
EXEMPTION FROM FILING AFFIDAVIT and IA No.109085/2022-EXEMPTION  
FROM FILING AFFIDAVIT and IA No.88346/2022-PERMISSION TO FILE

APPEAL and IA No.109078/2022-APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 16960/2022 (XVII)  
( IA No.90988/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.90985/2022-STAY APPLICATION and IA No.90983/2022-PERMISSION TO FILE PETITION (SLP/TP/WP/..))

Diary No(s). 17394/2022 (XVII)  
( IA No.85074/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.85073/2022-STAY APPLICATION and IA No.106784/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.85075/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.85072/2022-PERMISSION TO FILE APPEAL and IA No.106782/2022-APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 19051/2022 (XVII)  
( IA No.95258/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.95256/2022-STAY APPLICATION and IA No.95259/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.106828/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.95254/2022-PERMISSION TO FILE APPEAL and IA No.106826/2022-APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 25010/2022 (XVII)  
( IA No.117135/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.117134/2022-STAY APPLICATION and IA No.117137/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.117130/2022-PERMISSION TO FILE APPEAL and IA No.117133/2022-CONDONATION OF DELAY IN FILING APPEAL)

Date : 12-09-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s) Mr. Virag Gupta, Adv.  
Mr. Vishal Arun Mishra, Adv.  
Ms. Harshita Nigam, Adv.  
Mr. Hitesh Shahi, Adv.  
Mr. Ujjwal Bhardwaj, Adv.  
Mr. B. K. Pal, AOR

3.1-3.7 Mr. Mandeep Kalra , AOR  
Mr. Ashish Yadav, Adv.  
Ms. Radhika Narula, Adv.  
Ms. Divysingh Pundir, Adv.  
Ms. Kanak Malik, Adv.  
Mr. Rishabh Lekhi, Adv.

3.8 Mr. Pinaki Misra, Sr. Adv.

Mr. Mandeep Kalra , AOR  
Mr. Ashish Yadav, Adv.  
Ms. Radhika Narula, Adv.  
Ms. Divysingh Pundir, Adv.  
Ms. Kanak Malik, Adv.  
Mr. Rishabh Lekhi, Adv.

For Respondent(s) M/s. Karanjawala & Co., AOR

Ms. Anitha Shenoy, Sr. Adv.  
Ms. Srishti Agnihotri, AOR  
Ms. Sanjana Grace Thomas, Adv.  
Ms. Ayushma Awasthi, Adv.  
Ms. Aarthi Krupa Kumar, Adv.  
Ms. Namrata Caleb, Adv.  
Ms. Mantika Vohra, Adv.

Mr. Mukesh Verma, Adv.  
Mr. Yash Pal Dhingra, AOR

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

Permission to file appeal is granted.

Delay, if any, is condoned.

Tag with Civil Appeal No.8313/2019.

Until further orders, there shall be stay of judgment  
and orders dated 17.09.2020 and 24.01.2022 passed by the  
National Green Tribunal, New Delhi.

(Geeta Ahuja)  
Asth. Registrar-Cum-Ps

(Anju Kapoor)  
Court Master

ITEM NO.12+48

COURT NO.11

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 Diary No(s). 12081/2022

(Arising out of impugned final judgment and order dated 24-01-2022  
in OA No. 64/2016 passed by the National Green Tribunal)

DRV ORGANICS

Petitioner(s)

VERSUS

AKHIL BHARTIYA MENGELA SAMAJ PARISHAD &amp; ORS.

Respondent(s)

(IA No.83882/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.83881/2022-STAY APPLICATION and IA  
No.83884/2022-EXEMPTION FROM FILING AFFIDAVIT and IA  
No.109226/2022-EXEMPTION FROM FILING AFFIDAVIT and IA  
No.83880/2022-PERMISSION TO FILE APPEAL and IA No.109224/2022-  
APPROPRIATE ORDERS/DIRECTIONS, IA No. 109224/2022 - APPROPRIATE  
ORDERS/DIRECTIONS, IA No. 109226/2022 - EXEMPTION FROM FILING  
AFFIDAVIT, IA No. 83884/2022 - EXEMPTION FROM FILING AFFIDAVIT, IA  
No. 83882/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT, IA No. 83880/2022 - PERMISSION TO FILE APPEAL AND IA No.  
83881/2022 - STAY APPLICATION)

WITH

Diary No(s). 17708/2022 (XVII)

Diary No(s). 10593/2022 (XVII)

(IA No.84174/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.84170/2022-STAY APPLICATION and IA  
No.84175/2022-EXEMPTION FROM FILING AFFIDAVIT and IA  
No.109178/2022-EXEMPTION FROM FILING AFFIDAVIT and IA  
No.84169/2022-PERMISSION TO FILE APPEAL and IA No.109177/2022-  
APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 12282/2022 (XVII)

(IA No.85351/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.85350/2022-STAY APPLICATION and IA  
No.107486/2022-EXEMPTION FROM FILING AFFIDAVIT and IA  
No.85352/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.85348/2022-  
PERMISSION TO FILE APPEAL and IA No.107480/2022-APPROPRIATE  
ORDERS/DIRECTIONS)

Signature: [Signature]  
Digital Signature  
Deep Singh  
Date: 2022.11.05  
12:24:06 IST  
Reason:

Diary No(s). 16909/2022 (XVII)

(FOR ADMISSION and I.R. and IA No.85231/2022-EXEMPTION FROM FILING  
C/C OF THE IMPUGNED JUDGMENT and IA No.85229/2022-STAY APPLICATION  
and IA No.107543/2022-EXEMPTION FROM FILING AFFIDAVIT and IA

No.85232/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.85228/2022-PERMISSION TO FILE APPEAL and IA No.107540/2022-APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 11451/2022

WITH

Diary No(s). 11188/2022 (XVII)

(IA No.82919/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.82918/2022-STAY APPLICATION and IA No.109151/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.82921/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.82917/2022-PERMISSION TO FILE APPEAL and IA No.109150/2022-APPROPRIATE ORDERS/DIRECTIONS)

Date : 04-11-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s)

Mr. Mandeep Kalra , AOR  
Ms. Radhika Narula, Adv.  
Ms. Divya Singh Pundir, Adv.  
Ms. Kanak Malik, Adv.  
Mr. Rishabh Lekhi, Adv.  
Ms. Garima Singh, Adv.

For Respondent(s)

Mr. Mukesh Verma, Adv.  
Mr. Yash Pal Dhingra, AOR  
  
M/S. Karanjawala & Co., AOR  
  
Ms. Srishti Agnihotri, AOR

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

Permission to file appeal is granted.

Issue notice.

Tag with Civil Appeal No. 4527 of 2022.

Until further orders, there shall be stay of the impugned order.

(DEEPAK SINGH)  
COURT MASTER (SH)

(SAROJ KUMARI GAUR)  
ASSISTANT REGISTRAR

ITEM NO.19+56

COURT NO.9

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 Diary No(s). 33281/2022

(Arising out of impugned final judgment and order dated 24-01-2022 in OA No. 64/2016 passed by the National Green Tribunal)

BOMBAY RAYON FASHION LIMITED  
TEXTILES PVT. LTD. (FORMERLY KNOWN  
AS BOMBAY RAYON FASHION LIMITED)

Petitioner(s)

VERSUS

AKHIL BHARTIYA MENGELA SAMAJ PARISHAD &amp; ORS.

Respondent(s)

(IA No. 164342/2022 - CONDONATION OF DELAY IN FILING APPEAL, IA No. 164347/2022 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 164345/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 164341/2022 - PERMISSION TO FILE APPEAL, IA No. 164343/2022 - STAY APPLICATION)

WITH

CIVIL APPEAL Diary No(s). 12436/2022

(I.E. D.NO.33281/2022.]...FOR ADMISSION and I.R. and IA No.93463/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.93462/2022-STAY APPLICATION and IA No.93471/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.109265/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.93458/2022-PERMISSION TO FILE APPEAL and IA No.109260/2022-APPROPRIATE ORDERS/DIRECTIONS )

WITH

Diary No(s). 11976/2022 (XVII)

(FOR ADMISSION and I.R. and IA No.94643/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.94642/2022-STAY APPLICATION and IA No.109181/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.94646/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.94641/2022-PERMISSION TO FILE APPEAL and IA No.109180/2022-APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 12063/2022 (XVII)

(IA No.82261/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.82259/2022-STAY APPLICATION and IA No.109127/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.82266/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.82257/2022-PERMISSION TO FILE APPEAL and IA No.109122/2022-APPROPRIATE ORDERS/DIRECTIONS)

Signature  
Digitally signed by  
Date: 2022.11.18  
11:06  
Resend

Diary No(s). 19072/2022 (XVII)

(IA No.103863/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.103862/2022-STAY APPLICATION and IA No.103864/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.107563/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.103860/2022-PERMISSION TO FILE APPEAL and IA No.107562/2022-APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 11984/2022 (XVII)  
(FOR ADMISSION and I.R. and IA No.96714/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.96713/2022-STAY APPLICATION and IA No.109142/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.96712/2022-PERMISSION TO FILE APPEAL and IA No.109137/2022-APPROPRIATE ORDERS/DIRECTIONS)

Date : 18-11-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE VIKRAM NATH

For parties:

Mr. Mandeep Kalra , AOR  
Mr. Shelly Singh, Adv.  
Ms. Radhika Narula, Adv.  
Ms. Shruti Nayar, Adv.  
Ms. Divya Singh Pundir, Adv.  
Ms. Garima Singh, Adv.  
Ms. Kanak Malik, Adv.  
Mr. Rishabh Lekhi, Adv.  
Ms. Tanya Singh, Adv.  
Ms. Aneeshna Satapathy, Adv.  
Mr. Simarjeet Singh Setia, Adv.

Mr. Mukesh Verma, Adv.  
Mr. Kamal Kumar Pandey, Adv.  
Mr. Pankaj Kumar Singh, Adv.  
Mr. Pawan Kumar Shukla, Adv.

M/S. Karanjawala & Co., AOR

Ms. Srishti Agnihotri, AOR

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

Permission to file civil appeal(s) is granted.

Delay condoned.

Issue notice.

Tag with Civil Appeal No. 8313 of 2019.

Until further orders, there shall be stay of judgment and

orders dated 17.09.2020 and 24.01.2022 passed by the National Green Tribunal, New Delhi

(DEEPAK SINGH)  
COURT MASTER (SH)

(ANJU KAPOOR)  
COURT MASTER (NSH)

ITEM NO.8+21+22

COURT NO.9

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 Diary No(s). 19070/2022

(Arising out of impugned final judgment and order dated 24-01-2022 in OA No. 64/2016 passed by the National Green Tribunal)

E LAND FASHION (INDIA) PVT. LTD.  
(MUDRA LIFE STYLE)

Petitioner(s)

VERSUS

AKHIL BHARTIYA MENGELA  
SAMAJ PARISHAD & ORS.

Respondent(s)

(IA No. 163060/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 128438/2022 - CONDONATION OF DELAY IN FILING APPEAL, IA No. 128435/2022 - CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS, IA No. 128441/2022 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 128440/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 128442/2022 - EXEMPTION FROM FILING O.T., IA No. 128437/2022 - PERMISSION TO FILE APPEAL AND IA No. 128439/2022 - STAY APPLICATION)

Diary No(s). 37903/2022

(FOR ADMISSION and I.R. and IA No.193511/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.193510/2022-STAY APPLICATION and IA No.193516/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.193507/2022-PERMISSION TO FILE APPEAL and IA No.193508/2022-CONDONATION OF DELAY IN FILING APPEAL )

Diary No(s). 38567/2022

(IA No.195495/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.195494/2022-STAY APPLICATION and IA No.195496/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.195492/2022-PERMISSION TO FILE APPEAL and IA No.195493/2022-CONDONATION OF DELAY IN FILING APPEAL)

Date : 16-12-2022 These matters were called on for hearing today.

Signature :  
Digitally signed by  
Deepak Singh  
Date: 2022.12.17  
12:30:48 IST  
Reason: I

HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE VIKRAM NATH

For Petitioner(s)

Mr. Mandeep Kalra, AOR

Mr. Shelley Singh, Adv.  
Mr. Radhika Narula, Adv.  
Ms. Shruti Nayyar, Adv.  
Ms. Divya Singh Pundir, Adv.  
Ms. Garima Singh, Adv.  
Ms. Kanak Malik, Adv.  
Mr. Rishabh Lakhmi, Adv.  
Ms. Tanya Singh, Adv.  
Ms. Anushna Satpathy, Adv.  
Mr. Simarjeet Singh Satia, Adv.

For Respondent(s)

Ms. Srishti Agnihotri, AOR

Mr. Mukesh Verma, Adv.  
Mr. Yashpal Dhingra, Adv.

M/S. Karanjawala & Co., AOR

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

Permission to file appeals is granted.

Delay condoned.

Issue notice.

Tag with C.A. No. 4527 of 2022.

Until further orders, there shall be stay of the impugned  
order.

(DEEPAK SINGH)  
COURT MASTER (SH)

(ANJU KAPOOR)  
COURT MASTER (NSH)

2439

CA Diary No. 14850/2023

ITEM NO.28

COURT NO.7

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 Diary No. 14850/2023

(Arising out of impugned final judgment and order dated 24-01-2022 in OA No. 64/2016 passed by the National Green Tribunal)

M/S. ALEXO CHEMICALS

Petitioner(s)

VERSUS

MAHARASHTRA POLLUTION CONTROL BOARD & ORS.

Respondent(s)

(IA No.83878/2023-CONDONATION OF DELAY IN FILING and IA No.83879/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.83880/2023-STAY APPLICATION and IA No.83876/2023-PERMISSION TO FILE APPEAL and IA No.87995/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 08-05-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA  
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s)

Ms. Anshula Vijay Kumar Grover, AOR  
Mr. Ninad Laud, Adv.  
Mr. Saurabh Kulkarni, Adv.  
Mr. Aditya Pratap Swain, Adv.  
Ms. Rashika Narain, Adv.

For Respondent(s)

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

Delay condoned.

Issue notice and tag with Civil Appeal no. 4527/2022.

Notice will be served by all modes, including *dasti*.

In the meanwhile, there will be stay of operation of the direction to pay penalty amount of Rs.1,91,24,700/- (Rupees one crore ninety one lakhs twenty four thousand seven hundred only), subject to the petitioner depositing Rs.63,74,900/- (Rupees sixty

2440

CA Diary No. 14850/2023

three lakhs seventy four thousand nine hundred only). The deposit would be made before the authorities concerned and would abide by further orders passed by this Court. The appellant would comply with the other directions issued by the National Green Tribunal (NGT), Principal Bench, New Delhi and the Pollution Control authorities.

(DEEPAK GUGLANI)  
AR-cum-PS

(R.S. NARAYANAN)  
COURT MASTER (NSH)

2441  
ANNEXURE R 8/40

**2021 SCC OnLine NGT 4038**

**In the National Green Tribunal<sup>±</sup>  
(Through Video Conferencing)**

(BEFORE SHEO KUMAR SINGH, MEMBER (JUDICIAL) AND ARUN KUMAR VERMA, MEMBER  
(EXPERT))

Hanuman Ram ... Applicant(s);

*Versus*

State of Rajasthan and Others ... Respondent(s).

Original Application No. 89/2020 (CZ)

Decided on August 9, 2021 [Date of hearing : 09.08.2021]

Advocates who appeared in this case:

Mr. Naveen Ahuja, Adv., for the Applicant(s);

Mr. Ardhendumauli Kumar Prasad, Adv., Mr. Yadendra Yadav, Adv., for the Respondent(s).

**ORDER**

**1.** Issue raised in this application are non compliance of environmental rules and illegal and unlawful activities by non-applicant no. 6 relating to bleaching and dyeing of textiles operating in the village Khari, Tehsil - Sayla, District - Jalore, Rajasthan resulting into discharge of hazardous effluents in the nearby agricultural fields and contamination of ground water. In the instant case the non-applicant no. 6 is running an unauthorized and illegal unit of bleaching and dyeing of textiles where large amount of harmful chemicals such as hydrogen peroxide, sodium silicate, salt surfactants, color and alkaline conditions are being used to cater the textile industries in the nearby areas without taking any prior permission or clearances requisite from the concerned departments and keeping all the environmental norms at stake. That adjacent to the unit of bleaching and dyeing, a pit has been created illegally by digging soil to the tune of 20 feet deep on an area of 20 Bigah's (approx.) by the non-applicant no. 6 in his private land to discharge the effluents, which has now become a chemical pond as all the waste water is discharged in that area. That the said activity is being done under the garb of non-applicant officials and is continuing from a long time thereby affecting the acres of agricultural land adjacent to this chemical laundry nullifying the productivity of the land and damaging the life's of large number of people residing in the village which is just 500 meters away from this hazardous chemical laundry. The water used for the purpose of blanching and dying in the said chemical laundry comes from the bore-well illegally installed by the non-applicant no. 6 in his another nearby land which results in depletion of ground water level on the one hand and on the other hand after using the ground water for the purposes of dyeing the effluents are discharged into the dug pit and in case of overflow of wastewater, the same is discharge into the open agricultural fields resulting in the contamination of the ground water as there being no ETP installed for the treatment of the Same.

**2.** The talab of the village which was the only source of drinking water for the villagers has dried out and the villagers are now forced to drink the ground water which is also contaminated and salty which is causing deadly diseases like Cancer and various skin diseases. That several complaints were also made to the non-applicant authorities by the villagers but due to the collusion with the non-applicant no. 6, neither of the complaints of the villagers are given ears to, nor any action has been

taken by the non-applicant authorities till date and has become mere silent spectators. That there is a hog violation of environmental norms causing clamor of the villagers that their livelihood is hampered and is also infringement of right to life enshrined under Article 21 of the Constitution.

3. The matter was taken up on 06<sup>th</sup> October, 2020 and this Tribunal issued notice to the respondents and also constituted a Joint Committee consisting Central Pollution Control Board and Rajasthan Pollution Control Board with Central Ground Water Board/Authority and directed to submit Factual and Action Taken Report. The Joint Committee submitted the report as follows:

*"In compliance of the order passed by Hon'ble NGT, dated 06.10.2020 in OA 89/2020, following officers were nominated by the concerned departments to visit the site and submit a factual and action taken report before the Hon'ble NGT:*

- i. Shri Amit Juyal, Regional Officer, RPCB, Balotra, Dist-Barmer.*
- ii. Dr. Ranu Chouksey Verma, Scientist-B, CPCB, RD-Bhopal.*
- iii. Shri Praveen Jain, Sr. Scientific Assistant, CPCB, RD-Bhopal.*
- iv. Ms. Reena Borana, Assitant Hydrogeologist, CGWB, State Unit Office, Jodhpur.*
- v. Shri Ravi Kumar Chandel, Assistant Env. Engineer, RPCB, Balotra, Dist. Barmer.*

*The members of the joint committee held a meeting in the Office of the Regional Officer, RSPCB, Balotra to discuss on OA 89/2020 and deliberations were made to finalize the step of inspection. In pursuance to the above order, the team of officials from Central Pollution Control Board, Regional Directorate (Central), Bhopal; Rajasthan Pollution Control Board, Balotra, Dist.- Barmer and Central Ground Water Board, State Unit Office, Jodhpur visited Khari village, Tehsil Sayla, District Jalore area on 19.10.2020 along with other local authorities including Patwari (Lumba Ki Dhani) Shri Ram Swarup, Nayab Tehsildar (Jeevana) Shri Heeraram Kuldeep, Tehsildar (Sayla) Shri M.R. Patel in the presence of applicant Shri Hanuman Ram and respondent no. 6, Shri Ishwar Singh.*

**2. The Factual & Action Taken Report**

- i. The respondent no. 6 Shri Ishwar Singh is having agricultural land of approx. 54 Bigah in Village-Khari, Tehsil Sayla, District Jalore but it was found that a part of the agricultural land was used by the respondent no. 6 for illegal processing of textile i.e. plain washing of fabrics to cater textile industries in the nearby areas. No conversion of land from agriculture to industrial purpose or prior permission or clearances from the concerned departments had been obtained by the Respondent no. 6*
- ii. In this part of illegal operation, 15 small sized washing tanks (length-10 ft., width-4.5 Ji. & depth-2.5 Ji) were constructed for washing the fabric. All these tanks were drained in common outlet (drain) which was emptied into artificial pond constructed by respondent no. 6, Sh. Ishwar Singh in his private land in area of approx. 5 Bigah. Adaan (structure for drying of washed cloth) was also found constructed for drying of washed fabric. Effluent was found stored in the artificially pond.*
- iii. There was a tube well of about 200 feet depth located near the washing tanks. This tube well was not closed or sealed but since the electricity supply was disconnected on 18/06/2020, as reported by the Electricity Board, Jalore, hence seemed to be not in use. There was another water supply in the field which was claimed to be used for irrigation purposes and the water was supplied through pipeline from another field of Sh. Ishwar Singh in Village-Khari which was about 1.5 km from the site.*
- iv. Inspection of this illegal textile unit was earlier carried out by officials of*

- Rajasthan Pollution Control Board, Regional Office (RO), Balotra on 27.08.2019. Illegal operation and establishment for textile processing unit was reported by the team on non-converted agricultural land of respondent no. 6 and was discharging untreated effluents directly on the land.
- v. Whereas RPCB issued closure directions to illegal unit under the provisions of Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974 vide letter no. F.5 (Comp-02) RPCB/Textile/2653-2657 dated 16.12.2019.
  - vi. Whereas a letter was issued to Jodhpur Vidhyut Vitaran Nigam Ltd. (JVVNL), Jalore by RPCB, RO-Balotra vide letter no. RPCB/RO/Balotra/Gen-36/2230 dated 01.01.2020 for disconnection of electricity supply to the respondent no. 6 in compliance to the closure direction issued on 16.12.2019.
  - vii. A complaint was made by applicant Shri Hanuman Ram & Ors. to the Collector, Jalore on 11.06.2020 regarding illegal textile operation/establishment on the private agricultural land of respondent no. 6, Sh. Ishwar Singh and discharge of untreated effluent into drain/on land keeping environment norms at stack.
  - viii. Jodhpur Vidhyut Vitaran Nigam Ltd. (JdVVNL), Dist. Jalore vide letter no. JdVVNL/EE/PVS/Jalore/Revenue/P-2218 dated 29.07.2020, the electricity connection of respondent no. 6 was terminated and the transformer was removed on 18.06.2020.
  - ix. A meeting was convened by Rajasthan Pollution Control Board, Jaipur on 24/06/2020 under the Chairmanship of Chief Secretary, State of Rajasthan regarding inter-departmental issues related to consent mechanism for industries and others; where it was directed that the Revenue Department/Local Self Government Department shall take action against the industries illegally operating on non-converted land and also as per Hon'ble NGT for any industrial operation it is mandate to obtained NOC from CGWA.
  - x. The committee has also visited Primary Health Center, Sirana, Dist.-Jalore to assess if there is any medical case reported as submitted by the applicant Sh. Hanuman Ram in his application. The information as provided by the Medical Officer, PHC, Sirana, Dist.-Jalore no such specific medical cases have been reported in the area in last 3 years.
  - xi. The inspection team has collected grab samples of ground water from 04 locations [Tube well Sh. Ishwar Singh (25.4333839, 71.9994643), Tube well Hanuman Ram (25.4312055, 72.0191218), Tube well Kripal Singh (25.4269944, 71.9945816), Tube well Hukma Ram (25.4437315, 72.0007262)] and of surface water found stagnated in the artificial pond (25.4336527, 71.9992072) at the land of respondent no. 6 where effluents were discharged, and samples were analyzed at CPCB, Regional Directorate, Bhopal. The analysis results are as given in the Table No. 1.

**Table No. 1 Analysis Report of Ground water samples collected on 19.10.2020 in the matter of Hon'ble NGT OA No. 89 of 2020**

Parameters	Locations				
	Tube well Ishwar Singh	Tube well Hnaum an Singh	Tube well Hukma Ram (villager)	Tube well Kripal Singh (villager)	Pond where untreated effluents discharged
pH	7.72	7.92	8.31	8.17	10.23
Sp. Cond.	7330	6120	9320	9320	30534
SS (mg/L)	--	--	--	--	137
TDS (mg/L)	4246	3607	4366	5626	22400

<b>Total Alkalinity (mg/L)</b>	<b>541</b>	<b>578</b>	<b>615</b>	<b>619</b>	<b>1028</b>
<b>COD (mg/L)</b>	<b>7</b>	<b>6</b>	<b>7</b>	<b>14</b>	<b>101</b>
<b>BOD (mg/L)</b>	<b>Parameters not analyzed for Ground Water Samples</b>				<b>13.5</b>
<b>Chloride (mg/L)</b>	<b>1561</b>	<b>1801</b>	<b>2007</b>	<b>2762</b>	<b>7163</b>
<b>Sulphate (mg/L)</b>	<b>210</b>	<b>223</b>	<b>223</b>	<b>372</b>	<b>853</b>
<b>Heavy metals</b>					
<b>Cadmium (Cd)</b>	<b>BDL</b>	<b>BDL</b>	<b>BDL</b>	<b>BDL</b>	<b>0.024</b>
<b>Chromium (Cr)</b>	<b>BDL</b>	<b>BDL</b>	<b>BDL</b>	<b>BDL</b>	
<b>Copper (Cu)</b>	<b>BDL</b>	<b>BDL</b>	<b>BDL</b>	<b>BDL</b>	<b>0.035</b>
<b>Lead (Pb)</b>	<b>BDL</b>	<b>BDL</b>	<b>BDL</b>	<b>BDL</b>	<b>0.067</b>
<b>Nickel (Ni)</b>	<b>BDL</b>	<b>BDL</b>	<b>BDL</b>	<b>BDL</b>	<b>0.1138</b>
<b>Zinc (Zn)</b>	<b>0.0099</b>	<b>0.081</b>	<b>0.0064</b>	<b>0.0064</b>	<b>0.02980</b>
<b>Iron (Fe)</b>	<b>0.029</b>	<b>0.034</b>	<b>0.141</b>	<b>0.141</b>	<b>0.132</b>
<b>Manganese (Mn)</b>	<b>0.0088</b>	<b>0.0035</b>	<b>0.0067</b>	<b>0.0067</b>	<b>0.0216</b>

xii. The analysis report of collected samples reveals that compared to ground water samples, the surface water sample collected from the artificial pond shows much higher values of pH, TDS, Sp. Conductivity, COD, BOD, Chloride and Sulphate and even presence of Heavy metals, which confirms the discharge of untreated effluents by the concerned in the pond.

### 3. Environmental Compensation

In pursuance of the IR submitted by Rajasthan Pollution Control Board, RO-Balotra dated 27.08.2019 and the observations made by the joint committee during the visit of the site on 19.10.2020 it was found that-

- The respondent no. 6, Sh Ishwar Singh, S/o Narayan Singh, Kh No. 190, Village-Khari, Tehsil-Sayla, Dist.-Jalore was running an illegal textiles processing (washing of fabric) on his non-converted agricultural land at the village Khari.
- Neither the prior permission from the concerned department nor the conversion of agricultural land for its use in industrial purpose has been taken.
- No records have been maintained for the consumption of fresh water and generated wastewater.
- Illegal Extraction of ground water from 02 bore wells on his private land was found being used in above mentioned textile processing purpose without any NOC from CGWA for extraction of ground water for industrial use.
- Polluted effluents generated during the process were found being illegally discharged by the respondent no. 6 without any prior treatment in an artificial pond on his private land.

In compliance of Hon'ble NGT order dated 21.02.2019 in the matter of OA No. 739/2018 (residents of Gram Panchayat Varahiya v. State of M.P.) Copy enclosed as Annexure-10, where it is clearly mentioned that-

"7. From the above, it is clear that in spite of fact that the stone crusher have been found to be operating illegally, no compensation has been assessed and

recovered for crushing damage to the environment by illegally activities. As laid down by this Tribunal repeatedly, the Regulatory Authorities are not only required to prohibit illegal polluting activities but they are also required to recover compensation for the damage caused apart from prosecution or other steps so as to render polluting activities to be unprofitable. Failure to do so may call for action against the regulatory authorities themselves."

The committee opined to impose Environmental compensation cost for illegal extraction of ground water for its use in industrial purpose and running an illegal textile washing unit without any permission and discharging untreated effluents on land.

The committee also referred following two reports for EC calculation:

- i. Report of the CPCB in-house committee on methodology for assessing Environmental compensation and action plan to utilize the funds".
- ii. "Assessment of Environmental compensation in case of illegal extraction of ground water, submitted in compliance to Hon'ble NGT Order dated 7.5.2019 in OA No. 327/2018 in the matter of Shailesh Singh v. CGWB"

### 3.1 EC for illegal extraction of ground water for industrial purpose

Environmental compensation (ECGW) based on the purpose for illegal extraction of ground water as well as the deterrent factor detailed below:

**(ECGW) = Water consumption per day × Environmental Compensation rate for illegal extraction of ground water (ECRGW) × No. of Days × Deterrent Factor**

Where, water consumption is in m<sup>3</sup>/day and ECRGW in Rs./m<sup>3</sup>" Environmental Compensation Rate (ECRGW) for illegal extraction of ground water for use in industrial units as per the report on "Assessment of Environmental compensation in case of illegal extraction of ground water, submitted in compliance to Hon'ble NGT Order dated 7.5.2019 in OA No. 327/2018 in the matter of Shailesh Singh v. CGWB" is as detailed in below Tables;

#### 6.4 ECR<sub>gw</sub> for Industrial Units

S. No.	Area Category	Water Consumption (m <sup>3</sup> /day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR <sub>gw</sub> ) in Rs./m <sup>3</sup>			
1	Safe	20	30	40	50
2	Semi critical	40	60	80	100
3	Critical	60	80	110	150
4	Over-exploited	80	120	160	200
<b>Minimum EC<sub>gw</sub> = Rs. 1,00,000/-</b>					

#### 6.5:— Deterrent Factor

S. No.	Water Consumption	Deterrent Factor		
		< 2 years	2-5 years	>5 years
1	<1000 KLD	1.00	1.00	1.25
2	1000-5000 KLD	1.00	1.00	1.50
3	>5000 KLD	1.00	1.25	2.00

**Note : The industrial operations may be reviewed and only permitted, if it is**

**safe to continue withdrawal of ground water at the rate permitted.**

The committee after discussion has draw out the following parameters for assessment of Environmental Compensation:

- i. **Water consumption per day** : As the bore wells are not fitted with water meters and there is no specific data available for consumption of water, water consumption per day has been calculated based on the size of each storage tanks (Length-10 ft., Width-4.5 ft. & Height-2.5 ft) available at the site. The unit has 15 storage tanks each of capacity of about 3.2 m<sup>3</sup>, having total capacity of 48 m<sup>3</sup> which are being filled once a day. Hence, total water used in the process per day is 48 m<sup>3</sup>.
- ii. **Environmental Compensation Rate (ECRGW)** : As per Ground Water Resource assessment data, March, - 2017, Block-Sayla, Dist.-Jalore (Copy enclosed as Annexure-13) provided by CGWB, Block-Sayla, Dist.-Jalore comes under category-Over exploited area. Hence, ECRGW will be taken as 80 Rs./m<sup>3</sup>.
- iii. **Number of days of Non-compliance/violation:**
  - i. The day violation was observed by RPCB i.e. 27.8.2019.
  - ii. Till the day when electricity connection was terminated and transformer was removed by Jodhpur Vidhyut Vitaran Nigam Ltd. (JdVVNL), Dist. Jalore i.e. 18.06.2020

Total number of days is calculated as 297 days.

$$ECGW = 48 \times \text{Rs. } 80/\text{m}^3 \times 297 \text{ days} = \text{Rs. } 11,40,480 \text{ Lacs}$$

**3.2 EC for illegal discharge of untreated effluent without Consent to Operate (CTO)**

- i. No Consent to Establish & Consent to Operate was obtained by the Respondent no. 6 from the concerned authority for industrial activity on the agricultural land.
- ii. As effluents generated during the process were discharged untreated into an artificial pond located behind the unit on the private land of the respondent no. 6.

"This is violation of effluents discharge/inadequate ETPs/ZLD. Hence the following EC may be calculated as per the "Report of the CPCB In-house committee on Methodology for assessing Environmental Compensation and Action Plan to utilize the Fund" acknowledged by Hon'ble NGT vide order dated 19.02.2019 in the matter of Paryavaran Suraksha Samiti v. Union of India in OA No. 93/2017:

$$\text{Environmental Compensation (EC)} = PI \times N \times R \times S \times LF$$

Where,

EC is Environmental compensation

PI= Pollution Index of Industrial Sector

N= Number of Days of violation took place

R= A factor in Rupees for EC

S= Factor for scale of operation

LF= Location Factor

1	PI for Textile Processing involving any effluent/emission (As per document on revised classification of Industrial Sectors under ROGW categories by CPCB, Feb, 2016)	75
2	Number of days of Non-compliance/violation: i. Number of days violation took place the day violation was observed by RPCB i.e., 27.08.2019 ii. Till the day when electricity connection was	297 days

	<i>terminated and transformer was removed by Jodhpur Vidhyut Vitaran Nigam Ltd. (JDVVNL) Dist Jalore i.e., 18.06.2020</i>	
3	<i>A factor in Rupees for EC (Consider R as 250, as EC in cases of violation)</i>	<i>Rupees 250</i>
4	<i>Factor for scale of operation (small scale operation)</i>	<i>0.5</i>
5	<i>Location factor (Population &lt; 1 million)</i>	<i>1</i>
	<i>EC = (75 × 297 × 250 × 0.5 × 1)</i>	<i>Rs. 27,84,375/-</i>

Total Environmental Compensation Cost so calculated is : Rs. 39,24,855/-

4. Recommendations of the Joint Committee:

- i. Environmental Compensation cost of Total Rs. 39,24,855/- (Thirty Nine Lacs Twenty Four Thousand Eight Hundred and Fifty Five Rupees) may be imposed on Respondent no. 6 Sh. Iswar Singh for illegal abstraction of ground water and operation of illegal unit for textile washing and discharging untreated effluents directly on the land
- ii. The District Administration may be directed to recover the Environmental Compensation Cost from the Respondent no. 6 and deposit the amount to RSPCB
- iii. The District Administration shall ensure that no further illegal activity of washing of fabrics shall be continued by the Respondent No. 6"

4. The learned counsel for Rajasthan Pollution Control Board has submitted that vide order dated 23<sup>rd</sup> July, 2019, the Pollution Control Board has constituted a Committee consisting Senior Officer to keep vigil and surveillance over all kinds of processes/activities in and around the jurisdiction of Regional Officer, Balotra by way of monitoring, inspection, surprise checks, patrolling including night patrolling and to take all necessary steps to prevent any kind of environmental pollution including discharge of illegal industrial effluent/air emissions, dumping/disposal of any kind of waste. On 27<sup>th</sup> August, 2019, the inspection report was submitted with the fact that the unit under question was operating on non-converted land and discharging the waste water without treatment, therefore, the directions with regard to the Environmental Compensation must be processed according to the rules. On 16<sup>th</sup> December, 2019, Rajasthan Pollution Control Board issued a notice with the following facts:

"6. And whereas the industry was inspected by the officials of the Board on 27.08.2019 and during the course of inspection it was observed that:

- (i) Unit is operating illegally in non-conforming area.
- (ii) Unit is involving in textile processing without obtaining consent under the provisions of the Water Act from the State Board.
- (iii) Industry is discharging effluent directly into nallah/drain/on land without any treatment.

7. And whereas the above act of the industry shows that it has been making discharge of effluent without any treatment into nallah/drain/on land and violating the provisions of the Water Act.

8. And whereas above stated non-compliance and violations of the provisions of the Water Act have been viewed seriously by the Board.

9. And whereas, the State Board may, in exercise of the powers conferred upon it under the provisions of Section 33A of the Water Act, and in performance of its functions under the Water Act, issue directions in writing to any other person, officer or any authority and such persons, officers or authority shall be bound to comply with such directions which includes the power to direct:

- (a) The closure, prohibition or regulation of any industry, operation or process or  
(b) Stoppage or regulation of the supply of electricity or water or any other service"

5. While economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. Both development and environment must go hand in hand. In other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment [*Indian council for enviro-legal action v. union of India*, (1996) 5 SCC 281]. The traditional concept that development and ecology are opposed to each other is no longer acceptable [*Vellore citizens welfare forum v. union of India*, (1996) 5 SCC 647].

6. In a constitutional framework which is intended to create, foster and protect a democracy committed to liberal values, the rule of law provides the cornerstone. The rule of law is to be distinguished from rule by the law. The former comprehends the setting up of a legal regime with clearly defined rules and principles of even application, a regime of law which maintains the fundamental postulates of liberty, equality and due process. The rule of law postulates a law which is answerable to constitutional norms. The law in that sense is accountable as much as it is capable of exacting compliance. Rule by the law on the other hand can mean rule by a despotic law. It is to maintain the just quality of the law and its observance of reason that rule of law precepts in constitutional democracies rest on constitutional foundations. A rule of law framework encompasses rules of law but it does much more than that. It embodies matters of substance and process. It dwells on the institutions which provide the are of governance. By focusing on the structural norms which guide institutional decision making, rule of law frameworks recognize the vital role played by institutions and the serious consequences of leaving undefined the norms and processes by which they are constituted, composed and governed. A modern rule of law framework is hence comprehensive in its sweep and ambit. It recognizes that liberty and equality are the focal point of a just system of governance and without which human dignity can be subverted by administrative discretion and absolute power. Rule of law then dwells beyond a compendium which sanctifies rules of law. Its elements comprise of substantive principles, processual guarantees and institutional safeguards that are designed to ensure responsive, accountable and sensitive governance.

7. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools - conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges - of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts. There are significant linkages between

concepts such as sustainable development, the polluter pays principle and the trust doctrine. The universe of nature is indivisible and integrated. The state of the environment in one part of the earth affects and is fundamentally affected by what occurs in another part. Every element of the environment shares a symbiotic relationship with the others. It is this inseparable bond and connect which the environmental rule of law seeks to explore and understand in order to find solutions to the pressing problems which threaten the existence of humanity. The environmental rule of law is founded on the need to understand the consequences of our actions going beyond local, state and national boundaries. The rise in the oceans threatens not just maritime communities. The rise in temperatures, dilution of glaciers and growing desertification have consequences which go beyond the communities and creatures whose habitats are threatened. They affect the future survival of the entire ecosystem. The environmental rule of law attempts to weave an understanding of the connections in the natural environment which make the issue of survival a unified challenge which confronts human societies everywhere. It seeks to build on experiential learnings of the past to formulate principles which must become the building pillars of environmental regulation in the present and future. The environmental rule of law recognizes the overlap between and seeks to amalgamate scientific learning, legal principle and policy intervention. Significantly, it brings attention to the rules, processes and norms followed by institutions which provide regulatory governance on the environment. In doing so, it fosters a regime of open, accountable and transparent decision making on concerns of the environment. It fosters the importance of participatory governance - of the value in giving a voice to those who are most affected by environmental policies and public projects. The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we conserve, protect and regenerate the environment today.

8. In its decision in *Hanuman Laxman Aroskar v. Union of India*, (2019) 15 SCC 401 the Court, recognized the importance of protecting the environmental rule of law. The court observed:

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

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

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

*expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution."*

49. In its first global report on environmental rule of law in January 2019, the United Nations Environment Programme ("UNEP") has presciently stated:

*"If human society is to stay within the bounds of critical ecological thresholds, it is imperative that environmental laws are widely understood, respected, and enforced and the benefits of environmental protection are enjoyed by people and the planet. Environmental rule of law offers a framework for addressing the gap between environmental laws on the books and in practice and is key to achieving the Sustainable Development Goals. Successful implementation of environmental law depends on the ability to quickly and efficiently resolve environmental disputes and punish environmental violations. Providing environmental adjudicators and enforcers with the tools that allow them to respond to environmental matters flexibly, transparently, and meaningfully is a critical building block of environmental rule of law."*

50. The need to adjudicate disputes over environmental harm within a rule of law framework is rooted in a principled commitment to ensure fidelity to the legal framework regulating environmental protection in a manner that transcends a case-by-case adjudication. Before this mode of analysis gained acceptance, we faced a situation in which, despite the existence of environmental legislation on the statute books, there was an absence of a set of overarching judicially recognized principles that could inform environmental adjudication in a manner that was stable, certain and predictable. In an article in the Asia-Pacific Journal of Environmental Law (2014), Bruce Pardy describes this conundrum in the following terms:

*"Environmental regulations and standards typically identify specific limits or prohibitions on detrimental activities or substances. They are created to reflect the principles and prohibitions contained in the statute under which they are promulgated. However, where the contents of the statute are themselves indeterminate, there is no concrete rule or set of criteria to apply to formulate the standards. Their development can therefore be highly political and potentially arbitrary.*

*Instead of serving to protect citizens' environmental welfare, an indeterminate environmental law facilitates a utilitarian calculus that allows diffuse interests to be placed aside when they are judged to be less valuable than competing considerations."*

9. However, even while using the framework of an environmental rule of law, the difficulty we face is this - when adjudicating bodies are called on to adjudicate on environmental infractions, the precise harm that has taken place is often not susceptible to concrete quantification. While the framework provides valuable guidance in relation to the principles to be kept in mind while adjudicating upon environmental disputes, it does not provide clear pathways to determine the harm caused in multifarious factual situations that fall for judicial consideration. The determination of such harm requires access to scientific data which is often difficult to come by in individual situations.

10. In an article in the Georgetown Environmental Law Review (2020), Arnold Kreilhuber and Angela Kariuki explain the manner in which the environmental rule of law seeks to resolve this imbroglio:

*"One of the main distinctions between environmental rule of law and other areas of law is the need to make decisions to protect human health and the environment in the face of uncertainty and data gaps. Instead of being paralyzed into inaction, careful documentation of the state of knowledge and uncertainties allows the regulated community, stakeholders, and other institutions to more fully understand*

why certain decisions were made.”

The point, therefore, is simply this - the environmental rule of law calls on us, as judges, to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law. We cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law.

**11.** In a recent decision of the Court in *Bengaluru Development Authority v. Sudhakar Hegde*, 2020 SCC OnLine SC 328, the Hon'ble Supreme Court held:

“107. The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth...”

“108. Professor Corker draws attention to the idea that the environmental protection goes beyond lawsuits. Where the state and statutory bodies fail in their duty to comply with the regulatory framework for the protection of the environment, the courts, acting on actions brought by public spirited individuals are called to invalidate such actions...”

“109. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution, proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place.”

**12.** In *Lal Bahadur v. State of Uttar Pradesh*, (2018) 15 SCC 407, the Court underscored the principles that are the cornerstone of our environmental jurisprudence, as emerging from a settled line of precedent : the precautionary principle, the polluter pays principle and sustainable development. This Court further noted the importance of judicial intervention for ensuring environmental protection. In a recent decision in *State of Meghalaya v. All Dimasa Students Union*, (2019) 8 SCC 177 this Court reiterated the key principles of environmental jurisprudence in India, while awarding costs of Rs. 100 crores on the State of Meghalaya for engaging in illegal coal mining.

The UNEP report (supra) also goes on to note:

“Courts and tribunals must be able to grant meaningful legal remedies in order to resolve disputes and enforce environmental laws. As shown in Figure 5.12, legal remedies are the actions, such as fines, jail time, and injunctions, that courts and tribunals are empowered to order. For environmental laws to have their desired effect and for there to be adequate incentives for compliance with environmental laws, the remedies must both redress the past environmental harm and deter future harm.”

The above discussion puts into perspective our decision in the present appeals, through which we shall confirm the directions given by the NGT in its impugned judgment. The role of courts and tribunals cannot be overstated in ensuring that the 'shield' of the "rule of law" can be used as a facilitative instrument in ensuring compliance with environmental regulations.

**13.** In *Goel Ganga Developers India Pvt. Ltd. v. Union of India*, (2018) 18 SCC 257, the Court dealt with a situation in which the project proponent had engaged in construction that was contrary to the environmental clearance granted to it. Coming down on the project proponent, a two-judge bench, held as follows:

"64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. *This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs. 100 crores or 10% of the project cost, whichever is more.*"

**14.** The Court in *State of M.P. v. Centre for Environment Protection Research & Development*, (2020) 9 SCC 781 held as follows:"

"41. The Tribunal constituted under the NGT Act has jurisdiction under Section 14 of the said Act to decide all civil cases where any substantial question relating to environment including enforcement of any right relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule I to the said Act, which includes the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

"42. *In view of the definition of "substantial question relating to environment" in Section 2(1)(m) of the NGT Act, the learned Tribunal can examine and decide the question of violation of any specific statutory environmental obligation, which affects or is likely to affect a group of individuals, or the community at large.*

"43. *For exercise of power under Section 14 of the NGT Act, a substantial question of law should be involved including any legal right to environment and such question should arise out of implementation of the specified enactments.*

"44. *Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question must arise out of implementation of one or more of the enactments specified in Schedule I.*"

**15.** It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship". This indicates that while applying the concept of "sustainable development"

one has to keep in mind the "principle of proportionality" based on the concept of balance. It is an exercise in which we have to balance the priorities of development on one hand and environmental protection on the other hand.

**16.** The Joint Committee has properly inspected and calculated the Environmental compensation and recommended that the amount of Environmental Compensation must be recovered according to rules and should be deposited in the account of State Pollution Control Board which may further be used for the environmental purposes. Accordingly, we direct:

- (i) Rajasthan Pollution Control Board, being statutory body is directed to proceed to recover the Environmental Compensation in according with law. The process of recovery should be initiated forthwith and Collector, District Barmer is directed to comply the order.
- (ii) State Pollution Control Board and the District Administration is directed that there should not be any discharge of untreated water into the open land or open water body and the environmental rules must be complied with.

The application is finally disposed of accordingly.

† Central Zone Bench, Bhopal

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MANU/GT/0294/2022

ANNEXURE R8/41

2454

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

Original Application No. 58 of 2018 (WZ)

Decided On: 14.11.2022

Appellants: **Protection of Environment and Public Service Committee**  
**Vs.**Respondent: **Union of India and Ors.****Hon'ble Judges/Coram:***Dinesh Kumar Singh, J. (Member (J)) and Dr. Vijay Kulkarni, Member (E)***Counsels:***For Appellant/Petitioner/Plaintiff: Nitin Lonkar, Advocate**For Respondents/Defendant: Maulik Nanavati, Anand Verma, R.K. Mansuri, Sarim Naved, N.H. Kinkhabwala, Imroz Alam and Sanjay Upadhyay, Advocates***JUDGMENT**

1. This Application is moved under Section 14 of the National Green Tribunal Act, 2010, raising question related to environment arising out of **illegal and unauthorized mining of limestone on large scale in districts Gir-Somnath and Junagadh in the State of Gujarat without any prior Environmental Clearance** by respondent Nos. 9 to 22 in gross violation of the Environment Impact Assessment (EIA) Notification, 2006, notified under the provisions of Environment (Protection) Act, 1986, praying that a direction be issued to respondent Nos. 9 to 22 not to undertake mining of limestone without obtaining prior Environmental Clearance. It is prayed that respondent No. 7 i.e. the Industries and Mines Department, Gujarat and respondent Nos. 9 to 22 be directed to disclose the source of limestone for which royalty has been deposited by respondent Nos. 9 to 22 with further prayer that **exemplary environmental compensation be imposed** on respondent Nos. 9 to 22 as well as cost also be imposed upon respondent No. 2 - State of Gujarat and respondent No. 4/Gujarat Pollution Control Board for not taking action against the defaulting parties.

2. The facts of this case, in brief, are as follows:-

The applicant is a Society, which has filed this application through its Chairman namely Mr. Bhagwanbhai B. Solanki, stating that he gathered information under the Right to Information Act from Geology and Mining Department (under the Industries and Mines Department) and came to know that the following mining companies, details of which have been given in tabular form, have indulged in illegal mining-

Sr. No.	Name of Mining Company (Respondent No.)	Location of Lease	Area of Lease	Details of extraction of minerals
1.	M/s Gopalsinh Himatsinh Chauhan (Respdt. No.9)	Village Ghushiya, Taluka Talala, District Gir Somnath-362150 Gujarat	2 Ha	As per lease award dated 19.02.1990, this respondent has extracted total 286918.556 tons of limestone upto year 2013-16
2.	M/s Vajensinh Dancinh Mori Limestone Mine (Respdt. No.10)	Village Jasadhar, Taluka Talala, District Gir Somnath	2 Ha	As per lease award dated 07.10.2002, this respondent has extracted total 110857.735 tons of limestone till the year 2017-18
3.	M/s R.J. Trivedi & Co. (Respdt.No.11)	Village Umba, Taluka Veraval, District Gir Somnath-362265 Gujarat	7.69 Ha	As per lease award dated 18.05.1974, this respondent has extracted total 245996.138 tons of limestone till the year 2017-18
4.	M/s Aher Bhagvan Ehimacinh (Respdt. No.12)	Village Ajotha, Taluka Veraval, District Gir Somnath	--	As per lease award dated 08.09.1975, this respondent has extracted total 171 tons of limestone till the year 2005-18.
5.	M/s Somnath Hydrated Lime and Chemical/Cement Industries Pvt.Ltd.(Respdt.No.13)	Near village Kherali, Taluka Veraval, District Gir Somnath	15.1352 Ha	This respondent has extracted total 894696.99 tons of limestone during the period 1985-2014

6.	M/s Noormohamed Kalubhai Fatani Limestone Mine (Respdt.No.14)	Village Kherali, Taluka Varaval, District Gir Somnath	4.2593 Ha	As per lease award dated 02.07.1984, this respondent has extracted total 43765 tons of limestone till the year 2017-18
7.	M/s Vikram Chemicals Co.Limestone Mine (Respdt.No.15)	Village Damara, Taluka Una, District Gir Somnath	2 Ha	As per lease award dated 06.07.2000, this respondent has extracted total 166550.635 tons of limestone during the period 2000-2018
8.	M/s Dhirajlal Vachabhai Vachani (Respdt.No.16)	Village Undari, Taluka Gir Gadhada, District Gir Somnath	4 Ha	This respondent has extracted total 558474.89 tons of limestone during the period 2011-2018
9.	M/s Somnath Hydrated Lime and Chemical/Cement Industries Pvt.Ltd.(Respdt.No.17)	Near village Zadaka, Taluka Maliya, District Junagadh	10 Ha	This respondent was awarded lease on 09.03.1981 and it has extracted total 103633.529 tons of limestone during the period 1983-2018
10.	M/s Dinesh Kumar & Co.Limestone Mine (Respdt.No.18)	Village Khorasa, Taluka Maliya, District Junagadh	5 Ha	As per lease award dated 21.01.2002, this respondent has extracted total 46210 tons of limestone during the period 1983-2017
11.	M/s RajsiRanaJotava Limestone Mine (Respdt.No.19)	Village Khorasa, Taluka Maliya, District Junagadh	4 Ha	As per lease award dated 06.02.2017, this respondent has extracted total 39524 tons during the period 2005-2017
12.	M/s GHCL Ltd. Limestone Mine (Respdt.No.20)	Village Gorachmdhi, Taluka Sutrapada, District Gir Somnath	8.7811 Ha	As per lease award dated 11.08.1986, this respondent has extracted total 455606.06 tons of limestone during the period 1987-2017
13.	M/s GHCL Ltd. Limestone Mine (Respdt.No.21)	Village Koditra, Taluka Varaval, District Gir Somnath	4.7 Ha	This respondent was awarded lease on 19.03.2007 and has extracted total 162725.9 tons of limestone during the period 2007-2017
14.	M/s S.J. Trivedi Limestone Mine (Respdt.No.22)	Village Dari, Taluka Varaval, District Gir Somnath	9.35 Ha	This respondent was awarded lease on 19.03.2007 and has extracted total 278275.750 tons of limestone during 1988-2016

**3. All the above extraction of limestone is stated to have been done without any Environmental Clearance. It is alleged that this extraction of limestone has been shown to have been done from the allotted leased area though the google images show that in fact, this limestone has been extracted from some other area. The applicant had made multiple complaints against the above lease-holders but the Regulatory Authority did**

not take action against them. Further it is submitted that perusal of various inspection reports of the Gujarat Pollution Control Board (GPCB) dated 16.05.2017, 08.06.2017 and 12.06.2017, would show that the Industries and Mines Department failed to verify as to whether royalty being paid by the mining companies was arising out of the mining outside designated lease area and that no action was taken by the GPCB despite knowing fully well that no Environmental Clearance was granted to these lease-holders. To the best knowledge of the applicant, none of these respondent Nos. 9 to 22 had obtained Consent under the Air (Prevention and Control of Pollution) Act, 1981 (for short, "the Air Act") and the Water (Prevention and Control of Pollution) Act, 1974 (for short, "the Water Act") and yet, no action was taken by the GPCB. The Applicant has also placed reliance upon the law laid down in The Goa Foundation v. M/s. Sesa Sterlite Ltd. & Ors.; MANU/SC/0087/2018 : (2018) 4 SCC 218 as well as Gurpreet Singh Bagga v. Ministry of Environment and Forests (O.A. No. 184 of 2013), which make it clear that the activity of mining, whether in an area in excess of or less than 5 hectares, is required to obtain prior Environmental Clearance in accordance with law.

4. After receipt of the application, the matter was taken up on 27.09.2018. The order sheet of the said date discloses that on that date, respondent Nos. 2, 3, 4, 5, 6 and 7 were being represented by their learned counsel while regarding rest of the respondents i.e. respondent Nos. 1 and 8 to 22, notice was directed to be issued, in compliance of which the notices were issued but no reply-affidavit appears to have been filed from the side of respondent Nos. 1 to 7 on record.

5. The order dated 15.02.2019 shows that this Tribunal directed that it was necessary to have a joint report from Gujarat SEIAA, GPCB and MoEF & CC, particularly with reference to the grant of Environmental Clearance, and Consent under the Air Act 1981 and Water Act 1974. GPCB was made the nodal agency.

6. In compliance of the above order, report dated 15.03.2019 was submitted with following Annexures:-

#### Annexure-A

Site No. 1 Lime Stone Mine of Goplasinh Himatsinh Chauhan,

Village : Ghusiya, TAL: Talala. Dist : Gir Somnath  
Latitude and longitude : 21°01'45.68"N 70°31'03.46"E

During visit it is observed that the Project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on. Project Proponent Gopalsinh Chauhan informed that they have stopped the mining activity since December, 2017.

Site No. 2 Lime Stone Mine of Vajesinh Dansinh Mori,

Village : Jasadhar, TAL : Talala, Dist : Gir Somnath.  
Latitude and longitude : 20°59'31.02"N 70°37'20.27"E

During visit it is observed that the Project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on. Person contacted during site visit Shri Merubhai Pampaniya informed that they have stopped the mining activity since July 2017.

Site No. 3 Lime Stone Mines of R.J. Trivedi & Co,

Village : Uмба, TAL : Veraval, Dist : Gir Somnath.  
Latitude and longitude : 20°59'40.09" N 70°24'16.34"E

During visit it is observed that the Project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on. Person contacted during site visit Shri Rambhai Jotva informed that they have stopped the mining activity since May, 2018.

Site No. 4 Aher Bhagwan Bhimsi, Lime Stone Mine,

Village : Ajotha, TAL Veraval, DIST : Gir Somnath, Latitude and longitude : 20°54'07.34"N 70°29'20.80"E

During visit it is observed that the Project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on.

Site No. 5 Somnath Hydrated & Chemicals Ind (Lime Stone Mines),

Village: Kherali, TAL Veraval, DIST : Gir Somnath.  
Latitude and longitude : 21°00'52.41"N 70°24'36.71"E

During visit it is observed that the Project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on.

Site No. 6 Mines of Noormahamed Kalubhai Patani,

Village: Kherali, TAL Veraval, DIST : Gir Somnath. Latitude and longitude : 21°00'31.62"N 70°24'34'.41"E

During visit it is observed that the Project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on.

Site No. 7 Vikram Chemical Co. Lime Stone Mine,

Village : Damasa. TAL: Una, DIST: Gir Somnath.  
Latitude and longitude : 20°50'57.03"N 70° 57'43.36"E

During visit it is observed that the Project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on. Person contacted during site visit Shri Merubhai Pampaniya informed that they have stopped the mining activity since June 2017.

Site No. 8 Lime Stone mines of Dhirjalal Panchanhai Bachhani,

Village : Undari, TAL : Una, DIST : Gir Somnath.  
Latitude and longitude : 20°51'51.37"N 70°56'52.20"E

During visit it is observed that the project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on.

Site No. 9 Somnath Hydrated Chemicals,

Meghal River, Village Zadaka. TAL : Malia, Dist : Gir Somnath.  
Latitude and longitude : 21°04'47.37"N 70°17'45.04"E

During visit it is observed that the Project Proponent has carried out the mining

in the lease in past, however during visit no any mining activity was going on.

Site No. 10 Dineshkumar & Co.,

Village : Khorasa. Tal: Malia, DIST: Gir Somnath,  
Latitude and longitude : 21°02'49.82"N 70°19'28.42"E

During visit it is observed that the Project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on.

Site No. 11 Lime Stone of Rajshibhai R. Jotava,

Village : Khorasa, TAL : Malia, DIST : Gir Somnath  
Latitude and longitude : 21°02'79.00"N 70°19'19.84"E

During visit it is observed that the Project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on. Person contacted during site visit Rambhai Jotva informed that they have stopped the mining activity since October, 2018.

Site No. 12 Ghel Ltd.(Lime Stone Mines at Gorakhmadh),

Village : Gorakhmadhi, TAL: Sutrapada, DIST : Gir Somnath.  
Latitude and longitude : 20°54'39.99"N 70°31'12.05"E

During visit it is observed that the Project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on. Person contacted during site visit Shri Murli Moha informed that they have stopped the mining activity since June 2018.

Site No. 13 Kodidra Limestone Mine of GHCL Ltd.,

Village : Kodidra, TAL : Veraval, DIST : Gir Somnath.  
Latitude and longitude : 20°57'54.87"N 70°31'11.64"E

During visit it is observed that the Project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on. Person contacted during site Shri Rajesh Tiwari informed that they have stopped the mining activity since June 2018.

Site No. 14 Lime Stone Mines of Sukhdevbhai J. Trivedi,

Village : Dari, TAL : Veraval, DIST : Gir Somnath,  
Latitude and longitude : 20°56'46.05"N 70°19'43.13"E

During visit it is observed that the Project Proponent has carried out the mining in the lease in past, however during visit no any mining activity was going on. Person contacted during site visit Shri Sarmanbhai Dharamanchotiya informed that they have stopped the mining activity since December, 2014.

Annexure - B  
Status of Lease with respect to EC

Sr. No.	Name	Address	District	Status of Application	Status of EC	Remarks
1	Gopalsinh Himatsinh Chauhan	Vil. Chausiya, Ta. Talala	Gir Somnath	FOR application delayed on 26-12-2018 by SEAC	EC Not Obtained	FOR application delayed due to non submission of Additional Information called by SEAC
2	Vajesinh Dansinh Mori Limestone Mine	Vil. Jasadhar, Ta. Talala	Gir Somnath	FOR application rejected on 21-12-2018.	EC Not Obtained	Application rejected as locus title within the eco sensitive zone of Gir Sanctuary.
3	Raj. Trivedi & Co.	Vil. Umbo, Ta. Varval	Gir Somnath	FOR Granted on 31-12-2018	EC Not Obtained	
4	Ahar Bhagwan Himatsinh	Vil. Ajitha, Ta. Varval	Gir Somnath	FOR Granted on 17-11-2018	EC Not Obtained	
5	Somnath Hydrated Lime and Chemical / Cement Industries Pvt. Ltd.	Neer Vil. Kharali, Ta. Varval	Gir Somnath	FOR Granted on 30-11-2018	EC Not Obtained	
6	Neer Mahesh Anubhai Patel Limestone Mine	Vil. Kharali, Ta. Varval	Gir Somnath	FOR Granted on 17-11-2018	EC Not Obtained	
7	Udram Chemical Co. Limestone Mine	Vil. Daman, Ta. Una	Gir Somnath	FOR Granted on 25-09-2018	EC Not Obtained	
8	Chirajal Panchakha Wadhani	Vil. Undari, Ta. Gir Gadhadra	Gir Somnath	FOR Granted on 14-12-2018	EC Not Obtained	
9	Somnath Hydrated Lime and Chemical / Cement Industries Pvt. Ltd.	Vil. Kadaha, Ta. Maliga	Junagadh		EC Not Obtained	FF has not replied to EDS of online application of TOR.
10	Chowdhury & Co. Limestone Mine	Vil. Cherman, Ta. Maliga	Junagadh	FOR application delayed on 21-12-2018	EC Not Obtained	FF applied for regular TOR and project found under violation.
11	Rajal Rama Jeevan Limestone Mine	Vil. Cherman, Ta. Maliga	Junagadh		EC Not Obtained	FF has not replied to EDS of online application of TOR.
12	GHCL Ltd. Limestone Mine	Vil. Uradhahala, Ta. Surepada	Gir Somnath	EC application delayed on 30-10-2018	EC Not Obtained	FF applied for regular EC and project found under violation.
13	GHCL Ltd. Limestone Mine	Vil. Kodida, Ta. Varval	Gir Somnath	EC application delayed on 13-10-2018	EC not obtained	FF applied for regular EC and project found under violation.
14	S.J. Trivedi Limestone Mine	Vil. Dant, Ta. Varval	Gir Somnath	FOR application delayed on 29-01-2019 by SEAC.	EC Not Obtained	FOR application delayed due to non submission of Additional Information called by SEAC

**Annexure-C**  
NGT O.A. No. 58/2018(1A/Z).  
Details with reference to NGT order dated : 15/02/2019.

Sr. No.	Name of mining company	Location	Area in Hect or	GPC B ID	Action Taken	Status	Remarks
1	M/s Gopalsinh Himatsinh Chauhan	S. no. 64/P, Village: Ghusiya, Taluka-Talala, Dist. Gir Somnath	2.0	487 79	Notice of Directions issued dated 29/02/16 for not obtaining EC, CTE & CCA	CTE obtained CCA not obtained	Legal case filed in Talala Court Hon'ble Court imposed fined of total Rs. 50,000/-
2	M/s Vajesinh Dansinh Mori	S.No:152 Village: Jasadhar,	---	487 78		CTE & CCA not obtained.	Legal case filed in Talala Court Hon'ble Court

		Taluka: Talala, Dist.: Gir Somnath					Imposed fined of total Rs.7 5,000/-
3	M/s R. J. Trivedi & co.	S.No:65/70 Village: Umbla, Taluka: Veraval, Dist. Gir- Somnath	7.69	263 70	Issued closure directions dated 31/01/12 Closure yet not revoked.	Obtained CTE and CCA for 700MT/M onth CTE Amendme nt for expansion is rejected	---
4	M/s Aher Bhagwan Ehimsinh S.No389/1	Village: Ajotha, Taluka: Veraval, Dist. Gir Somnath	6.47	278 68	Issued closure directions dated 17/02/12 for not obtaining EC, CTE & CCA Closure yet not revoked.	CTE obtained	---
5	M/s Somnath Hydrated & Chemicals Ind.	Village: Kherali Taluka: Veraval, Dist Gir Somnath,	15.1 352	389 72	Closure Directions issued dated 28/06/12 Process in LGL-EPA- JNG-342 Letter issued to the Collector to seal the plant and machinery of the unit dated 26/06/2012 Closure yet not revoked.	CTE obtaine d CCA not obtained.	---
6	M/s Noormahmad Kalubhai Patani	Village: Kherali, Taluka: Veraval, Dist. Gir Somnath.	4.25. 93	136 96	Closure Direction issued dated 15/03/12 Closure yet not revoked.	CTE obtained CCA Rejected	---
7	M/s Vikram chemical Co. Limestone Mine	S. No: 110/p Village: Damasa, Taluka: Una, Dist. Gir Somnath	--	392 01	Closure Direction issued dated 05/07/17 for not obtaining EC, CTE & CCA. Closure yet not revoked not revoked.	CTE & CCA not obtained	---
8	M/s Lime stone mines of Dhirjalel Panchanhai Vachhanr	S.No:49/p Village: Undari, Taluka: Una, Dist. Gir Somnath	4.0	413 29	Issued Closure Directions dated14/08/1 7 for not obtaining EC. Closure yet	CCA Expired on 18/12/2 018 and Applied for CCA renewal on	Legal Case filed dated 30/10/18

					not revoked.	13/03/2019	
9	M/s Somnath Hydrated Chemicals	Village: Zadka, Taluka: Malia, Dist. Junagadh	--	379 97	Closure Directions issued dated 25/01/2012 for not obtaining EC, CTE & CCA. Letter issued to the Collector to seal the plant and machinery of the unit dated 27/02/2013 Closure yet not revoked	CTE & CCA not obtained	
10	M/s Dinesh Kumar & Co. Limestone Mine	Village: Khorasa, Taluka: Malia, Dist. Junagadh	--	--		CTE & CCA not obtained	Legal case filed in Malia Court on 21/02/2019
11	M/s Lime Stone Mine Of Rajshihai P. Jotava	S.No:29/p Village: Khorasa, Taluka: Malia, Dist. Junagadh	4.0	384 01		CTE Rejected	Legal case filed in Malia Court Hon'ble Court imposed fine of total Rs. 10,000/-
12	M/s GHCL Ltd. Limestone Mine	S. No: 408/6/p Village: Gorakhmadhi, Taluka: Sutrapada Dist. Gir Somnath	3.19.70	260 93		CCA renewal rejected	Legal case filed on 06/02/19
13	M/s GHCL Ltd. Limestone Mine	S. No: 81/p Village: Kodadra, Taluka: Veraval, Dist. Gir Somnath	4.7	123 79	Closure Directions issued dated 09/09/16 for not obtaining EC&CCA renewal Revocation Granted dated 13/10/16 with specific condition to obtain EC and CCA. As per earlier NGT order unit has applied for EC before 31/03/2016.	CCA renewal rejected	Legal case filed on 30/01/19
14	M/s S.J Trivedi Limestone Mine	S.No: 123 Village: Dari, Taluka: Veraval, Dist. Gir Somnath,	2.42.36	263 78	Closure Directions issued dated 23/06/14 Letter issued The Collector to seal the plant and machinery of the unit dated 23/06/14 Closure yet not revoked.	CTE & CCA rejected	Legal Case filed dated 18/05/17

7. On the next date of hearing i.e. 01.05.2019, following direction was issued by this Tribunal:-

"Considering this position, we are of the view that the further action is required to be taken by the concerned on the same principle as passed in a batch of cases, one of them being O.A. No. 110(THC)/2012, Threat to life arising out of coal mining in south garo hills district Vs. State of Meghalaya & Ors., that involved similar factual positions as in the present case. We accordingly direct that damages on account of (i) Net Present Value (NPV) of the ecological services forgone forever, (ii) cost of damage to environment and pristine ecology; (iii) cost of mitigation and restitution of the environment and (iv)

deterrent environmental compensation distinct from the earlier three heads, be assessed and a report submitted with regard to assessment made before the next date by e-mail at [ngt.filing@gmail.com](mailto:ngt.filing@gmail.com)."

**8.** In compliance of the above order, a report has been submitted by GPCB in July 2019 as follows:-

"The Committee inspected all the 14 mine leases & its surrounding area. Details regarding date of commencement of mining, yearly production was collected from Office of District Geologist. Other information such as, method of mining, mode of mineral transport and transport route, manpower details, etc. was collected from mine owners.

**1.** Limestone Mine of M/s. Goplasinh Himatsinh Chauhan

This is an existing Limestone Mine located in 2.0 Ha mine lease area. During inspection, mining activity was observed to be stopped. No mining machinery was observed at site. Existing mining was observed to be carried out up to about 15 m depth in the work out area. Water is accumulated in the Mine pit from which one water sample is collected. No any river, school, village habitation etc are located in 500 m radius of this mine. Mine is surrounded from three sides by agriculture land and one side by village road. Village Ghusiya is around 2 km away from mine. Hiran-2 Dam is around 2.5 km away from the mine. One water sample is collected from bore well of Ashokbhai Hamirbhai Chandra, village: Ghusiya, Talala, Gir Somnath, located adjacent to the mine lease.

**Quarry Pit Water Quality Analysis:** The physico-chemical characteristics of quarry pit water sample collected are presented in Annexure 1 and are compared with the IS-10500 standards and most of the parameters are found within limit as per IS:10500. Thus, the water quality was observed to be good as per IS:10500 standards but primary treatment is suggested before using the water for potable purpose.

**Ground Water Quality Analysis:** The physico-chemical characteristics of groundwater sample collected are presented in Annexure 1 and are compared with the IS-10500 standards and most of the parameters are found within limit as per IS:10500. Overall, the ground water quality was observed to be good for drinking and domestic use as per IS:10500 standards.

**2.** Limestone Mine of M/s. Vajesinh Dansinh Mori

This is an existing Limestone Mine located in 2.0 Ha lease area. During inspection, mine was not in operation. No any machinery was observed at site. Average depth of the mine pit is about 1.5 to 2.0 m in the work out area. No any river, school, residential area etc. are there in 500 m radius of this mine. Mine is surrounded from two sides by agriculture land and two sides by other mine leases. Village Jasadhar is around 1.5 km away from mine. The mine lease area is located in proposed eco-sensitive zone around Gir Sanctuary. However, no vegetation is observed in the mine lease area. Surrounding area comprised of horticulture plantation and agriculture land. As such, no impact is observed on the pristine ecology of the area.

**3.** Limestone Mines of M/s. I.L.J. Trivedi & Co.

This is an existing Limestone Mine located in 7.69 Ha lease area. During inspection, mining activity was observed stopped. Existing mine pit is having about 0.5 to 1.0 m depth in the work out area. No mining machinery was observed at site. No any river, school, residential area etc are there in 500 m radius of this mine. Mine is surrounded from four sides by agriculture land. Village Uмба is around 0.6 km away from mine.

#### **4. Limestone Mine of M/s. Aher Bhagwan Bhimsinh**

This is an existing Limestone Mine with lease area of 6.47 Ha. During inspection, mining activity was observed to be stopped. No mining machinery was observed at site. A mine pit of about 1.5 m average depth was observed in work out area of the mine. No any river, school, village habitation are located in 500 m radius of this mine. Few houses are constructed in agriculture land near the mine lease area. Mine is surrounded from three sides by agriculture land and one side by village road. Village Ajotha is around 2.0 km away from mine.

**5. Limestone mine of M/s. Somnath Hydrated Lime & Chemicals Industries Pvt. Ltd.** This is an existing Limestone Mine located in 15.1352 Ha lease area. During inspection, mining activity was observed to be stopped. Average depth of mine working was observed to be about 1.5 to 2.0 m in the work out area. No mining machinery was observed at site. Babool plantation was carried on the lease boundary facing village road. No any river, school, residential area are observed in 500 m radius of this mine. Mine is surrounded from three sides by agriculture land and one side by barren land. One water sample is collected from hand pump of Tapubhai Rajabhai Chandpa, village: Umrāla, Veraval, Gir Somnath.

**Water Quality Analysis:** The physico-chemical characteristics of groundwater sample collected are presented in Annexure 1 and are compared with the IS-10500 standards. The pH of the water sample collected was observed to be 7.53 which is within Acceptable limits. Turbidity is 25 NTU, which is exceeding the permissible limit. Total suspended solids are 18 mg/l. TDS is observed as 650mg/l, which is within permissible limit. The total hardness was observed as 387 mg/l, which is within permissible limit. Calcium was observed within permissible limits. Chlorides, Nitrates Magnesium and Sulphates were also observed to be within acceptable limits. Heavy metals were not detected in the ground water. Overall, the ground water quality was observed to be good for drinking and domestic use 2S per IS: 10500 standards but primary treatment is suggested for settling of suspended solids before used for drinking purposes.

#### **6. Limestone Mine of M/s. Noormahamed Kalubhai Patani**

This is an existing Limestone Mine with lease area of 4.2593 Ha. During inspection, mining activity was observed to be stopped. A small quarry pit with average depth of about 0.5 m was observed in work out area. No mining machinery is observed at site. No any river, school, residential area etc. are located in 500 m radius of this mine. Mine is surrounded from two sides by agriculture land and two sides by barren land. Village Kherali is around 1.0 km away from mine.

#### **7. Limestone mine of M/s. Vikram Chemical Company**

This is an existing Limestone Mine spread in 2.0 Ha lease area. During inspection, mining activity was observed to be stopped. Average depth of mining is about 2.5m in the work out area. No any river, school, village habitation etc. are observed in 500 m radius of this mine. Few houses are located adjacent to the mine lease area. Mine is surrounded from two sides by agriculture land and two sides by barren land. Village Damasa is around 0.7 km away from mine

**8. Limestone Mine of M/s. Dhirjalal Panchabhai Vachhani**

This is an existing Limestone Mine having 4.0 Ha lease area. During inspection, mining activity was observed to be stopped. Average depth of mine pit was about 2.0 to 2.5m in work out area. No mining machinery is observed at site. No any river, school, residential area etc. are there in 500 m radius of this mine. Mine is surrounded from three sides by agriculture land and one side by barren land. Village Undri is located at around 1.0 km away from mine.

**9. Limestone mine of M/s. Somnath Hydrated Chemicals**

This is an existing Limestone Mine spread over 10.0 Ha lease area located in Meghal river bed. During inspection, mining activity was observed to be stopped. No mining machinery is observed at site. Nearest human habitation is around 200 meter away from this mine. Mine lease area is surrounded from four sides by barren land. Village Zadka is around 0.3 km away from mine.

**10. Limestone Mine of M/s. Dineshkumar & Company**

This is an existing Limestone Mine spread over 5.0 Ha lease area. During inspection, mining activity was observed to be stopped. No mining machinery is observed at site. Nearest human habitation is around 200 meter away from this mine. Mine is surrounded from one side by agriculture land and three sides by barren land. Village Khorasa is around 0.5 km away from mine.

**11. Limestone Mine of M/s. Rajsi Rana Jotava**

This is an existing Limestone Mine spread over 4.0 Ha lease area. During inspection, mining activity was observed to be stopped. No mining machinery is observed at site. Nearest human habitation is around 200 meter away from this mine. Mine is surrounded from one side by agriculture land and three sides by barren land. Village Khorasa is around 0.5 km away from mine.

**12. Limestone Mine of M/s. GHCL**

This is an existing Limestone Mine spread over 8.73 Ha lease area. During inspection, mining activity was observed to be stopped. Average depth of the mine pit was observed as 3.0 m. No mining machinery is observed at site. Mining area is properly fenced and some plantation has been carried out on the backfilled area in the mine lease. No any river, school, residential area etc. are there in 500 m radius of this mine. Mine is surrounded from three sides by agriculture land and one side by internal road. Village Gorakhmadhi is around 1.5 km away from mine. One water sample is collected from open well of Bhimabhai Dayabhai Gavadiya, village: Gorakhmadhi, Sutrapada, Gir Somnath.

Water Quality Analysis: The physico-chemical characteristics of groundwater

sample collected are presented in Annexure 1 and are compared with the IS-10500 standards and most of the parameters are found within limit as per IS:10500. Overall, the ground water quality was observed to be good for drinking and domestic use as per IS:10500 standards.

#### **13. Limestone Mine of M/s. GHCL**

This is an existing Limestone Mine in 4.7 Ha lease area. During inspection, mining activity was observed to be stopped. Average depth of the mine was observed as 2.0 to 2.5 m. No mining machinery is observed at site. Fencing has been carried out around the mine pit. No any river, school, residential area etc. are there in 500 m radius of this mine. Mine is surrounded from two sides by agriculture land and two sides by barren land. Village Kodidra is around 1.0 km away from mine.

#### **14. Limestone mine of M/s. S.J. Trivedi**

This is an existing Limestone Mine spread over 9.35 Ha lease area. During inspection, mining activity is observed to be stopped. No mining machinery is observed at site. No any river, school, residential area etc are there in 500 m radius of this mine. Mine is surrounded from one side by agriculture land and three sides by barren land. Village Veraval is around 3.0 km away from mine. Arabian Sea is located at about 0.47 km from the lease area. Hence, CRZ clearance may be required for this mine.

All the quarries are mostly located in barren land/areas devoid of major vegetation and are located away from ecological sensitive areas except one i.e. Limestone Mine of M/s. Vajesinh Dansinh Mori, which is located in proposed eco-sensitive zone around Gir Sanctuary.

All the quarries have been observed to be worked by manual/semi-mechanised opencast method of mining without blasting and with the use of rock breaker, excavator, and/or manual tools such as pick axe, crow bar, etc. Sizing of the big boulders was carried out manually by hammers.

Limestone is available as outcrop or just below a small cover of top soil/waste rock. Thickness of limestone deposit in the area is varying from 3 - 5 m. All the quarries have been observed to be excavated for a shallow depth except for mine lease mentioned in Sr. No. 1 in above table i.e. Limestone mine of M/s. Gopalsinh Himmatsinh Chauhan, where a depth of about 15 m have been observed with accumulation water in mine pit.

No groundwater interception was observed in any quarry pit. In all the leases, existing quarry pits have been observed of varying sizes and depths. All the 14 mines have been observed to be stopped. No major overburden was observed as the limestone is outcropping/located close to surface in the lease area. Few over burden/waste rock heaps were observed in some leases during inspection.

During the field visit, variations were observed by the committee in the quantity of mined out mineral (considering the volume of mine pits) as against production details submitted by the office of the District Geology. This may be due to reasons like unevenness in topography/geomorphology considered for quantification or inclusion of minerals mined out at other locations being included in the mines visited by the committee etc. and the same could not be

verified because of mining activities already completed.

During the inspection, the committee consulted people residing in the vicinity of the mine leases. These people are using ground water (through bore well and open well) for drinking, domestic use and for agriculture activities. No complaint has been received for ground water contamination due to mining activities. Wherever required, water samples from mine pits (wherever available) and from ground water were collected to identify if any ground water contamination is caused due to operation of these mines. Water samples from the following locations were collected:

- (1) Ground water from Bore well of Ashokbhai Hamirbha Chandra, Village: Ghusiya, Talala, Gir Somnath.
- (2) Pit water from mine pit of Limestone mine of Gopalsinh Himatsinh Chauhan, Village: Ghusiya, Talala, Gir Somnath.
- (3) Ground water from Hand pump of Tapubhai Rajabhai Chandpa, Village: Umralla, Veraval, Gir Somanth.
- (4) Ground water from Open well of Bhimabhai Dayabhai Gavadiya, Village: Gorakhmadhi, Sutrapada, Gir Somnath.

The physico-chemical characteristics of quarry pit and groundwater sample collected are presented in Annexure 1 and are compared with the IS-10500 standards. From the water quality analysis reports, it is observed that all the parameters analysed were within permissible limits for drinking use. There is no contamination observed due to mining activities. It is suggested that the water be used for drinking purpose after primary treatment. The water can be directly used for all other domestic and agriculture purposes.

Most of the population is observed dependent on ground water for drinking, domestic use and for agriculture activities. During the field investigation, it was also observed that the area is highly impervious and the rainwater flows along the slope and directly joins the seasonal streams. Percolation rate to the ground is very low. Limestone exposures have also been observed in the nearby agriculture lands, roads, etc. No issues were observed with the presence of limestone in the agriculture or any other activities to the residents of the area.

During the inspection of all the above 14 mine leases, surrounding areas and along transport routes, no visible signs of any damage on vegetation, crops and horticulture plantation was observed. Looking at the method and extent of mining in the past and the distance of nearest village habitation, no damage has been observed on the village habitation. There was no ecologically sensitive, archaeological/historical/religious important places observed within 500 m radius from the mine lease boundaries except one i.e. Limestone Mine of M/s. Vajesinh Dansinh Mori which exists in eco sensitive zone of Gir Sanctuary.

All the mine leases are located in barren/waste land and no significant natural vegetation/tree cover was observed in or around the mine leases. The mining leases are mostly surrounded by agriculture lands. As such, there were no ecological services foregone forever. Also, it was observed that no significant damage to the environment or pristine ecology has been observed due to these 14 limestone mines.

No significant damage has been observed to the ecological services & pristine ecology due to these limestone quarries.

### 1.3 METHODOLOGY ADOPTED FOR DAMAGE COST ASSESSMENT

In order to carry out damage assessment on the account of (i) ecological services forgone forever (ii) cost of damage to environment and pristine ecology (iii) cost of mitigation and restitution of environment & (iv) deterrent environmental compensation distinct from earlier three heads, guidelines issued by CPCB, SEIAA-SEAC Gujarat, and Industries & Mines Department, Govt. of Gujarat were followed and damage assessment costs were determined. The guidelines are summarized in following paragraphs:

#### 1.3.1 Methodology for Assessing Environmental Compensation, CPCB

(Ref: Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund, attached as Annexure 2)

As per the directions received from Hon'ble NGT, CPCB formed a committee for development of guidelines for assessment of Environmental Compensation. The committee discussed that environmental compensation should be based on "Polluter Pay Principle". The Committee decided to list the instances for taking cognizance of cases fit for violation and levy environmental compensation.

Cases considered for levying Environmental Compensation (EC):

- a. Discharges in violation of consent conditions, mainly prescribed standards/consent limits.
- b. Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
- c. Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission/Effluent Monitoring systems.
- d. Accidental discharges lasting for short durations resulting into damage to the environment.
- e. Intentional discharges to the environment on land, water and air resulting into acute injury or damage to the environment.
- f. Injection of treated/partially treated/untreated effluents to ground water.

In the instances as mentioned at a, b and c above, Pollution Index may be used as a basis to levy the Environmental Compensation. CPCB has published guidelines for categorization of industries into Red, Orange, Green and White based on concept of Pollution Index (PI). The Pollution Index is arrived after considering quantity & quality of emissions/effluents generated, types of hazardous wastes generated and consumption of resources. Pollution Index of an industrial sector is a numerical number in the range of 0 to 100 and can be represented as follows:

PI = f (Water Pollution Score, Air Pollution Score & HW Generation Score)

Pollution Index is a number from 0 to 100 and increasing value of PI denotes the increasing degree of pollution hazard from the industrial sector.

After considering various factors including the policy implementation issues, Committee has come up with following formula for levying the Environmental Compensation in instances as mentioned at a, b and c including non-compliance of the environmental standards/violation of directions.

The Environmental Compensation shall be based on the following formula:

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC is Environmental Compensation in ' '

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (' ') for EC

S = Factor for scale of operation

LF = Location factor

The formula incorporates the anticipated severity of environmental pollution in terms of Pollution Index, duration of violation in terms of number of days, scale of operation in terms of micro & small/medium/large industry and location in terms of proximity to the large habitations.

Note:

a) The industrial sectors have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively. N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.

b) R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.

c) S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.

d) LF, could be based on population of the city/town and location of

the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

Table 1.1: Location Factor Values

Sr. No.	Population* (Million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

\*Population of the city/town as per the latest Census of India

#LF will be 1.0 in case unit is located >10km from municipal boundary

LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. However, for critically Polluted Areas, LF may be explored in future.

e) In any case, minimum Environmental Compensation shall be Rs. 5000/day.

f) In order to include deterrent effect for repeated violations, Environmental Compensation may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.

g) If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.

h) Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

In other instances i.e. d, e and f, the environmental compensation may contain two parts - one requires providing immediate relief and other long-term measures such as remediation. In all these cases, detailed investigations are required from expert institutions/organizations based on which environmental compensation will be decided. CPCB shall list the expert institutions for this purpose. In such cases, comprehensive plan for remediation of environmental pollution may be prepared and executed under the supervision of a committee with representatives of SPCB, CPCB and expert institutions/organizations.

### 1.3.2 Indicative Guidelines for Assessment of Ecological Damage, SEIAA/SEAC Gujarat

(Ref SEAC-SE1AA-MoM attached as Annexure 3 A & B)

As per notification vide S.O. 804(E) : MANU/ENVT/0040/2017 dated 14.03.2017 it has been notified that the violation cases/non-compliance will

involve the assessment of ecological damage, remediation plan and natural and community resource augmentation plan. An Indicative guideline for Assessment of Ecological Damage is prescribed by SEAC-SEIAA and is assessed as below:

Assessment of ecological damage and remediation plan will address the following attributes:

EMP Sub-Components									
AP	WP	SHW	TP	NV	GB	HG	RH/OH S	SC	CER
Air Pollution	Water Pollution	Solid & hazardous waste	Transportation	Noise & Vibrations	Greenbelt	Hydro-geology	Risk Hazard /Occupational Health &	Soil Conservation	Corporate Environmental Responsibility
							Safety		

Salient Features of the Project considered are as under:

- Type of Mineral
- Lease Area (In Sq. Meter)
- Quantity of Mineral in MT
- No. of working days
- Price of Mineral in Rupees per MT
- Total cost of Mineral in Rs.

Attributes	Scope of Environmental benefits earned	COST	
		Calculations	Total cost (Rs.)
AP	Water requirement per day for sprinkling of water to curb fugitive emission in KL (0.1 Liters per sq.m.) Cost of 1 KL water for sprinkling in Rupees		
WP	Major water pollution envisioned: 1. Ground water table intersection if any. 2. Run off water outside the lease and estimated damage caused considering period of violation in Rs. Per day		
SHW	When there is an overburden, Quantity of Over Burden in MT * 10 Rs. Per MT O.B. handling charges * 2 (Lifting and shifting frequency)		
	When there is no Overburden, only mining waste handling charges are to be considered. Mine waste in MT * 10 Rs Per MT of mineral waste handling *2 (Lifting and shifting frequency)		
NV	Existence of House properties/ env. Entities within 500 meter of blasting site and if damaged due to blasting. • Nos of such properties/ env. Entities. • Built up area of each property/ env. Entities • Cost of reconstruction of properties (total) considering current construction cost per Sq. Meter.		
GB	Green Belt developed in 10% of leased area Green belt area in M <sup>2</sup> . Presume 1 plant per 4 m <sup>2</sup> is to be planted. Cost of single plant: Total cost of green belt		
HG	No major HG issues envisioned, considering no ground water interception. If intersection of ground water is made, cost of one time remediation plan after estimating extent of contamination of ground water		
RH/OHS	Health Expenditure: Nos of workers* Rs 1000		
	PPE expenditure No of workers*Rs 300		
	Total expenditure for health and safety for workers* Nos of year		
CER	10% of Mineral (Sale) Value		
SC	Cost of preservation, Handling and reuse of Topsoil : (Cost of Soil preservation is assumed to be Rs 10,000 per 1 Hectare)		
Total Assessed Env. Damage Cost in Rupees			
Environmental Damage Cost in % of Mineral Value	(Total Assessed Env. Damage Cost in Rupees/ Value of Mineral in Rs.)*100		

**Note:**

For the aforementioned assessment, following basis are taken into consideration:

1. Quantity of water sprinkling for curbing fugitive emission is assumed as 0.1 Liters per sq.m.
2. Cost of water availability is to be considered on prevailing local market

3. Over burden removal and its shifting are considered as two separate activities.

4 . For damage of house, entire construction of house considering built up area and local prevailing rate of construction are to be considered.

5. For greenbelt 1 plant is assumed in 4 sq. meter area and 10% of lease area is proposed to be developed as green belt.

6. It is assumed that One Hectare mine requires 2 workers.

7 . Cost of health check up per worker is Rs. 1000/- or prevailing local marker rate.

8 . Cost of PPE per worker is Rs. 300/- or prevailing local marker rate.

9. Cost of preservation, handling and restoration for 1 Ha lease is Rs. 10,000/-.

**1.3.3** Resolution passed by Industries & Mines Department, Govt. of Gujarat (Ref Resolution No. NGT/102017/1750/CHH dated 10.09.2018 and amendment in the said resolution vide Resolution No. NGT/102017/1750/CHH dated 29.11.2018 regarding imposing Environmental Compensation in cases of illegal mining, transportation and storage for causing damage to the environment, attached as Annexure 4)

In the matter of National Green Tribunal Bar Association Vs. Virender Singh (State of Gujarat), an interim action taken report on behalf of State of Gujarat was submitted by Industries & Mines Department, Govt. of Gujarat in compliance of order dated 17.09.2018 passed by the Hon'ble Tribunal in O.A. No. 360 of 2015.

The application preferred by one of the applicants dealing with illegal mining of Mineral Ordinary sand in the State of Gujarat and its adverse effect on the environment was pending final consideration before this Hon'ble Tribunal. The Hon'ble Tribunal vide it's order dated 13.07.2018 was placed to issue the following directions:-

"4. We are of the view that in view of the increasing illegal mining demonstrated by the affidavit filed by the State itself the State may also take further preventive steps on precautionary principle and the action taken by the State in determining compounding fee should be based not merely on the cost of illegally mined material but also to restore damage to environment on the principle of Polluter Pays. The amount representing damage to the environment may be separately accounted for and used for restoration of damage to the environment by taking appropriate steps"

In compliance of the above direction, the Industries and Mines Department, State of Gujarat, vide Government Resolution No. NGT/102017/1750/CHH dated 10.09.2018 decided to impose, in addition to the compounding fees, Environmental Compensation in the cases of Illegal mining, storage and

Transportation from the offenders.

As per the resolution mentioned above, the computation of Environmental Compensation was given as below:

"4. For the Minor Minerals as categorized under Schedule III of the Gujarat Minor Mineral Concession Rules, 2017 (GMMCR, 2017) and for Minerals other than Minor Minerals as per the Mines and Minerals (Development and Regulation) Act, 1957, the Environmental Compensation payable shall be computed as under:

- a. For Part - A - I Minerals under GMMCR, 2017 = 35% of Value of Mineral
- b. For Part - A - II Minerals under GMMCR, 2017 = 20% of Value of Mineral
- c. For Part - B Minerals under GMMCR, 2017 = 15% of Value of Mineral
- d. Minerals other than Minor Minerals = 15% of Value of Mineral

Value of Mineral = Price per metric tons of respective Mineral (Multiplied by) Quantity of Mineral illegally Mined, Transported & Stored)

Price of Mineral:

- Minor Mineral: The last available price per metric tons of such mineral, published by the Government of Gujarat as prescribed under GMMCR, 2017
- Mineral Other than Minor Mineral: The last available average price per metric tons of such mineral as published by the Indian Bureau of Mines for the State of Gujarat.

Explanation: If for any mineral or mineral grade, the average sale price in respect of the State of Gujarat for any month is not published by Indian Bureau of Mines, the all India average sale price published by Indian Bureau of Mines for such mineral or mineral grade for that month shall be used.

Provided that the Authorized Officer, empowered to impose and collect penalty/compounding fees under the Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 shall assess the quantity of mineral illegally mined, transported and stored which will be reckoned for computation of the Value of Mineral."

The Hon'ble Tribunal while appreciating the scheme framed by the State of Gujarat issued following directions vide its order dated 17.09.2018-

"5. We do not see any difficulty in approving the proposed action but the same cannot take care of all situations if it is found that the damage caused and cost of restoration of ecology to be incurred is

higher. The same must be recovered fully on the principle of 'Polluter Pays. This apart, the cost of damages must include net present value of future eco system services foregone."

Pursuant to the above direction issued by this Hon'ble Tribunal, a meeting under the Chairmanship of the Commissioner of Geology and mining was held on 19.10.2018 to recommend the necessary steps to be taken in order to comply with the directions issued by the Hon'ble Tribunal. Taking into consideration the recommendations made by the committee, the Industries and Mines Department, Govt. of Gujarat, vide its Government.

Resolution No. NGT/102017/1750/CHH dated 29.11.2018 has amended the scheme dated 10.09.2018 by incorporating following changes:

(i) The Environmental Compensation have been increased from

"a. For Part - A - I Minerals under GMMCR, 2017 = 35% of Value of Mineral

b. For Part - A - II Minerals under GMMCR, 2017 = 20% of Value of Mineral

c. For Part - B Minerals under GMMCR, 2017 = 15% of Value of Mineral

d. Minerals other than Minor Minerals = 15% of Value of Mineral"

to

"a. For Part - A - I Minerals under GMMCR, 2017 = 41% of Value of Mineral

b. For Part - A - II Minerals under GMMCR, 2017 = 26% of Value of Mineral

c. For Part - B Minerals under GMMCR, 2017 = 21% of Value of Mineral

d. Minerals other than Minor Minerals = 21% of Value of Mineral"

(ii) Following further provisos have been inserted in Para 4:

"Provided further that, all situations, wherein the authorities are of the view that the damage caused and the cost of restoration of ecology to be incurred is higher, shall be referred to the Gujarat Pollution Control Board for assessment of actual damage caused to the Ecology, net present value of future eco system services foregone and the Cost of Restoration.

Provided further that, if after assessment by GPCB the actual damage caused and the Cost of restoration of Ecology is found to be higher than the abovementioned Environmental

Compensation, the same shall be recovered fully on the principle of 'Polluter Pays' from the offender by the authorities empowered under Para - (2)."

### 1.3.4 Factors Considered for Calculations

For estimation of damage cost, some factors have to be considered based on guidelines issued under various Acts, Rules, orders of Hon'ble Courts, Hon'ble NGT and on the basis of general observations.

• **Period under violation:**

- For mines having lease area more >5 Ha, violation is considered from the year, in which the production is exceeded to the production achieved in the year 1993-94 as per directions given in Hon'ble Supreme court Common cause Judgment dated 2.08.2017.
- For mines having lease area <5 Ha, violation is considered from year 2016 w.r.t. the Clause 22(3) of the Hon'ble NGT order vide Original application No. 34/2016 dated 4.05.2016 (Annexure 5). Since, in the Hon'ble Supreme court order in the case of Deepak Kumar Vs. State of Haryana dated 27.02.2012 and subsequent MoEFCC OM dated 18.05.2012, all minor mineral quarry owners were required to obtain Environmental clearance. However, closure of mines not having environmental clearance was only ordered vide Hon'ble NGT order dated 4.05.2016. Hence, the year 2016 is considered for violation.
- Sale value of Mineral for different year have been obtained from Geology & Mines Department, Govt. of Gujarat. The sale value of limestone for the year 1994-1999 was not available, so the sale value of year 1999 was used for calculation of mineral sale price for the years 1994-1999.

### 1.3.5 SAMPLE CALCULATION FOR DAMAGE ASSESMENT

For assessment of Damage cost based on CPCB guidelines, the factors considered/calculations made are explained in Table 3.1 with sample calculation:

**TABLE 3.1: SAMPLE CALCULATIONS AS PER CPCB GUIDELINES  
(GOPALSINH HIMMATSINH CHAUHAN CASE)**

Sr. No.	Basic information			CPCB Guidelines for Penalty/Compensation							
	Lessee	Lease area (Ha)	Production (considered under violation)	PI	N	R	S	LP	EC		
I	Gopalsinh Himmatsinh Chauhan	2.00	Year	Production							
			2016-17	66588.91	60	500	350	0.5	1	3750000	
			2017-18	23372.13							
			2018-19	0							
			39961.04						3750000		

As per CPCB guideline on methodology for assessing penalty & Environmental compensation and action plan to Utilize the fund (Guideline is attached herewith). The penalty shall be based on the

following formula:  $\text{Penalty} = \text{PI} \times \text{N} \times \text{R} \times \text{S} \times \text{LF}$

Where,

Penalty in rupees

PI = Pollution index of industrial sector

PI factor is considered as 60 because for these fourteen mines, no significant Water

Pollution and Hazardous Pollution is observed

N = Number of days of violation took place

Number of days is considered as 250 mining days/year considering holidays and

monsoon season

R = A factor in Rupees for penalty

All cases are pertaining to EC violations, factor considered is 250

S = Factor for scale of operation

Considering all the mining projects under small category, factor considered is 0.5

LF = Location factor

LF Considered is 1.0, as population is +-less than 1 million

For assessment of Damage cost based on SEIAA-SEAC Gujarat guidelines, the factors considered/calculations made are explained in Table 3 with sample calculation:

TABLE 3.2: SAMPLE CALCULATIONS AS PER SEAC-SEIAA, GUJARAT GUIDELINES

Attributes	Scope of Environmental benefits earned	DAMAGE COST	
		Sample Calculations (Example for Gopalsinh Himmatsinh Chauhan case)	Total cost (Rs.)
AP	Water requirement per day for sprinkling of water to curb fugitive emission in KL (0.1 Liters per sq.m.)	Lease area: 2.00 Ha Water requirement: 0.1 Litre/sq.m. area/Day Cost of water: Rs. 100/KL No. of days: 250 days per year Total cost = $20000 \times 0.1/1000 \times 100 \times 250 = 50,000$	Rs. 50,000 Per year
Transport	Cost of water sprinkling on kutcha road outside mine lease upto nearest pakka major road water to curb fugitive emission in KL (0.1 Liters per sq.m.)	Road length: 0.00 m Water requirement: 0.1 Litre/sq.m. area Cost of water: Rs. 100/KL No. of days: 250 days per year Total cost = $0 \times 0.1/1000 \times 100 \times 250 = 0$	Rs. 0
WP	Major water pollution envisioned: 1. Ground water table intersection if any. 2. Run off water outside the lease and estimated damage caused considering period of violation in Rs. Per day	No water pollution issues envisioned as limestone is inert material and ground water intersection was not observed. Hence, damage pertaining to this aspect is considered as zero.	Rs. 0
SHW	When there is an overburden, Quantity of Over Burden in MT * 10 Rs. Per MTO.B. handling charges * 2 (Lifting and shifting frequency)	Average thickness of overburden/ waste rock is observed to be about 1 feet i.e. 0.3 m. & bulk density of OB/Waste rock is considered as 2 T/m <sup>3</sup> . Cost of reclamation = Rs. 10/ MT x 2 Cost of reclamation = $2.00 \times 10000 \times 0.3 \times 2 \times 10 \times 2 = 240000$	Rs. 2,40,000/-
NV	Existence of House properties/ env. Entities within 500 meter of blasting site and if damaged due to blasting.	No blasting is being carried out in the mines. No damage on any private or public properties have been observed or no such complaint has been received. Hence, cost is considered as zero.	Rs. 0

	<ul style="list-style-type: none"> <li>• Nos of such properties/ env. Entities.</li> <li>• Built up area of each property/ env. Entities</li> <li>• Cost of reconstruction of properties (total) considering current construction cost per Sq. Meter.</li> </ul>		
GB	<p>Green Belt developed in 10% of leased area Green belt area in m<sup>2</sup>. Presume 1 plant per 4 m<sup>2</sup> is to be planted. Cost of single plant: Total cost of green belt</p>	<p>Lease area: 2.00 Ha            No. of saplings = 1 sapling / 4 m<sup>2</sup>            Cost of Sapling including plantation cost:            Rs. 100/Plant            Salary of gardener: Rs. 5000 / month            Nurturing is required for 3 years only.            Watering cost: 1 lit/plant/day x Rs.            100/KL            No. of watering days = 250            Total cost = (20000 x 0.1/4 x 100) =            50000 Gardener salary = 5000 x 12 =            60000 Maintenance cost = 500 x 1/1000            x 100 x 250 = 12500</p>	<p>Plantation cost = Rs. 50000            Maintenance cost = Rs. 72500 / year</p>
HG	<p>No major HG issues envisioned, considering no ground water interception if intersection of ground water is made, cost of one time remediation plan after estimating extent of contamination of ground water</p>	<p>No ground water intersection was observed. Hence, no damage cost is calculated.</p>	Rs. 0
RH/0 HS	<p>Health Expenditure:            Nos of workers* Rs 1000 PPE expenditure No of workers*Rs 300            Total expenditure</p>	<p>Average No. of workers are calculated based on annual production, 250 days working, average output per man per shift is considered as 5, and considering 2 supervisory manpower.            Total expenditure = (55 x 1000) + (55 x 300) = 71500 for the first year</p>	Rs. 71,500

	for health and safety for workers* Nos of year		
CSR	10% of Mineral Value	Since the CER guidelines are applicable since 1.05.2018, the CSR guidelines as per Companies act are considered. Hence, 2% of the sale price of mineral is considered for estimating CER cost; CSR = 28787531 x 2 / 100 = 5,75,751	Rs. 5,75,751 (different for different years)
SC	Cost of preservation, Handling and reuse of Top soil : (Cost of Soil preservation is assumed to be Rs 10,000 per 1 Hectare)	Lease area: 2.00 Ha Soil conservation cost = 10000 rupees/hector x 2 = Rs. 20000	Rs. 20,000
	Total		50,000*2+ 2,40,000 +50,000 +72,500*3 +(71,500+ 27,300) + 5,75,751 +20,000= 13,02,051

\*AP-Air Pollution, WP-Water Pollution, SHW-Solid Hazardous Waste, GB-Green Belt, HG-Hydro Geology, RH-Risk Hazard, OHS-Occupational Health and Safety, SC-Soil Contamination.

For assessment of Damage cost based on GR of Ind & Mine Department, Gujarat guidelines, the factors considered/calculations made are explained in Table 3.3 with sample calculation:

**TABLE 3.3: SAMPLE CALCULATIONS AS PER GR of IND & MINE DEPARTMENT, GUJARAT (EXAMPLE FOR GOPALSINH HIMMATSINH CHAUHAN CASE)**

Sr. No.	Basic information			Assessment as per GR of IMD, GoG			
	Lessee	Lease area (Ha)	Production (considered under violation)	Declared Mineral Sale value by CGM/IBM	Total sale value of mineral	Damage Assessment cost*	
1	Gopalsinh Himatsinh Chauhan		Year Production				
		2.00	2016-17	66588.9	320	2130845	
		2.00	2017-18	23372.1	320	7479080	
		2.00	2018-19	0	400	0	
			89961.04		28787531	6045382	

#### 1.4 DAMAGE COST ASSESSMENT

As per the directions issued by Hon'ble NGT, damage assessment on the account of (i) ecological services forgone forever (ii) cost of damage to environment and pristine ecology (iii) cost of mitigation and restitution of environment & (iv) deterrent environmental compensation distinct from earlier three heads, has been carried out with reference to the guidelines issued by CPCB, SEAC Gujarat & Industries & Mines Department, Govt. of Gujarat as mentioned in Para 1.3 above. The estimated damage cost and compensation

calculated by each of the three guidelines, as mentioned above, are summarized in the Table 4.

All the mine leases are located in barren/waste land and no significant natural vegetation/tree cover was observed in or around the mine leases. The mining leases are mostly surrounded by agriculture lands. As such, there were no ecological services foregone forever. Also, it was observed that no significant damage to the environment or pristine ecology has been occurred due to these 14 limestone mines.

Hence, no damage cost on the account of (i) ecological services forgone forever (ii) cost of damage to environment and pristine ecology, has been calculated. However, cost of mitigation and restitution of environment was estimated using the Industries & Mines Department, Government Of Gujarat Resolution and SEAC-SEIAA Gujarat guidelines. The deterrent environmental compensation was calculated using CPCB guidelines.

The individual project details and damage cost assessment for all the 14 mine leases are given in Annexure 6.

TABLE 4: SUMMARY OF DAMAGE COST ASSESSMENT

Sr. No.	Lessee & Location of Lease	Damage assessment cost as per GR of Industries and Mine Department of Govt. of Gujarat, (Rs.)	Damage Assessment cost as per guidelines of SEAC/SEIAA, Gujarat, (Rs.)	Environmental Compensation as per Guidelines of CPCB, (Rs.) (Deterrent Penalty Factor)	Total Damage Assessment Cost Levied Maximum of (A), (B) and (C) in Rs.
		(A)	(B)	(C)	
1.	M/s Gopalsinh Himnatsinh Chauhan, Survey No. 64 P, Village Ghushiya, Tahuka - Talala, Dist. - Gir Somnath	60,45,382	13,02,051	37,50,000	60,45,382/.
2.	M/s Vajesinh Dansinh Mori, Survey No. 152, Village Jasadhhar, Tahuka - Talala, Dist. - Gir Somnath	3,61,721	7,11,150	37,50,000	37,50,000/.
3.	M/s R. J. Trivedi & Co., Survey No. 65, 70, Village Umba, Tahuka - Veraval, Dist. - Gir Somnath	1,77,75,679	81,42,697	4,31,25,000	4,31,25,000/.
4.	M/s Aher Bhagwan Bhimsinh, Survey No. 389/1, Village Ajotha, Tahuka - Veraval, Dist. - Gir Somnath	2,46,86,172	77,39,414	3,75,00,000	3,75,00,000/.
5.	M/s Somnath Hydrated Lime & Chemicals Industries Pvt. Ltd., Survey No. 42/1, Village Kherali,	7,99,12,362	1,62,88,137	2,25,50,000	7,99,12,362/

	Tahuka - Veraval, Dist. - Gir Somnath				
6.	M/s Noor mahamad Kathubhai Patani, Survey No. 49, Village Kherali, Tahuka - Veraval, Dist. - Gir Somnath	1,26,31,063	26,31,840	56,25,000	1,26,31,063/
7.	M/s Vikram Chemical Company, Survey No. 110P, Village Damasa, Tahuka - Una, Dist. - Gir Somnath	1,25,866	5,99,012	18,75,000	18,75,000/
8.	M/s Dhirajal Panchabhai Vachhani, Survey No. 49 P, Village Undari, Tahuka - Una, Dist. - Gir Somnath	1,96,50,504	33,71,427	56,25,000	1,96,50,504/
9.	M/s Somnath Hydrated Chemicals, Meghal riverbed, at near Village Zadaka, Tahuka - Maliya, Dist. - Junagadh	8,69,60,838	1,69,73,085	3,75,00,000	8,69,60,838/
10.	M/s Dinesh Kumar & Company, Survey No. 2P, Village	1,15,74,733	27,03,856	56,25,000	1,15,74,733/

	Khorasa, Taluka - Maliya, Dist — Junagadh				
11.	M/s Rajsi Rana Jotava Limestone Mine, Survey No. 29 P, Village Khorasa, Taluka - Maliya, Dist — Junagadh	1,01,22,773	22,99,749	56,25,000	1,01,22,773/
12.	M/s GHCL Ltd., Survey No. 408/6P, Village Gorakhmadhi, Taluka - Sutrapada, Dist - Gir Somnath	2,25,30,544	98,64,494	4,50,00,000	4,50,00,000/
13.	M/s GHCL Ltd., Survey No. 81P, Village Kodidra, Taluka - Veraval, Dist. - Gir Somnath	26,04,574	16,52,630	56,25,000	56,25,000/
14.	M/s S. J. Trivedi Limestone Mine, Survey No. 123, Village Dari, Taluka - Veraval, Dist. — Gir Somnath	1,04,67,408	74,94,846	3,37,50000	3,37,50000

### 1.5 CONCLUSION:

- The scope of this Committee was to assess damages on the account of (i) ecological services forgone forever (ii) cost of damage to environment and pristine ecology (iii) cost of mitigation and restitution of environment & (iv) deterrent environmental compensation distinct from earlier three heads.
- The Committee made preliminary investigation through site visit & discussion with affected people to assess the environmental damage caused due to mining activity.
- It is the matter of mining of lime stone which is done through either manually or through surface miners & other mechanized means but without blasting in all cases. Due to this it is different from the coal & other mineral mining which is done with complex methodology.
- The area and depth of mining is relatively small. Average mining area in these cases is about 4 Hecter & Average Depth is about 3 meter.
- The committee considered three formulas for the primary assessment of the damage:
  - A. Methodology adopted by Industries & Mines Department, Govt. of Gujarat through resolution regarding imposing

environmental compensation in cases of illegal mining, transportation and storage causing damage to the environment.

B. Formula/Guideline prepared by SEAC, Gujarat for assessment of ecological damage & remediation plan for the mining proposal

C. Environmental Compensation as per formula CPCB submitted to Hon. NGT

- The committee based on site visits & other records has decided and adopted various factors used in different formula in above three methods, and are shown in relevant chapter of the report.
- During calculations of Environmental damage based on above three formulas, big variance in the penalty amount was found in each of the case, as all the three formulas are based on different factors.
- A primary investigation reveals that the above open cast mining has not caused the damage to the extent that can create visible impacts on the surroundings and nearby people. However the damage to the ecology cannot be undermine without detailed investigation of the subject.
- Assessment of environmental damage compensation particularly loss of ecological damage is very complex & required institutional capacity; the committee could not assess it through separate detailed investigations.
- Considering above the committee unanimously decided recommend to levy maximum penalty arrived though above three formula in each of the case as an interim penalty. Based on this penalty in each of the cases in tabulated below:

TABLE : DAMAGE COST ASSESSMENT

Sr. No.	Lessee & Location of Lease	Total Damage Cost Assessment Levied Maximum of (A),(B) and (C) in Rs.
1.	M/s Gopalsinh Hinmatsinh Chauhan, Survey No. 64 P, Village Ghusiya, Taluka - Talala, Dist. — Gir Somnath	60,45,382/-
2.	M/s Vajesinh Damsinh Mori, Survey No. 152, Village Jasadhra, Taluka - Talala, Dist. — Gir Somnath	37,50,000/-
3.	M/s R. J. Trivedi & Co., Survey No. 65, 70, Village Umba, Taluka - Veraval, Dist. — Gir Somnath	4,31,25,000/-
4.	M/s Aher Bhagwan Bhimsinh, Survey No. 389/1, Village Ajotha, Taluka - Veraval, Dist. — Gir Somnath	3,75,00,000/-
5.	M/s Somnath Hydrated Lime & Chemicals Industries Pvt. Ltd., Survey No. 42/1, Village Kherali, Taluka - Veraval, Dist. — Gir Somnath	7,99,12,362/-
6.	M/s Noor mahamad Kalubhai Patani, Survey No. 49, Village Kherali, Taluka - Veraval, Dist. - Gir Somnath	1,26,31,063/-
7.	M/s Vikram Chemical Company, Survey No. 110P, Village Damasa, Taluka - Una, Dist. - Gir Somnath	18,75,000/-
8.	M/s Dhiraajlal Panchabhai Vachhani, Survey No. 49 P, Village Undari, Taluka - Una, Dist. - Gir Somnath	1,96,50,504/-
9.	M/s Somnath Hydrated Chemicals, Meghal riverbed, at near Village Zadaka, Taluka - Matiya, Dist. - Junagadh	8,69,60,838/-
10.	M/s Dinesh Kumar & Company, Survey No. 2P, Village Khorasa, Taluka - Matiya, Dist. — Junagadh	1,15,74,733/-
11.	M/s Rajsi Rana Jotava Limestone Mine, Survey No. 29 P, Village Khorasa, Taluka - Matiya, Dist. - Junagadh	1,01,22,773/-
12.	M/s GHCL Ltd., Survey No. 408/6P, Village Gorakhmadhi, Taluka - Sutrapada, Dist. - Gir Somnath	4,50,00,000/-
13.	M/s GHCL Ltd., Survey No. 81P, Village Kodidra, Taluka - Veraval, Dist. — Gir Somnath	56,25,000/-
14.	M/s S. J. Trivedi Limestone Mine, Survey No. 123, Village Dari, Taluka - Veraval, Dist. - Gir Somnath	3,37,50,000/-

- The committee recommends that separate detailed study through an expert agency like NEERI, IIT or any other technical institute of similar repute in consultation with CPCB & GPCB, shall be carried out for the detailed assessment of the damages to the ecological services forgone forever and damage to environment and pristine ecology."

9. Thereafter this matter was considered by this Tribunal on 15.06.2020 and it is recorded in the order passed on that date that the **Committee has further recommended that separate detailed study be got done through an expert agency like NEERI and IIT or any other technical institute of similar repute in consultation with CPCB and GPCB and a detailed assessment of the damages to the ecological services forgone forever and damage to environment and pristine ecology, be made.** A copy of the report was directed to be provided to respondent Nos. 9 to 11 and 17 while the learned counsel for respondent Nos. 20 and 21 has raised question of limitation on that date but the Tribunal directed that CPCB and GPCB shall submit further action taken report and if deemed necessary, engage any independent agency or IIT and submit a report with respect to damage assessed by the Committee within a period of four weeks.

10. The record reveals that on 21.09.2021, a communication was received from GPCB with which the Joint Inspection Committee report was enclosed, which is taken to be final project report, **prepared by Dr. Manish Kumar, Assistant Professor, Discipline of Earth Sciences, Indian Institute of Technology, Gandhinagar, Gujarat.** The learned counsel appearing for the contesting respondents had submitted on the last date that the mining activities had been stopped right from the year 2018 and that the applications submitted for renewal/grant of mining leases, have not been processed on account of pendency of this Original Application and the contesting private respondents had asked for an opportunity to submit their responses to the said final report which was submitted in compliance with this Tribunal's earlier orders dated 15.06.2020 and

18.08.2020. The relevant portion of the said final report is reproduced hereinbelow for the sake of convenience:-

#### "Background

In the case of O.A. No.: 58/2018 Hon'ble NGT has directed to a committee consisting of Gujarat Pollution Control Board (GPCB), State Environment Impact Assessment Authority (SEIAA), and Geologist Department to prepare damage assessment reports due to illegal limestone mining activity in Junagadh and Gir Somnath District. The committee has prepared a report and submitted to Hon'ble NGT. In the said report the committee observed to need "To evaluate the detailed assessment by the expert institution/organization of the national repute". Following the Hon'ble NGT order dated 01/05/2019 and 15/06/2020 in the matter of O.A. 58/2018, Protection of Environment and Public Service Committee Vs. Union of India & Ors. it was mandatory for the Board to carry out detailed assessment. In this context, the Gujarat Pollution Control Board (GPCB) take the professional services of IIT-Gn for the aforementioned work. The project was started on 1st January, 2021, with the objectives that are given below.

#### The objective

- Preliminary site/incident location characterization through proper documentation of the preliminary information.
- Computation of the net present value of ecological services foregone forever,
- To evaluate the overall cost of damage to the pristine ecology and To identify the actual cost of mitigation and restitution of environment in Junagadh and Gir Somnath mining areas

#### Action Taken

Upon receiving the work order from GPCB, IIT-Gn project team had prepared the questionnaire/checklists before the field visit commenced between 18th to 23rd January, 2021. Before this field visit, we carried out several remote-sensing-based investigations to understand the field situation through several timeline impression images. The dynamics of land use/land cover (LULC) changes, the effect of mining on the LU/LC changes are studied and discussed in detail. The different land use classes mainly water body, mining area, forest cover, built-up area, barren land and agriculture land in Junagadh and Gir-Somnath districts are identified in order to understand the impact of LU/LC change on the environment. A detailed survey on various aspects of mining status, stakeholder's perceptions, vegetation status, and other environmental indicators were carried out during that six days in the field. The preliminary survey included the collection of local geological data for the Junagadh district in order to understand the soil characteristics. Besides, samples were taken for hydro-geochemical analyses. During our visit to the mining sites, the soil/sediment, surface water, groundwater, open-well water, pit water samples (wherever available) were collected in order to ascertain the water quality in the region as well as to trace the effect of mining activities on the potable water resources.

The collected samples are undergone investigation for various water quality parameters. In total, thirteen (n=13) open-well/bore-well and four (n=4) pit water samples were collected from the vicinity of mines. The physicochemical analyses (hydrogeochemical parameters, cations, anions, and trace metal ions) of the collected samples were carried out for the proper identification of their composition, suitability for drinking purpose, and the potential effect of mining pollution.

In addition to these, we had collected all the first-hand data and details from the lease holders, which included several pertinent issues of mining activities (refer sub-section 2.1.3 for detailed checklist). Based on the available guidelines, we have considered three methodology dependent formulas for the overall damage assessment, i.e., (i) CPCB guidelines/methodology for assessing environmental compensation, (ii) SEAC, Gujarat proposed formula/guideline for assessment of ecological damage and (iii) Industries and Mines Department, Govt. of Gujarat resolution for imposing environmental compensation in cases of illegal mining, transportation and storage causing damage to the environment.

#### Key Findings

- The present status of environmental, ecological scenario and overall socioeconomic impact in the core zone and buffer zone of limestone mining area of Junagadh and Gir Somnath District put together seems to have positive effects.
- The most critical findings of two-decade change (20 years i.e., from the year 2001 to 2021) in the land use/land cover change in the Junagadh and Gir Somnath district has been the significant reduction of barren land (-36.3%) and increase of vegetation. Precisely speaking, our remote-sensing analyses suggests that even in the last decade i.e. the period between 2011-21, there has been a 23.4% of decrease in the barren land with a corresponding increase of 19.6% in vegetation and 32% in the human settlement. The main driver of these changes is the mining activities.
- A primary investigation including survey of local people reveals that in all the 14 mines, the open cast mining is done either manually or through surface miners/other mechanized means but without blasting. It implies that mining could not cause the damage to the extent that will create visible impacts on the surroundings and nearby people.
- A detailed questionnaire survey discloses the environmental, societal, biodiversity and climatic impacts of all the mines. However, the positive impacts are overwhelming the negative ones considering the proper management such as, the green belt development along the roads, providing work and shelter to people who live hand-to-mouth in the rural area of the district, less impact on the biodiversity and climate (owing to non-usage of blasting type of mining process).

The physico-chemical analysis results suggested that for all the collected open-well/bore-well samples (n=13) the values of pH were ranged from 6.90 to 7.83 with an average value of 7.29, signifying that the surface and groundwater present in the vicinity of mining area is neutral in nature with negligible impact from the mining activity.

- 77.8% of the collected water samples exceeded the IS standard limit for fluoride (F-) in drinking water, implying that the open limestone quarries are somewhere directly/indirectly accountable for such higher content of - which can cause dental fluorosis as well as adversely affect the central nervous system, bones and joints at high ( $>1.5 \text{ mg L}^{-1}$ ) concentrations. However, the water samples collected from the quarry pit were of superior quality as compared to the open-well or the bore-well water samples.

- The penalty for the environmental damage calculated in the previous report was corroborated through our detailed exercise. However as is the case, final recommendation was based on the highest damage amount deduced from any of three methods used, which seems arbitrary, and unpractical for the following reasons:

- Absence of consistent thumb rule for methodology opted for the damage obligation. The maximum financial penalty seems to be harsh and sporadic, which may lead to unsatisfaction among the stakeholders. It may not be also right from the social justice perspective.

- Some of the lease holders had witnessed very less mineral production for a very small duration of one to two years. However, the levied penalty, following the highest financial calculation principle, turns out to be four to five times of their earned values.

- There are significant statistical differences among the outcomes of three methods (i.e. CPCB, Industries and Mines, GoG and SEIAA/SEAC, GoG) used for financial obligations.

- Environmental damages on the ground have been less obvious than the beneficial impacts of this open scrap mining leading to lake or water body creation, or agricultural land formations, positively affecting the basic human needs like drinking water and food.

- Overall, with proper functioning of these mines is likely to be beneficial or the local people by getting direct employment in the mining project and indirect employment opportunities in the associated services. The project will provide livelihood to the poorest section of the society who are economically and socially backward. It will provide employment to the people residing in the vicinity of mining area directly or indirectly. The mine management will also help the people in the nearby villages by providing financial aid to schools, conducting medical and social awareness campaigns, help in the formation of self-help groups, etc. Thus, the project will bring socio-economic development of the area, which is much needed.

- Under the light of above consideration, the average value for total damage assessment cost calculated through three different methods (i.e. CPCB, Industries and Mines, GoG and SEIAA/SEAC, GoG) should be levied to the proprietors.

Table 14: Summary of the damage cost assessment using three standard methods and the recommended value.

Sr. No.	Lessee and location of Lease	Environmental compensation as per CPCB guidelines (INR)	Damage assessment cost as per guidelines of SEAC/S	Damage assessment cost as per guidelines of Industries	Total damage assessment cost recommended by previous	Recommended damage assessment cost levied from lease
		(A)	(B)	(C)	(D)	(E)
1.	M/s Gopalsinh	37,50.00	13,02.05	60,45.38	60,45.38	36,99.144
2.	M/s Vaiesinh	37,50.00	7,11.150	3,61.721	37,50.00	16,07.624
3.	M/s R. J. Trivedi &	4,31.25	81,42.60	1,77.75	4,31.25	2,30.14.42
4.	M/s Aher Bhanvan	3,93.75	77,39.32	2,46.86	3,93.75	2,39.33.30
5.	M/s Somnath Hydroted Lime &	2,25,00,000/-	1,62,88,102/-	7,99,12,364/-	7,99,12,364/-	3,95,66,827/-
6.	M/s Noormahamad	56,25.00	26,31.80	1,26.31	1,26.31	69,62.624
7.	M/s Vikram Chemical	18,75.00	5,99.012	1,25.866	18,75.00	8,66.626/-
8.	M/s Dhurailal	56,25.00	33,71.42	1,96.50	1,96.50	95,48.977
9.	M/s Somnath	3,93.75	1,69.73	8,69.60	8,69.60	4,77.69.64
10.	M/s Dinesh Kumar &	56,25.00	27,03.85	1,15.74	1,15.74	66,34.530
11.	M/s Raisi Rana	56,25.00	22,99.74	1,01.22	1,01.22	60,15.841
12.	M/s GHCL Ltd.	4,50.00	98,64.45	2,25.30	4,50.00	2,57.98.33
13.	M/s GHCL Ltd.	56,25.00	16,52.63	26,04.57	56,25.00	32,94.068
14.	M/s S. J. Trivedi	3,37.50	75,40.78	1,01.63	3,37.50	1,71.51.32

#### Chapter 4. Summary and Limitations

Following the Hon'ble NGT order dated 01/05/2019 and 15/06/2020 in the matter of O.A. 58/2018 Protection of Environment and Public Service Committee Vs. Union of India & Ors., the Gujarat Pollution Control Board (GPCB) approached IIT-Gandhinagar to provide their professional services for evaluation of the damage assessment of the Lime Stone mines in Junagadh and Gir Somnath District. On the acceptance of financial proposal from IIT-Gn, GPCB had issued work order for the aforementioned project vide letter No. GPCB/LGL: NGT: Gen: 109(2)/571461 dated 28/10/2020.

Upon receiving the work order from GPCB, IIT-Gn project team had carried out several remote-sensing-based investigations to understand the field situation through several timeline impression images. The dynamics of land use/land cover (LULC) changes, the effect of mining on the LULC changes are studied in detail. The different land use classes mainly vegetation, water body, agriculture land, settlement and barren land in Junagadh and Gir-Somnath district are identified in order to understand the impact of LULC change on the environment. Also, we had prepared the questionnaire/checklists before the field visit commenced between 18th to 23rd January, 2021. A detailed survey on various aspects of mining status, stakeholder's perceptions, vegetation status, and other environmental indicators were carried out during field visit. The preliminary survey included the collection of local geological data for the Junagadh district in order to understand the soil characteristics. Besides, samples were taken for hydro-geochemical analyses. During our visit to the mining sites, the soil/sediment, surface water, groundwater, open-well water, pit water samples (if available) were collected in order to ascertain the water quality in the region as well as to trace the effect of mining activities on the potable water resources. The collected samples are undergone investigation for various water quality parameters. In total, thirteen (n=13) open-well/bore-well and four (n=4) pit water samples were collected from the vicinity of mines. The physicochemical analyses (hydrogeochemical parameters, cations, anions, and trace metal ions) of the collected samples for the proper identification of their composition, suitability for drinking purpose, and the potential effect of mining pollution on water quality. Our observations can be summarized as follows:

- The study provides the trend of major changes in the LULC classes of

study area during the time period from 2001 to 2021. It is observed that there is a significant impact of mining on barren land reduction (-36.3%).

- In the year 2021 the observation confirmed that agricultural land (52.6%) has a larger area as compared to barren land (23.4%) and vegetation (19.6%). The period (2011-21) indicates the general decrease in percentage area of barren land (23.4%) including the increase in vegetation (19.6%) and settlement (32%). The land use supporting the agricultural activities and economic activities increased indicated by the settlement and cultivation.
- A primary investigation reveals that in all the 14 mines, the open cast mining is done through either manually or through surface miners/other mechanized means but without blasting which suggested that it has not caused the damage to the extent that can create visible impacts on the surroundings and nearby people.
- A detailed questionnaire survey discloses the environmental, societal, biodiversity and climatic impacts of all the mines. However, the positive impacts are overwhelming the negative ones considering the proper management such as, the green belt development along the roads, providing work and shelter to people who live hand-to-mouth in the rural area of the district, less impact on the biodiversity and climate due to non-usage of blasting type of mining process.
- The physico-chemical analysis results suggested that for all the collected open-well/bore-well samples (n=13) the values of pH were ranged from 6.90 to 7.83 with an average value of 7.29, signifying that the groundwater present in the nearby location is neutral in nature with negligible impact from the mining activity.
- The Fluoride (F-) content was exceeded IS standard limit in 77.8% of the collected water samples suggested that open limestone quarries are directly/indirectly accountable for such higher content of F-which can cause dental fluorosis as well as adversely affect the central nervous system, bones and joints at high ( $>1.5 \text{ mg L}^{-1}$ ) concentrations.
- The water samples collected from the quarry pit show superior quality as compared to the open-well or the bore-well water samples.
- **The environmental damage penalty recommended by the previous committee was not rational since some of the lease holders had very less mineral production only for one to two years however, the levied penalty is four to five times of their earned values. Hence, we hereby recommend the average value for total damage assessment calculated using all the three methods (i.e. CPCB, Industries and Mines, GoG and SEIAA/SEAC, GoG) which certainly seems to be realistic and indemnify by the lease holders.**
- Overall, with proper functioning of these mines the local people will be benefitted by getting direct employment in the mining project and indirect employment opportunities in the associated services. The project will provide livelihood to the poorest section of the society who

are economically and socially backward. It will provide employment to the people residing in the vicinity of mining area directly or indirectly. The mine management will also help the people in the nearby villages by providing financial aid to schools, conducting medical and social awareness campaigns, help in the formation of self-help groups, etc. Thus, the project will bring socio-economic development of the area, which is much needed.

Major limitations of the project are highlighted as follows:

- The damage to the ecology cannot be determined because assessment of environmental damage compensation particularly loss of ecological damage is very complex and required substantial time as well as resources.
- The environmental attributes such as, air pollution, water pollution, hazardous waste generation, noise & vibration, cannot be precisely identified due to non-operational condition of all the mines. The ongoing pandemic (COVID-19) restricted the IIT-Gn team members to carry out detailed door-to-door survey which would certainly help in understanding the impact on the mining activity on individuals.
- The assigned project was only for four months hence, it cannot be possible to carry out continuous water (groundwater/surface water) monitoring for all three seasons (monsoon, pre-monsoon, and post-monsoon), required to understand the seasonal fluctuations on the water quality due to mining activity.

## Chapter 5. Conclusions

After the rigorous analyses of dynamics of land use and land cover (LULC) changes for 20 years in Junagadh and Gir-Somnath districts; detailed survey on various aspects of mining status, stakeholder's perceptions, vegetation status, and other environmental indicators; collection of baseline historical geological data; on-site visit as well as surface water, groundwater, open-well water, pit water samples analyses we conclude that there is a significant positive impact of mining on the reduction of barren land and generation of livelihood to the poorest section of the society in the region. Also, **no major environmental impact could be seen due to the mining activities supporting the hypothesis that all the 14 leased mines will allowed to be operative with levying average value for total damage assessment calculated from all the three methods (i.e. CPCB, Industries and Mines, GoG and SEIAA/SEAC, GoG)** owing to the following reasons:

- + The area and depth of mining is relatively small. Average mining area in these cases is about 4 Ha and average depth is about 3 m.
- + The LULC analyses results of past 20 years period suggested sharp reduction of barren land (-36.3%) and increase in vegetation (19.6%) and settlement area (32%) in the studied region.
- + Due to open cast mining in all the 14 mines which was performed without blasting technique suggested negligible damage and associated impacts on the nearby habitats.

+ Compared to the collected water samples, the quarry pit water shows superior quality. Also, in the survey local people confirmed that they utilize this pit water for their day to day activities.

+ A detailed questionnaire survey discloses that due to the closure of all 14 mines, mine diggers/workers who live hand-to-mouth by working in here are most affected and some of them also lost shelter also.

Overall, with proper functioning of these mines the local people will be benefitted by getting direct employment in the mining project and indirect employment opportunities in the associated services. The project will provide livelihood to the poorest section of the society who are economically and socially backward. It will provide employment to the people residing in the vicinity of mining area directly or indirectly. The mine management will also help the people in the nearby villages by providing financial aid to schools, conducting medical and social awareness campaigns, help in the formation of self-help groups, etc. Thus, the project will bring socio-economic development of the area, which is much needed. Considering above the experts from IIT-Gn unanimously decided to recommend to levy average value for total damage assessment calculated through three various methods. The final recommended figures for the each mine are tabulated as follows:

Sr. No	Lessee	Recommended damage assessment cost levied from the lease holders (INR)
1.	M/s Gopalsinh Himmatsinh Chauhan	36,99,144/-
2.	M/s Vajesinh Dansinh Mori	16,07,624/-
3.	M/s R. J. Trivedi & Co.	2,30,14,429/-
4.	M/s Aher Bhaqwan Bhimsinh	2,39,33,500/-
5.	M/s Somnath Hydrated Lime & Chemicals Industries Pvt. Ltd.	3,95,66,822/-
6.	M/s Noormahamad Kalubhai Patani	69,62,624/-
7.	M/s Vikram Chemical Company	8,66,626/-
8.	M/s Dhiraajal Panchabhai Vachhani	95,48,977/-
9.	M/s Somnath Hydrated Chemicals	4,77,69,643/-
10.	M/s Dinesh Kumar & Company	66,34,530/-
11.	M/s Rajsi Rana Jotava Limestone Mine	60,15,841/-
12.	M/s GHCL Ltd.	2,57,98,333/-
13.	M/s GHCL Ltd. (Kodidra)	32,94,068/-
14.	M/s S. J. Trivedi Limestone Mine	1,71,51,327/-
	Total	19,87,12,161/-

## Chapter 6. Recommendations

- Thick plantation is recommended along the mine boundary within lease area to reduce noise and vibration although it is not the major problem since blasting has not been performed for mining process.
- The fertile topsoil must be stored separately from the overburden produced during mining operations. It is recommended that topsoil be reused as soon as possible for plantations and greenbelt development. The installation of drains around the stockpiles prevents erosion and waste. Land reclamation activities such as backfilling exhausted pits, slope stabilization, and pit conversion to water reservoirs can be carried out.
- Overburden handling has a significant impact on surface mining projects and

must be carefully planned while taking mining activities and site rehabilitation into account. As a result, the following fundamental steps are recommended for proper overburden management:

- (a) Examine site-specific aspects such as geographic location and surface morphology;
  - (b) From a geotechnical standpoint, evaluate the micro and macro properties of overburden materials in detail;
  - (c) Evaluate and compare the efficiency that can be obtained from alternative options of excavation-transportation and dumping waste rock and soil.
- Implementation of land reclamation work after mineral excavation should be done with a thorough understanding of local geology and ecology.
  - The management should provide ear muffs and helmets to the workers in the mine and stress on its utilization.
  - The regular medical check-up of workers is to be carried out. Green belt development is to be stressed and workers must be motivated for plantation care. The general environmental awareness is given to the local workers. Regular maintenance of vehicle is carried out. Slogans of environment, health and safety are recommended for display.
  - Effective network of drains with sedimentation pits should be developed to prevent the flow of eroded material to nearby drainage. Harvesting rainwater in mined-out pits will help towards maintaining the groundwater regime of the region."

**11.** The stand of respondent No. 16 is that inspection report by GPCB dated 08.06.2017 clearly states that the answering respondent's unit was having valid Consolidated Consent and Authorisation (CCA) under the Water Act, 1974 and the Air Act, 1981 and as one of the specific conditions contained in the said order states that the unit shall obtain Environmental Clearance (EC) when further renewal of mining lease would be prayed for. This led the answering respondent to believe that the EC would be necessary only upon further renewal of the mining lease which was due to expire on 20.06.2016, but in good faith, the answering respondent made several attempts to obtain EC, which has been rejected without supplying any cogent reason. The CPCB has recognized that most of the conditions laid down in EC and CCA are similar in nature and hence, collapsed the three tier requirement of obtaining Consent to Establish (CTE), Environmental Clearance (EC) and Consent to Operate (CTO) into two tier process while deeming equality between CTE and EC. The answering respondent not only obtained CTE but has also obtained a CCA. The answering respondent had applied for EC year after year from Gujarat State Level Environment Impact Assessment Authority (GSEIA) and in fact, GPCB had accorded temporary approval to undertake industrial/manufacturing activity to the respondent in the form of Provisional Consent order and Consolidated Consent and Authorisation under the Water Act, 1974 and the Air Act, 1981 from 27.10.2014 till 18.12.2018 for operation of industrial plant for manufacturing limestone to the capacity of 12,500 metric tons. Prior to that, CTE had already been obtained on 18.10.2013. The Mining Department had accorded approval in 2013 and 2016 for undertaking mining activity, pursuant to which the answering respondent engaged in manual mining which does not involve blasting. The answering

respondent is regularly paying royalty to the Government in lieu of mining activity after obtaining permission from GPCB and paid Rs. 4,08,90,205/- as royalty from 2011 to December, 2017 and thereafter from December, 2017, he deposited an amount of Rs. 24,00,000/- towards royalty. This shows that the Government was aware of the mining activity being undertaken. On 04.09.2018, the answering respondent provided a bank guarantee of Rs. 10,00,000/- to the Indian Bureau of Mines, Gandhinagar. No mining activity is presently being undertaken. There is no evidence to prove that the quantity of limestone mined exceeds the quantity with respect to which royalty was being paid.

**12.** The stand of respondent Nos. 9, 10, 15 and 19 is as follows:-

Respondent No. 9 was granted mining lease of 2 hectares on 19.02.1998 at Survey No. 64/P of Village Ghosla, Taluka Talala, District Junagadh, Gujarat, which was executed on 14.08.1998. The mining lease was executed on 07.01.2003 between respondent No. 10 and the State of Gujarat for a period of 20 years over leasehold area of 2 hectares at village Jasadhar, Taluka Talala, District Junagadh, Gujarat. However, the lease lapsed due to non-production which was revived by the Government of Gujarat's order dated 18.05.2007. The mining lease was executed on 17.10.2000 between respondent No. 15 and the State of Gujarat for a period of 20 years over leasehold area of 2 hectares at 110P, village Damasa Taluka Una District Gir Somnath. A lease deed was executed on 18.12.2009 between the Government of Gujarat and respondent No. 19 for a period of 20 years over an area of 4 hectares at Survey No. 29, village Khorasa, Taluka Malia Hatina, District Gir Junagadh. All these leases were of limestone mining.

**13.** In the year 2015, the Mines and Minerals (Development and Regulation) Amendment Act, 2015 was promulgated. Section 8A(3) was provided. All the mining leases granted before commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be deemed to have been granted for a period of fifty years... Thus by virtue of insertion of said Section, the above leases of the respondents would be deemed to have been granted for fifty years. Hence, all of them are valid and subsisting.

**14.** In paragraph No. 6 onwards of its reply, the legal position has been submitted by the said respondents, which is not being reproduced because that is understood by us on the basis of the arguments raised before us by the learned counsel for the respondents as well as the applicant and hence, in the light of the said arguments and the documentary evidence placed before us, the legal position is as follows:-

"The EIA Notification, 2006, replaced the EIA Notification 1994 and stated categorically that all new projects or activities listed in the Schedule to the Notification would require a prior EC. The Mining of minerals was included as Item 1(a) in the Schedule to the Notification. It clearly stated that more than or equal to 50 Ha of mining lease area would be a Category A project and less than 50 Ha but more than or equal to 5 Ha of mining lease area would be Category B project and would require an EC from the SEIAA.

The EIA notification 2006 was amended on 01.12.2009 which introduced a different area categorisation in Category B projects for non-coal mine lease and coal mine lease. However, in the case of limestone mining lease the area continued to be more than or equal to 5 Ha and less than 50 Ha and where the EIA Notification would be applicable.

Vide Notification dated 04.04.2011 the EIA Notification 2006 was amended and a Note was added to the column after the phrase "General Conditions shall apply" which stated that "Prior Environmental Clearance is as well required at the stage of renewal of mine lease for which application should be made up to one year prior to date of renewal".

On 27.02.2012, the Hon'ble Supreme Court in the case of Deepak Kumar etc. v. State of Haryana & Ors. held among other things that "leases of minor minerals including their renewal for an area of less than 5 ha be granted by the States/UTs only after getting environmental clearance from the MoEF".

In pursuance of the said Judgment, the Office Memorandum dated 18.05.2012 was issued by the MoEF & CC which clarified that EIA Notification as amended requires mining projects (new projects, expansion or modernisation of existing projects as also at the stage of renewal of mine lease) with lease area of 5 Ha and above, irrespective of mineral (major or minor) to have prior Environmental Clearance.

On 04.01.2013, the MoEF & CC issued an Office Memorandum as a "Clarification letter with regard to applicability of provisions of EIA Notification, 2006 for mining of major minerals in areas less than 5 Ha" where it clarified that mining projects of major mineral of the size of the lease area less than 5 Ha will not be under the purview of the Order of the Hon'ble Supreme Court dated 27.02.2012 as well as O.M. dated 18.05.2012 issued by the Ministry. It further clarified that hence there is no need for prior EC for mining leases of major minerals for areas less than 5 ha as per the EIA Notification either from the Central Government or the State Government.

On 09.09.2013 the EIA Notification 2006 was amended and in Item 1(a) of Schedule to all leases of minor mineral less than 50 ha were included in Category B, along with mining leases of other non-coal mines, which are more than and equal to 5 ha and less than and equal to 50 ha.

Vide Notification dated 07.10.2014 an amendment to Item 1(a) of the Schedule to the EIA Notification, 2006, was brought wherein all non-coal mining leases less than and equal to 50 ha were covered within Category B, however, the General Conditions were not applicable to mining leases less than 5 ha. A note added to column 5 again stated that prior EC was required at the stage of renewal of mine lease for which an Application shall be made upto two years prior to the date due for renewal.

Vide an Amendment to the EIA Notification 2006 dated 15.01.2016 issued by the MoEF & CC pursuant to both Deepak Kumar case on minor minerals as well as pursuant to the Ld. NGT case of Himmat Singh Shekhawat v. State of Rajasthan dated 13.01.2015 on sand mining which stated that within Category B, all non-coal mining leases below 50 ha, shall require prior EC. The amended EIA Notification dated 15.01.2016 mainly dealt with minor mineral such as sand mining, environmental clearance for cluster and constitution of District Level Environment Impact Assessment Authority and nowhere dealt in any manner for EC requirement of major mineral having area less than 5 ha.

On 19.02.2016, this Tribunal in the case of Jatinder Singh v. UOI (OA 495 of 2015) observed the issue of legal regime relating to the requirement of obtaining EC for major minerals having mining lease area less than 5 ha.

The above-mentioned case was originally filed as W.P. (Civil) 688 of 2013 titled as Jatinder Singh & Anr. Vs. UOI & Ors. Before the Hon'ble Supreme Court of India. During the pendency of the above-mentioned case, Hon'ble Supreme Court had directed the

"Central Empowerment Committee (hereinafter referred to as the CEC)" to submit a detailed report in relation to the various interim applications, writ petitions that have been filed before the Hon'ble Supreme Court of India. (Para 7, page 7)

The CEC while concluding its report, has submitted under Para 52(iv) of the report, for consideration of Hon'ble Supreme Court of India, the aspect of environment clearances of major minerals having mining lease areas of less than 5 hectares in following manner:

"Presently the environmental clearances are required for all mining projects of minor minerals irrespective of the lease areas whereas the environmental clearances for major minerals having mining lease areas of less than 5 hectares is not required. This Hon'ble Court may consider directing MOEF to review the present scheme of things particularly considering that the environmental impact of mining of major minerals is in no way less than, if not more, than that of the mining of minor minerals".

While dismissing the Writ Petition (Civil) 688 of 2013, the Hon'ble Supreme Court in its order dated 28.10.2013 has observed that the CEC in Para 52 of its Report made certain suggestions for consideration of this court and MOEF shall file its response to such suggestions.

Thereafter Hon'ble Supreme Court of India vide its order dated 05.10.2015 has transferred the case for further proceedings to this Hon'ble Tribunal and the said case was re-numbered as OA No. 495 of 2015 before this Hon'ble Tribunal.

The MOEF & CC in terms of the order dated 28.10.2013 of Hon'ble Supreme Court of India had filed an affidavit submitting its reply to the report of the CEC. This Tribunal has in detail dealt with the submissions forwarded by MOEF in response to CEC recommendations. While dealing with issue of ECs for major minerals having mining lease areas of less than 5 hectares this Tribunal under Para 13 (page 17) of its order dated 19.02.2016 has mentioned as such:

"It is submitted by MOEF that presently ECs are required for all mining projects of minor minerals irrespective of their lease areas, whereas, EC for lease for mining in areas of major minerals of less than 5 hectares in case of mining of major minerals is not required."

Under Para 19 (page 24) this Tribunal observed that-

"Last recommendation made by authority (CEC) is that the MOEF should review the present schemes and consider requirement of EC for mining of major minerals in areas less than 5 ha. This is acceptable to MOEF and according to them a Notification in this regard is likely to be issued".

This Tribunal while disposing the OA 495 of 2015 inter alia made the following directions (Para 25(a), Page 28-29):

"It shall be mandatory for all the applicants to seek EC for carrying on mining activity of minor or major minerals, even if the lease area is less than 5 ha....."

Thus, till 19.02.2016 there was no schemes and/or regime for applying/obtaining EC for major minerals having mining lease areas of less than 5 ha.

This Hon'ble Tribunal in its Judgment dated 30.06.2020 in Tamil Nadu Small Mine

Owners Federation v. UOI & Ors. (OA 136/2017) held that all mining leases, whether major or minor minerals, including those of less than 5 ha area as well as existing mines, are required to obtain EC under the EIA Notification, 2006 as amended on 15.01.2016. It was further held that all those EC applications which are pending as on or before 31.03.2016 should be treated as normal applications and not violation cases whereas those applications filed after 31.03.2016 can be treated as violation applications. This was also in consonance with the Judgment in Naresh Zargar which stated the same position albeit in case of minor minerals.

The Judgment dated 18.08.2020 in Review Application in Tamil Nadu Small Mine Owners Federation v. UOI & Ors. (RA No. 07 of 2020 in OA 136/2017) this Tribunal dismissed the review application and upheld Judgment dated 30.06.2020. It reaffirmed that the Notification dated 15.01.2016 did not make any distinction between major minerals and minor minerals of lease area less than 5 ha.

The Hon'ble Supreme Court in Tamil Nadu Small Mine Owners Federation vs. MoEF (CA No. 1789-1790 of 2021) has granted finality to the issue and made the direction given by the Tribunal final and binding by the dismissing the said Appeal.

**15.** Based on the above position of law, it is further submitted by the respondents that there were several procedural ambiguities in applying for Environmental Clearance even after amendment dated 07.04.2015. The answering respondents had applied for Environmental Clearance but the same has been rejected on one pretext or the other by MoEF & CC and the narration of the same has been given in tabular form in paragraphs 8.3 and 9 as follows:-

"8.3 The following table will show delay in processing EC by SEIAA for Respondent No. 15:

27/04/2015	The Respondent applied for EC by submitting application in Form 1 along with pre-feasibility report and environmental management plan
10.01.2017	The Respondent applied for EC by submitting application in Form 1 along with pre-feasibility report and environmental management plan.
08/06/2017	SEAC sought additional documents from the Respondent for grant of EC.
22/08/2017	The Respondent applied for grant of TOR.
31/03/2018	SEAC sought additional documents from the Respondent for grant of EC.
04/04/2018	SEAC sent a letter requiring the Respondent to submit EC application online.
09/04/2018	The SEIAA sent an email directing the Respondent to submit Form I and pre-feasibility report already submitted in a hard copy, upon which the application shall be further processed.
15/05/2018	The Respondent sent a letter to SEIAA resubmitting application for EC after delisting of the application of Respondent.
01/06/2018	The Respondent applied for transfer of application for grant of EC from category A to B.
16/07/2018	SEAC sent a letter to Respondent directing it to attend the SEAC meeting to be held on 18/07/2018 where its application was to be considered.
16/08/2018	SEAC sent a letter to Respondent directing it to attend the SEAC meeting to be held on 29/08/2018 where its application was to be considered.
20/08/2018	Respondent sent a letter replying to queries raised by SEAC at its 404th meeting held on 06/06/2018.
25/09/2018	The Respondent was granted terms of reference by SEIAA.

The following table shows delay in processing EC by SEIAA for Respondent No. 19:

Date	Particulars
09/01/2014	The Respondent applied for environmental clearance with State Level Expert Appraisal Committee by submitting application in Form I alongwith pre-feasibility report.
15/10/2015	The Respondent submitted an application for grant of TOR with SEIAA.
30/03/2016	The Respondent received an acknowledgement for EC application submitted on 30/03/2016.
13/07/2016	The SEAC held its 293rd meeting on 01/06/2016 wherein it considered the proposal of Respondent for EC and sought certain additional information from the Respondent. The Respondent vide letter dated 13/07/2016 sent a point wise reply to all the queries put forth by SEAC.
12/01/2017	However, despite submitting the requisite information sought by SEAC at its 293rd meeting held on 01/06/2016, the SEAC sent a letter to Respondent stating that it had received no information as thus at its meeting dated 18/02/2017, a decision was taken to delist the application of the Respondent.
21/01/2017	The Respondent again applied online for Environmental clearance with SEIAA.
28/01/2017	In reply to letter dated 12/07/2017, the Respondent sent a letter to SEAC stating that it had already replied to the queries put forth at the meeting of SEAC dated 01/06/2016 and it is submitting the informing again for processing of the application.
06/02/2017	The Respondent received an email alert stating that the proposal of Respondent for EC has not been accepted due to certain shortcomings and therefore it was directed to remove the shortcomings and resubmit the proposal.
15/02/2017	The Respondent submitted an application with SEIAA for grant of TOR.
30/06/2017	The Respondent got an email alert from GPCB directing to send certain additional documents.
24/08/2017	The Respondent submitted its proposal for TOR on 24/08/2017.
02/04/2018	The Respondent submitted an application with SEIAA for grant of TOR.
07/04/2018	The SEAC directed the Respondent to submit Form I and pre-feasibility report already submitted in hard copy for further consideration.
09/04/2018	The SEAC again directed the Respondent to submit Form I and pre-feasibility report already submitted in hard copy for further consideration.
01/06/2018	The SEAC sent a letter dated 01/06/2018 to the Respondent requesting it to attend the meeting on 06/06/2018 for consideration of the EC proposal of Respondent.
13/06/2018	The SEAC directed the Respondent to submit Form I and pre-feasibility report already submitted in hard copy for further consideration.
16/07/2018	The SEAC again sent a letter to the Respondent requesting it to attend the meeting on 18/07/2018 for consideration of the EC proposal of Respondent.
16/08/2018	The SEAC again sent a letter to the Respondent requesting it to attend the meeting on 29/08/2017 for consideration of the EC proposal of Respondent.
20/08/2018	Respondent sent a letter replying to queries raised by SEAC at its 404th meeting held on 06/06/2018.
24/09/2018	Respondent sent a letter replying to queries raised by SEAC at its 404th meeting held on 06/06/2018.
05/10/2018	The SEAC sent a letter seeking additional information as sought by SEAC at its meeting held on 29/08/2017 from the Respondent within 30 days of the letter.
30/10/2018	The SEIAA, Gujarat sent a letter to Respondent stating that it considered the application for EC at its meeting dated 24/10/2018 and it has taken a decision to grant TOR to the Respondent.

**16.** The aforesaid details have been narrated only with a view to convince us that efforts were being made by the answering respondents but Environmental Clearance was not granted to them on one pretext or the other by the authorities concerned.

**17.** It is submitted in the affidavit sworn in on 26.11.2018 that the respondents have stopped mining operations. The lessees continued to get despatch permission from the

State Government and Consent to Operate from the State Pollution Control Board and also continued to file returns clearly indicating the quantity being produced without any objections or prohibition from the said statutory authorities.

**18.** The State Government had already initiated prosecution against the lessees under Sections 15 and 19 of the Environment (Protection) Act, 1986 and in Criminal Case No. 290 of 2017 against respondent No. 9, the Judicial Magistrate passed an order on 18.11.2017 imposing penalty upon the respondent under Sections 15 and 19 of the Environment (Protection) Act, 1986 and imprisonment in the event of default of payment of penalty. Respondent No. 10 was imposed penalty of Rs. 25,000/- and on failure to pay the same, simple imprisonment of 150 days in Criminal Case No. 156 of 2017. Against respondent No. 19, in Criminal Case No. 82 of 2017, penalty was imposed and in the event of non-payment thereof, simple imprisonment of 90 days has been slapped.

**19.** The stand of respondent Nos. 11, 18 and 22 is as follows:-

Respondent No. 11 was granted a mining lease vide order dated 18.05.1974 over an area of 7.79 hectare at Survey Nos. 65 and 70, 10 kms. Back of Veraval, Talala-Veraval road, village Umba, Taluka Veraval, District Junagadh which was executed on 23.09.1974. Respondent No. 17 was granted the mining lease over an area of 10 hectare at village Zadka, Taluka Maliya Hatina, District Junagadh, which was executed on 11.08.1981. The State Government, vide order dated 21.12.2002, granted mining lease to respondent No. 18 for a period of 20 years over leasehold area of 5 hectares at Survey No. 2, village Khorasagir, Taluka Maliya Hatina, District Junagadh, which was executed on 15.11.2003. The lease deed was executed between the State Government and respondent No. 22 on 20.03.1968 over an area of 9.34.84 hectares at Survey No. 523, Paiki, village Dari, Taluka Veraval, District Gir Somnath. All these mines leases were of limestone. The rest of the contents of the affidavit are almost similar to the contents of affidavits of respondent No. 9 and others, mentioned above. Hence, we do not deem it proper to re-produce the same here.

**20.** On behalf of respondent No. 8 - Indian Bureau of Mines, by their affidavit, our attention is drawn to Section 18 of the Mines & Minerals (Development and Regulation) Act, 1957 (for short, Act of 1957), which is quoted hereinbelow for the sake of convenience:-

"Mineral Development.

**18.** (1) It shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for such purposes the Central Government may, by notification in the Official Gazette,

(a) make such rules as it thinks fit.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the opening of new mines and the regulation of mining operations

in any area;

(b) the regulation of the excavation or collection of minerals from any mine;

(c) the measures to be taken by owners of mines for the purpose of beneficiation of ores, including the provision of suitable contrivances for such purpose;

(d) the development of mineral resources in any area;

(e) the notification of all new borings and shaft sinkings and the preservation of bore-hole records, and specimens of cores of all new bore-holes;

(f) the regulation of the arrangements for the storage of minerals and the stocks thereof that may be kept by any person;

(g) the submission of samples of minerals from any mine by the owner thereof and the manner in which and the authority to which such samples shall be submitted; and the taking of samples of any minerals from any mine by the State Government or any other authority specified by it in that behalf;

(h) the submission by owners of mines of such special or periodical returns and reports as may be specified, and the form in which and the authority to which such returns and reports shall be submitted;

(i) the regulation of prospecting operations;

(j) the employment of qualified geologists or mining engineers to supervise prospecting or mining operations;

(k) the disposal or discharge of waste slime or tailings arising from any mining or metallurgical operations carried out in a mine;

(l) the manner in which and the authority by which directions may be issued to the owners of any mine to do or refrain from doing certain things in the interest of conservation or systematic development of minerals or for the protection of environment by preventing or controlling pollution which may be caused by prospecting or mining operations;

(m) the maintenance and submission of such plans, registers or records as may be specified by the Government;

(n) the submission of records or reports by persons carrying on prospecting or mining operations regarding any research in mining or geology carried out by them;

(o) the facilities to be afforded by persons carrying out prospecting or mining operations to persons authorised by the central Government for the purpose of undertaking research or training in matters relating to mining or geology;

(p) the procedure for and the manner of imposition of fines for the contravention of any of the rules framed under this section and the authority who may impose such fines; and

(q) the authority to which, the period within which, the form and the manner in which applications for revision of any order passed by any authority under this Act and the rules made thereunder may be made, the fee to be paid and the documents which should accompany such applications.

(3) All rules made under this section shall be binding on the Government."

**21.** In the light of above provision, it is submitted that the power to curb the illegal mining vests with the State Government. The acceptance of royalty from private respondent Nos. 9 to 22 is done by the State Government and its intermediaries. The review of Mining Plan is approved by the answering respondent under the power conferred by sub-clause (b) of Sub-Section (2) of Section 5 of the Mines and Minerals (Regulation and Development) Act, 1957 read with Government of India order dated 28.04.1987. The approval lays down conditions specifying that it does not undertake to verify the mining lease boundary on the ground and accordingly, does not undertake any responsibility regarding the correctness of the boundaries of the precise area as furnished by the lessee. In case any violation is found about the correctness of the lease boundary and other ground realities shown in the plan, approval shall stand revoked with immediate effect. The mining operation is also supposed to be carried out strictly in accordance with the conditions/stipulations imposed by the Ministry of Environment Forest and Climate Change in that regard. The true copies of the approval of Review of Mining Plan along with progressive Mine closure plan in respect of respondent Nos. 10, 11, 12, 15, 20 and 21 have been annexed. The answering respondent has served violation letters and show-cause notice to respondent Nos. 13 and 17 for non-submission of the Mining Plan required under Rule 11 Sub-Rule (4) of the Mineral Conservation and Development Rules, 2017 (for short, "Rules of 2017"). Consequent to the non-compliance of the said show-cause notice, order of suspension of mining operation with immediate effect was issued on 06.11.2017 and 21.03.2018 in respect of these two respondents. Similarly, the answering respondent served violation letters and show-cause notice to respondent Nos. 9, 12, 14, 16, 18 and 22 for non-submission of requisite Financial Assurance required under Rule 27 Sub-Rule (1) of the Rules of 2017 and as a consequence of non-compliance, orders of suspension of mining operation were issued with immediate effect on 20.08.2018, 27.08.2018 and 30.11.2018 to these respondents. Copies of these orders have been annexed and those have been endorsed to the Commissioner of Geology and Mining, the District Collector, Gir Somnath and the District Collector, Junagarh, District Geologist, Gir Somnath, District Geologist, Junagadh and Director of Mines Safety, Gujarat Region, Ahmedabad for further necessary action at their end.

**22.** Respondent No. 12 has admitted that a mining lease was granted to it on 03.09.1975 and it has excavated 171 MT of limestone minerals till the submission of the affidavit. He has denied all the allegations made against it regarding illegal mining and asserted that for Environmental Clearance, an application had been moved but so far it has not been considered as the same is pending. The answering respondent has submitted that the present application is barred by limitation.

**23.** In its stand, respondent No. 14 has submitted that the mining lease was granted to it on 02.07.1984 and it has excavated 43765 MT of limestone minerals till 2017-2018.

No excavation was done after 2016. No illegality has been committed in extraction of the said minerals. The Gujarat Pollution Control Board (GPCB) had granted No Objection Certificate pursuant to Environment Clearance Application being moved, which would be granted within a short time.

**24.** As far as stand of respondent No. 13 is concerned, this respondent was granted Consent to Establish under the Water Act, 1974 and the Air Act, 1981 on 29.01.2015 and it was valid till 06.01.2020. The CPCB recognized that most of the conditions laid down in the Environmental Clearance and Consent to Establish are similar in nature and collapsed the three tier requirement of obtaining Consent to Establish (CTE), Environmental Clearance (EC) and Consent to Operate (CTO) in two tier process while deeming equality between CTE and EC. For Environmental Clearance, repeatedly applications were moved before the Gujarat State Level Environment Impact Assessment Authority (GSEIA) but to no avail. All the allegations made in the Original Application have been refuted and it is prayed that the application should be dismissed.

**25.** The objections of respondent No. 13 against the recommendations made by the GPCB on the basis of the report submitted by Indian Institute of Technology (IIT), Gandhinagar dated 21.03.2021, is titled 'Report on Damage Assessment Due to Illegal Mining of Limestone in the Districts of Junagadh and Gir-Somnath'. It is submitted in the affidavit dated 29.09.2021 that the methodology adopted by the GPCB in imposing the penalty of Rs. 13,95,66,822/- against the answering respondent is contrary to the established law and is also based on an erroneous understanding of the fact that in the said report of IIT, it has been observed that there have been numerous beneficial impacts of the mining activities in the region. The said penalty imposed on the answering respondent would infringe the doctrine of legitimate expectation. Since the provisional consent was obtained from the State Government and the respondent acted in accordance with the same, it would be wholly illegal to penalise the respondent and for this, he has placed reliance on the decisions in the cases of Bhushan Power & Steel Ltd. & Ors. V. State of Orissa & Anr.; MANU/SC/0210/2012 : (2012) 4 SCC. The relevant portion of the said judgment is also quoted in para 2 of the affidavit. Besides, reliance has also been placed on the decision in the case of Monnet Ispat & Energy Ltd. V. Union of India; MANU/SC/0601/2012 : (2012) 11 SCC 1. The relevant portion of the said judgment is also quoted in para 3 of the affidavit. It is submitted that the doctrine of legitimate expectation cannot be stopped in taking a decision in public interest as per law. It was the Government which provided initial consent and further permitted the mining activity to go on accepting the royalties. Thus, the said doctrine would clearly entitle the answering respondent to continue their operation in absence of any direction to stop that activity, regardless of any Environmental Clearance. The answering respondent has been acting under the terms of the Provisional Consent Order (CTE) granted from 29.01.2015 to 06.01.2020 and continued to pay royalties. The full amount of royalty paid from 1985 till 2014-15 is Rs. 4,49,66,500/-. As per circular dated 02.11.2018, it has been clarified that issuance of consent by the Pollution Control Board is supposed to be a one-step process and Environmental Clearance and CTE have been equalized. No violation of the Gujarat Minor Mineral Concession Rules has been pointed out. Out of the total lease order for mining i.e. 15 hectares, mining activity was done in approximate 2 hectares, which fact has not been taken into consideration in the said report. As per the 2016 Notification, no Environmental Clearance is required for mining lease of less than 5 hectares and in view of that, the mining was only being carried out on approximately 2 hectares to get the benefit of the said notification while calculating the penalty taking into account the full area of the lease. It is also apparent that the penalty is recommended for the period 2005-06 to 2018-19, which is absolutely wrong as the same is arbitrary and exorbitant. The Environmental Clearance could not be

granted due to lackadaisical attitude of the State authorities. It has been observed in the said Study that in the past 20 years, there has been sharp reduction to the extent of 36.3% of the barren land and an increase of 19.6% has happened in vegetation and the increase of 32% has happened in the settlement area. There is now larger area of agricultural land i.e. 52.6% as compared to the barren land and vegetation. Since the open cast mining was being performed without resorting to blasting technique, damage was caused to the nearby habitats. The closure of mines in the region has been noted to have a negative social impact as the workers who live hand-to-mouth were adversely affected and many of them have lost their shelter. This mining project would bring much needed socio-economic development in the area. All these facts have not been taken into consideration while proposing penalty to be imposed.

**26.** In its affidavit dated 10.11.2021, respondent No. 21 has submitted that it was amply clear by the position of law discussed in paras 1 to 46 of the affidavit that the answering respondent was mandated to apply for EC within the deadline dated 31.03.2016 being treated as normal application. The legal position has been highlighted in paragraph No. 14 of this judgment. Hence, all these facts need not be mentioned here. The Joint Committee in its report dated 18.03.2019 has failed to appreciate the legal and factual position which led to the rejection of CCA renewal application moved by the answering respondent. The Ministry of Environment, Forest and Climate Change (MoEF & CC) has issued clarification dated 21.11.2006 on Environmental Clearance stating that 'Consent to Establish (NOC) and the prior Environmental Clearance are separate legal requirements. Further, NOCs required under the Water Act and Air Act are mandatory requirement and will have to be taken as required and will not be linked to environment clearance. The answering respondent after multiple failure attempts had finally managed to obtain CTE on 05.03.2021. Subsequently, the answering respondent was granted CCA by GPCB on 01/03.10.2012 which was valid upto 15.07.2015 for mining of 2000 MT/month of limestone. Subsequently, an amended CCA dated 13.09.2013 was issued which corrected the production capacity from unit of '2000 MT/month' to '24000 MT/annum'. Subsequently, the answering respondent applied for renewal of CCA on 24.07.2015 as per procedure, which was wrongly rejected by GPCB on 23.11.2015 on the ground that the answering respondent had started mining operations without obtaining EC, without considering the legal position regarding requirement of EC for mining leases less than 5 ha, despite MoEF & CC clarification dated 21.11.2006 mentioned above. The GPCB issued closure direction on 09.09.2016 under Section 31A of the Air Act stating that the mine was operating without obtaining valid CCA and EC and directed to stop production and in violation of the judgment of this Tribunal dated 04.05.2016 in Naresh Zargar case. The answering respondent submitted various representations clarifying that he has applied for permission within time limit prescribed by the said judgment and after considering the representations, the GPCB issued revocation of closure direction on 13.10.2016. There is complete lack of clarity on the part of the State authorities because on the one hand the SEIAA is categorising the answering respondent as violation case while on the other, the GPCB is categorising the answering respondent as a non-violation case and has issued revocation order in terms of judgment of this Tribunal in the case of Naresh Zargar.

**27.** Respondent No. 21 had applied for EC within prescribed window and the applications which are pending as on or before 31.03.2016 should be held as normal applications and not violation cases.

**28.** The Joint Committee report dated 18.03.2019 mentions about the status of EC application as well as Consent to Establish/Consent to Operate applications but the report fails to establish any offence against the answering respondent nor did it take

into account the multiple applications moved by the answering respondent for grant of EC and for renewal of CCA due to confusion in the respective departments on the applicability of EIA, 2006. Annexure-B of the said report states that the application for grant of EC was moved as regular one while it should have been applied under Violation category, due to which the EC application was delisted on 30.10.2018. It is noted in the said report that the EC was applied before 31.03.2016 and the legal case has been filed against the answering respondent by GPCB on 30.01.2019 under Violation category. It has failed to appreciate the legal developments with regard to mines of lease area less than 5 ha as well as the procedure to be followed in case of violation cases.

**29.** With regard to second Committee Report of July, 2019, on damage assessment, it is submitted that no damage has occurred on account of "(1) ecological services forgone forever (ii) cost of damage to environment and pristine ecology and yet it has mechanically calculated the compensation of Rs. 56,25,000/- and has simultaneously recommended a detailed assessment to be made in respect of damage for the ecological services foregone forever and damage to environment and pristine ecology through an expert agency like NEERI, IIT or any other technical institute of repute in consultation with CPCB and GPCB. It is explicitly noted in the said report that the method of mining used by the answering respondent i.e. open cast mining has not caused any damage to the local area or around it. It has also noted that there was no mining activity being undertaken at the time of inspection, which was noted earlier in the Joint Committee report dated 18.03.2019. Therefore, the Committee has wrongly assumed violation on the part of the answering respondent from the years 2016 to 2019. In calculation of damages, the methodology adopted by the second Committee is erroneous, as the erroneous use of CPCB guidelines has been done. The Committee in its wisdom decided to use three methods to arrive at a suitable compensation mechanism for mitigation and restitution of environment and has proposed fine of Rs. 56,25,000/-. The first method relates to environmental compensation with respect to NGT's directions in Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. (O.A. No. 593/2017) relating to penal action for failure to set up and maintain STPs, CEPTs and EPTs and recovery of compensation for such failure. It is submitted that such method was only an interim measure, the legality of which has not been discussed nor a judgment to that effect has attained finality at any forum. Moreover, these directions were issued for discharge of STPs, CEPTs and EPTs, untreated effluents in water bodies leading to contamination of water, which has no relevance as there is no generation of industrial waste water. The Committee has recommended maximum compensation on the basis of such formula which is highly inappropriate.

**30.** It is further submitted in the Joint Committee report dated 18.03.2019 (Annexure-C) that an application for grant of EC was moved before 31.03.2016 which proved that the case of answering respondent does not fall under Violation category. However, Damage Assessment Report under "Compensation Cost Assessment as per Methodology for Assessing Environmental Compensation, CPCB" mentions 750 days as 'number of days in violation', which is self-contradictory.

**31.** Another formula devised through a resolution in the 417th meeting of SEAC-Gujarat has been incorrectly employed to calculate the environmental compensation as this formula assesses ecological damage and remediation plan through the following attributes:-

"1. Air Pollution

2. Water Pollution

3. Solid and Hazardous Waste
4. Transportation
5. Noise and Vibration
6. Greenbelt
7. Hydro-Geology
8. Risk Hazard/Occupational Health and Safety
9. Soil Conservation
10. Corporate Environmental Responsibility"

**32.** This criteria is vague, for example the cost of the sapling is fixed at Rs. 100/- while Gardner's salary is fixed at Rs. 5000/- p.m. These costs are not indicative of the final value of compensation. The SEIAA has evolved its own formula and the procedure employed by the respective SEIAAs across the country, the MoEF & CC issued the OM dated 07.07.2021, laying down detailed procedure for calculation of environmental compensation in case of violation. In view of the OM dated 07.07.2021, the SEIAA's resolution on calculation of environmental compensation becomes infructuous.

**33.** The second Committee has incorrectly relied upon the formula arrived at by Mines and Industries Department, Government of Gujarat, which was formulated as per NGT Bar Association Vs. Virender Singh in O.A. No. 360/2015, which was regarding illegal mining of sand without any mining lease. The said formula is not applicable in the instant case as the answering respondent has a valid lease. Moreover, the Committee members lack the required institutional capacity to determine environmental compensation in the report itself. Hence, it has decided to levy the maximum penalty arrived at through the three formulas. No detailed investigations were conducted by the Committee.

**34.** It is further submitted that the issue raised by the answering respondent has been highlighted in the final report filed by IIT, Gandhinagar which states that maximum financial penalty calculated and imposed on the respondent is arbitrary and unpractical and has recorded that there is absence of consistent thumb rule for the methodology adopted for imposition of damages. The penalty levied is 4 to 5 times of the earned value which was very less as the mineral production was limited and for a small duration of time. It has highlighted that the environmental damage has been less obvious than its socio-economic as well as ecological benefits such as lake or water body creation and agricultural land farms.

**35.** This Tribunal had directed CPCB and GPCB to engage any independent agency or IIT and submit its report regarding the damage assessed by the Committee, pursuant to which the IIT, Gandhinagar submitted its final report on 21.09.2021 objecting to the assessment made by the second Committee being arbitrary and yet, relied upon the findings of second Committee and merely calculated the damages on the basis of the average of the three computations arrived at by the second Committee and thus, has proposed imposition of an amount of Rs. 32,94,068/- on the answering respondent. In view of that, it is prayed by the answering respondent that the assessment made by the Committee and IIT should be set aside because no damage has been found to have been caused to environment.

**36.** Respondent No. 18 has filed objections to the Joint Committee report dated 18.03.2021, Damage Assessment report of July, 2019 and Final Project report by IIT, Gandhinagar dated 21.09.2021 to the following effect:-

On the basis of the second report of July, 2019, the environmental compensation was first illegally determined to be Rs. 1,15,74,733/- which was later on revised by IIT report dated 21.09.2021 to Rs. 32,94,068/-. Thereafter, it is narrated that the Joint Committee reports have misunderstood and misinterpreted the legal position with respect to requirement of EC to be obtained from mines of major minerals in the area below 5 ha. Thereafter, legal position has been discussed in several paras which we do not find necessary to reproduce because it has already been summarised by us in paragraph 14 above. With respect to the Joint Committee report dated 18.03.2019, it is submitted that Annexure-B to that report states that the project had applied for regular EC instead of applying under Violation category. Therefore, TOR application was delisted on 31.12.2018.

**37.** With respect to the methodology adopted by IIT in the final report, it is submitted by respondent No. 18 that the same stand has been taken as has been adopted by respondent No. 21.

**38.** The objections of respondent No. 16 against the report of Damage Assessment Due to Illegal Mining of Limestone is as follows:-

It is submitted that the said report has been prepared without following the principles of natural justice as the same has been prepared without verifying the relevant order and documents issued by the authorities and record pertaining to grant of mining lease. No damage has been caused to environment and yet, the damage of Rs. 1,96,50,504/- has been ascertained. The answering respondent stands on different footing as order dated 28.04.2011 came to be passed by the State of Gujarat granting permission for mining for a period of 30 years for the subject matter property admeasuring 4 Hectare area and the GPCB had granted provisional consent order and also mining permission upto 18.12.2018. The consent order was issued on 27.10.2014 with a condition stipulating that the Unit shall obtain the EC for further mining lease. Thus, the answering respondent had never commenced the mining activity without EC (CCA, which is similar to the EC) and it was valid upto 18.12.2018. The EC would be required only at the time of renewal of mining lease which would be in the year 2043. Therefore, the mining activity being undertaken cannot be said to be illegal or unauthorized.

**39.** It is submitted that surprisingly, the concerned authorities suspended the mining account, virtual account and royalty account w.e.f. 25.10.2018 and hence, the answering respondent stopped carrying out the mining activity. This act on the part of the authority was absolutely illegal. The answering respondent had CCA valid upto 18.12.2028 and had paid huge amount of royalty. The petition was also preferred by the answering respondent before the Hon'ble High Court, but even that was surprisingly delisted on the ground that the answering respondent had not paid damages. The Writ Petition was dismissed solely on the ground of availability of alternate remedy by order dated 18.06.2021. The answering respondent had complied with all the Rules and Regulations but the same has not been considered by the authorities. Therefore, the report against the answering respondent, according to which substantial amount for damage is assessed to Rs. 95,48,977/-, deserves to be quashed.

**40.** By additional affidavit dated 08.12.2021, the objections have been filed by respondent No. 20 against the Joint Committee report dated 18.03.2021 at pages 1755 to 1801 of the paper-book, in which it is stated that penalty of Rs. 4,50,00,000/- has been wrongly assessed against the answering respondent by the Damage Assessment Report of July, 2019 and of Rs. 2,57,98,333/- by Final Project Report dated 21.09.2021. In this affidavit also, the legal position has been narrated which we have already summarized above in paragraph 14. Hence, there is no need to repeat the same here. The answering respondent had applied for EC within the prescribed window but the same was not granted by SEIAA directing the respondent to apply for TOR under Violation category. Further, it is submitted that the MoEF & CC vide O.M. dated 07.07.2021 has prescribed Standard Operating Procedure (SOP) to be followed for consideration of violation cases, which is a three-step process. It provides for mechanism for penalty for violation. With respect to cases where operations have commenced without EC, the penalty is 1% of total project cost incurred upto date of filing of application along with EIA/EMP report plus 0.25% of total turnover during the period of violation. Therefore, if the answering respondent is found guilty of violation by the State Pollution Board, he will be tried as per this procedure and then only would be allowed to continue the mining operations.

**41.** With respect to the Joint Committee report dated 18.03.2019, it is submitted by respondent No. 16 that the said report mentions the status of the EC application and Consent to Establish/Consent to Operate application submitted by the answering respondent. It is further submitted that the report fails to establish any offence committed by the answering respondent. In Annexure-B to the report, it is recorded that regular EC was applied instead of applying under Violation category. Hence, the EC application was delisted on 30.10.2018. These averments and some other additional averments appear to have been mentioned by other respondents cited above.

**42.** With respect to the Second Committee report of July, 2019, it is submitted by respondent No. 16 that the compensation of Rs. 4,50,00,000/- is arbitrary and mechanically calculated despite there being no environment loss/damage. No mining activity was found to have been done at the time of inspection as the same was stopped in June, 2018, yet the Committee has wrongly assumed the violation on the part of the answering respondent from 1994 to 2019, which is the period for which there was no EC required till 31.03.2016. The mining activity was stopped in 2017-2018. The rest of the averments in the form of objections are repetition. The same objections have been raised by other respondents, stated above.

**43.** We have heard the arguments of the learned counsel for the respective parties, which are based on the pleadings in the affidavits/additional affidavits filed on behalf of the respective parties.

**44.** On the basis of above pleadings, we find that respondent Nos. 9 to 22 were conducting mining activities on the validly granted leases to them after making payment of royalty to the Government and after having obtained CCA which was valid for the period they did the mining activity. It is also their case that they had applied for EC also by way of abundant precaution, though the same was not required to be obtained under law in view of the legal position cited above by us in paragraph No. 14. The position of law makes it clear that since March, 2016, it was mandatory for all such mining leases (major or minor) irrespective of the size whether less than 5 hectares or bigger than that, that EC would be required for all. However, in the present case, it is apparent that none of the respondents from amongst 9 to 22 had obtained valid EC. Therefore, we have to determine as to whether for want of EC, the penalty in the form of

environmental compensation can be imposed upon respondent Nos. 9 to 22.

**45.** We find that this Tribunal had constituted Joint Committees and also Expert Committee, which find mention above with a specific mandate that the computation of the environmental compensation shall be made by them for the period of violation and in respect of all fourteen respondents. The amount of environmental compensation has been calculated by them by three different modes i.e. (i) as per guidelines prescribed by CPCB, (ii) as per guidelines of SEAC-SEIAA, Gujarat and (iii) as per resolution passed by the Industries and Mines Department, Government of Gujarat. When the matter was referred to IIT, Gandhinagar, it has recommended that average value of three calculations should be adopted for arriving on the amount of environment compensation.

**46.** We find that the Joint Committee has calculated the compensation from the period much prior to March, 2016 till the period the respondents have executed the mining but we deem it necessary to clarify that the environmental compensation should be calculated and levied from 31.03.2016 onwards till the execution of mining activities are conducted by the respondents, in view of the position of law cited above in para 14. Based on that, we find that the amount given in the last column (D) in table below should be levied as environmental compensation from the respondents mentioned in column 2 of the said table, which is the revised environmental compensation calculated by us on the above mentioned principle from 31.03.2016 onward-

#### Final Environmental Damage Assessment

Sr. No.	License & Location of License	Production after March 2016 (MT)	Damage assessment cost as per GR of Industries and Mine Department of Govt. of Gujarat. (Rs.) for Production after March 2016	Damage Assessment cost as per guidelines of SEAC/SEIAA, Gujarat. (Rs.) for Production after March 2016	Environmental Compensation as per Guidelines of CPCB, (Rs.) (Deducted Penalty Factor for Production after March 2016	Total Damage Assessment Cost Levied Average of (A), (B) and (C) in Rs. for Production after March 2016
			(A)	(B)	(C)	(D)
1	M/s Gopalchh Himmatsinh Chavhan, Survey No. 64 F, Village Ghansiya, Taluka - Talaha, Dist. - Gir Somnath	89961.04	60,45,383	13,02,051	37,50,000	16,99,144
2	M/s Vignesh Doodhik Mori, Survey No. 152, Village Jambhar, Taluka - Talaha, Dist. - Gir Somnath	5382.75	3,61,721	7,11,149	37,50,000	16,07,623
3	M/s R. J. Tivadi & Co., Survey No. 65, 70, Village Umbe, Taluka - Veraval, Dist. - Gir Somnath	119010	83,72,112	15,29,194	56,25,000	51,75,435
4	M/s Ahar Bhagwan Khimatsinh, Survey No. 389/1, Village Ajetha, Taluka - Veraval, Dist. - Gir Somnath	1,96,590	1,32,10,848	18,13,476	37,50,000	62,58,108
5	M/s Somnath Hydrated Lime & Chemicals Industries Pvt. Ltd., Survey No. 42/1, Village Kheroli, Taluka - Veraval, Dist. - Gir Somnath	390600	2,78,27,820	42,03,280	56,25,000	1,25,51,933
6	M/s Hoor mohamad Kolakhai Ferozi, Survey No. 49, Village Kheroli, Taluka - Veraval, Dist. - Gir Somnath	163335	1,26,31,063	26,31,841	56,25,000	69,42,635

7	M/s Vihara Chemical Company, Survey No. 1109, Village Damasa, Taluka - Una, Dist. - Gir Somnath	1873	1,25,866	5,99,012	16,75,000	8,56,626
8	M/s Etharjal Fanchakhal Vachhara, Survey No. 49 F, Village Undari, Taluka - Una, Dist. - Gir Somnath	271915.64	1,96,50,504	33,71,426	56,25,000	95,48,977
9	M/s Somnath Hydrated Chemicals, Magdal, rivkedi, at near Village Zadaia, Taluka - Malip, Dist. - Jamnagar	124717.87	83,81,043	14,33,395	56,25,000	51,46,479
10	M/s Dinesh Kumar & Company, Survey No. 2F, Village Khorana, Taluka - Malip, Dist. - Jamnagar	161866.34	1,15,74,731	27,03,856	56,25,000	66,24,530
11	M/s Rajai Kansa Jetava Limestone Mine, Survey No. 29 F, Village Khorana, Taluka - Malip, Dist. - Jamnagar	142559	1,01,22,773	22,99,749	56,25,000	60,15,641
12	M/s GHCL Ltd., Survey No. 408/6F, Village Garakhmasahi, Taluka - Samarpada, Dist. - Gir Somnath	27510.07	18,94,502	9,11,028	56,25,000	28,10,180
13	M/s GHCL Ltd., Survey No. 81F, Village Kodhara, Taluka - Veraval, Dist. - Gir Somnath	36423.12	26,04,574	6,15,055	56,25,000	29,48,210
14	M/s S. J. Trivedi Limestone Mine, Survey No. 123, Village Danti, Taluka - Veraval, Dist. - Gir Somnath	0	0	0	0	0

**47.** In arriving at the environmental compensation, we have taken into consideration the period of 2016-17 to 2018-19 and assessment is made of the damage/compensation from all the three modes adopted by the Industries and Mine Department, Govt. of Gujarat, as per the guidelines laid down by SEIAA, Gujarat and as per the methodology for assessing environmental compensation adopted by Central Pollution Control Board (CPCB). These amounts of environmental compensation have been given in the table above in the last column and thereafter the said amount has been added up and thereafter divided by three in order to reach the average. The said average has been recorded as the final amount of environmental compensation to be levied from each of the fourteen respondents i.e. respondent Nos. 9 to 22, which amount has been given in the last column (D) of the table against the name of each respondent.

**48.** We further direct that the said amount mentioned in last column (D) of the above table shall be deposited by respondent Nos. 9 to 22 with the State Pollution Control Board within a period of two months from the date of this order and the same shall be used for restitution of environment.

**49.** In order to explain as to how the above calculation has been made, the following facts are being mentioned in tabular form:-

**Project No. 1: Lime Stone Mine of Gopalinsh Himatrinsh Chauhan, (2.00 Ha Lease Area)**  
**Village: Chusiya, TAL: Talala, DIST: Gir Somnath.**

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Production (considered under violation)		Declared Mineral Sale value by CGM/ISM in Rs.	Total sale value of mineral in Rs.	Damage Assessment cost in Rs. 21% of Sale Value
Year	Production			
2015-17	56268.91	320	213,02,431.2	
2017-18	23872.13	320	74,79,880.0	
2018-19	0	320	0	
<b>Total</b>	<b>80141.04</b>		<b>28782311.2</b>	<b>6045.389</b>

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, SEIAA/SEAC Gujarat

Year	AP	Transport	WP	SHW	N V	Green Belt	H G	PH/GHS	CSE	SC	Total Damage Assessment Cost				
	Water requirement (MLD)	Cost of water (Rs) per year	Length of Road (m)	Cost of water sprinkling (Rs)	Water pollution treatment cost	Quantity of CH/MS in waste (MT)	Cost of Handling CH/MS in waste (Rs)	10% of loss in area (Rs)	Cost of grass (Rs)	Maintenance cost (Rs)	No. of workers	Cost	2% of Mineral Sale Value	Cost of soil preservation (Rs)	
2015-17	2	5000	0	0	0	12000	24000	0	200	5000	0	50	7250	4261	20000
2017-18	2	5000	0	0	0	0	0	0	0	72500	0	21	7730	1495	0
2018-19	0	0	0	0	0	0	0	0	0	72500	0	0	0	0	0
<b>Total</b>	<b>4</b>	<b>10000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12000</b>	<b>24000</b>	<b>0</b>	<b>200</b>	<b>145000</b>	<b>0</b>	<b>71</b>	<b>8980</b>	<b>5757</b>	<b>20000</b>

Note: Village Road is located adjacent to mine lease. Hence, no kutcha road used for transport of mineral.

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, CPCB

CPCB Guidelines for Penalty/Compensation					
Pollution Index, PI	Number of days in Violation, N	Factor in Ra, R	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Rs.)
40	300	250	0.5	1	3750000

**Project No. 2: Lime Stone Mine of M/s Vajresh Mori (2.00 Ha Lease Area)**  
**Village: Janadhar, TAL: Talala, DIST: Gir Somnath.**

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Production (considered under violation)		Declared Mineral Sale value by CGM/ISM in Rs.	Total sale value of mineral in Rs.	Damage Assessment cost in Rs.
Year	Production			
2015-17	3238	320	10,29,750	
2017-18	3164.75	320	5,90,750	
2018-19	0	320	0	
<b>Total</b>	<b>6402.75</b>		<b>1722480</b>	<b>3,61,721</b>

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, SEIAA/SEAC Gujarat

Year	AP	Transport	WP	SHW	N V	Green Belt	H G	PH/GHS	CSE	SC	Total Damage Assessment Cost				
	Water requirement (MLD)	Cost of water (Rs) per year	Length of Road (m)	Cost of water sprinkling (Rs)	Water pollution treatment cost	Quantity of CH/MS in waste (MT)	Cost of Handling CH/MS in waste (Rs)	10% of loss in area (Rs)	Cost of grass (Rs)	Maintenance cost (Rs)	No. of workers	Cost	2% of Mineral Sale Value	Cost of soil preservation (Rs)	
2015-17	2	5000	2500	18750	0	12000	24000	0	200	5000	0	50	7250	4261	20000
2017-18	2	5000	2500	18750	0	0	0	0	0	72500	0	4	5200	1385	0
2018-19	0	0	0	0	0	0	0	0	0	72500	0	0	0	0	0
<b>Total</b>	<b>4</b>	<b>10000</b>	<b>5000</b>	<b>37500</b>	<b>0</b>	<b>12000</b>	<b>24000</b>	<b>0</b>	<b>200</b>	<b>145000</b>	<b>0</b>	<b>54</b>	<b>12450</b>	<b>5646</b>	<b>20000</b>

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, CPCB

CPCB Guidelines for Penalty/Compensation					
Pollution Index, PI	Number of days in Violation, N	Factor in Ra, R	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Rs.)
50	300	250	0.5	1	3750000

Project No. 3: Lime Stone Mine of M/s R. J. Trivedi & Co. (7.59 Ha Lease Area)  
Village: Umba, TAL: Veraval, DIST: Gir Somnath.

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Production (considered under violation)	Declared Mineral Reserves value by CGM/IRM in Ha.	Total sale value of mineral in Ha.	Damage Assessment cost in Ha.
Year	Production	200	
2016-17	89900	200	1.26,59,200
2017-18	97300	200	1.82,30,000
2018-19	12300	400	19,30,000
Total	199500		3,28,19,200

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, SEMA/SEAC Gujarat

Year	AP	Transport	WP	BHW	N	Green Belt	H	H/H/CHS	CGR	SC	Total Damage Assessment Cost
15-17	7.59	19225 D	1000	7500	0		0	34	44200	25318	
17-18	7.59	19225 D	1000	7500	0		0	48	62000	36276	
18-19	7.59	19225 D	1000	7500	0		0	20	26000	17040	
Total		57675 D	32000	0	0	0	0	102	132000	78634	15,29,19

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, CPCB

Pollution Index, PI	Number of days in Violation, N	Factor in Ha, F	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Rs.)
50	750	250	0.5	1	8426250

Project No. 4: Lime Stone Mine of M/s Aher Bhagwan Bhimsinh, (6.47 Ha Lease Area)  
Village: Ajotha, TAL: Veraval, DIST: Gir Somnath.

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Production (considered under violation)	Declared Mineral Reserves value by CGM/IRM in Ha.	Total sale value of mineral in Ha.	Damage Assessment cost in Ha.
Year	Production	200	
2016-17	196000	200	6,77,20,000
2017-18	260	200	1,79,000
2018-19	0	400	0
Total	1,96,260		6,99,19,000

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, SEMA/SEAC Gujarat

Year	AP	Transport	WP	BHW	N	Green Belt	H	H/H/CHS	CGR	SC	Total Damage Assessment Cost
15-17	6.47	16175 D	1500	11250	0		0	159	23670	129429	
17-18	6.47	16175 D	1500	11250	0		0	2	2600	3264	
18-19	0	0	0	0	0		0	4	0	0	
Total		32350 D	3000	0	0	0	0	165	23970	132693	18,13,97

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, CPCB

Pollution Index, PI	Number of days in Violation, N	Factor in Ha, F	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Rs.)
50	500	250	0.5	1	3726000

Project No. 5: Lime Stone Mine of Somnath Hydrated Lime & Chemicals Industries Pvt. Ltd., (Lease Area 15.1352 Ha)  
Village: Kherali, TAL: Veraval, DIST: Gir Somnath.

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Production (considered under violation)		Declared Mineral Sale value by CUM/BSM in Rs.	Total sale value of mineral in Rs.	Damage Assessment cost in Rs.
Year	Production			
2016-17	102250	300	3272500	
2017-18	104350	300	6219250	
2018-19	102900	300	3700000	
Total	309500		13291750	2,78,27,520

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, BEAA/BEAC Gujarat

Year	AP	Transport	WP	DRW	N V	Green Belt	H G	H1/OH1	CSR	BC	Total Damage Assessment Cost		
	Water requirement (MLD)	Cost of water (Rs) per year	Length of Road (km)	Cost of water supply (Rs)	Quantity of CO <sub>2</sub> /Min. in waste (MT)	Cost of Handling CO <sub>2</sub> /Min. in waste (Rs)	10% of lease area (Sq. M.)	Cost of green belt (Rs)	Maintenance cost (Rs)	No. of workers	Cost	2% of Mineral Sale Value	Cost of soil preservation (Rs)
16-17	15.135	273280	20	1800	0	0	0	0	0	04	19200	694400	
17-18	15.135	273280	20	1800	0	0	0	0	0	157	20410	214396	
18-19	15.135	273280	20	1800	0	0	0	0	0	77	10010	752300	
Total	133514	0	4800	0	0	0	0	0	0	0	42360	265326	0

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, CFCB

CFCB Guidelines for Penalty/Compensation					
Pollution Index, PI	Number of days in Violation, N	Factor in Ra, R	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Rs.)
60	750	250	0.5	1	5625000

Project No. 6: Lime Stone Mine of M/s Noormahamad Kalubhai Patani (4.2593 Ha Lease Area)  
Village: Kherali, TAL: Veraval, DIST: Gir Somnath.

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Production (considered under violation)		Declared Mineral Sale value by CUM/BSM in Rs.	Total sale value of mineral in Rs.	Damage Assessment cost in Rs.
Year	Production			
2016-17	21061	300	8799300	
2017-18	43725	300	14034800	
2018-19	36335	300	3940000	
Total	101121		16774130	1,26,31,063

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, BEAA/BEAC Gujarat

Year	AP	Transport	WP	DRW	N V	Green Belt	H G	H1/OH1	CSR	BC	Total Damage Assessment Cost				
	Water requirement (MLD)	Cost of water (Rs) per year	Length of Road (km)	Cost of water supply (Rs)	Quantity of CO <sub>2</sub> /Min. in waste (MT)	Cost of Handling CO <sub>2</sub> /Min. in waste (Rs)	10% of lease area (Sq. M.)	Cost of green belt (Rs)	Maintenance cost (Rs)	No. of workers	Cost	2% of Mineral Sale Value	Cost of soil preservation (Rs)		
16-17	4.259	10648	500	3750	0	25525	511115	0	0	0	0	19	24700	134790	42593
17-18	4.259	10648	500	3750	0	0	0	0	0	0	0	27	40100	280096	
18-19	4.259	10648	500	3750	0	0	0	0	0	0	0	11	11530	798072	
Total	133514	0	11250	0	0	511115	0	0	0	0	0	0	17610	1,00,095	4,25,93

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, CFCB

CFCB Guidelines for Penalty/Compensation					
Pollution Index, PI	Number of days in Violation, N	Factor in Ra, R	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Rs.)
50	750	250	0.5	1	5625000

Project No. 7: Lime Stone Mine of M/s Vilram Chemical Company, (2.00 Ha Lease Area)  
 Village: Damasa, TAL: Una, DIST: Gir Somnath.

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Year	Production (considered under violation)	Declared Mineral Sale value by CCM/IRM in Ru.	Total sale value of mineral in Ru.	Damage Assessment cost in Ru.
2015-17	0	0	0	
2017-18	1873	0	0	
2018-19	0	0	0	
	1873	0	0	1,25,899

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, SEEA/SEAC Gujarat

Year	AP	Transport	WP	SHW	NY	Green Belt	HG	SH/GHS	CSR	SC	Total Damage Assessment Cost
16-17	0	0	0	0	0	0	0	0	0	0	0
17-18	2	2600	790	3625	0	0	0	0	0	0	0
18-19	0	0	0	0	0	0	0	0	0	0	0
Total	0	2600	790	3625	0	0	0	0	0	0	0

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, CPCB

Pollution Index, PI	Number of days in Violation, N	Factor in No., R	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Ru.)
50	250	250	0.5	1	1875000

Project No. 8: Lime Stone Mine of Dhiraajlal Fanchabhai Vachhani, (Lease Area 4.00 Ha)  
 Village: Undari, TAL: Veraval, DIST: Gir Somnath.

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Year	Production (considered under violation)	Declared Mineral Sale value by CCM/IRM in Ru.	Total sale value of mineral in Ru.	Damage Assessment cost in Ru.
2015-17	0	0	0	
2017-18	109276.3	0	0	
2018-19	80000.64	0	0	
	189276.94	0	0	1,06,50,524

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, SEEA/SEAC Gujarat

Year	AP	Transport	WP	SHW	NY	Green Belt	HG	SH/GHS	CSR	SC	Total Damage Assessment Cost
16-17	4	10000	150	11250	0	0	0	0	0	0	0
17-18	4	10000	150	11250	0	0	0	0	0	0	0
18-19	4	10000	150	11250	0	0	0	0	0	0	0
Total	12	30000	450	33750	0	0	0	0	0	0	0

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, CPCB

Pollution Index, PI	Number of days in Violation, N	Factor in No., R	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Ru.)
50	780	250	0.5	1	5625000

**Project No. 9: Lime Stone Mine of M/s Somnath Hydrated Chemicals (10.00 Ha Lease Area)  
Meghal River, Village: Zadalka, TAL: Malin, DIST: Gir Somnath.**

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Production (considered under violation)		Declared Mineral Sale value by CGM/BIM in Rs.		Total sale value of mineral in Rs.		Leakage Assessment cost in Rs.	
Year	Production						
2016-17	21879.27	300		6742360			
2017-18	303636.3	300		33164330			
2018-19	0	400		0			
<b>Total</b>	<b>126717.87</b>			<b>39906720</b>			<b>8221043</b>

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, SEIAA/SEAC Gujarat

Year	AP	Transport	WP	SHW	NV	Green Belt	HQ	RH/OHS	CSR	BC	Total Damage Assessment Cost			
	Water repair amount (K.L.)	Cost of water (Rs) per year	Length of Head, m	Cost of water supply (Rs) per kg	Water pollution on annual basis	Quantity of CB/Min. waste (MT)	Cost of Handling CB/Min. waste (Rs)	10% of lease area cost (Rs)	Cost of green belt (Rs)	Main structure cost (Rs)	No. of workers	Cost	2% of Mineral Sale Value	Cost of soil preservation (Rs)
16-17	10	250000	0	0	0			0	19	24700	134008			
17-18	10	250000	0	0	0			0	60	110000	763207			
18-19	0	0	0	0	0			0	0	0	0			
<b>Total</b>		<b>500000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>79</b>	<b>357000</b>	<b>798195</b>	<b>0</b>	<b>14,33,395</b>	

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, CPCB

CPCB Guidelines for Penalty/Compensation					
Pollution Index, PI	Number of days in Violation, N	Factor in Rs., E	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Rs.)
60	750	250	0.5	1	5625000

**Project No. 10: Lime Stone Mine of M/s Dinesh Kumar & Co. (5.00 Ha Lease Area)  
Village: Khorana, TAL: Malin, DIST: Gir Somnath.**

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Production (considered under violation)		Declared Mineral Sale value by CGM/BIM in Rs.		Total sale value of mineral in Rs.		Leakage Assessment cost in Rs.	
Year	Production						
2016-17	46730	300		14019000			
2017-18	72649.47	300		22847800			
2018-19	42796.87	400		17082740			
<b>Total</b>	<b>161266.34</b>			<b>53949440</b>			<b>1,25,74,738</b>

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, SEIAA/SEAC Gujarat

Year	AP	Transport	WP	SHW	NV	Green Belt	HQ	RH/OHS	CSR	BC	Total Damage Assessment Cost			
	Water repair amount (K.L.)	Cost of water (Rs) per year	Length of Head, m	Cost of water supply (Rs) per kg	Water pollution on annual basis	Quantity of CB/Min. waste (MT)	Cost of Handling CB/Min. waste (Rs)	10% of lease area cost (Rs)	Cost of green belt (Rs)	Main structure cost (Rs)	No. of workers	Cost	2% of Mineral Sale Value	Cost of soil preservation (Rs)
16-17	5	125000	100	750	0	800000	600000	0	12500	91200	39	87700	295744	80000
17-18	5	125000	100	750	0			0	91200	0	60	79000	464957	
18-19	5	125000	100	750	0			0	91200	0	36	46300	941838	
<b>Total</b>		<b>375000</b>	<b>200</b>	<b>2250</b>	<b>0</b>	<b>800000</b>	<b>600000</b>	<b>0</b>	<b>342400</b>	<b>27375</b>	<b>95</b>	<b>173000</b>	<b>1,10,285</b>	<b>80000</b>

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, CPCB

CPCB Guidelines for Penalty/Compensation					
Pollution Index, PI	Number of days in Violation, N	Factor in Rs., E	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Rs.)
60	750	250	0.5	1	5625000

Project No. 11: Lime Stone Mine of M/z Rajni Rana Jotava (4.00 Ha Lease Area)  
Village: Khorata, TAL: Malia, DIST: Gir Somnath.

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Production (considered under violation)		Declared Mineral Sale value by CDM/ISM in Rs.	Total area value of mineral in Rs.	Damage Assessment cost in Rs.
Year	Production			
2016-17	39224	320	1264680	
2017-18	70725	320	2282520	
2018-19	32210	400	1292400	
	142159		4839600	1,01,22,975

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, SEIAA/SEAC Gujarat

Year	AP	Transport		WP	SHW	NV	Green Belt			H/G	RH/CRH		CNR	BC	Total Damage Assessment Cost		
		Water requirement (MLD)	Cost of water (Rs) per year				Length of Road, m	Cost of water Sprinkling (Rs)	Quantity of CO/MS waste (MT)		Cost of Handling CO/MS waste (Rs)	10% of area (Ha)				Cost of green belt (Rs)	Machine cost (Rs)
16-17	4	10000	350	1125	0	24000	480000	0	400	10000	25000	0	34	46200	25295	40000	
17-18	4	10000	350	1125	0			0	0		25000	0	30	75700	45204		
18-19	4	10000	350	1125	0			0	0		25000	0	28	35400	22945		
Total		30000		3375	0	48000	0	10000	0	25000	0	0	15730	95407	40000	22,99,74	

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, CPCB

CPCB Guidelines for Penalty/Compensation

Pollution Index, PI	Number of days in Violation, N	Factor in Rs, F	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Rs.)
50	750	250	0.5	1	9625000

Project No. 12: Lime Stone Mine of M/z GHCL Ltd., (8.73 Ha Lease Area)  
Village: Gorakhmadi, TAL: Sutrapada, DIST: Gir Somnath.

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Production (considered under violation)		Declared Mineral Sale value by CDM/ISM in Rs.	Total area value of mineral in Rs.	Damage Assessment cost in Rs.
Year	Production			
2016-2017	12840.6	320	4108920	
2017-18	11941.8	320	2821376	
2018-19	2727.87	400	1021468	
Total	27510.27		8021764	13,94,502

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, SEIAA/SEAC Gujarat

Year	AP	Transport		WP	SHW	NV	Green Belt			H/G	RH/CRH		CNR	BC	Total Damage Assessment Cost
		Water requirement (MLD)	Cost of water (Rs) per year				Length of Road, m	Cost of water Sprinkling (Rs)	Quantity of CO/MS waste (MT)		Cost of Handling CO/MS waste (Rs)	10% of area (Ha)			
16-17	17311	218278	1750	18125							12	15600	82180		
17-18	17311	218278	1750	18125							10	15600	76428		
18-19	17311	218278	1750	18125							4	7830	21821		
Total		654834		54375	0	0	0	0	0	0	26	39030	180429	0	91,11,038

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, CPCB

CPCB Guidelines for Penalty/Compensation

Pollution Index, PI	Number of days in Violation, N	Factor in Rs, F	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Rs.)
50	750	250	0.5	1	9625000

Project No. 13: Lime Stone Mine of M/s GHCL Ltd., (4.70 Ha Lease Area)  
Village: Kodidra, TAL: Veraval, DIST: Gir Somnath.

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Year	Production	Declared Mineral Sale value by GCM/ISM in Rs.	Total sale value of mineral in Rs.	Damage Assessment cost in Rs.
2016-17	17042.34	320	4142509	
2017-18	14126.07	320	4225012	
2018-19	9241.73	320	3726664	
Total	39420.12		12094185	26,04,574

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, SEMA/SEAC Gujarat

Year	AP	Transport	WP	SHW	NV	Green Belt	JG	RI/OH	CSR	EC	Total Damage Assessment in Cost				
Water requirement (GJ)	Cost of water (Rs/year)	Length of road (m)	Cost of water spread (Rs)	Water sold to community (MT)	Quantity of CH/MS waste (MT)	Cost of Handling CH/MS waste (Rs)	10% of lease area (Sq. M.)	Cost of green belt (Rs)	Maintenance cost (Rs)	No. of workers	Cost	2% of Mineral Sale Value	Cost of soil preservation (Rs)		
16-17	4.7	11750	300	3750	0	28200	33400	0	470	11750	0	12	5850	20850	47000
17-18	4.7	11750	300	3750	0	0	0	0	0	11750	0	13	2475	9241	
18-19	4.7	11750	300	3750	0	0	0	0	0	11750	0	9	1170	7473	
Total		23500		7500	0	0	0	0	0	17850	0	34	2960	10520	0

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, GPCB

Pollution Index, PI	Number of days in Violation, N	Factor in Rs., R	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Rs.)
50	750	250	0.5	1	5625000

Project No. 14: Lime Stone Mine of M/s S. J. Trivedi. (9.35 Ha Lease Area)  
Village: Dari, TAL: Veraval, DIST: Gir Somnath.

Damage Assessment cost calculations

Assessment as per Resolution passed by Industries & Mines Department, Govt. of Gujarat

Year	Production	Declared Mineral Sale value by GCM/ISM in Rs.	Total sale value of mineral in Rs.	Damage Assessment cost in Rs.
2016-17	0	320	0	
2017-18	0	320	0	
2018-19	0	320	0	
Total	0	960	0	0

Assessment as per Indicative Guidelines for Assessment of Ecological Damage, SEMA/SEAC Gujarat

Year	AP	Transport	WP	SHW	NV	Green Belt	JG	RI/OH	CSR	EC	Total Damage Assessment in Cost		
Water requirement (GJ)	Cost of water (Rs/year)	Length of road (m)	Cost of water spread (Rs)	Water sold to community (MT)	Quantity of CH/MS waste (MT)	Cost of Handling CH/MS waste (Rs)	10% of lease area (Sq. M.)	Cost of green belt (Rs)	Maintenance cost (Rs)	No. of workers	Cost	2% of Mineral Sale Value	Cost of soil preservation (Rs)
16-17	0	0	0	0	0	0	0	0	0	0	0	0	0
17-18	0	0	0	0	0	0	0	0	0	0	0	0	0
18-19	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0	0	0	0	0

Compensation cost Assessment as per Methodology for Assessing Environmental Compensation, GPCB

Pollution Index, PI	Number of days in Violation, N	Factor in Rs., R	Scale of Operation, S	Location Factor, LF	Environmental Compensation, EC (Rs.)
50	0	250	0.5	1	0

50. We find that the Committee has calculated the amount of environmental compensation by the above three modes and the mode which brought the environmental compensation to the maximum level, the same was recommended to be levied, while we are of the opinion that the amount which is arrived at as average of the amount calculated by the three modes, should be levied by way of environmental compensation.

51. We hereby direct that the amount of Environmental Damage Compensation shall be deposited by the responding units, namely, respondent Nos. 9 to 22 with GPCB within two months. GPCB in consultation with the department of Industries and mines shall prepare plan within one month for utilization of the said amount for environmental improvement in the area where these mines were operating. Thereafter, the GPCB shall host the said environmental improvement plan for two weeks on its website for inviting inputs/suggestions from the stake holders and finalize the same within two weeks thereafter. Plan so prepared shall be executed within 6 months and report shall be uploaded on website of GPCB.

52. We have also noticed in the reply-affidavits that most of the respondents have applied for EC to be granted and the applications for the same are long pending with the respondent authorities and are not being decided on the pretext of the present

matter being pending before this Tribunal. In these circumstances, we direct that the respondent authorities shall decide all such pending applications within a period of two months as per the provisions of the relevant Acts and Rules.

**53.** With above directions, the Original Application stands disposed of. No costs.

**54.** In view of disposal of the Original Application, all pending Misc. Applications and Interlocutory Applications stand disposed of.

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