

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
I.A. NO. 08 OF 2025
IN
O.A. NO. 349 OF 2024**

IN THE MATTER OF:

YASHPAL SINGH

...APPLICANT

Versus

STATE OF UTTARAKHAND & ORS.

...RESPONDENTS

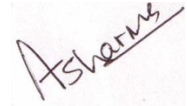
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14. Proof of Service

593
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Supreme Court of India
New Delhi-110001

Place: New Delhi
Dated: 09.10.2025.

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IN THE MATTER OF:

YASHPAL SINGH

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STATE OF UTTARAKHAND & ORS.

...RESPONDENTS

**REPLY ON BEHALF OF ORIGINAL APPLICANT TO I.A. NO. 08 OF
2025 FILED BY RESPONDENT NO.6 ALONG WITH AFFIDAVIT.**

TO
HON'BLE CHAIRPERSON AND HIS LORDSHIP'S COMPANION
MEMBERS OF THE NATIONAL GREEN TRIBUNAL AT NEW DELHI

The Original Applicant,

MOST RESPECTFULLY SHOWETH:

1. That the present Original Application has been filed, inter alia, praying for directions to the State Government to ensure that no stone crushers are allowed to operate within 500 meters of any perennial or non-perennial rivers in Uttarakhand State and also for quashing various permissions granted by governmental authorities to Respondent No.6 allowing it to carry out stone crushing activity with a capacity of crushing 200 tons/hour in Village Majri Grant, Tehsil Doiwala, District Dehradun, which crusher is located admittedly within Doon Valley, an ecologically sensitive area as per MoEF&CC notification dt. 01.02.1989 (as amended from time to time).

2. That the present Application has been filed by Respondent No. 6 (hereinafter referred to as 'Applicant'/'Respondent'), inter-alia, on the following erroneous grounds:
 - a. That the O.A. filed u/s 14 is not maintainable. (*para 3 to 15 of the I.A.*).
 - b. That the Original Applicant lacks bonafides (*para 6 of the I.A.*).
 - c. That NGT has no power to quash governmental notifications (*para 17 to 29 of the Present Application*).
3. That the reply of the Original Applicant on each of the above issues is as follows:

I. Original Application is maintainable.

- i. It is submitted that the Original Application has been filed since a heavily polluting activity (i.e. stone crushing) has been permitted in an ecologically sensitive zone (ESZ), namely the Doon Valley, that has been notified as ESZ vide notification dt. 01.02.1989 of MoEF&CC issued under Section 3 of Environment (Protection) Act, 1986, a Schedule 1 enactment under the NGT Act, 2010 (*refer to Annexure 1 of the Original Application*). The State Government has permitted Respondent No.6 to set up stone crusher in the Doon Valley ESZ vide its order dt. 04.12.2023 and 12.12.2023 (*Annexure 10 of the Original Application*):
 - a. without undertaking any assessment of carrying capacity of Doon Valley, which is already heavily polluted;
 - b. in complete violation of judgement of this Hon'ble Tribunal in Sanjay Kumar v. Union of India & Ors. [O.A. No. 669 of 2022, judgment dt. 07.12.2022], which quashed the

distinction between perennial and non-perennial rivers for computing the distance within which stone crushers are prohibited; and

- c. ignoring that the private Respondent is carrying on illegal river-bed sand mining in Jakhan river, which mining forms the raw material for its stone crusher.

Section 14 places no fetters on the power of the NGT to pass appropriate order/ directions w.r.t. issues arising out of Schedule 1 statutes.

- ii. At the outset it is submitted that section 14 of the NGT Act, 2010 itself places no fetters on the power of the NGT to quash a government notification or deal with matters related to regulatory approvals. The invocation of NGT's original jurisdiction is contingent only upon (i) *itis* should raise a substantial question relating to environment, and (ii) such question should arise out of implementation of a Schedule 1 enactment. The use of the word 'including' within brackets in Section 14 implies that powers of the NGT extend beyond mere enforcement of recognized legal rights.
- iii. It is submitted that Section 2(1)(c) broadly defines "*environment*" to include land, air and water and their inter-relationship with humans and other living beings. Similarly, Section 2(1)(m) defines "*substantial question relating to environment*" to include instances where environmental consequences arise out of a specific activity or a source of pollution. In the present case, the grant of permission to

operate stone crushers in the ecologically fragile Doon Valley has obvious adverse environmental consequences, including drastic increase in air pollution and river bed material mining among other harmful effects.

- iv. Therefore, it is submitted that the present Original Application meets the requirements of Section 14 to invoke the jurisdiction of this Hon'ble Tribunal. Once invoked, the power of the Tribunal extends to passing any order, decision or award for restitution of the environment [see Section 15(1)(c) of the NGT Act 2010] and after applying the three core principles enunciated in Section 20. It is submitted that there is no explicit or implicit limitation on the power of the NGT in the NGT Act, 2010 to pass an order, decision or award quashing a government notification.

II. Bonafides of the Original Applicant

- i. It is submitted that the Original Applicant is a resident of Village Majri Grant, Tehsil Doiwala, District Dehradun, Uttarakhand.
- ii. It is submitted that the Original Applicant along with other residents of the village are opposed to the establishment of stone crushers since the same is located admittedly within 60 meters of River Jakhan and within 300 meters from the village (*refer to para 5 of the Original Application*).
- iii. It is pertinent to mention that since the stone crushing unit is set up on agricultural land, the dust and other pollution that would emanate from its activity would settle on the farm lands

thereby negatively affecting the soil and crop yield of lands located near the crusher (*refer to para 6,7 and 8 of the Original Application*). Reduction in crop yields due to a polluting activity is directly hit by the principle of inter-generational equity.

- iv. Therefore, it is submitted that the Original Applicant is a concerned resident of the village who along with other villagers is opposed to the stone crushing unit, since it would entail direct harm to all the villagers.
- v. It is submitted that the threshold of 'aggrieved person', mentioned in Section 16, is not mentioned in Section 14 of the NGT Act 2010, in which the requirement to invoke Tribunal's jurisdiction is 'substantial question of law'. Thus, while the Original Applicant is an aggrieved person in the facts of the present case, the threshold of Section 14 does not even require a person aggrieved to invoke Tribunal's jurisdiction. Thus, jurisdiction u/s 14 is far more liberal and wider than in Section 16.
- vi. Moreover, it is submitted that this Hon'ble Tribunal in the case of Samir Mehta v. Union of India & Ors. [O.A. No. 24 of 2011] (*refer to para 31 and 32*) has held that meaning of 'aggrieved person' cannot be confined to someone who has directly suffered person loss as 'environment' as a subject is not person centric rather it is society centric and therefore when a person raises a substantial question relating to environment the same grants locus standi. Though the matter has been challenged before the Hon'ble Supreme Court via Special

Leave Petition, the Hon'ble Supreme Court has issued notice without granting a stay on the operation of judgement of Samir Mehta (supra). A true copy of judgement dt. 23.08.2016 passed by this Hon'ble Tribunal in Samir Mehta v. Union of India & Ors. [O.A. No. 24 of 2011] is annexed herewith as **Annexure R-1 at pages 129-151**

III. That NGT has the power to pass such orders as necessary to protect the environment.

- i. At the outset it is submitted, that the Hon'ble Supreme Court of India in a catena of judgements has held that this Hon'ble Tribunal has wide jurisdiction to pass orders to safeguard the fundamental right to environment flowing from Article 21 of the Indian Constitution. Therefore an interpretation which confers jurisdiction upon this Hon'ble Tribunal should be favoured over one which takes away its jurisdiction.
- ii. In Mantri Techzone Pvt. Ltd. vs. Forward Foundation & Ors. [MANU SC/0315/2019] (*refer to para 40 to 44; 46 and 47*), the Hon'ble Supreme Court of India held that the NGT has been enacted to safeguard right to clean and healthy environment guaranteed by Article 21. As such, the Hon'ble Court held, that **NGT has 'special jurisdiction'** to safeguard fundamental rights. As a corollary, the Tribunal therefore has the power to adjudicate the plea assailing a government notifications on the ground that it violates fundamental right to clean and healthy environment. The Hon'ble Court held as follows in Mantri Techzone (supra):

"40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialized judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.

41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and

15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

*44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading (See *Kishore Lal v. Chairman, Employees' State Insurance Corpn.* (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad*

restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45.

46. *Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra. the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.*

47. *Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument*

having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and water bodies in contradiction with zoning regulations under these statues or the RMP."

(emphasis added)

A true copy of judgement dt. 05.03.2019 in Mantri Techzone Pvt. Ltd v. Forwards Foundation & Ors. [MANU SC/0315/2019] is annexed herewith as **Annexure R-2 at pages 152 to 178**

- iii. Mantri Techzone (supra) was cited with approval subsequently by the apex Court in The Director General, NHAI vs. Aam Aadmi Lokmanch & Ors. [2020 6 S.C.R. 1050] and again in paragraph 21.1 of Municipal Corporation of Greater Mumbai vs. Ankita Sinha [MANU/SC/0815/2021] (*refer to para 17.3, 21.6 and 26.4*) wherein the apex Court held that the Tribunal has power to suo moto invoke its jurisdiction to pass orders, inter alia, which hold the government accountable for failing to

uphold environmental interests (refer to para 26.4). The Hon'ble Court held as follows in Ankita Sinha (supra):

"17.3 For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of lis, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

21.6 The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in Andhra Pradesh Pollution Control Board v. Prof. M. V. Nayudu (Retd.) and Ors.¹⁷ where Justice M. Jagannadha Rao speaking for a Division Bench referred to a comparable court in Australia and noted the following:

"The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior

court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters."

The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

26.4 ... Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain"

A true copy of judgement dt. 07.10.2021 Municipal Corporation of Greater Mumbai v. Ankita Sinha [MANU/SC/0815/2021] is annexed herewith as **Annexure R-3 at pages** ^{179 to 192}.

iv. In Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India [MANU/SC/0642/2012] the Hon'ble Supreme Court of India vide a judicial order directed transfer of all pending and fresh cases covered by the NGT Act and pending before the High Courts to the NGT since impliedly the NGT had wide

powers to pass any such orders that the High Courts would have the powers to pass (*refer to para 40 of the judgement*). A true copy of judgement dt. 09.08.2012 Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India [(MANU/SC/0642/2012)] is annexed herewith as **Annexure R-4 at pages 179 to 192**

- v. It is submitted that the Applicant's reliance on Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd. [MANU/SC/0223/2019] to contend that powers of this Hon'ble Tribunal are curtailed to with respect to judicial review, is misplaced as it was related to exercise of appellate jurisdiction by the Hon'ble Tribunal under Section 16 of the NGT Act 2010. The present case is invoked under Section 14 of the NGT Act 2010, which is the original jurisdiction of this Hon'ble Tribunal. The Hon'ble Supreme Court has held that:

"42. It is clear, therefore that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act."

It is pertinent to mention that in the present case the challenge to various permissions as well as directions for reconsideration of siting criteria is made under Section 14 of the NGT Act, which is a de novo challenge and not an appellate challenge and therefore the judgement in Sterlite Industries (supra) has no application to the present case. A true copy of judgement dt. 18.02.2019 in Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd. [MANU/SC/0223/2019] is

annexed herewith at **Annexure R-5 at pages**^{193 to 228}.

vi. It is submitted that the Applicant's reliance on Environment Support Group v. Biodiversity Authority [SLP (C) No. 7951 of 2014] is misplaced as the Hon'ble Supreme Court itself has not made any observation with respect to jurisdiction of this Hon'ble Tribunal to decide the vires of any statute. It is pertinent to mention that the Applicant itself admits that the Hon'ble Supreme Court has allowed any aggrieved party by High Court's order to raise the issue of maintainability later on. A true copy of order dt. 22.11.2022 in Environment Support Group v. Biodiversity Authority [SLP (C) No. 7951 of 2014] is annexed herewith as **Annexure R-6 at pages**^{229 to 232}.

vii. It is submitted that the Hon'ble Supreme Court in the case of State of Uttar Pradesh v. Gaurav Kumar [C.A. No. 14170 of 2024] has tacitly approved the jurisdiction possessed by this Hon'ble Tribunal to review state executive actions. In that case the Hon'ble NGT had 'quashed' e-auction notice issued by the Respondent State therein for sand mining and subsequent Letter of Intent issued by it, on the ground that no valid DSR had taken place. It is further pertinent to mention that the Hon'ble Supreme Court emphasized on the need of strict enforcement and tough policies to stop environmental degradation of fragile ecosystems. The Hon'ble Supreme Court has held that:

"1.1. Unregulated sandmining disrupts riverine ecosystems, alters natural flow patterns, and leads to erosion and habitat loss. Aquatic biodiversity suffers as

spawning grounds are destroyed and water quality deteriorates. The destabilisation of riverbanks increases flooding, risking human life and animal habitat alike..... Therefore, absolute standards with get tough policies, strict enforcement and quick accountability are compelling for effective regulatory control.

1.2. We have upheld the decision of National Green Tribunal quashing e-auction notice dated 13.02.2023 issued by the State Government for sand mining and the consequent grant of Letters of Interest (LOIs) in favour of successful bidders on the ground that the auction was conducted in the absence of a valid, final and a subsisting District Survey Report (DSR).”

A true copy of judgement dt. 08.05.2025 in State of Uttar Pradesh v. Gaurav Kumar [C.A. No. 14170 of 2024] is annexed herewith as **Annexure R-7 at pages 233 to 266**.

viii. It is submitted that the law laid down by Sanjay Kumar v. Union of India & Ors. [O.A. No. 699 of 2022] that in case of Uttarakhand Stone Crusher, Screening Plant, Pulveriser, Hot Mix Plant Policy 2021 the distinction based on distance between perennial and non-perennial rivers is unfounded, has attained finality in view of the fact that the Hon’ble High Court of Uttarakhand has dismissed WPMS No. 830 of 2023 vide its order dt. 11.09.2025. Therefore, the Applicant’s reliance on State of Andhra Pradesh v. Raghu Ramkrishna Raju Kanumuru (M.P.) [Civil Appeal No. 4522-4524 of 2022],

to canvass the proposition that since Sanjay Kumar (supra) is under challenge before the Hon'ble High Court of Uttarakhand and therefore the same is not binding, has no legs to stand on as the writ petition against Sanjay Kumar (supra) has been dismissed and no challenge as of yet has been made to the same. A true copy of order dt. 11.09.2025 passed in Uttaranchal Stone Crusher v. State of Uttarakhand & Ors. [WPMS No. 830 of 2023] is annexed herewith as **Annexure R-8 at pages 267** .

- ix. It is further submitted that the Hon'ble Supreme Court in the case of L. Chandra Kumar v. Union of India & Ors. [1997 3 SCC 261] has held that tribunals have the power of judicial review subject only to the exception that such power does not extend to adjudicating a challenge to the vires of the parent statute of the tribunal so concerned. In para 93, the Hon'ble Supreme Court has held that:

"93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to

scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes.....We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.”

- x. It is submitted that a large number of precedents exist where this Hon'ble Tribunal has quashed government notifications in exercise of its original jurisdiction. Some of them are mentioned below:

- a.** S.P. Muthuraman v. Union of India [O.A. No. 37 of 2015], where Office Memorandums issued by MOEF&CC dt. 27.06.2013, 12.12.2012 among others were challenged and Hon'ble NGT struck down OM dt. 27.06.2013 and 12.12.2012 (*refer to para 90 to 94, 163*). A true copy of judgement dt. 07.07.2015 and it is annexed as **Annexure R-9 at pages 268 to 468**

- b. Naresh Zargar v. State of Madhya Pradesh [O.A. No. 34 of 2016] (*refer to para 13,14 and 18*) where State of MP's circular dt. 14.12.2015 was struck down as it allowed mining activities beyond 31.12.2015 which was in teeth of Hon'ble NGT's orders. A true copy judgement dt. 04.05.2016 and it is annexed as **Annexure R-10 at pages 469 to 482.**
- c. Himmat Singh Shekhawat v. State of Rajasthan & Ors. [O.A. No. 123 of 2014] (*refer to para 56, 75 and 83*) where MOEF&CC's office memorandums dt. 24.06.2013 which prohibited certain mining activities and 24.12.2013 which exempted river sand bed mining projects from EC requirements were struck down by Hon'ble NGT. A true copy of judgement dt. 13.01.2015 and it is annexed as **Annexure R-11 at pages 483 to 575.**
- d. Satendra Pandey v. MoEF & Ors. [O.A. No. 186 of 2016] (*refer to para 9,12,13 and 21*) where notification dt. 15.01.2016 by MOEF&CC relaxing requirement of EIA and Public hearing for projects of certain size was struck down by Hon'ble NGT. A true copy judgement dt. 13.09.2018 and it is annexed as **Annexure R-12 at pages 576 to 592.**
- xi. Even otherwise and without prejudice to the foregoing submissions of the Original Applicant it is submitted that this Hon'ble Tribunal has the power to mold relief to safeguard the environment. In Ankita Sinha (*supra*) the Hon'ble

Supreme Court of India specifically held that this Hon'ble Tribunal has the power to mold reliefs prayed for and to grant appropriate relief even though such relief may not have been prayed for by a party. The last prayer in the Original Application specifically prays for passing of such other order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case. Given that this is the scope of this Hon'ble Tribunal's powers, it is submitted that this Hon'ble Tribunal has the power to halt operation of stone crusher in Doon Valley and further direct state authorities to ensure that no crushers operate within 500 meters from the embankments on any river whether perennial or non perennial.

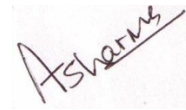
xii. It is submitted that the EC granted to the Applicant dt. 01.02.2024 by SEIAA is as per EIA Notification 2006, which itself is issued under Section 3 of the Environment Protection Act, 1986 a Schedule 1 enactment under NGT Act 2010 (*Annexure 12 of the Original Application*). It is pertinent to mention that several conditions of the EC granted are not being complied with viz. installation of borewell sans permission from Central Ground Water Board; construction of crusher below high tension wire line, etc (*refer to para 9 of the Original Application*).

xiii. It is submitted the CTE granted to Applicant dt. 18.01.2024 is a necessary NOC required under Water Act, 1974 and Air Act 1981 both of which are Schedule 1 enactments under the NGT Act 2010. In the present case, permitting a stone

crushing unit in an eco-sensitive zone raises serious questions of environmental degradation, public health, and violation of statutory norms, which squarely attract Section 14 jurisdiction of the NGT Act 2010.

4. In view of submissions made above, the Original Applicant, herein the Responding Applicant, prays that the Hon'ble Tribunal be pleased to dismiss this Interim Application [I.A. No. 08 of 2025].

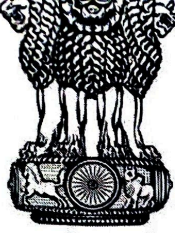
Filed By:



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320 CK Daphtary Chambers
Supreme Court of India
New Delhi-110001

Place: New Delhi
Dated: 09.10.2025.



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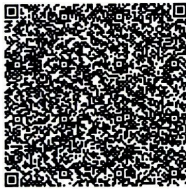
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BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
I.A. NO. 08 OF 2025
IN
O.A. NO. 349 OF 2024

IN THE MATTER OF:
YASHPAL SINGH

...APPLICANT

Versus

STATE OF UTTARAKHAND & ORS.

...RESPONDENTS

AFFIDAVIT

I, Yashpal Singh, s/o Amichand, aged about 39 years and r/o Ward No. 14, Resham Magri, Doiwala Dehradun, Uttarakhand 248140 presently at _____ do hereby solemnly affirm and declare as under:

1. That I am the Applicant in Original Application No. 349 of 2024 and the answering Applicant or Responding Applicant in the present Interim Application No. 08 of 2025.
2. That I further state that contents of present reply filed in Interim Application No. 08 of 2025 have been thoroughly read and understood by me and I declare the reply has been prepared on my instructions.
3. The contents of the reply filed in Interim Application No. 08 of 2025 are true to the best of my knowledge. The same has been read over to me and understood by me.

YASHPAL SINGH
DEPONENT

Verification:

Verified at Dehra Dun on this 8 day of Oct., 2025 that the contents of my above affidavit are true and correct to my knowledge and nothing material has been concealed therein.



ATTESTED

KAMAL KUMAR KURMI
 Advocate & NOTARY
 Reg. No.- 48991/2025
 Dehradun Uttarakhand (INDIA)

YASHPAL SINGH
DEPONENT

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ANNEXURE R-1

MANU/GT/0104/2016

BEFORE THE NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH, NEW DELHI

Original Application No. 24 of 2011, M.A. No. 129 of 2012, M.A. Nos. 557 and 737 of 2016

Decided On: 23.08.2016

Samir Mehta **Vs.** Union of India and Ors.

Hon'ble Judges/Coram:

Swatanter Kumar, J. (Chairperson), U.D. Salvi, J. (Member (J)), A.R. Yousuf, Member (E) and Ranjan Chatterjee, Member (E)

Counsels:

For Appellant/Petitioner/Plaintiff: Raj Panjwani, Sr. Advocate, Ritwick Dutta, Rahul Choudhary and Meera Gopal, Advocates

For Respondents/Defendant: Panchanjanya Batra Singh, Advocate

ORDER

Swatanter Kumar, J. (Chairperson)

1. The present application raises questions of public importance and significance of environmental jurisprudence, in relation to pollution caused by sinking of ship and oil spill in the Territorial Water, Contiguous Zone and Exclusive Economic Zone of the country (India) and consequences and liabilities arising therefrom.

FACTS:

The Applicant, a resident of Mumbai claims to be an environmentalist pursuing various environmental concerns before different forums for the last two decades. According to the Applicant, he was on the Committee constituted by the Ministry of Environment, Forest & Climate Change (for short, 'MoEF&CC') of Matheran Eco-Sensitive Zone as well as on the Committee of Mahabaleshwar Panchagani Regional Board constituted by the State of Maharashtra to prepare master plan of the Eco-Sensitive Zone. The Applicant has filed the present application under Sections 14 and 15 of the National Green Tribunal Act, 2010 (for short, 'Act of 2010') raising substantial questions relating to the environment, restitution of the environment and compensation commensurate to the damage done to the ecology on the facts of the present case.

2. Respondent Nos. 1, 2, 3 and 4 are the MoEF&CC, State of Maharashtra, Maharashtra Pollution Control Board and Maharashtra Maritime Board. All are the official Respondents and/or the instrumentalities of the State who are vested with statutory powers to maintain and protect the environment and ecology. Respondent No. 5 is the owner of the ship 'M.V. RAK' (for short, 'the Ship') which was carrying coal for and on behalf of Respondent No. 6. Respondent No. 6 is an Indian Company with its registered office at Ahmedabad. The Ship was carrying more than 60054 MT coal in its holds. The Ship contained 290 tonnes of fuel oil and 50 tonnes of diesel. Its voyage was from Indonesia to Dahej.

3. On its voyage to destination, the ship sank approximately 20 Nautical Miles from the

coast of South Mumbai. There was an oil spill in August, 2011 which occurred in the Arabian Sea, off the coast of Mumbai due to the sinking of the ship. The spilled oil from the ship spread beyond Mumbai to Raigad District. Traces were noticed particularly between Uttan in Bhayandar and Gorai beach. Continuous trail of oil leak from the ship was observed upto 12 Nautical Miles. A very thick oil slick up to one nautical mile and a thick layer of oil upto two Nautical Miles was also observed. During the first few days, oil was leaking at the rate of 1-2 tonnes per hour and on August 12, 2011 according to the Applicant, the rate of oil spill was 7 to 8 tonnes per day as per the information of the Coast Guard. Press Information Bureau Report and the press release of the MoEF&CC indicated said statistics. It is reiterated that the ship was carrying more than 60000 MT of coal for Adani Enterprises Limited for its thermal power plant at Dahej in Gujarat. As a result of the oil spill, there has been damage to mangroves and marine ecology of the Bombay coast. Various press information and articles were published in the newspapers during August, 2011 and particularly from 8th to 12th August, 2011. The impact of the oil spill has been clearly noticed and is visible on the mangroves of Mumbai. The lower portion of mangroves at Bandra had turned dark because of a layer of oil and got destroyed. The Government had also taken the view that the oil seen at Juhu Beach is due to localized events and not due to oil spill, but this was a misconception. Other accidents of oil leak from other ships had also taken place in 2010 near Uran.

4. It is the specific case pleaded by the Applicant that oil spill impact commonly known as marine oil spill is a form of pollution. It includes release of crude oil from tankers, offshore platforms, drilling rigs and wells, as well as spills of refined petroleum products-gasoline and diesel and heavier fuels used by large ships in the seas. The general impact due to oil spill is that it spreads in the water depending on its relative density and composition. The oil slick formed as a result may remain cohesive, or may break up in the case of rough seas. Waves, water currents and wind force the oil slick to drift over large areas, impacting the open ocean, coastal areas, and marine and terrestrial habitats in the path of the drift. Oil that contains volatile organic compounds partially evaporates, losing between 20 and 40 percent of its mass and becomes denser and more viscous (i.e. more resistant to flow). Over time, oil waste weathers (deteriorates) and disintegrates by means of photolysis (decomposition by sunlight) and biodegradation (decomposition due to microorganisms). The oil spill waste reaches the shoreline or coasts. It interacts with sediments such as beach sand and gravel, rocks and boulders, vegetation and terrestrial habitats of both wildlife and humans, causing erosion as well as contamination. It has definite impact on fish, marine mammals, birds, coastal marshes, mangroves, wetlands, wildlife habitats and their breeding ground.

5. India relies heavily on its marine environment for trade and commercial operations. The Indian coast is becoming increasingly vulnerable as there is significant increase in all types of oil tankers/bulk carriers/container ships passing through the Indian Ocean. The Study 'How vulnerable is Indian coast to oil spills?' Impact of MV Ocean Seraya oil spill' Current Science, 95(4), 504 [25 August 2008] show the various adverse impacts of oil spill on the Indian Coast. The oil spills particularly on the Indian Coast cause major damage to marine ecology. The Applicant submits that the ship owner as well as the person/company for whom the cargo is being transported is, therefore, liable to pay compensation and ensure restitution of environment.

6. The damage to the coastal, marine ecology has increased by the day. There is serious threat to various aspects of the coastal area and marine environment particularly in India. According to the Applicant, all the Respondents, namely, Respondent No. 5

who is the registered owner of the ship, Respondent Nos. 7 and 11 who in fact are the sister concerns of Respondent No. 5 responsible for the voyage of the ship and its sinking and these Respondents along with other Respondents are also liable for all the damage caused. They are also liable to pay compensation for restitution and restoration of the ecology, ecosystem on the basis of 'Polluter Pays Principle'. They are also liable to pay costs to Respondent Nos. 1 and 4 for containment of the oil spill and for taking preventive measures. The Applicant also prays that the movement of the ship be allowed only after detailed safety measure and regulations are in place in accordance with the 'Polluter Pays Principle'. According to the Applicant, in view of the provisions of Section 17(1) of the Act of 2010, the 'person responsible' for causing adverse impact on the environment is liable to pay compensation. The Applicant claims that on account of damage caused to aquatic flora & fauna, mangroves, fishermen and the damage done to the environment including soil, water, land and eco-system, the Respondents have a joint and several liability to pay compensation claimed in the application.

7. While relying upon the judgments of the Supreme Court of India in the cases of 'M.C. Mehta and Another v. Union of India & Ors.' MANU/SC/0092/1986 : (1987) 1 SCC 395, 'Indian Council for Enviro-Legal Action v. Union of India' MANU/SC/1112/1996 : (1996) 3 SCC 212 and 'Subhash Kumar v. State of Bihar & Ors.' MANU/SC/0106/1991 : (1991) 1 SCC 598, the Applicant prays for the following reliefs:

- A. Direct the Respondent Nos. 2 to 4 and the Central Pollution Control Board to submit reports on the impact of the Oil spill on the environment.
- B. Direct the Respondent No. 1 to Respondent No. 4 to submit the cost incurred by them on the containment of the oil spill.
- C. Direct and hold the Respondent No. 5 and Respondent No. 6 be made liable for the damage caused to the ecosystem and pay compensation of the loss to ecology and livelihood in accordance with the 'Polluter Pays Principle'.
- D. Direct that the restitution of the area is undertaken in accordance with the 'Polluter Pays Principle'.
- E. Direct that movement of the ship be allowed only after detailed safety measures and regulations are in place in accordance with the 'Polluter Pays Principle'.
- F. Direct that the damage likely to be caused during transportation of fuel such as coal by ship should be factored in the Environmental Impact Assessment of a power plant.
- G. Pass any such other or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

Let us now deal with the defences and replies filed by the different public authorities.

8 . Respondent No. 1, MoEF&CC at the very outset in its reply stated that the Maharashtra Pollution Control Board, DG Shipping, Indian Coast Guard and the Indian Navy co-ordinate the pollution control activity and Maharashtra Pollution Control Board has already issued a letter to the ship owner company, Respondent No. 5 to remit financial aid of Rs. 3 Crores towards the remedial measures taken to mitigate damage caused to the fragile marine environment. On merits, it is submitted that as reported by the Department of Environment, Government of Maharashtra and the Indian Coast

Guard, the ship, sank about 20 Nautical Miles off the coast of Mumbai on 4th August, 2011 resulting in an oil spill. It was carrying 60054 MT cargo of coal, 290 tonnes of fuel oil and 50 tonnes of diesel. The ship was on her voyage from Indonesia to Dahej, Gujarat. The provisions under the CRZ Notification are applicable upto the territorial water limit i.e. 12 Nautical Miles = 22.22 KM (1 nm = 1.852 Km) whereas the oil spill occurred at 20 Nautical Miles off the coast of Mumbai. Therefore, the provisions of the CRZ Notification are not applicable in this case. As per the decision taken in the meeting of the Committee of the Secretaries held on 4th November, 1993, the Ministry of Shipping is responsible for the prevention and control of pollution arising from ships all over the sea including the major port areas. It is further submitted that the Indian Coast Guard, Ministry of Defence is the Central Coordinating Agency for combating of oil pollution in the coastal and marine environment of various maritime zones in the country. As per the Government of Maharashtra, oil was leaking at the rate of 1.5 to 2 tonnes/hour initially which later on reduced to 0.5 tonne/hour. However, no oil spill was reported from the sunken ship after 21st August, 2011. Patches of oil and oil covered debris were detected near the beaches in Juhu, Dadar and Alibaug. A thin oil slick was observed upto 8 to 12 Nautical Miles around the ship Carrier and a thick slick was seen between 3 to 5 Nautical Miles. The Environmental Impact Assessment study was assigned to the National Environmental Engineering Research Institute (herein referred to as NEERI), Nagpur to assess the environmental damage of oil spill caused due to the ship sinking. The Maharashtra Pollution Control Board (for short 'the Board') was to substantiate whether the spill on Juhu Coast was a localized phenomenon or was for reasons other than the sinking of the ship. While referring to the earlier incidents and the study conducted, it was stated that the collision between MSC Chitra and MV Khalijia had caused significant disturbance to marine and coastal habitats. There were changes in the water quality in the natural variations. Though, in that case an adverse impact of oil spill was short lived and the affected segments recovered quickly but in relation to the incident in the present case, there was severe damage and a sum of Rs. 3 Crores has to be remitted towards the remedial measures taken to mitigate the damage caused to the marine environment.

9. It appears from the records that no independent reply has been filed by Respondent No. 2, the State of Maharashtra. However, a detailed reply has been filed on behalf of the Respondent No. 3, the Board wherein it is stated that the Board has been constituted and is primarily responsible for the prevention and control of air, water and all other pollution in the areas under its jurisdiction. After coming into force of the Water (Prevention and Control of Pollution) Act, 1974, which was adopted on 1st June, 1981 the State Government had declared the whole State of Maharashtra as the Water Pollution, Prevention and Control Area' shown in the map of Maharashtra. The Board has been further entrusted with the implementation of the Environment (Protection) Act, 1986 and the Rules framed there under, which have been extended to the whole of India and the Central Government has been empowered to take such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating the environmental pollution. In relation to the ship in question, it is stated that the Director General, Shipping (for short 'DG Shipping') had informed the Board about the sinking of the ship on 4th August, 2011, which was on her voyage from Lubuk Tutung, Indonesia to Dahej, Gujarat with the cargo containing, 60054 MT of Coal. It had been reported that the said ship also contained furnace oil and diesel oil, thus, increasing the chances of oil spill from the ship and thereby endangering the aquatic life and the marine environment. DG Shipping further informed that the Indian Coast Guard was requested to render immediate assistance to this ship and to also direct the Shipping Corporation of India, the charterer of Smit Lumba, ETV to send the unit to the casualty site for rendering

assistance. The Indian Coast Guard dispatched their ships to the site rescued the crew members aboard and also dispatched their oil pollution response ship namely 'Samudra Prahari'. The Mumbai Port and the National Hydrographic Officer, Dehradun were advised to issue navigational warning so that the mariners were warned of the said danger. The Directorate under the provisions of Merchant Shipping Act, 1958 (for short 'Act of 1958') in terms of Section 356J & 356K had issued statutory notice to the ship owner, ship manager and the local ship agent on 4th August, 2011. The Director of Shipping had further informed that the ship had submerged at 40 kilometers away from the Mumbai coast. The jurisdiction of Union of India, being a sovereign, is stated to be up to 12 Nautical Miles and as far as the incident is concerned, the primary responsibility for initiating further line of action in respect of the pollution caused by the ship is on the DG Shipping and the secondary responsibility is on the MoEF, Government of India, as it is for them to prevent, control and abate environmental pollution. After having received the intimation, different departments had taken different actions and they can be summed up as follows and as per the reply filed by the said Respondents:-

"(i) The Respondent-Board vide letter dtd. 4/8/2011 informed the District Collector, Mumbai, Sub Urban and the Municipal Commissioner, MCGM about the incidence and requested them to initiate necessary mitigation measures and to be prepared for the possible disastrous situation. A copy of the said communication dtd. 4/8/2011 made to the said Competent Authorities is enclosed and marked herewith as Exhibit R-3.

(ii) The Officials of the Respondent Board visited the Arabian sea shore and close vigilance on the incidence was kept by the team of Board officers. There was no immediate effect of the oil spill on 4th August, 2011, however the Indian Coast Guard dispatched their oil pollution response ship namely 'Samudra Prahari' to deal with the said pollution and disaster caused thereof.

(iii) The Respondent Board caused the coastal monitoring and collection of sea water samples at various beaches from 4/8/2011 to assess the oil content in sea water and submitted to the Central Lab for further analysis.

(iv) It is further submitted that oil leak was observed near Juhu beach on Sunday 7th August, 2011, the officials of the Respondent Board at Mumbai immediately visited the oil spill spread area near Juhu beach and collected the samples for analysis. In this regard a meeting was called by the DGS and in its press release reported that the oil leak in Arabian sea was at an approximate rate of 1.5 to 2 tons per hour from the sunken ship MV Rak Carrier and also informed that the said oil had spread to about 7 Nautical Miles around the ship.

(v) The DGS had decided to take the daily review at my incidence and held daily meetings of all concern stake holders for further necessary steps to combating the oil-spill and preventing it from spreading in the sea.

(vi) Taking into account the gravity of the incidence, the Respondent Board had lodged a complaint/filed FIR on 8/8/2011 at yellow gate Police Station, Mumbai against the owner of the ship company under Section 7, 8 and 9 of the Environment (Protection) Act, 1986 and section 43 and 45A of the Water (Prevention and Control of Pollution) Act, 1974. A copy of the complaint is enclosed and marked herewith as Exhibit R-4.

(vii) Further, the Environment Department, Govt. of Maharashtra vide letter No.

Oil Spill/2011/TC-1 dated 8/8/2011 directed the Brihanmumbai Municipal to take up the beach cleaning work immediately and provided financial assistance to the said work. A copy of the letter dtd. 8/8/2011 is enclosed and marked as an Exhibit R-5. The Environment Department further vide letter No. Oil Spill/2011/TC-1 dtd. 8/8/2011 issued work order to M/s. National Institute of Oceanography, Regional Centre, Mumbai for Environmental Impact Assessment (EIA) to study on pollution due to oil spill. The said letter dtd. 8/8/2011 addressed to NEERI is enclosed as Exhibit R-6.

(viii) The Respondent Board vide letter dtd. 12/8/2011 to ship owner of the company i.e. Respondent No. 5 to remit financial aid of Rs. 3 Crore towards the remedial measures of fragile marine environmental damage. A copy of the letter dtd. 12/8/2011 is enclosed as an Exhibit R-7.

(ix) The DG of Shipping had directed the ONGC to release a suitable specialized diving support ship to undertake the Preliminary Assessment of the oil being released from the sunken ship. A copy of the letter dated 10/8/2011 is enclosed as an Exhibit R-8. The DG shipping also instructed the local P&I correspondent (protection and indemnity) to engage an expert diving supervisor to guide the diving operations which was commenced. The expert divers were instructed to identify the source of leak and if practicable and possible to plug such leak to check the outflow. The DG-Shipping advised the P&I correspondent (Interport Marine Services Pvt. Ltd.) to immediately seek the expertise of the International Tanker Owner Pollution Federation, to assist in conducting the survey mapping of the affected areas and provide guidance to the concerned authorities including owner to deal with the cleanup operation alongwith the coastline. Further, the Coast Guard ships namely Samudra Prahari, Varuna and Kamla Devi carried out the spraying of dispersants (OSD) in areas where the oil slick was spotted.

(x) The Respondent Board had constituted two teams for the extensive monitoring purpose engaging 10 Field Officers under the supervision of two Sub Regional Officers and daily monitoring from 4/8/2011 was carried out and samples were collected twice in a day fixing 9 location as following:

- i) Gate way of India
- ii) Culaba
- iii) Worli Sea Face
- iv) Dadar Beach
- v) Juhu Beach
- vi) Varsova
- vii) Marve
- viii) Madh
- ix) Gorai Beach

Further, sea water samples from the affected beaches were also collected.

(xi) The Hon'ble Minister of Environment Deptt. Govt. of Maharashtra, Environment Secretary, Chairman Central Pollution Control Board also visited the affected area on 9/8/2011. They dignitaries also took the review of the mitigation work related to the oil spill. Further, the Hon'ble Chairman of CPCB and his team further visited to the probable affected area such as Gate way of India, Worli Sea Face, Dadar Beach, Juhu Beach. Versova, Madh and Marve Beach on 9/8/2011 including the grounded ship MT Pavit. At the time of visit, floating oil was observed at Juhu Beach, Madh and Marve Beach. The samples collected by the Board officials revealed that the oil and grease levels in the sea water was up to 135 mg/l at few locations.

(xii) The Respondent Board had taken regular review of the oil spill incidence in co-ordination meeting held by DGS, further field observations were briefed to the DGS, Coast Guard authorities and the concerns during the meeting.

(xiii) It is submitted that the Respondent Board does not have jurisdiction for more than 5 Kms. in deep sea, hence MPCB had to depend on Coast Guard and DG Shipping for information. The Rak Carrier was submerged at 40 kms. from the Mumbai coast."

10. It is the contention of the State of Maharashtra and the Board that they have a very limited role i.e. to monitor the exact cause of action and to communicate the details thereof to the Environment Department of the State of Maharashtra. The Board had informed various authorities, as has been stated above. Furthermore, the Board had lodged a complaint at Yellow Gate Police Station, Mumbai against the owner of the ship company under Sections 7, 8 and 9 of the Environment Protection Act, 1986 and Sections 43 and 45A of the Water (Prevention & Control of Pollution) Act, 1974. Under provisions of the Environment (Protection) Act, 1986, Respondent Board had called upon the private Respondents to remit the financial aid of Rs. 3 Crores towards the remedial measures taken to conserve the fragile marine environment. NEERI in furtherance to the work order placed by the Board vide order dated 12th August, 2011 had submitted the Interim Report. The assignment work presented in the report of NEERI was limited to the first interim assignment based on data information, water and sediment samples which were being analysed. The work was in progress and subsequent report was to be submitted.

The Board had also decided to take steps, to recover the cost of remediation and compensation from the ship owner owing to the damage caused by the ship sinking, after the receipt of the report.

11. The Tribunal vide its order dated 6th September, 2012 had directed Respondent Nos. 2 to 4 to file an affidavit specifically indicating the amount spent for the aforesaid purpose i.e. exact damage caused and the cost incurred by them on the containment of oil spill. Additional affidavit dated 14th September, 2012 was filed on behalf of Respondent No. 3 and in that affidavit it was stated that the Board had conducted initial review of the environmental damage caused by the oil spill to the marine ecosystem in all the four districts namely, Mumbai city, Mumbai Suburban, Thane and Raigad. Even the initial review assessment had indicated that damage was caused to, inter alia, the shoreline, beaches and mangroves in and around the said area. A statement showing the details regarding Financial Assistance given to various authorities has been placed on record that reads as follows:

"Details regarding Financial assistance given to District Collector, Raigad and

District Collector, MCGM for clean up activity, for the study of Environmental Assessment regarding pollution due to Oil Spill from MV Rak Carrier.

Sl. No.	District Collector	Amt. In Rs. Issued by MPC Board	Cheque No.	Date
1.1	Raigad District Collector	Rs. 10 Lakh	481903	8/8/2011
1.2	MCGM	Rs. 10 Lakh	481904	8/8/2011
1.3	Financial assistance given by MPCB for the study of Environmental Assessment regarding pollution due to Oil Spill from MV Rak Carrier	Rs. 37.5 Lakh		

12. The final NEERI report had been submitted in pursuance of the Board's work order dated 12th August, 2011, during the pendency of the proceedings before the Tribunal in April, 2013. In the report besides providing summary of proceedings and making some recommendations, it also suggested remedial steps that were required to be taken. It also noticed that damage to the environment, ecology and flora and fauna of the area had occurred due to oil spill.

13. Respondent No. 4, Maharashtra Maritime Board filed an independent reply taking up the stand that it is constituted and functioning under the provisions of Maharashtra Maritime Board Act, 1996 and its jurisdiction is to the extent of Port limits of 48 minor ports on the coastline of State of Maharashtra and neither their impleadment nor presence is necessary for proper and effective adjudication in the present application. According to the Respondent No. 4 on 6th August, 2011, it had received a mariners notice issued by Jawaharlal Nehru Port Trust regarding sinking of ship carrying a cargo of coal in position latitude 18 degree 46.287' N Longitude 072'29.194'E' in chartered depths of 36 meters on 4th August, 2011. The position of the said ship was inside the Bravo W" outer anchorage which is under the control of Mumbai Port Trust. The area where the ship sank did not fall under the port limits of the minor ports in the State of Maharashtra. After receiving the navigational warning dated 8th August, 2011, the said Respondent had issued necessary Notice to all Regional Port Offices informing about the sinking of the ship. Actions were initiated by the Indian Coast Guard to prevent the oil pollution. For this purpose, operation "Paryavaran Suraksha" was undertaken by the Coast Guard from 7th August, 2011. The main object of the operation was to prevent damage to the fragile marine environment along the Maharashtra Coast.

Different reports were sent from time to time. Respondent No. 4 has not incurred any expenses or cost in relation to the containing of oil spill resulting from sinking of the said ship. Hence, they had prayed for deletion of their name.

14. Before we proceed further to spell out the defence taken by other private Respondents, it will be necessary to refer to the respective Respondents' impleadment and deletion from array of parties and their description in the case. Initially, the application had been filed with just six Respondents. Name of Respondent No. 5, Delta Group International was ordered to be deleted from array of parties vide order dated 22nd February, 2012 and its name was replaced by Delta Shipping Marine Services S.A.,

through its legal representative. Respondent No. 5 is the owner of the ship and the consignment of coal belongs to the Respondent No. 6. Respondent No. 6, Adani Power Dahej Limited was substituted by Adani Enterprises Limited, Adani House, Ahmedabad in terms of the order dated 22nd February, 2012. Respondent No. 5, Delta Shipping Marine Services S.A. was served but had failed to put in appearance despite service, hence, the Tribunal had proceeded ex parte against them in these proceedings vide order dated 7th August, 2012.

Respondent No. 6, filed MA No. 129 of 2012 praying for deletion of its name from array of parties on the ground that it was only the consignee of the cargo that was being carried by the ship. It further prayed that it is on the basis of Polluter Pays Principle that the Tribunal has to adjudicate in cases where there has been contamination of the environment. The Investigation Report had concluded that the cause of accident resulting in the leakage of oil and the spread of the oil across the coastal waters and shores of Mumbai was unseaworthy ship which had been poorly maintained and was technically not suited to handle the water ingress. The Delta Group International had taken up the plea that it was not the owner of the ship and therefore, is not a necessary party. Affidavit dated 15th February, 2012 affirmed by the Managing Director of Delta Group International was filed stating that they are not the owners of the ship and that the true owner of the ship is Delta Shipping Marine Services S.A., Panama. Reference was also made to the Charter Party Agreement for carriage of the cargo. This Agreement clearly shows that the owner of the ship was Delta Navigation WLL, Al Sadd Street, Doha, Qatar and there is no change in ownership. Director of Delta Group International (who is the owner of the ship) had a subsidiary company, which had entered into a Charter Party Agreement for carriage of the cargo from Indonesia to Dahej. The statement made by then Respondent No. 5 was contrary to the facts. Erstwhile Respondent No. 5, Delta Group International, Qatar and Delta Navigation WLL, Qatar were the owners of the ship and subsidiary respectively. Thus, they were required to be added. Further, in the application, impleadment of Astra Asigurari Insurance Reinsurance Co. was pleaded on the ground that it was the company that had insured the voyage and in terms of the insurance policy covered the pollution, fines and wreck liabilities. Thus, it was also a necessary party. Respondent No. 6 also prayed for impleadment of Interport Marine Services Private Limited. This party in their letter dated 10th August, 2011 had stated that P&I Correspondent shall arrange all the costs of operation for pollution control which are made payable by the owner of the ship for the purposes of identification of the owner and determination of law of compensation under marine environment. It was pleaded that this party should be impleaded. Respondent No. 6 also pleaded that Union of India, through Ministry of Shipping and Ministry of Defence should be impleaded as Respondents, in terms of the provisions of the Act of 1958. The Ministry of Shipping was responsible for carrying out the proceedings in relation to the determination of compensation and damages. All these facts had been put forward by this Respondent while praying for deletion of its own name. It prayed for addition of the abovementioned Respondents:

- "i. Re-implead Delta Group International, Qatar as a Respondent in O.A. No. 24/2011;
- ii. Implead Delta Navigation WLL, Qatar as a Respondent in O.A. No. 24/2011;
- iii. Implead Astra Asigurari Insurance and Reinsurance Co. as a Respondent in O.A. No. 24/2011;
- iv. Implead Interport Marine Services Pvt. Ltd. as a Respondent in O.A. No.

24/2011;

v. Implead the Union of India through the DG of Shipping, Ministry of Shipping as a Respondent in O.A. No. 24/2011;

vi. Implead the Union of India through the Indian Coast Guard, Ministry of Defence as a Respondent in O.A. No. 24/2011;"

15. Notices were issued to the above parties vide order dated 13th September, 2012. Delta Group International, Qatar and Delta Navigation WLL, Qatar both were ordered to be impleaded vide order dated 22nd November, 2012, after notice was served upon them. Astra and M/s. Interport Marine Services Private Limited had taken time to file reply to the application. Vide order dated 3rd January, 2013, it was ordered by the Tribunal that the presence of the said Respondents would be necessary for proper adjudication of the issues involved in the present case before the Tribunal and directed their impleadment, the Tribunal also directed the CEO of the Maharashtra Maritime Board to appear before the Tribunal. The requests of Respondent No. 6 for deletion of its name was declined vide order dated 3rd January, 2013. Even M/s. Astra Asugurari Insurance Reinsurance Co. and M/s. Interport Marine Services Private Limited were directed to be impleaded as Respondents in the main application vide the same order. Vide order dated 19th February, 2013, Delta Group International and its agents GAC Shipping (India) Private Limited were ordered to be impleaded as Respondent No. 11 & 12, respectively. Newly added/substituted Respondent No. 5 was also directed to be added as a party vide order dated 15th April, 2013. Thus, in entirety, there were 13 Respondents in the present application. Vide same order, Ld. Counsel appearing for the parties were directed to answer the questions formulated i.e. a) who is the owner of the ship in question; b) whether Delta Navigation and Delta Shipping Marine Services S.A. are subsidiaries of Delta Group International; c) what is the relationship between these companies and d) whether GAC Shipping (India) Pvt. Ltd. is the agent of any of these companies in India.

STAND OF RESPONDENT NO. 8

16. Respondent No. 8, Indian Coast Guard in its reply took a stand that it is an Armed Force of the Union, which is administered by the Ministry of Defence. In terms of the Section 14 of the Coast Guard Act, 1978, it has been empowered by the Government of India to combat oil spill in various maritime Zones and to act as a Central Coordinating Agency in the coastal and maritime Zones in terms of the Rules. It is averred that at about 0740 hrs on 4th August, 2011 the ship while at the anchorage of Mumbai experienced heavy flooding and requested assistance through Ship Traffic Service, Mumbai. On communication with the Master of the ship, it was evident that the chances of the ship sinking existed as there were no submersible pumps available onboard to pump out the ingress of sea water. At about 0840 hrs on the same day the Coast Guard Helicopters of 842 Squadron and Indian Navy were launched concurrently for coordinated rescue efforts, as the ship was about 22 Nautical Miles from coast with 30 crew members on board. The specialized pollution control ship of the Indian Coast Guard, 'Samudra Prahari' was diverted from routine patrol and emergency towing ship Smit Lumba was directed to proceed to render assistance to the ship. Merchant ships operating in the area were also diverted to augment rescue efforts. Indian Coast Guard/Indian Navy helicopters successfully evacuated all crew of the ship and airlifted them ashore by 1015 hrs on the same day. The ship subsequently sank at the same position at about 1345 hrs on 4th August, 2011, due to excessive flooding onboard.

Indian Coast Guard ship, 'Samudra Prahari' was directed to remain in the area to monitor the developing situation. On 5th August, 2011, Indian Coast Guard ship, Samudra Prahari reported the oil spill from the ship and commenced pollution response operation to combat and control oil pollution. Subsequently, on report of heavy oil spill on 7th August, 2011 Regional Headquarters (West) launched "Ops Paryavarán Suraksha 02/11" for effective mitigation of oil spill. Oil spill mapping was carried out using Coast Guard Dornier Aircraft and additional ships were deployed to augment the pollution response efforts. Coast Guard Units applied churning and Oil Spill Dispersant spray tactics to mitigate oil spill. On report of tar balls on few beaches, shore clean up was coordinated with State agencies and volunteers. Regular helicopter sorties were undertaken for oil spill assessment/coastal reconnaissance to monitor extent of pollution. The operation continued for 11 days and finally terminated on 21st August, 2011 on drastic reduction of oil discharge and localization of the spillage area. Thereafter, Coast Guard ships were deployed in the area to monitor the situation. The day wise details of the extent of the oil spill from the ship and details of Coast Guard Ships deployed and the quantity of oil spill dispersant sprayed are as under:

Date	Extent of oil spill
05 Aug 11	Thin/broken sheen of oil of approximately 200m in breadth extending south easterly direction upto 2.5 Nautical Miles.
06 Aug 11	Approximate 0.025mm thick oil sheen extending ENE from datum upto 2.5 Nautical Miles thereafter deviating ESE upto 07nm prior extending NE 7 Nautical Miles. Estimated oil spill approx 120 T.
07 Aug 11	Continuous leakage of approx 2-2.5 T oil moving ENE-ESE direction upto 7 Nautical Miles forms the sunken ship. Launched Operation 'PARYAVARAN SURAKSHA-02/11'
08 Aug 11	Long snaking oil slick extending upto 12 Nautical Miles from the datum along ENE-WSW direction of 300m width.
09 Aug 11	Oil spill reduced to 500L/h. Long snaking oil slick extending upto 8 Nautical Miles along ENE-W direction of width 100m. Silvery oil film possibly emulsified oil and tar ball patches in few areas at Bandra Bandstand and Dadar Chowpatty.
10 Aug 11	Fresh slick 300-400L around the sunken ship extending to 3.5 nautical in NE direction of about 600m width. Snaking oil slick extending upto 11 Nautical Miles from datum along WSW-ENE direction with width of 200m. Thin silvery oil NNE-SSW direction upto 2 Nautical Miles short of Madh Island.
11 Aug 11	Primary slick silvery tendril extending upto 9 Nautical Miles along NE-SW direction of approx width 200m. A secondary tendril thin film originating 11 Nautical Miles from datum extending upto 7 Nautical Miles off Mahalaxmi in NNE-SSW direction. Oil slick around the sunken ship reduced to approx one mile in length with width of 200m.

12 Aug 11	Primary slick silvery tendril extending upto 7 Nautical Miles along ENE-WSW direction of width less than 200m. Silvery thin film of secondary tendril originating 8 Nautical Miles from datum extending upto 6 Nautical Miles off Mahalaxmi in NNE-SSW direction. Oil slick around sunken ship reduced to less than one mile in length of width 200m.
14 Aug 11	Intermittent oil spill patches and silvery sheen extending upto 3.5 Nautical Miles from datum in NE direction. Small patches of emulsified oil off Colaba point. The oil spill area near sunken ship extended upto 1 Nautical Miles with width of approx 200m.
15 Aug 11	Fresh traces of oil spill observed extending upto one nautical mile from the datum with width of 100m in NE direction. Silvery oil film was observed extending upto 3.5 Nautical Miles from the datum.
17 Aug 11	Very thin film and broken layer of oil extending upto one nautical mile in E direction. Considerable reduction in discharge of oil from the sunken ship. No trace of oil beyond three Nautical Miles from the datum.
18 Aug 11	A thin layer of broken oil slick and intermittent silvery sheen extending up 3.5 Nautical Miles in E direction. Discharge rate of oil from the sunken ship is further reduced.
19 Aug 11	Minor trace of black and brown patches of oil spill in vicinity of sunken ship.
21 Aug 11	Oil spill from sunken ship is negligible and found only in 600m radius. Terminated Operation 'Paryavaran Suraksha-02/11'.

The details of Coast Guard Ships deployed and the quantity of Oil Spill Dispersant sprayed as appended below:

Ser	Name of Coast Guard Ship	Date of Departure from Harbour	Date of return to Harbour	Qty of OSD Spray	Remarks
(a)	Samudra Prahari	06 Aug 11	08 Aug 11	1600 Ltrs	
		09 Aug 11	10 Aug 11	400 Ltrs	
		11 Aug 11	14 Aug 11	1200 Ltrs	
		20 Aug 11	23 Aug 11	690 Ltrs	
(b)	Sankalp	07 Aug 11	09 Aug 11	1400 Ltrs	
		14 Aug 11	17 Aug 11	1700 Ltrs	
(c)	Samrat	17 Aug 11	20 Aug 11	--	--
(d)	Varuna	10 Aug 11	11 Aug 11	--	--
(e)	Amritkaur	08 Aug 11	08 Aug 11	400 Ltrs OSD and collected Water Samples	
		09 Aug 11	09 Aug 11		
		10 Aug 11	10 Aug 11		
(f)	Kamla Devi	05 Aug 11	06 Aug 11	--	--

17. About 1500 liters of Oil Spill Dispersant Type-III were sprayed by the Coast Guard's Dornier aircraft. Further, Dornier aircraft of Coast Guard Air Squadron, Daman and Chetak helicopter of 842 Squadron undertook 05 sorties amounting to approx 12 hours of flying and 19 sorties amounting to approx 10 hrs of flying respectively in pollution response configuration. The Coast Guard team comprising of 30 enrolled personnel alongwith 70 workers of Brihan Mumbai Municipal Corporation started the cleanup operation at Alibaug, Juhu, Versova, Gorai, Madh, Uttan, Kihim and Awas. Subsequently, it is stated that the DG, Shipping issued notice to owners and agents under Section 356(J) of Act of 1958 for their liability towards the pollution caused by oil spill. The capitation charges of Rs. 3,11,86,954.43 (Rupees Three Cores Eleven

Lakhs Eight Six Thousand Nine Hundred Fifty Four and Forty Three paise only) toward the pollution response efforts undertaken by Coast Guard was to be paid by the ship owners/agents, which has not been paid by them till now.

Name of the ship/Aircraft	Duration (hrs) of deployment	Amount (Rs.) (Capitation charges)
ICGS Sankalp	123:15	1,29,72,556.26
ICGS Samudra Prahari	219:55	31,17,974.36
ICGS Samrat	77:00	81,39,643.14
ICGS Varuna	80:15	35,53,414.42
ICGS Amrit Kaur	16:00	4,38,898.75
ICGS Kamla Devi	32:30	8,77,797.50
CG Helo	09:30	5,22,500.00
CG Dornier	12:00	9,24,000.00
OSD Type II 5590 t @ 67.50/ t	--	3,77,325.00
OSD Type III 3300 t @ 79.65/ t	--	2,62,845.00
Total	570:25	3,11,86,954.43

This Respondent while giving the above mentioned details and/or while dealing with the parawise reply of the application, primarily took the plea that the averments made in the application are of general nature and based on a general scientific view on oil spill and therefore, do not call for any reply.

STAND OF RESPONDENT NO. 13

18. DG Shipping as Respondent No. 13 has stated that it is functioning under the provisions of the Act of 1958 and as per the relevant rules framed under the Act of 1958, which are applicable to any ship which is registered in India or any ship which is required by this Act, inter-alia so registered incremental to the provisions of the Act. The Ministry of Shipping, through the DG and the Indian Coast Guard under Ministry of Defence, Government of India had jurisdiction to implement the provisions under Part-XI A of the Act of 1958 for prevention and containment of the pollution from ships within the Exclusive Economic Zone or with reference to such incidents occurring in the high seas.

It is also stated that enforcement of some of the provisions, under Part-XI A of the Act of 1958 is with regard to contravention of the MARPOL, an International Convention (Protocol 73/78 on marine environmental prevention and protection) for the work of issuance of notice to polluting ships and measures for preventing or containing oil pollution has also been delegated to the Indian Coast Guard and/or Indian Navy as the case may be.

The Ministry of Shipping had issued an executive order in January, 2008, where the DG Shipping has been assigned to perform Maritime Assistance Services (MAS) for the purposes of acting as a focal contact point for ships in need of assistance and for supervision of salvage operations as is required under International Maritime Organization (IMO) Resolution 950(23). The other facts with regard to sinking of ships have also been adopted by this Respondent. It is further stated, that the ship being a ship other than an Indian ship, the provisions of Part-XIA of the Act of 1958 in respect of prevention and containment of pollution of the sea by oil are applicable to it within the coastal waters of India. This provides jurisdiction with regard to the control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (for short, 'Act of 1976'). DG Shipping in exercise of the powers vested in it by the Ministry of Shipping through orders dated

25th July, 1989 and 21st June, 1990 had invoked the provisions of sections 356(J), (356K) & (L) under Part-XIA of the Act of 1958 to prevent or minimize pollution from the said sunken polluting ship, which then was about 20 Nautical Miles from Mumbai within the jurisdiction of the EEZ of India.

It is stated that the provisions of the Act of 2010 under which the present application has been filed do not extend to the Act of 1958. All the important requisite steps were taken by the Ministry of Shipping to protect the sensitive coastline of Maharashtra, including the populated seashores of Mumbai under the Polluter Pays Principle. Upon receipt of information on 4th August, 2011, the DG Shipping, Respondent No. 9, in the capacity of being the designated MAS provider, had carried out various steps to inform the District Administration Authorities, other concerned authorities and had convened regular review meetings to combat, control and clean marine oil pollution at sea, to activate the necessary contingency plan, requested to rescue the crew, mobilized the emergency towing ship, 'Smit Lumba' and issued Monsoon Advisory, 2009. As already stated, it had issued statutory notice under Section 356(J)&(K) of the Act of 1958, to the ship owner, charterer, agent and master for making arrangements to prevent, contain, control and clean the oil pollution from the said ship. Amongst others, it had also mobilized 'Malaviya' 36, a specialized ship managed by the Oil and Natural Gas Corporation (for short 'ONGC') for pollution response at the owner's cost as the owners, masters and agents failed to comply with the directives issued to them under Section 356(J) of the Act of 1958. It also ordered a preliminary inquiry under Section 359 of the Act of 1958. The list of claims to the ship owner and charterer for expeditious payments was also submitted. DG Shipping being interface as the Maritime Administration of India on behalf of the Government of India to the International Maritime Organization (IMO) which adopts various international maritime convention/protocols/treaties with respect to, inter alia prevention of pollution, pollution response and payment of liability & compensation thereto and has become a party to many such global instruments, took action accordingly. The inquiry had been completed by Ministry of Shipping through the DG Shipping and a copy thereof placed on record.

The recommendations of the said statutory preliminary report were accepted and thereupon the following actions were taken to prevent such causalities in future in the Indian waters:

"1. Issued casualty circular to shipping industry in respect of the lessons learnt [Casualty Circular No. 01 of 2012 (File No. 11-NT(49)/2011-Vol. II dated 12/07/2012) same available on DGS website www.dgshipping.com].

2. Issued Merchant Shipping [Regulation of Entry of Ships into Ports and Anchorages and Offshore Facilities] Rules, 2012, to restrict the entry of substandard ships into the Indian waters with certain conditions. The same is available on DGS website www.dgshipping.com].

3. Is in the process of strengthening the Port State Control [PSC]/Flat State Implementation [FSI] inspection regime to identify in advance substandard ships calling the Indian Ports.

4. Monitors the movement of such ships through reported National Automatic Identification System [ASI] Network established at D.G. Comm. Centre, Mumbai."

19. It is stated that the DG Shipping exercised due diligence and discharged all the responsibilities entrusted to them in accordance with law. They prayed for deletion of

their name from the application. However, they also prayed that the directions may be issued to the owner of the ship, agent and charterer of the ship to make the payment of the dues of Indian Coast Guard and Oil and Natural Gas Corporation for services rendered without any further delay.

20. The Ld. Counsel appearing for Respondent Nos. 9 & 11 had argued the matter on different occasions, however, when the matter was being heard in 2016, they submitted that they have not received instructions from their respective clients. However, no letter of revocation of their authority was placed on record. We may notice that in 2016, in fact, the matter was being reheard and the Ld. Counsel on behalf of their respective clients have entered appearance on earlier occasions.

Let us now deal with the defences and replies filed by the different private Respondents.

STAND OF RESPONDENT NO. 5

21. As already noticed, Respondent No. 5 initially in the application had been described as Delta Group International. The name of Respondent No. 5 was substituted because an affidavit had been filed on behalf of Respondent No. 5 stating that the true owner of the ship was Delta Shipping Marine Services (S.A.) and not Delta Group International. The Respondent No. 5 had filed a very short affidavit on 15th February, 2012 and Paragraph 2 of the said affidavit read as under:

"I say that Delta Shipping Marine Services (S.A.) are the owners of the ship M.V. Rak Carrier. Hereto annexed and marked as Annexure-I is a copy of the certificate of registry issued by the panama registry confirming the same, in the certificate itself it is stated that the legal representative of Delta Shipping Marine Services (S.A.) are Karnakis & Karnakis and hey have their office at Global Plaza, 50th Street, 21st, Floor, P.O. Box-0834-01251 panama, Republic of Panama."

As is evident from the above affidavit of Respondent No. 5, it was restricted to informing the Tribunal with regard to true, lawful and registered owner of the ship.

Thus, resulting in substitution of the name of Respondent No. 5. Mr. V.K. Ramabhadran, Advocate who was appearing for the then Respondent No. 5 had got the above name of Respondent No. 5 substituted. Thereafter, he did not appear and a notice was ordered to be issued to him vide order dated 3rd January, 2013 returnable on 23rd January, 2013. Mr. V.K. Ramabhadran, Advocate, appeared and in view of the statement made on behalf of Respondent No. 11 that they had been directed to appear for the said Respondent No. 11 and their interest was common with Respondent No. 5. Consequently, on their statement Mr. V.K. Ramabhadran, Advocate was discharged from the case. Thereafter, nobody appeared on behalf of Respondent No. 5 despite a fresh notice being served upon them as recorded in the order dated 15th April, 2013 and, therefore, vide order dated 15th April, 2013 and even by an earlier order, ex parte proceeding was directed to be taken against Respondent No. 5.

STAND OF RESPONDENT NO. 6

22. In the application as originally filed, Respondent No. 6 had been described as 'Adani Power Dahej Limited'. Thereafter, an application was filed wherein it was stated before the Tribunal that this was not the correct name of the company and thus, not responsible for the transaction. The name was substituted to 'Adani Enterprise Limited' vide order dated 28th February, 2012. After the substitution of the name, Respondent

No. 6 filed the reply for and on behalf of the Adani Enterprise Limited which, in fact, was the consignee. The said Respondent while denying the allegations made in the application admitted that leakage of oil has occurred in the present case. However, the consignee of the cargo could not be held responsible for the damage caused by such oil spill. It was stated as a preliminary submission that the subject matter of the application was already being investigated and adjudicated by the two government departmental agencies, namely, the Board and DG Shipping. Vide letter dated 12th August, 2011, Respondent No. 3 directed the owner of the ship to remit financial aid towards remedial measures in respect of the oil spill. It had also filed a criminal complaint against the owner of the ship under the provisions of the Environment (Protection) Act, 1986 and the Water (Prevention and Control of Pollution) Act, 1974 and other actions were also proposed to be taken by the authorities. It was admitted that a statutory notice under Section 356(J) and 356(K) of the Act of 1958 was issued to the owner of the ship, the ship manager and the local ship agent, calling upon the said noticees to take such actions in relation to the oil spill, including action for preventing the escape of oil from the ship and for removal of oil slicks from the surface of the sea. The present application is in respect of an identical event and the application should not be entertained. The 'Polluter Pays Principle' is not applicable against such Respondents in the facts and circumstances of the present case. Pollution essentially involves the contamination of soil, air and water with noxious substances. The answering Respondent is only a consignee of the Cargo and cannot be said to have indulged in any activity which has resulted in contamination of sea water or the coastal areas. According to this Respondent, no act of pollution and/or responsibility thereof can be attributed to a situation where the substance is not within the control of the said Respondent. Non-coking coal was neither hazardous nor noxious.

Respondent No. 6 had also filed reply affidavit, of course without leave of the court in respect of affidavit filed by some of the other Respondents. In this reply, a preliminary objection was also taken as to the jurisdiction of this Tribunal. It was stated that cause of action did not take place within the territory of India. The accident occurred around 20-25 Nautical Miles from the coast of Mumbai, which is beyond the territory of India that extends only upto 12 Nautical Miles and therefore, the Tribunal has no jurisdiction to entertain and decide the application. While, reiterating the stand already taken, Respondent No. 6 had denied its liability and prayed even for deletion of its name. However, it is stated that the investigation report has specified the cause of the accident and sinking of the ship and it does not attribute any role of the cargo owned by Respondent No. 6. It is stated that Respondent No. 11 had acted as broker/agent for the owner of the ship Respondent No. 5, which had not been earlier disclosed. They had entered into Commercial and Brokerage Agreement dated 20th April, 2011 with Respondent No. 5 to provide services for locating, negotiating, fixing and coordinating the execution of commercial contracts and contracts of affreightment for which the ship could be used or employed. According to this Respondent, Respondent No. 5 has produced two relevant documents including Telecommunications Certificate and Certificate of Registration, a document showing the previous owners of the ship, marine protection, Indemnity Insurance Policy, the Bunker Blue Card Certificate and the Charter Party Agreement with Libra Shipping. Despite this fact, they have not disclosed their true and correct relationship with Respondent No. 5; Delta Navigation WLL as per the Charter Party Agreement is stated to be the owner of the ship, even at the end of the Commercial and Brokerage Agreement dated 20th April, 2011. The signature had been appended by the company for and on behalf of the owners, which is evident from the fact that the Delta Navigation WLL has signed the documents in its own capacity and not for and on behalf of the Respondent No. 5. Respondent No. 11 is not only commercial broker of the ship but even contacted with Respondent No. 12 to ensure that the Cargo

reaches safely. In relation to Respondent No. 12, the replying Respondent points out in the affidavits filed by Respondent No. 12 that it had on 19th July, 2011 and 21st July, 2011 received telephone calls from one Mr. Md. Backri of Delta Group International informing that the ship is presently at the outer anchorage of Mumbai Port, enroute to Dahej and was running out of the bunkers. It was Respondent No. 11 who also contacted Respondent No. 12 for rendering service to assist the ship and save crew-members. All communications and payments of money were made by Respondent Nos. 11 and 12 and there is not even a mention of Respondent No. 5. They have denied the averments that the ship was chartered by Respondent No. 6, it was only a consignee or the ultimate recipients of the goods and had no access to the ship either before the voyage or during transit. The Charter Party Agreement dated 28th May, 2011 clearly shows that Libra Shipping at Dubai was the charterer. They denied their liability as stated by Respondent No. 9 and averred that there is no connection between the sinking of the ship and the power plant and it is completely incorrect that Respondent No. 6 is liable to any damage.

It is specifically pleaded by this Respondent that the environmental impact which had been caused by the event of 4th August, 2011 are solely attributable to leakage of the oil from ship and all other authorities have also stated the same. The cargo owned by the replying Respondent has no connection, whatsoever, with the environmental damage sought different remedy under the present application. It is stated that the cargo transported by the ship, was 60054 MT of non-coking coal which had no effect on the marine or coastal eco-system. Referring to the case of collision of two ships, namely, M.S.C. Chitra and M.V. Khalija on 7th August, 2010, it is stated that it was a case of leakage of oil as a result of collision of the ships which were carrying hazardous chemicals and that was totally a different case. The authorities have also found that the owner of the ship is responsible for causing pollution and also responsible for restitution of environment. The extent of civil liability for loss or damage caused by an oil spill has been laid down in International Convention on Civil Liability for Oil Pollution Damage, 1992 (for short, 'Liability Convention'). This Convention had been signed, accepted and ratified by India and in furtherance thereto it has enacted Part-XB of the Act of 1958 which stipulates the details of pollution and the manner in which such oil spill pollution is to be dealt with and the liability of the persons responsible. Ascertained, on the true construction of the provisions, no liability can be fastened upon anybody except the owner of the ship. On merits, the liability is denied. Loss of cargo, which is comprised of coal in sea, does not have any connection with the leakage of oil, the oil slick or the oil patches observed subsequent to the wreckage of the ship. It is submitted that an oil spill has also been identified as release of bunker fuel which is the subject of the present application. It is clear that the answering Respondent does not have any connection with such cause or effect from the oil spill especially in context of the present case. There is no specific denial of damage caused to the marine eco-system, coastal, ecological, livelihood of fishermen and human health by the oil spill from the ship. Since the replying Respondent has no role in the incident that may have occasioned the leakage of oil from the ship which carried the cargo, the principle of 'no fault', which is made applicable to accidents by virtue of section 17(3) of the Act of 2010, does not cover the answering Respondent and it is neither engaged in a hazardous and inherently dangerous activities nor is it dealing with substance which are hazardous or dangerous. At this juncture, we may also notice that in the application filed by this replying Respondent being M.A. No. 129 of 2012 afore-referred, it had made reference to the investigation report which refers to the observations that have been made on the basis of the depositions of the officers and crew of the ship and the documents made available by the various agencies and the inquiry conducted by the Maharashtra Maritime Board by the order of the DG Shipping. Following are the

observations and conclusions made in the reports:

"Observations:

- a. Maintenance of the machineries, hull and cargo holds, ballast tanks have not been carried out properly by the ship owner.
- b. There were a number of deficiencies and defects on deck and engine reported to the representatives of the ship owner/manager on the board but no efforts were made to rectify the same.
- c. The ship owner has not made efforts to supply adequate spares on board before the ship was commercially deployed. Technical snags were not reported to the concerned authorities by the ship owners.
- d. Necessary action was not taken by the ship owner to repair the auxiliary boiler which had frequent water tube cracks despite the Chief Engineer having informed the ship owner.

Conclusions:

- a. The arrangements for pumping out water from the ballast tanks, cargo holds and fuel oil tanks were insufficient to tackle the distress situation on board, even though the water ingress and been detected in time.
- b. Master of the ship neither sought any assistance from the shore nor even considered taking such assistance.
- c. While the ship was sinking, maritime assistance service was not intimated as required by the international regulations.
- d. Chief Officers and second engineer failed to take effective measures during the contingency period as machineries were not maintained properly.
- e. Poor loading, non-follow up of sequence and delayed de-ballasting was the cause of the ship sailing down by head. As the ship by down by head, it was not possible to take suction from the fuel oil tanks.
- f. Poor housekeeping by the ship staff and poor maintenance of the ship, not complying with the previous class requirements and not engaging well reputed classification proves to be the main cause of the casualty.
- g. Technical failure of the main engine, auxiliary engine and machinery was an important contributing factor of the accident heavy weather conditions added to flooding of the ship compartments and causing sinking."

Respondent No. 6 had relied upon the above observations to support its contentions that other Respondents are liable for claims.

STAND OF RESPONDENT NO. 9

23. ASTRA had not been impleaded as a party Respondent in the application when the original application was filed. Vide order dated 3rd January, 2013, this Respondent was ordered to be impleaded as party Respondent in the main application. This Respondent filed its detailed reply dated 11th February, 2013.

This Respondent filed its reply without prejudice to challenge its impleadment. Under the preliminary submissions it took an objection that the Applicant has no Locus Standi to file the present application and the same cannot be entertained by the Tribunal. The application can be filed only by the persons stated under Section 18(2) of the Act of 2010. The Applicant is not an aggrieved person whose rights have been directly affected. The Applicant has not shown in his petition as to how he is entitled to claim the relief and how he is an interested party. According to him, he is interested in the state of Marine environment and ecology which would not enable him to file this application by expanding the scope of the Doctrine of Locus Standi. Further, it is averred that the application does not involve any substantial questions relating to the environment and it is not the case where the direct statutory violation of any of the legislations listed in the Schedule 1 of the Act of 2010 has been raised or even intended to be raised alleged in the application. Thus, the application is not maintainable.

It is stated that in terms of the Section 1(2) of the Environmental Protection Act, 1986 it extends to whole of India, however, the incident of the ship sinking did not take place within India nor within its territorial waters and, therefore, must be considered to have taken place outside India and the Act of 1986 would have no application. If at all there is any jurisdiction, it is vested in the authorities within the purview of the Act of 1958. As such the Tribunal does not have the Jurisdiction in the matter under the provisions of the Act of 1958. Subject to these submissions it is further averred in the reply that the Tribunal has no jurisdiction over Respondent No. 9 in the present application because Respondent No. 9 is not the person responsible for causing pollution or for any other act covered under Schedule II of the Act of 2010. It is only the person responsible against whom orders can be passed under the Act of 2010 and the liability if any, has to be imposed between the persons responsible for the occurrence in question. Respondent No. 9 claims that it is not a proper party to the present proceedings. It is submitted that role of Respondent No. 9 is limited to a policy of insurance that it had issued to the ship owner and this policy has subsequently been avoided due to breach of warranties by the ship owners. The liability under the contract of insurance can only be by the insurance company to the ship owner and only in terms of the contract of insurance. No third party can make any claim against the insurance company. The dispute between Respondent No. 9 and the insurance company is beyond the jurisdiction of the Tribunal. The contract of insurance explicitly provides that it will be governed by Romanian law and subject to the jurisdiction of the courts of Romania. In fact, there are no subsisting or surviving, direct or legal interests of the replying Respondents in the present proceedings. The present petition is, thus, liable to be dismissed, qua Respondent No. 9 at the very threshold. It is further submitted by this Respondent that only connection of Respondent No. 9 to the present dispute is that the ship owner, Delta Marine Services, S.A., Panama, had entered into a contract of insurance with Respondent No. 9, a company which was incorporated under the laws of Romania. Pursuant to which Respondent No. 9 has agreed to insure certain risks in accordance with the terms and conditions of the insurance contract. It is necessary to clarify that Respondent No. 9 is not an International Protection & Indemnity Club (P&I Club) but is a company providing insurance cover and is only bound by the terms and conditions of such insurance contract. The ship owner has breached the representations, warranties and undertakings contained in the contract of insurance and Respondent No. 9 is not liable to the ship owner under the said contract of insurance. In the event of

marine pollution the provisions of the Act of 1958, Part XC and Part XI A are attracted. These provisions do not make it necessary for a carrier to have insurance cover unlike Part X-B of the said Act which requires compulsory insurance in respect of ships carrying 2000 tons of oil or more in bulk as cargo. In view of the provisions of the Act of 1958 the Tribunal will have no jurisdiction. The principal relief has been claimed against the Board and the Union of India and its agencies. Cost and compensation has been claimed from the ship owner and the charterer.

24. The role of Respondent No. 9 was limited only to P & I insurance coverage for the ship which was disclaimed and for nothing else and therefore no relief would lie against the Respondent No. 9. As per the terms and conditions of the insurance policy the ship owners/insured undertake to satisfactorily maintain the condition of the ship throughout the entire period of the insurance contract. The accident investigation report prepared as per the orders of the DG, Shipping would show that the ship was not seaworthy and the state of its maintenance was far from satisfactory. The trouble for the ship started from 27th June, 2011 onwards when it entered the Bay of Bengal and started having frequent blackouts and drifted for 5 days to have the repairs carried out and despite repeated requests, no help was forthcoming from the ship owners. Thereafter, on 7th July, 2011 due to ingress of water, the ship sought permission to seek refuge in Colombo but the ship owners refused permission and the ship continued her voyage "limping" towards Mumbai. The ship docked in the outer anchorage outside Mumbai Port on 19th July, 2011 and sought to take fuel and supplies but was unable to do so and there was heavy flooding reported in the cargo holds on the previous day. The ship's master declared the ship to be unseaworthy and refused to proceed with the voyage and it was only then that the ship owners consented to repairs being made. It is thereafter reported that despite some repairs being made to the ship and 30 MT of Diesel oil being supplied on 29th July, 2011 to the ship to continue with the voyage, the flooding in the cargo holds could not be remedied. Thereafter, a defect was detected in the one of the 2 generators on board of the ship but the ship owner however advised that the voyage should continue. The master refused to proceed and on 1st August, 2011 the ship's generator was repaired but it could not proceed due to heavy flooding. Thereafter, further damage took place on 2nd August, 2011 and water ingress was suspected in the fuel tank. On 3rd August, 2011 the ship asked for pumping equipment to remedy the flooding and were told by the representative of the ship owner in Mumbai that the boat with the pumps would reach by 0300 hrs on 4th August, 2011. It is, therefore, recorded that due to the situation worsening further and seeing no help forthcoming, the master on 4th August, 2011 at 0700 hrs called the Ship Traffic System (VTS) Mumbai for assistance and naval helicopters were rushed to the site of the ship to rescue the crew and the bag containing the ship's various certificates could not be recovered and the ship sank before the towing boat could reach the distressed ship by 10 a.m. The DG's report further goes to state that it appeared that certification surveys of the ship were carried out in a biased manner and this is in complete breach of the principle of ubber imafides which is the keystone of any insurance contract. In any event, it is submitted that the policy contains a 'pay to be paid clause' which requires that for Respondent No. 9 to be found in any way to be liable, it is necessary that the ship owner to first pay the liability imposed upon it and Respondent No. 9's role is limited only to reimbursing the expense of the ship owner. It is further submitted that the 'pay to be paid clause' has been recognised in common law. On merits it is stated that the Applicant does not have any expertise in assessing the merits of oil pollution or in marine biology or botany. The averments made in the application need to be verified by factual statements of the witnesses and the Applicants, to prove the same. It is disputed that the oil spill occurred within the State of Maharashtra, it occurred beyond the 12 Nautical Miles limit of territorial jurisdiction. The averments made in para 5 to 8 were denied for want of

knowledge. However, it is stated that there is nothing on record to show that any adverse impact has taken place on the mangroves due to oil pollution. In the sea there are other oil spills and other incidents, several containers of hazardous pesticides are also said to have fallen into the sea. The report placed on record is an interim report according to which more seasonal data is required to attain a sound knowledge about the effects on mangroves seedlings establishment as well as faunal communities. The report has to be proved. Schedule II of the Act of 2010 does not mention anything about the oil spills and it is stated that actual damage and cause of damage has to be proved by the Applicant. Respondent No. 9 has no relation to any of the frequent oil spills on the coast as averred by the Applicant and the Respondent cannot be made a party. Respondent No. 9 has no role in the present proceedings as it is not engaged in any hazardous or inherently dangerous industry which poses a potential threat to the health and the safety of the persons or the environment. The Tribunal can pass orders only against the person responsible for causing the pollution or environmental harm and Respondent No. 9 is not a person responsible, therefore, no liability can be imposed upon it. On these averments Respondent No. 9 prays for dismissal of the application.

25. It may also be noticed here that the Respondent No. 9 has also filed reply to M.A. No. 129 of 2012 an application filed by Respondent No. 6 for impleadment of Respondent No. 9. That application, as already stated, was allowed and Respondent No. 9 was impleaded as Respondent. The Learned Counsel, Ms. Diya Kapur, Advocate had moved an application bearing application No. 557 of 2016 praying for discharge on 23rd May, 2016. It was on the ground that firstly, she has no instructions and secondly the company of Respondent No. 9 is now in liquidation and that a provisional liquidator KPMG had been appointed to take charge of the assets of the company vide orders of the Court in Romania dated 3rd December, 2015. This application has been heard and we see no reason to discharge the counsel or this final stage of the case. In para 3 of this application it has already been admitted that the Counsel had addressed arguments on various occasions from 1st July, 2013 to 17th February, 2014 on merits before the Tribunal. In other words, the learned Counsel had appeared for the Respondent No. 9 on various dates and even in the year 2015 had argued the matter. As there was a change in constitution of the Bench, as one of the Hon'ble Members of the Bench had retired in the meanwhile, the matter was again put up for hearing and the arguments already addressed by the counsel appearing for the various parties were again addressed in the year 2016 when the matter was reserved for Judgment. The application is also liable to be dismissed on the ground that the authority of the counsel has not been revoked by any competent authority and, in fact, no letter of revocation of the authority of the counsel has been placed on record. As far as the legal proceedings in Romania are concerned, no order of any Competent Court which will be binding on the Tribunal, has been brought to the notice of the Tribunal qua Respondent No. 9 have been stayed.

In light of this, we see no reason to allow the application. In fact, the counsel has already argued the matter and nothing survives in this application. This application i.e. 557 of 16 is consequently dismissed as having become infructuous.

STAND OF RESPONDENT NO. 10

26. Respondent No. 10 has filed an independent reply though it has been stated in the very opening paragraphs of the reply that the answering Respondent (Respondent No. 10) is the correspondent of the P&I (protection and indemnity club) with whom the subject ship has been insured, that is, of Respondent No. 9. The Learned Counsel appearing for the Respondent No. 9 stated that Respondent No. 10 has not been

appointed as an agent but was required to consider the claims filed on the basis of the policy and forward the same to Respondent No. 9's office i.e. M/s. Astra Asiguari Insurance.

According to Respondent No. 10 the appointment was made vide letter dated 15th March, 2011. In face of Section 230 of the Indian Contract Act, 1872, no agent can be proceeded against when the Principal is identified and sued. Relying upon the judgment of the Hon'ble Supreme Court of India in the matter of Vivek Automobiles Ltd. V. Indian Inc, MANU/SC/2825/2005 : (2009) 17 SCC 657 it is stated that the agent cannot be sued when the principal had been disclosed. It is averred that the impleadment of the answering Respondent is only to identify the real owner of the alleged offending ship. Thus, the Respondent states that it has no commercial arrangement with the owner of the ship. It had no undertaking in the activity relating to the recovery of the sunken offending ship and is only the correspondent of the P&I (Protection and Indemnity Club) in the proceedings. The owner of the ship is Delta Group International, from whom the said Respondent was taking instructions to make certain essential supplies to the ship. Taking the similar stand like Respondent No. 9 it is stated that the Applicant has no Locus Standi and if there is any claim which can be passed for causing pollution from sinking of the ship, it lies against is the owner of the offending ship. The DG shipping vide its letter dated 5th February, 2013 has already stated that, as per the statutory requirements, it is only the owner or its agents or the master or charter of the ship who have the responsibility to bear the cost of the expenditure incurred. Under these circumstances neither the answering Respondent nor its principals are in any way connected with the incident or liability attached thereto.

To that extent the stand taken by the Respondent No. 9 and 10 is common.

STAND OF RESPONDENT NO. 11

27. Respondent No. 11-Delta Group International has filed the reply through its Manager, Md. Bakri Osman Mahgoub. Respondent No. 11 was impleaded as party Respondent in the application vide order dated 7th February, 2013 and according to the replying Respondent it is not a necessary party and its name is liable to be deleted from the array of parties. It is averred that as far as ship Carrier is concerned, the same is owned by Delta Shipping Marine Services S.A. of Panama. Delta Navigation WLL is a group company of answering respondent. Delta Navigation WLL is unrelated to Delta Shipping Marine Services S.A. of Panama. The answering respondent is the broker who had entered into Commercial and Brokerage Agreement dated 20th April, 2011 with the owner i.e. Delta Shipping Marine Services S.A. of Panama of the ship to provide services for locating, negotiating, fixing and coordinating the execution of commercial contracts and contracts of affreightments for which ship could be used and employed. Delta Shipping Marine Services S.A. Panama, was incorporated on 14th April, 2011 and the company purchased the said ship and got it registered in its name on 18th April, 2011. The insurance of the ship was obtained by the said company from Astra Asigurari Insurance and Reinsurance Company Astra S.A., Romania-Respondent No. 9. The technical Managers were appointed by the owners and all other statutory and class compliances were also obtained by the said company themselves. All these documents show that Respondent No. 5-Delta Shipping Marine Services S.A. of Panama is the owner of the ship. There is nothing on record to say that the replying Respondent or its group company Delta Navigation has any shareholding or interest in Respondent No. 5. There is no privity of interest in anyway between the answering Respondent company, Delta Navigation and Delta Shipping Marine Services S.A. of Panama. There is no case made out by the Applicant for lifting the corporate veil of Delta Shipping Marine

Services S.A. of Panama to find out how the parties are inter-linked. The entire law in India and abroad is premised on Corporate Personality. Respondent No. 5 has been incorporated in Republic of Panama and Directors of the said company consist of Mr. Pedro Ortega Jones and Mr. Roberto Ortega Jones. The 100% shareholder of the company is an entrepreneur Mr. Petros Tsiamouris of Greek origin. The answering Respondent states that it has no shareholding in the said company. Respondent No. 5 had applied to the Maritime Authority of Panama for the issue of Telecommunication Certificate which was issued on 19th April, 2012 stating therein that it was a real owner of the ship. The insurance policy was obtained on 28th April, 2011 from Respondent No. 9. There also Respondent No. 5 has been disclosed to be the owner of the ship. Respondent No. 5 had obtained Bunker Blue Card certificate of its ship in April, 2011 and the said certificate was valid as on the date of the casualty. It is the averment of this Respondent that Bunker Blue Card is issued by an insurer as proof that it will fully meet the liability claims set out in the Bunker Convention. Respondent No. 11 had entered into Commercial Brokerage Agreement with Respondent No. 5 on 20th April, 2011 as stated to provide services. Delta Navigation a group company of the answering respondent signed a Charter Party Agreement dated 28th May, 2011 with M/s. Libra Shipping Services, Dubai (charterers) to transport about 60000 tonnes of coal from Indonesia to Gujarat for respondent No. 6. The Charter Party Agreement was a voyage C/P agreement as would be evident from the C/P itself. Delta Navigation signed the C/P on behalf of the owner of the ship and not as owners because Delta Navigation were not the owners of the ship. Delta Navigation signed the C/P on behalf of the owner of the ship because answering Respondent company and Delta Navigation acted as broker in finding commercial contracts of affreightment for the employment of the ship, on the basis of Commercial and Brokerage Agreement dated 20th April, 2011. As per the investigation report dated 14th June, 2011, during its voyage from Indonesia to Gujarat and particularly from 19th July, 2011, the ship seems to have encountered various problems and ultimately sank in the international waters on 4th August, 2011 off the coast of Mumbai. The Coast Guard rescued the crew of the ship on the same day after a distress call was given by the master of the ship. It is important to note that statutory and class documents, etc. such as registry certificate, insurance, telecommunication certificate, trim and stability certificate, SOPEP certificate, statement of compliance of International Anti Fouling Systems, Bunker Blue Card, etc. are compulsorily kept on board for inspection by port authorities. It was on the basis of the aforementioned documents that the arrival of the ship off Mumbai coast was declared to the Indian Port Authorities. According to Respondent, it may be noticed that it is impossible for the ship to have all her statutory documents and classification documents issued in the name of the owners, if on arriving at a port the authorities find that the ship belongs to another company then that company appears as owner in the statutory and classification documents on the basis of which the ship loads cargo, sails and arrives at the destination port. The reference to the website of Delta Navigation, on the basis of which it is alleged by the Respondent that Respondent No. 7, Delta Navigation and the answering company-Delta Shipping Marine Services S.A. of Panama are also concerned and answering Respondent is the real owner of the ship, is not correct. On bare perusal of the website, it is clear that there is no reference to the ship and there is no statement to confirm that they are group companies and/or Delta Navigation is the owner of the ship. The replying Respondent is registered in Qatar showing that Delta Navigation is a group company and they have wide range of activities from trade in children wear to general building construction. The submission of the Applicant and that of Respondent No. 6 in M.A. No. 129 of 2011 that on the basis of C/P agreement dated 28th April, 2011 it could be concluded that the replying Respondent is the owner of the ship is misleading and is factually incorrect. As a matter of Maritime Law, it is impossible for a

voyage to equate itself with the owner. It is only in the case of bareboat/demise charters that the charterers can be held responsible for the safety of the ship and her seaworthiness. Any agreement that is signed on behalf of the owner cannot be read as if they have been signed by the owner. Reliance is placed on the following clauses of the Agreement:-

"III. UNDERTAKING BY THE BROKER

The Broker shall use its best endeavours so far as reasonably practicable to provide the owners with the employment for their ship, in accordance with sound practice.

IV. BROKERS SERVICES

The broker will provide the services of locating, negotiating, fixing and coordinate the execution of commercial contracts and contracts of affreightment to which the ship can be used and employed."

VI. EXCLUSION OF LIABILITY

The income of the brokers commission will derive as a percentage of the actual credited amounts to the owner. As such the broker will bear no responsibility of any reason for uncollected freight, hire, or any other amounts due to owners deriving from such contracts of employment/affreightment.

VII. OBLIGATION OF THE OWNERS

The owner is obliged to keep the ship in a fit and seaworthy state through their operational managers as well as their technical managers and tam. The brokers will bear no responsibility for any loss or damage that may be caused to the owners and/or charterers and/or cargoes receivers and/or any third parties during the performance of a contract of employment which is attributed to the performance of the ship, crew their technical managers or the owners as whole."

On the strength of the above clause, it is submitted that no liability can be fastened on the replying Respondent in view of clause-VII. If there was any other owner of the ship then they would have got the same insured under a policy. The Bunker Blue Card certificate has also been issued in the name of Respondent No. 5. There are large number of companies which are using the Greek alphabet "Delta" and merely because some of the companies which are Respondents are using the similar name would be of no consequence. On that basis, the answering Respondent cannot be held to be liable as the owner. The technical managers of the ship were Coral Technical Services of Jordan as reflected in the documents as per the International Ship Security certificate issued by the flag State of the ship.

According to this Respondent, the ship was off the Mumbai coast and it was delaying her approach to the port of discharge. The receiver of the cargo i.e. Respondent No. 6 had contacted the answering Respondent because they knew them as an entity. They booked the ship for them as broker. The answering Respondent tried to contact the owner of the ship-Delta Shipping Marine Services S.A. of Panama and also Coral Technical Services but there was no response. They had practically abandoned the ship due to financial trouble and due to the unwillingness of their insurers to live up to the expectation of the insured and Coral Technical was also not responding. The answering

Respondent had tried to help the cargo owner by trying to appoint agent in India that could help the ship with supplies so that cargo could reach safely to its destination. The effort, therefore, was certainly not on account of ownership etc of the ship but was purely based on the fact that the answering Respondent had been the broker for the cargo and also to help the cargo owner inter-alia on a personal basis. It is also stated that Respondent No. 5-Delta Shipping Marine Services S.A. of Panama appointed lawyers in Greece and these lawyers appointed lawyers in India to deal with the situation and they met with the Coral Technical Officials. The repatriation of the crew of the ship was paid by the lawyers of Respondent No. 5 in Greece. It is submitted that in a marine casualty the technical managers, the insurance company of the ship, the classification society, the master of the ship as well as the owners of the ship are the only persons who can be held liable or as potentially responsible for what went wrong and how the casualty could be avoided, but the replying Respondent cannot be held liable for the same. The word 'WLL' in Qatar has similar import as the word 'LTD' in India and are used by legally independent bodies.

On the above premise, the answering Respondent submits that it has no place of business in India and is not involved in the accident as such and the Tribunal has no jurisdiction to proceed against the answering Respondent and name of answering Respondent should be deleted from the array of parties.

We may also notice that as late as on 3rd August, 2016, the Counsel appearing for Respondent No. 11 has even filed the written submissions giving the brief facts of the case as well as giving its relationship with Respondent No. 5 on the same lines as afore-stated in the main reply.

In the written submissions, besides submitting that it has no relationship with Respondent No. 5, it has also been submitted that the liability to compensate, if any, towards pollution damage, etc., is that of the insurance company i.e. Respondent No. 9 and not that of Respondent No. 5. Respondent No. 9 undertook to continue to make good liability for pollution damage for a further period of 90 days from the date of the policy or its termination. The Bunker Blue Card stated that "provided always that insurer may cancel this certificate by giving three months written notice to the above authority whereupon the liability of the insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards to the "incident arising thereafter." In relation to jurisdiction of the Tribunal, it has not been specifically stated in the reply. It is also submitted that under the Act of 1976, the incident occurred at 20 Nautical Miles from Mumbai harbour and in terms of the provisions of the Act India's sovereignty extend over the natural resources in the Contiguous Zone and Exclusive Economic Zone Sections 6(3)(d) and 7(4)(d) of the Maritime Zones Act, 1976 confer exclusive jurisdiction on the Central Government to preserve and protect the marine environment and to prevent and control marine pollution within this Zone. Keeping in view the provisions of the Act of 1958 the authority specified under the Act of 1958 shall only have jurisdiction in the case of oil pollution and does not give jurisdiction to the Tribunal.

We may also notice that after hearing was practically concluded, M.A. No. 737 of 2016 was filed on behalf of the Counsel appearing for Respondent No. 11 praying that they should be discharged from the case as they have no instructions from Respondent No. 11. The clients have not got any reply with them even after repeated reminders. As already noticed while dealing with M.A. No. 557 of 2016, this matter has been heard time and again and even now before the present application was filed, the arguments have practically been concluded and the case has been reserved for judgment. The

application was filed on 26th July, 2016 and the case has been reserved for judgment on 2nd August, 2016. There is no document placed before us to show that Respondent No. 11 has revoked the authority and the Counsel appearing in the matter seeking instructions of whatever kind is a matter which primarily falls in the domain of the client and the lawyer relationship. Court proceedings can hardly be affected as a result thereof. For these reasons, we dismiss M.A. No. 737 of 2016 without any order as costs as to it had already become infructuous.

STAND OF RESPONDENT NO. 12

28. Despite opportunities and being represented, the Counsel appearing for the Respondent No. 12 did not file reply to the main application. However, reply was filed to M.A. No. 129 of 2012 filed by Respondent No. 6 for impleadment of other Respondents, including Respondent No. 12. Thus, it will be useful to refer to the contents of the reply. It is stated that Respondent No. 12 was not the agent of the ship nor was so appointed by Respondent No. 11. It is stated that sometime on 19th July, 2011, Respondent No. 12's sister concern in Qatar was contacted by Delta Group requesting assistance for arranging certain supplies to their ship, RAK Carrier, which was then in outer anchorage Mumbai, which request was passed on to the Respondent No. 12. On 19th and 21st July, 2011, Respondent No. 12 received telephone calls from one Mr. Md. Backri of Delta International Group W.L.L., informing that their ship, MV Rak Carrier, which was enroute to Dahej in Gujarat, was running out of bunkers and to arrange for bunkers and other supplies to the ship. According to Mr. Bakri, due to bad weather conditions prevailing on account of the ongoing monsoon season, various suppliers were not willing to make deliveries at outer anchorage and requested Respondent No. 12 for help to assist in arranging for bunkers, fresh water and food items to the said ship thus, the replying Respondent came into the picture. They had nothing to do with the ship. They were neither the agent nor the owners. Pursuant to the request for assistance, Respondent No. 12 contacted M/s. Mercury Marine Suppliers and arranged for the requested supplies to the ship which were delivered to the ship on 23rd and 27th July, 2011, by the ship, M.V. Albatross 19 and M.V. Al Samridihi respectively. Respondent No. 12 was the third party whose role was limited as stated. The bill for the said supplies was submitted by Mercury Marine Suppliers and not by Respondent No. 12. M/s. Delta International Group W.L.L. paid for the said supplies through this Respondent. Once monies were paid to the suppliers and accounts rendered, matter between Respondent No. 12 and Delta International Group came to an end. On 4th August, 2011, Respondent No. 12 received an email from D.G. Shipping informing that the ship sank due to bow submerged and water ingress into the ship at posn1846N 072,28.7E. Certain details were asked for, which were provided including the information that Respondent No. 12 had nothing to do with the ship. By a further email on the same day i.e. 4th August, 2011, a notice ostensibly under Section 356(J) & (K) of the Act of 1958 addressed to Delta Group and Respondent No. 12 as the purported agents, was sought to be served upon the Respondent by D.G. Shipping. Respondent No. 12 vide their letter dated 5th August, 2011 replied and clarified that they have nothing to do with the ship and they are not their agent. M/s. Taurus Shipping Pvt. Limited were the main agent at discharge port-Dahej, and that M/s. Kshitij Marine Services were the discharge port sub-agents of the ship, at Dahej. Subsequently, the D.G. Shipping including the then Nautical Advisor to the Government of India, telephonically informed the Respondent No. 12 that the crew has been evacuated from the ship and instructed the Respondent No. 12 to make arrangement for the crew members. On 5th August, 2011, a meeting was held at the office of the D.G. Shipping when the D.G. Shipping and M/s. Interport i.e. local correspondent of the P&I Club of the ship again requested the Respondent No. 12 to make arrangements for the

accommodation of the crew members of the ship on humanitarian grounds. Arrangements were made on humanitarian grounds and M/s. Interport had agreed to bear the cost. This does not make Respondent No. 12 liable for any action in accordance with law. On 5th August, 2011, Respondent No. 12 addressed an email to Delta International Group W.L.L. inter-alia calling upon them to respond to D.G. Shipping and to make their own arrangements in Mumbai. In the mail, it was also clarified that they were not appointed as agents and they were not acting as such. The only role of Respondent No. 12 was to make supplies and to make arrangements on humanitarian grounds. According to this Respondent, after sinking of the ship on 4th August, 2011, at the request of the D.G. Shipping and confirmation from M/s. Interport, the arrangements were made purely on humanitarian grounds and they were not the agents of the ship, and for that matter, any person interested in the ship. On these facts, the said Respondent prayed for discharge from the array of parties.

29. Having discussed with some elaboration the case pleaded by the respective parties in the present case and keeping in view the multiple but contradictory pleas which have been raised by the parties for consideration before the Tribunal, it is essential for us to formulate the issues which are of some national and international importance pertaining to environmental jurisprudence that arise for determination by the Tribunal.

1 . Whether the Applicant has no Locus standi to institute the present application with the prayers?

2 . Who is the owner of the ship and a person responsible and interested in terms of the relevant laws in force?

3 . Which of the Respondents are liable and/or responsible, if so, how and to what extent, within the ambit and scope of Sections 14, 15 and 17 read with Section 20 of the National Green Tribunal Act, 2010?

4 . Whether the Tribunal has jurisdiction to entertain and decide the present case and whether or not the provisions of the Merchant Shipping Act, 1958 oust the jurisdiction of this Tribunal?

5 . Whether the Ship, M.V. Rak Carrier was seaworthy at the commencement of the voyage and remained so, till its arrival at about 20 Nautical Miles off the coast of Mumbai where it sank on 4th August, 2011?

6 . Whether on 4th August, 2011 the Ship while it sank or immediately thereafter caused pollution by oil spill or otherwise? Further, whether the sunk ship even presently lying in the 'contiguous Zone' along with its cargo, has caused in the past and is a continuous source of pollution at that site to the sea, aquatic life and/or to the shore itself?

7 . What compensation, damages and which of the Respondents are liable to pay for causing pollution and degradation of marine environment in terms of Sections 15 and 17 read with Section 20 of the National Green Tribunal Act, 2010?

8 . Whether the insurance company incurs no liability whatsoever in the facts and circumstances of the case?

9 . What is the effect of the winding up proceedings pending before the Romanian Court in relation to the insurance company upon the proceedings

pending before this Tribunal?

10. The directions that are required to be issued in the present case?

11. Relief?

30. As already noticed the present application had been filed under Sections 14 & 15 of the Act of 2010, where the Applicant has claimed that he is a person seriously involved in the protection of environment and particularly, the Eco-Sensitive Zone and Marine Environment. The Applicant has prayed for relief, damages, restoration, restitution and issuance of directions for prevention and control of pollution, resulting from the oil spills. We may notice that right at the initial hearings of the application the Tribunal had directed expansion of the scope of hearing of the application and passed orders in that behalf.

Issue No. 1: Whether the Applicant has no Locus standi to institute the present application with the prayers?

31. According to some of the Respondents who have taken the objection of locus standi, it is contended that Applicant is not a person as contemplated under Section 18(2) of the Act of 2010 and locus standi under the provisions of the Act of 2010 cannot be expanded like in a public interest litigation before the higher courts. It is also contended that the Applicant is a resident of Mumbai and has no interest or involvement in the coastal area which is alleged to have been affected because of oil spill and other offending acts as alleged, thus, they pray for dismissal of this application on that ground alone.

In order to examine the merits of the case, it would be necessary to refer to the object and reasons for enactment of, the Act of 1986 as well as the Act of 2010. The Right to healthy environment under the Indian Constitution has been held to be a Fundamental Right which is included in 'Right to Life' as enshrined under Article 21 of the Constitution. The Act of 1986, was enacted to provide for the protection and improvement of environment and for matters connected therewith. The primary object of the Act of 1986 was to implement the principle of the United Nations Conference on Human Environment held at Stockholm in June, 1972. The concern over the state of environment has grown world over. The decline in environmental quality has been witnessed by increasing pollution of different forms. A general legislation of environmental protection was enacted with primary objective of protecting the environment and to ensure proper check and balances for the protection of the same. The Act of 2010 was enacted for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources, including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto and further with a specific object of effective and expeditious environmental justice. Both these enactments have defined the expression 'environment' in very wide terms but in identical language. Section 2(a) of the Act of 1986 which is identical to Section 2(c) of the Act of 2010 reads as under:

"environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

The above definition, therefore, provides an insight into the legislative intent of giving a very liberal construction to the Statute itself which would practically apply in all matters

and events relating to environment. Section 2(j) of the Act of 2010 defines the word "person" which would include an individual, a company, an association amongst others even every artificial juridical person, not falling within any of the proceedings of sub-clause 3 of Section 25 of the Act of 2010. This again reflects that the definition of "person" is to be given a liberal interpretation and it is an inclusive but not exhaustive definition and includes an individual, even a juridical person in any form. Under Section 14 of the Act of 2010 the Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved and such question arising out of the implementation of the enactments specified in Schedule I. Of course, such civil disputes relating to environment have to be filed within the prescribed period of limitation. Under Section 15, the Tribunal can pass an order giving any of the reliefs stated in that Section. The reliefs could relate to relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I (including accident occurring while handling any hazardous substance); for restitution of property damaged and for restitution of the environment for such area or areas. Section 18 of the Act of 2010 deals with the applications under Sections 14 and 15 of the Act of 2010 and who can claim such reliefs. The application has to be filed by a person, who has sustained the injury; or the owner of the property to which the damage has been caused; or any person aggrieved, including any representative body or organization, amongst other specified Applicants. The contention before the Tribunal is that a person filing an application has to be a person who has suffered personal injury otherwise he would have no right to file the application. This argument is misplaced. Under the provision of the Section 18(2) of the Act of 2010 which again have to be interpreted in light of the objects and reasons of the statute and the definition of 'environment' and scope and ambit of Section 14 of the Act of 2010. The expression 'any person aggrieved' appearing in Section 18(2)(e) of the Act of 2010 is to be given a wider meaning. This expression is not to be restricted only to a person who has suffered personal injury. It is to be interpreted and understood in contradistinction to Section 18(2)(a) where the person who has suffered injury personally can invoke the jurisdiction of the Tribunal under Section 14, 15 and 16 of the Act of 2010. Obviously, both these clauses are not meant for the same class of persons. A person who has not suffered any personal injury or does not have the personal grievance but his grievance is of general form of a larger public interest, such person can certainly invoke the jurisdiction of the Tribunal in terms of Section 14 of the Act of 2010. If we were to accept the contention of the Respondents then the very object of the two enactments would stand defeated. In other words, a person would not be able to approach the tribunal if he is intending to protect the general environment, ecology and marine environment. There could be a number of cases where a person had not suffered personal injury or may not be even aggrieved personally because he may be staying at some distance from the place of occurrence or where the environmental disaster has occurred and/or the places of accident. To say that he could not bring an action, in the larger public interest and for the protection of the environment, ecology and for restitution or for remedial measures that should be taken, would be an argument without substance. This view can be substantiated even from the language of Section 18(2)(e) where even a representative body or organization can bring an application for environmental adjudication before the Tribunal. Obviously a body or an organization per se would not suffer any injury or may not have any grievance. Once the Legislature in its wisdom has used the expression of such wide meaning and scope, it would be impermissible in law to give them narrower meaning or strict construction. The construction that will help in achieving the cause of the Act should be accepted and not the one which would result in deprivation of rights created under the Statute. In fact,

the question of locus standi under the Act of 2010 had come up for consideration before the Tribunal in number of cases. In the case of *Kishan Lal Gera v. State of Haryana & Ors*, 2015 ALL (I) NGT REPORTER (2) (DELHI) 286, the Tribunal after considering even other judgments on the issue, held as under:

Issue in that case was:-

Whether the appellant has the locus standi to file the present appeal?

21. Section 16 of the Act of 2010 gives the statutory right to any 'Aggrieved Person' to prefer an appeal before the Tribunal. The expression 'Person Aggrieved' has neither been defined under the Act of 2010 nor in any of the Acts specified in Schedule I of the Act of 2010. Keeping in mind the object of the Act of 2010, its legislative scheme and the purpose enumerated in the Scheduled Acts, it can be concluded that the expression 'Aggrieved Person' has to be interpreted liberally.

The concept of locus standi as applicable to the Civil or Constitutional jurisprudence cannot be stricto sensu applied to the interpretation of this expression under the Act of 2010. The term 'Person Aggrieved' does not have to show any personal interest or damage or injury as the concept of personal injury would be applicable to Applicant invoking the jurisdiction of the Tribunal under Sections 15 and/or 17 of the Act of 2010, but it would not be true for a person invoking the jurisdiction of the Tribunal under Section 14 and/or Section 16 of the Act of 2010. In fact, this preposition need not detain us any further as a larger bench of the Tribunal has settled this principle in its various judgments. At best, the person has to show that he is directly or indirectly concerned with adverse environmental impacts which are likely to be caused due to grant of the Environmental Clearance by the competent authority.

22. It may be noticed that by coming into force of the Act of 2010, National Environmental Appellate Authority Act, 1997 was repealed. Under the provisions of that Act, any person aggrieved had a right to prefer an appeal against the orders to the Appellate Authority in terms of Section 11 which defines an 'Aggrieved Person' and provides that any person who is likely to be affected by the grant of the Environmental Clearance could prefer an appeal. However, every such definition is conspicuous by its absence in the provisions of Section 16 of the Act of 2010. Thus, it cannot be said that a person actually and really aggrieved should alone be permitted to prefer an appeal under the Act of 2010. It will be sufficient that a person states that the environment of the area would be adversely effected, the protection of which, is of his interest. Expression 'Aggrieved Person' must be given a wide connotation and the persons directly or indirectly affected or even interested should be permitted to ventilate their grievances in an appeal. (Refer:-*Sri Ranganathan v. Union of India*, (2014) ALL (I) NGT REPORTER (2) (SZ) 1 and *Mr. Vithal Gopichand Bhugersay v. Ganga K Head Sugar and Energy Ltd.*, (2014) ALL (I) NGT REPORTER (1) (SZ) 49.

23. 'Aggrieved Person' is one, who has a legal right to enforce a

remedy. Such person must satisfy the ingredients as stated in the laws in force. Although the legal right must fall within the framework of the statute, but, that does not mean that the Tribunal would unduly restrict the meaning of this expression. It must receive a liberal construction in consonance with the object of the Act of 2010. We may also refer to the Judgment of a larger bench of the Tribunal in the case of Goa Foundation v. Union of India, MANU/GT/0057/2013 : (2013) ALL (I) NGT REPORTER (Delhi) 234, where the Tribunal examined the ambit and scope of this expression while referring to various judgments of the Supreme Court of India. The relevant extract of the judgment reads as under:

25. The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the Applicant's interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar's The Law Lexicon supra describes this expression as 'when a person is given a right to raise a contest in a certain manner and his contention is negative, he is a person aggrieved' [Ebrahim Aboodbakar v. Custodian General of Evacuee Property, MANU/SC/0058/1952 : AIR 1952 SC 319]. It also explains this expression as 'a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which he is legally entitled to and not merely a person who has suffered some sort of disappointment'.

26. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something. This expression is very generic in its meaning and has to be construed with reference to the provisions of a statute and facts of a given case. It is not possible to give a meaning or define this expression with exactitude and precision. The Supreme Court, in the case of Bar Council of Maharashtra v. M.V. Dabholkar and Others MANU/SC/0670/1975 : AIR 1976 SC 242 held as under:-

"27. Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved." Again a

person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which pre judicially affects his interests." It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

28. The pre-eminent question is: what are the interests of the Bar Council? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.

40. The point of view stated above rests upon the distinction between the two different capacities of the State Bar Council: an executive capacity, in which it acts as the prosecutor through its Executive Committee, and a quasi-judicial function, which it performs through its Disciplinary Committee. If we can make this distinction, as I think we can, there is no merger between the prosecutor and the Judge here. If one may illustrate from another sphere, when the State itself acts through its executive agencies to prosecute and then through its judicial wing to decide a case, there is no breach of a rule of natural justice. The prosecutor and the Judge could not be said to have the same personality or approach just because both of them represent different aspects or functions of the same State.

44. The short question is as to whether the State Bar Council is a 'person aggrieved' within the meaning of Section 38 so that it has locus standi to appeal to this Court against a decision of the Disciplinary Tribunal of the Bar Council of India which, it claims, is embarrassingly erroneous and, if left unchallenged, may frustrate the high obligation of maintaining

standards of probity and purity and canons of correct professional conduct among the members of the Bar on its rolls.

47. Even in England, so well-known a Parliamentary draftsman as Francis Bennion has recently pleaded in the Manchester Guardian against incomprehensible law forgetting 'that it is fundamentally important in a free society that the law should be readily ascertainable and reasonably clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights'. It is also needlessly expensive and wasteful. Reed Dickerson, the famous American Draftsman, said: It cost the Government and the public many millions of dollars annually'. The Renton Committee in England, has reported on drafting reform but it is unfortunate that India is unaware of this problem and in a post-Independence statute like the Advocates Act legislators should still get entangled in these drafting mystiques and judges forced to play a linguistic game when the country has an illiterate laity as consumers of law and the rule of law is basic to our Constitutional order."

27. In the case of *Maharaj Singh v. State of Uttar Pradesh* MANU/SC/0361/1976 : (1977)1 SCC 155, the Supreme Court observed that a legal injury creates a remedial right in the injured person. But the right to a remedy apart, a larger circle of persons can move the court for the protection or defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the lis and the plaintiff need not necessarily be personal, although it has to be more than a wayfarer's allergy to an unpalatable episode. Further in the case of *Dr. Duryodhan Sahu and Others v. Jitendra Kumar Mishra and Others*(1998) 7 SCC 270, the Supreme Court, held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. In *Jasbhai Motibhai Desai v. Roshan Kumar*, MANU/SC/0011/1975 : AIR 1976 SC 578 the Court held that the expression 'aggrieved person' denotes an elastic, and to an extent, an elusive concept. It stated as follows:

"It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him."

28. Section 16 of the NGT Act gives a right to any person to prefer an

appeal. These expressions have to be considered widely and liberally. The person aggrieved, thus, can be a person who has no direct or personal interest in invoking the provisions of the Act or who can show before Tribunal that it affects the environment, and therefore, prays for issuance of directions within the contemplation of the provisions of Section 16 of the NGT Act.

24. The objection of the Respondents with reference to the judgments of the Tribunal which we have already referred, is, that a person (appellant) has to be an 'Aggrieved Person' who has suffered a legal injury, i.e., to say that he has been wrongly deprived of something. Further, it is averred by the Respondent that no specific averments have been made in the appeal in this regard and this contention is without any merit. Firstly, there are averments in the appeal in this regard and secondly, the appellant has taken a specific plea that being resident of the area, he is concerned with the protection of environment and ecology of the area which is affected by the unauthorized construction activities of the Respondent.

25. In light of the above dictums of the Tribunal, we may refer to the memorandum of appeal preferred by the appellant. The appellant has specifically stated that the Environmental Clearance for the project would have adverse impacts on the environment and ecology of the area. According to him, it would cause traffic jams and air pollution since the Super-Speciality Hospital has been established contrary to the laws in force. The maintenance of prescribed percentage of green area has not been complied with by the Project Proponent and other conditions of the Environmental Clearance have also been violated by him. According to the appellant, the Environmental Clearance has been granted arbitrarily and in violation to the Notification of 2006. The appellant claims to be a resident of that area and has a direct interest in the environment of the area. Furthermore, the appellant has been pursuing the cause of environment protection before various forums for a considerable time. Thus, we are of the considered opinion that the appellant is covered within the ambit of the term 'Aggrieved Person' and once he is an 'Aggrieved Person' he would have the locus standi to file this appeal.

The Tribunal was concerned with the locus standi of the Applicant as well as the 'person aggrieved'. After considering other judgments by the Tribunal on this issue, in the case of Wilfred J. v. Ministry of Environment & Forests, MANU/GT/0072/2014 : 2014 ALL (I) NGT REPORTER (2) (DELHI) the Tribunal held as under:

136. In this very judgment, the Tribunal emphasised that the cause of action must be construed and relate to environmental issues arising from the Scheduled Acts and 'such dispute' appearing in Section 14 of the NGT Act. Besides this, the Tribunal has to keep in mind that Section 14 of the NGT Act does not, in any manner, restrict the locus standi of the person who may file application relating to substantial question of environment, (including enforcement of a legal right in relation to the environment) which arises from the implementation of the specified acts in Schedule I of the NGT Act. Similarly, Section 16 uses the words "any person aggrieved" which again is a very generic term. Under Section 15 of the NGT Act, a person is expected to file an application who claims relief and compensation, restitution of property damaged for restitution of environment for such area or areas. Again restitution of environment may not be person specific but purpose specific. A person

aggrieved may not necessarily be a person who has suffered a personal injury. Any person aggrieved can challenge an order granting Environment Clearance even though the Applicant might not have suffered personally. Section 14 gives a very wide meaning to the person seeking to invoke jurisdiction of the Tribunal under Section 14. At this stage, we may refer to the judgment of the Tribunal in the case of *Samata v. Union of India*, (2014) 1 All India NGT Reporter (South Zone) where the Court held as under:-

"29. Both under Section 11 of the NEAA Act, 1997 and Section 18 of the NGT Act, 2010 any person aggrieved by the grant of EC as shown above can maintain an appeal. The 'aggrieved person' as contemplated in the Act came up for interpretation before the Tribunal in a number of cases. An aggrieved person contemplated in the above provisions would refer to the substantial grievance as to denial of some personal, pecuniary or property right or imposing an obligation on a person. The grievance so ventilated should not be either fanciful or sentimental, but must be substantial. A person calling himself as an 'aggrieved' must have suffered a legal grievance that he has been wrongfully deprived of something or refused wrongfully. The aggrieved person can either be aggrieved either directly or indirectly. In so far as the environmental matters are concerned, it cannot be stated that the person really aggrieved should alone be permitted to initiate an action. It is not necessary that the person, who initiates action, is a resident of that particular area wherein the proposed industrial site is located. It is true that the appellants have not participated in the proceedings of the public hearing. It is true that it is necessary to scan the credentials of the appellants as to their intention and motive. Even assuming that the appellants have not participated in the proceedings of the public hearing, they would lose their right to challenge the approval or the EC. If the appellants come forward with a case apprehending damage and danger to environment and ecology if the project in question was not properly envisaged and did not satisfy the Principles of Sustainable Development and Precautionary Principles, they can maintain the appeal and be allowed to agitate as to the correctness of the study made in respect of ecology and environment. In the instant case, nothing substantial has been demonstrated in order to doubt the credentials of the appellants. What are all stated by the 3rd Respondent is that the appellants are residents of a different area though within the State and they are not aggrieved persons. The first appellant is a registered Non Governmental Organisation working in the field of Environment and the 2nd appellant is a social and environmental group with the objective of working for the welfare of the local communities and creating awareness on environmental issues and have filed the letter of authorisation issued by the respective bodies to initiate proceedings. Hence, they are to be termed as 'aggrieved persons' as envisaged under the above provisions, who can maintain the appeal and thus, this question is answered in favour of the appellants."

137. Applying the rule of liberal construction as to who can approach the Tribunal under the environmental jurisprudence, a Bench of the Delhi High Court in the case of *Prafulla Samantra v. Ministry of Environment & Forests & Ors.* MANU/DE/1253/2009 : (2009) ILR 5 Delhi 821 held as under:-

"The world as we know is gravely imperiled by mankind's collective folly. Unconcern to environment has reached such damaging levels which threatens the very existence of life on this planet. If standing before a special tribunal, created to assess impact of projects and activities that impact, or pose potential threats to the environment or local communities, is construed narrowly, organizations working for the betterment of the environment whether in form of NGOs or otherwise would be effectively kept out of the discourse, that is so crucial an input in such proceedings. Such association of persons, as long as they work in the field of environment, possess a right to oppose and challenge all actions, whether of the State or private parties, that impair or potentially impair the environment. In cases where complaints, appeals, etc. are filed bona fide by public spirited interested persons, environmental activists or other such voluntary organizations working for the betterment of the community as a whole, they are to be construed as 'aggrieved persons' within the meaning of that expression under Section 11(2)(c) of the Environment (Protection) Act, 1986."

Reference can also be made to the judgment by the larger bench of the Tribunal in the case of Dr. Arvind Gupta v. Union of India & Ors., O.A. No. 61 of 2012 decided on 10th December, 2015.

32. From the above judgments it is clear that locus standi of an Applicant cannot be given a strict construction under the environmental laws of our country. 'Environment' is not a subject which is person oriented but is society centric. The impact of environment is normally felt by a larger section of the society. Whenever environment is diluted or eroded the results are not person specific. If we were to adopt the reasoning given by the Respondents then it would lead to undesirable results. The provisions of a statute must be examined in the light of the scheme of the Act and the scheme of both the enactments afore referred do not permit recourse to such narrower interpretation. The Applicant admittedly is a resident of Mumbai and by the oil spills the coasts of various beaches in Mumbai including Juhu, Raigad, Uttan in Bhayandar and Gorai beach have been adversely impacted. The Applicant has raised a very substantial question of environment. The question relates to the protection, restoration, restitution and damages on the strength of the Act of 1986 (which is a scheduled Act to the NGT) and the provisions of the Act of 2010. The question is the impact of oil spill on the marine ecology and environment, destruction of mangroves, its adverse impact on aquatic life, impact on fishermen and more importantly the impact of the sunken ship and cargo (60054 MT of coal lying in sea water being a continuous source of pollution in sea bed and its continuous effect on the shore). Such an important question of law relating to the environment would certainly be a question falling within the ambit and scope of Section 14 of the Act of 2010 and would arise from implementation of the Acts, particularly, the Act of 1986 stated in Schedule I of the Act of 2010. To conclude the Applicant has the locus standi to file the present application, he has raised substantial question relating to environment arising in relation to the implementation of Scheduled Acts. The prayers of the Applicant, as stated in the application and in the subsequent orders of the Tribunal, are the reliefs which the Tribunal, if satisfied, can grant within the ambit and scope of the Act of 2010. Resultantly, issue No. 1 is answered against the Respondents.

Issue No. 2: Who is the owner of the ship and a person responsible and interested in terms of the relevant laws in force?

33. This issue has to be discussed under three different concepts.

(i) Who is the real owner of the ship?

(ii) If there is any ostensible owner of the ship?

(iii) And lastly, if there were persons or entities interested and responsible in relation to the ship in question, in terms of the law in force?

34. Once the first concept is answered in definite terms, still there would be need to consider and pronounce upon other two concepts as well. This would primarily be for the purpose that it is only then alone that responsibility and liability of the concerned respondent can be determined severally and/or co-jointly. As is evident from the record and the facts afore-noticed, Respondent No. 5-Delta Group International was impleaded as the Respondent and stated to be the main Respondent in relation to ownership of the ship. However, vide order dated 22nd February, 2012, the name of this Respondent was deleted and Delta Shipping Marine Services S.A. was impleaded as the main Respondent. In relation to the ship and the occurrence, the first document placed on record was from Respondent No. 5, as originally impleaded. This affidavit was filed by the Managing Director of the original Respondent No. 5 which has an office in Doha, Qatar. In terms of this affidavit, it was declared that the Delta Group was not owner of the ship but Delta Shipping Marine Services S.A. was the real owner of the ship. Along with this affidavit, Certificate of Registry issued by the Panama Registry confirming the same was placed on record. The certificate was issued on 13th April, 2011 and it recorded the name of the ship as 'Rak Carrier' and that of the owner as Delta Shipping Marine Services S.A. (100%). This was the certificate issued by the competent authority in Republica-De-Panama. The ship in its voyage from Indonesia to Dahej in Gujarat had also been insured by Respondent No. 9. There is no dispute to the fact that the ship was actually insured and there exists the policy of insurance of the ship. This insurance policy No. 024CT/27.04.2011 was issued by Respondent No. 9 for the ship 'RAK Carrier' and the name of the insurer as well as that of the owner was written as Delta Shipping Marine Services S.A. Under this issue, it is not necessary for us to discuss the details of the insurance policy. It is suffice to note that the policy was in favour of Respondent No. 5 on the same date i.e. 27th April, 2011. Bunker Blue Card certificate No. 2011/12 was issued in relation to the ship and the full name of the registered owner was also that of Respondent No. 5 with complete details as noticed above. This certificate noticed that the ship had a valid insurance during the period 28th April, 2011 to 27th April, 2012 and it was subject to the terms and conditions and up to the limit of liability as per the policy. The certificate certified that there is in force in respect of the above-named ship while in the above ownership, a policy of insurance satisfying the requirement of Article-7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 when and where applicable. A Commercial and Brokerage Agreement was executed on 20th April, 2011 between Respondent No. 5 and Respondent No. 11 respectively. Respondent No. 5 had declared itself in the recitals of the agreement as owner of M.V. Rak Carrier, the ship. Respondent No. 11 was appointed as broker to find commercial contracts and any kind of contracts of affreightment for the employment of the ship subject to the conditions stated in the said Agreement. Another Agreement dated 28th May, 2011 was also executed between Delta Navigation WLL-Respondent No. 7, and Libra Shipping Services, Dubai (Charterers) who are not party to the present application. In this agreement Delta Navigation WLL-Respondent No. 7, which is a sister concern of Respondent No. 11, was disclosed to be the owner of 'M.V. Rak Carrier' and in the agreement it was recorded that the ship being tight, staunch and strong, and in every-way fitted for the voyage shall, with all

convenient dispatch, sail and proceed to safe parts. It noticed that it was being engaged for voyage, to carry 60000 MT with 10% more or less at owner's option. This agreement had been signed by Respondent No. 7 on behalf of the owners of the ship and the Charterers had also signed the agreement. The rider clause of the Charter Party Agreement dated 28th May, 2011 also provided and described Respondent No. 7-Delta Navigation WLL, Doha, Qatar as head owner. Under this agreement, clause 'B' specifically provided that owners guarantee that the ship is entered with and insured for all risks including cargo, wreck removal, pollution damage and damage to fixed and floating objects with an international group, P&I club and will remain so for the duration of its voyage and that all calls, including supplementary calls are fully paid up by owners to provide evidence on demand if requested by the charterers. Thus, the obligation to provide requisite information and documentation has laid both on Respondent No. 7 and Respondent No. 5.

35. Respondent No. 6 in its affidavit has clearly stated that Respondent No. 5 is the owner of the ship and, therefore, while applying the Polluter Pays Principle the entire liability both for the ship and cargo, would be upon the said owner of the ship.

Respondent No. 11 which is Delta Group International in its affidavit has stated that Rak Carrier is the ship and the owner is Delta Shipping Marine Services S.A. Delta Navigation WLL is a group company of the Delta Group International, though it is unrelated to Respondent No. 5. Respondent No. 11 has further filed some documents like TRIM and Stability Certificate, SOPEP Certificate, Statement of Compliance of International Anti Fouling Systems, Bunker Blue Card, Air Pollution Prevention Certificate all issued in Greece. The pollution certificate does not reflect the name of the owner of the ship though the certificates relate to the ship Rak Carrier. Similarly, the record of Anti-Fouling System also does not provide the name of the owner though it gives the name of the Ship. The other two certificates also contain similar content. The certificate in relation to Telecommunication, that was issued on 19th April, 2011 and was valid till October, did record both the name of the ship as well as the name of Respondent No. 5 as the owner of the ship. Another certificate issued by the Maritime Authority in Panama, also reflects Respondent No. 5 as the owner, however the address indicated in this certificate is similar to that of Respondents No. 7 and 11 that is, Doha, Qatar. Respondent No. 7 that claims to be the sister concern and a part of Delta Group International has taken the same stand.

From the above documents and the facts put forward by the affidavits, it is clear that the registered and actual owner of the ship is Respondent No. 5, Delta Shipping Marine Services S.A.

36. Having concluded that Respondent No. 5 is the actual and registered owner of the ship, now, the question that arises for the consideration of the Tribunal is whether any of the other Respondents are person interested or responsible in terms of the law in force and further for the determination of that purpose does the Tribunal need to apply the Doctrine of Lifting the Corporate Veil.

37. The diverse pleadings filed by the parties on record are sufficient indicator of the fact that other than Respondent No. 5, there are entities which are directly or indirectly but substantially interested in the ship or its business. Respondent No. 7 has taken a categorical stand that it had only executed a Charter Party Agreement on behalf of the owner and has no direct relationship with Respondent No. 5 and the Ship. This position does not stand to reasoning. Respondent No. 7 has signed a Charter Party Agreement making clear commitments in relation to the voyage, liabilities and other stipulations in

relation to the ship. The Agreement has not been executed between Respondent No. 5 and Libra Shipping Services, Dubai but it has been executed between Delta Navigation, WLL and Libra Shipping. The Agreement has been signed in relation to and for the voyage of the ship, M.V. Rak Carrier. The agreement has been signed on behalf of the owners. The Agreement has been signed on behalf of owners, this would mean that the Agreement have been signed on behalf of the entity as described in the Agreement as owner that is Delta Navigation WLL and not Delta Shipping Marine Services (S.A.) that is Respondent No. 5. This Charter Party Agreement had number of clauses creating responsibilities and liabilities upon the parties, including the fixation of commission, right on gross amount of freightage. Besides this, it had number of rider clauses. These rider clauses are of some significance. In rider clause 87, while giving the ship description, the Agreement also describes who is the head owner. Under this clause, it is not the name of Respondent No. 5 that was given but that of Respondent No. 7, Delta Navigation WLL, though it had the same address of Al Sadd Street, Doha, Qatar. Furthermore, under this very clause and as afore-referred, the owner's liabilities in relation to the ship were stated which included the liability to pay different damages during the voyage and liability to furnish fittings, if required, in relation to the ship which had been insured through Respondent No. 9. Clause 60 declared that ship is guaranteed, suitable for grab discharge and owners/masters to maintain the holds in good conditions throughout the voyages until the completion of discharge. Owners/masters to properly secure any and all fittings in the cargo holds, including manhole, covers throughout the period of voyage. No cargo is to be loaded in or top of deep tanks nor in tweendecks, nor bridge space nor in any other places not accessible for discharge payments of grabs and/or Charterers I receivers bulldozers or other equipment for any reason attributable to the ship, including ship's stability or trim. The bulldozers and drivers to be arranged and paid for by receivers/charterers. Should nevertheless any cargo be loaded by ship in places not accessible to grab and/or charterers bulldozers or other equipment any time and/or dispatch money so lost and all extra expenses over and above normal grab discharge at Port of discharge to be for owner's account. Deep tanks, tunnels and all other provisions within ship's holds are to be adequately protected against damage by the stevedone's grabs/equipment, failing which owners to be responsible for all consequences. These clauses read in conjunction with other clauses of the charter agreement dated 28th May, 2011, seen in the light of the attendant circumstances, makes it clear that Respondent No. 7 had an interest in the ship and its business particularly in relation to the voyage in question.

38. Respondent No. 6 amongst others in Application, M.A. 129/2012 while giving the details with reference to the proceedings before the Tribunal has specifically stated that the charter party agreement clearly shows that the owner of the ship is Respondent No. 7, Delta Navigation WLL and there is no document placed on record that the said ownership was changed during the voyage anytime till the accident off the coast of Bombay. Delta Navigation, WLL is a subsidiary company of Delta Group International, Qatar, which was originally Respondent No. 5 in the application. Thus, according to Respondent No. 6, Respondent No. 7 is interested in the ship and definitely in its business. The business interest extended upto declaring itself to be owner of the ship and taking responsibilities for the voyage of the ship in question.

39. Respondent No. 11, Delta Group International, of which Respondent No. 7 is a sister concern, had entered into Commercial and Brokerage Agreement dated 20th April, 2011. This Agreement had been signed by Respondent No. 11 on the one hand and Delta Shipping Marine Services S.A. on the other. Respondent No. 11 had taken unto itself the responsibilities of finding commercial contracts and any kind of contracts for affreightment in relation to the ship in question. It was to provide service of locating,

negotiating, fixing and coordinating execution of commercial contracts and contracts of affreightment for which the ship can be used and employed. The commission was payable @ 3.5% of the gross income, actual to be created upon performance of the contract. This was for a period of two years. Qua any damage or loss that may be caused to the owner and/or any third parties during performance, the brokers were not to bear any liability. In terms of Clause 7 of the said Agreement the contract rights and obligations were not assignable. The dispute between the parties was to be settled as per arbitration in London in terms of Arbitration Act, 1996. Respondent No. 6, amongst others has taken the stand that Respondent No. 11 has acted as broker agent for the purported owner of the ship, Respondent No. 5. Respondent No. 11 has failed to produce the Agreement at the appropriate stage and prove the same in accordance with law. It is, therefore, averred that the documents produced by the Respondent No. 11 are again a colourable exercise inasmuch as the entity was so involved with the other, it cannot otherwise produce so many documents and information about the Respondent No. 5 and its constitution. There is apparently a clear and definite relationship between Respondent No. 5 and 11 and, therefore, they are part of the same group. The information by Respondent No. 11 that the lawyers from Greece and India met with the Technical Manager, Coral and tried to push the insurance to deal with various issues, is an averment which is stated to be true to the personal knowledge of the Respondent No. 11. This shows that they are acting collectively and collusively and were together responsible for the voyage of the ship. Respondent No. 11 is also involved in the ownership of the ship, as is evident from the affidavit of Respondent No. 12, the Indian agent (GAC Shipping) that they had received instructions from Mr. Mohammed Bakri of Delta Group International, WLL, informing the sinking of the ship demanding help and that the ship had run out of bunkers. In all these proceedings, including before the Indian Authorities, there is not even an averment that Respondent No. 5 is the owner of the ship and these respondents, i.e., Respondent No. 7 and Respondent No. 11 have no interest.

In order to have more clear picture we must look into the collective role of Respondent No. 7 and 11 in the entire transactions and voyage. Respondent No. 7 had executed the charter party agreement while the commercial and brokerage agreement has been executed by Respondent No. 11. Respondent No. 7 has taken onto itself various responsibilities and obligations with regard to the ship and its voyage in question. Though Respondent No. 11 had signed a commercial and brokerage agreement and had stated that it will not carry any responsibility or interest in the business of the ship but its conduct is to the contrary. It is undisputable before us that both Respondent No. 7 and 11 are sister concerns and have a common interest of management and business. Normally, a corporate body has three kinds of well known controls they are financial, management and business. It is not necessary that even in a given case all these 3 must co-exist. It is possible that one or 2 controls are so absolute in terms and practice that they will place dominant control on one company or other. The sister concerns normally would have common management control but in other cases and where some liability would be invited they may have common business interests. Keeping the structure of the case in view, common business control and business interest could bring into aid the Principle of Lifting the Veil. Once Veil is lifted and it comes to the light that 2 or more concerns have common management, common financial control and or common business control or business interest, the consequences in some specific laws could follow. Here, Mr. Md. Bakri of Delta Group International, Respondent No. 11 which was the erstwhile Respondent No. 5 (under the unamended petition) also worked on behalf of Respondent No. 7 effectively. Respondent No. 7 and 11 in any case are sister concerns and Mr. Md. Bakri acted on behalf of both of them. It is on record and Respondent No. 12 who acted on behalf of these Respondents and upon instructions

from these Respondents has stated that on 19th and 21st July, 2011 it had received telephone calls from one Mr. Md. Bakri of Delta Group International informing about the ship that it had run out of bunkers and that the ship was anchored at Mumbai Port enroute to Dahej, Gujarat. Respondent No. 12 has a sister concern that is in Qatar and it had contacted by Respondent No. 11 requesting assistance for arranging certain supplies to the ship 'RAK Carrier' which was then in outer anchorage in Mumbai, and assistance was arranged. Not only this, having received further instructions from them it had also arranged for the residing and exit of the crew members, though purely on humanitarian grounds. As far as Respondent No. 12 is concerned it might have humanitarian grounds but Respondent No. 5, 7 and 11 had pure commercial interests in the ship and its activities. Respondent No. 11 also admitted in its own reply affidavit that the ship was owned by Respondent No. 5 while Delta Navigation WLL is a group company of Respondent No. 11. They claim that they are unrelated to Respondent No. 5 but the records and the affidavit before the Tribunal belie the same.

The Tribunal has to lift the veil to find out the exact common interest of these respondents in the ship and ships voyage and related activities. Apparently, some dispute is being raised that these Respondents 7 and 11 are unrelated to Respondent No. 5 but once their functional and business controls are examined minutely the real substance of their common interest surfaces particularly in relation to the voyage in question. Original respondent No. 5 in the application had filed an affidavit that it is not the owner of the ship and it was present Respondent No. 5 which is the owner of the ship. After the detailed arguments still erstwhile Respondent No. 5 of the unamended petition was found to be necessary party and directed to be impleaded as Respondent No. 11.

If presently Respondent No. 5 is the owner of the ship in the normal course of business there would be no occasion for Respondent No. 7 to declare itself as an owner of the ship and create rights and obligations upon such documents directly affecting the voyage in question. The Delta Group of Companies is trying to withhold relevant information. Respondent No. 7 has referred to the management control of the Respondent No. 5 but for reason best known to it, it has withheld its own and Respondent No. 11's management control in all respects. This would go to show that even the conduct of Respondent No. 7 and 11 has not been fair on the one hand while on the other Respondent No. 5 has been playing hide and seek before the Tribunal and after definite documentation was placed before the Tribunal it opted to be proceeded against ex parte in the proceedings. Apparently, these companies have a corporate entity but in relation to the voyage in question, the position is entirely different, their business and financial interests are common and they have acted collectively, collusively and for and on behalf of each other including claiming of ownership interest in relation to the ship in question. The real entity for the purpose of business interest and responsibility is that of Respondent No. 5, 7 and 11 together. They cannot be permitted to create a camouflage to hide their actual inter se relationship and their common business interests and liability for the consequences arising therefrom. The improper conduct of these parties before the Tribunal renders it necessary for the Tribunal to lift the corporate veil to penetrate though the untruthfulness, vileness and unfair conduct to see the truth and real involvement of the parties to the lis. Reference can be made to the Judgment of the Hon'ble Supreme Court of India in the case of LIC v. Escorts, MANU/SC/0015/1985 : 1986 1 SCC 264, where the Court held as under-

90. It was submitted that the thirteen Caparo Companies were thirteen companies in name only; they were but one and that one was an individual, Mr. Swraj Paul. One had only to pierce the corporate veil to discover Mr. Swraj Paul

lurking behind. It was submitted that thirteen applications were made on behalf of thirteen companies in order to circumvent the scheme which prescribed a ceiling of one per cent on behalf of each non-resident of Indian nationality or origin of each company 60 per cent of whose shares were owned by non-residents of Indian nationality/origin. Our attention was drawn to the picturesque pronouncement of Lord Denning M.R. in *Wallersteiner v. Moir* 1974 3 All E.R. 217, and the decisions of this Court in *Tata Engineering and Locomotive Company Ltd. v. State of Bihar* MANU/SC/0036/1964 : [1964] 6 SCR 885, *The Commissioner of Income Tax v. Meenakshi Mills* MANU/SC/0138/1966 : [1967] 63 ITR 609 (SC), and *Workmen v. Associated Rubber Ltd.* MANU/SC/0236/1985 : (1986) 142 SC. While it is firmly established ever since *Salomon v. A. Salomon & Co. Limited* 1897 A.C. 22, was decided that a company has an independent and legal personality distinct from the individuals who are its members, it has since been held that the corporate veil may be lifted, the corporate personality may be ignored and the individual members recognised for who they are in certain exceptional circumstances. Pennington in his *Company Law* (Fourth Edition) states:

Four inroads have been made by the law on the principle of the separate legal personality of companies. By far the most extensive of these has been made by legislation imposing taxation. The Government, naturally enough, does not willingly suffer schemes for the avoidance of taxation which depend for their success on the employment of the principle of separate legal personality, and in fact legislation has gone so far that in certain circumstances taxation can be heavier if companies are employed by the tax-payer in an attempt to minimise his tax liability than if he uses other means to give effect to his wishes. Taxation of Companies is a complex subject, and is outside the scope of this book. The reader who wishes to pursue the subject is referred to the many standard text books on Corporation Tax, Income Tax, Capital Gains Tax and Capital Transfer Tax.

The other inroads on the principle of separate corporate personality have been made by two Sections of the Companies Act, 1948, by judicial disregard of the principle where the protection of public interests is of paramount importance, or where the company has been formed to evade obligations imposed by the law, and by the courts implying in certain cases that a company is an agent or trustee for its members.

In *Palmer's Company Law* (Twenty-third Edition), the present position in England is stated and the occasions when the corporate veil may be lifted have been enumerated and classified into fourteen categories. Similarly in *Gower's Company Law* (Fourth Edition), a chapter is devoted to 'lifting the veil' and the various occasions when that may be done are discussed. In *Tata Engineering and Locomotives Co. Ltd.* (supra), the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Article 32 of the Constitution, by treating it as one filed by the shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the company as a citizen for the purposes of Article 19. In *Commissioner of Income Tax v. Meenakshi Mills* (supra), the corporate veil was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In *Workmen v. Association Rubber Industry* (supra), resort was had to the principle of lifting

the veil to prevent devices to avoid welfare legislation. It was emphasised that regard must be had to substance and not the form of a transaction. Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc.

Reference can also be made to TATA Engineering and Locomotive Company v. State of Bihar & Ors. MANU/SC/0036/1964 : 1964 6 SCR 885 where the Court held as under-

24.....However, in the course of time, the doctrine that the corporation or a company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more.

25. But the question which we have to consider is whether, in the circumstances of the present petitions, we would be justified in acceding to the argument that the veil of the petitioning corporations should be lifted and it should be held that their shareholders who are Indian citizens should be permitted to invoke the protection of Art. 19, and on that basis, move this Court under Art. 32 to challenge the validity of the orders passed by the Sales-tax Officers in respect of transactions which, it is alleged, are not taxable. Mr. Palkhivala has very strongly urged before us that having regard to the fact that the controversy between the parties relates to the fundamental rights of citizens, we should not hesitate to look at the substance of the matter and disregard the doctrinaire approach which recognises the existence of companies as separate juristic or legal persons. If all the shareholders of the petitioning companies are Indian citizens, why should not the Court look at the substance of the matter and give the shareholders the right to challenge that the contravention of their fundamental rights should be prevented. He does not dispute that the shareholders cannot claim that the property of the companies is their own and cannot plead that the business of the companies is their business in the strict legal sense. The doctrine of lifting of the veil postulates the existence of dualism between the corporation or company on the one hand and its members or shareholders on the other. So, it is no good emphasising that technical aspect of the matter in dealing with the question as to whether the veil should be lifted or not. In support of his plea, he has invited our attention to the decision of the Privy Council in *The English and Scottish Joint Co-operative Wholesale Society Ltd. v. Commissioner of Agricultural Income-tax, Assam* (1916) A.C. 307, as well as the decision of the House of Lords in

Daimler Company Ltd. v. Continental Tyre and Rubber Company (Great Britain) Ltd. (1916) A.C. 307.

26. It is unnecessary to refer to the facts in these two cases and the principles enunciated by them, because it is not disputed by the respondents that some exceptions have been recognised to the rule that a corporation or a company has a juristic or legal separate entity. The doctrine of the lifting of the veil has been applied in the words of Palmer in five categories of cases : where companies are in the relationship of holding and subsidiary (or sub-subsidiary) companies; where a shareholder has lost the privilege of limited liability and has become directly liable to certain creditors of the company on the ground that, with his knowledge, the company continued to carry on business six months after the number of its members was reduced below the legal minimum; in certain matters pertaining to the law of taxes, death duties and stamps, particularly where the question of the "controlling interest" is in issue; in the law relating to exchange control; and in the law relating to trading with the enemy where the test of control is adopted (Palmer's Company Law 20th Ed. p. 136). In some of these cases, judicial decisions have no doubt lifted the veil and considered the substance of the matter.

(Reference can also be made to another Judgment of the Hon'ble Supreme Court of India in the case of Shubra Mukherjee & Anr. v. Bharat Cooking Coal Ltd. and Ors. MANU/SC/3328/2000 : 2000 3 SCC 312)

40. In the present case controlling interest, real intention of the parties, their conduct and common business interests are to be examined to find the truth and reality of the transaction. For that purpose the Tribunal has to lift the veil, look into the real facts as afore-stated and then come to the real conclusion.

41. In light of the above, the management facet of the company cannot be permitted to place a curtain upon the reality of its functional and business controls. It should come with true facts and not be permitted to frustrate the determination of the real issue and misguide the Tribunal in that pretext for ulterior benefits. In a recent Judgment of the Hon'ble Supreme Court of India in the case of State of Rajasthan v. Gotan Lime Stone Khanji Udhog Ltd. & Ors. Civil Appeal 434 of 2016 decided on 20.01.2016 the Court took the view that "Principle of Lifting the Veil as a extension to the distinction of the corporate personalities could be invoked where the protection of public interest is of paramount importance and corporate entity is an attempt to evade the legal obligation and lifting the veil is necessary to prevent a device to avoid welfare legislation." Having weighed the balances the Hon'ble Supreme Court of India lifted the veil and granted the requisite relief.

42. In the present case also we are concerned with the larger public and environmental interest. The responsibility that will be fixed upon the Respondents cannot be permitted to be defeated by using the tools of manipulative management and business interests. The contention raised by Respondent No. 11 that the Tribunal should not lift the corporate veil in fact raises a serious suspicion in the mind of the Tribunal as what is there for these Respondents to hide if they were genuine, separate legal corporate entities operating strictly in their own business interest and fully independent of each other factually and legally. The facts and law as afore-referred to so clearly show that this plea has been taken primarily to hide the truth from the Tribunal and avoid liability that may arise in the facts of the present case. The direct involvement of these Respondents in the transaction in question is fully substantiated by documentary

evidence, affidavit of the parties and the conduct of the concerned Respondents, furthermore, the present circumstances clearly indicate that these Respondents have acted together in the voyage in question and the sinking of the ship. Their collective efforts in not responding to the need of the hour when the ship was in dire need of mechanical and human help. Respondent No. 5 and Respondent No. 7 commanded to go on with its voyage. The ship which certainly was not sea worthy was directed to complete its voyage, thus, exposing it to an inherent danger of sinking. The inter-relationship between these respondents clearly shows corporate relationship demonstrating commonality of commercial management and financial involvement in the voyage in question.

43. In view of this discussion, we have no hesitation in concluding that Respondent No. 5 is the actual and registered owner of the ship, however, Respondent No. 7 and 11 have common interests of business and finance in the ship and the voyage in question. They have effectively participated in the activity commencing from the voyage of the ship to its sinking and dumping in the continental shelf near Mumbai Coast. Both these Respondents are effectively responsible for the business of the ship and particularly the voyage from Indonesia to Dahej in Gujarat. Respondent No. 7, in fact, has voluntarily disclosed itself to be the owner or at least a person who has ownership interest in the ship. The said Respondent will be bound by its admission which was not subjected to any change during the voyage. The owner, charterer and the interested persons all incur liabilities under the different Conventions and the law in force. The Charter Party Agreement dated 28th May, 2011 is a binding document and the said Respondent No. 7 would be estopped from pleading to the contrary. Respondent No. 6 admittedly is the owner of the consignment. He through Respondent No. 11, has chartered the ship for carriage of the consignment in Dahej in Gujarat. It was carrying 60054 MT of coal which is still lying in the bed of the sea. This is a continuous source of pollution and the said respondent has taken no steps either to lift the coal or take any preventive steps to stop the pollution from the consignment now for years. Thus, Respondent No. 6 is responsible and liable for the consequences resulting from sinking of the consignment in question. Resultantly, we answer this issue accordingly. However, we would be discussing the liability of each of these Respondents under the relevant issue.

Issue No. 3: Which of the Respondents are liable and/or responsible, if so, how and to what extent, within the ambit and scope of Sections 14, 15 and 17 read with Section 20 of the National Green Tribunal Act, 2010?

44. The undisputed facts which emerge from the record are that the ship in question was on its voyage from Indonesia to Dahej in Gujarat carrying 60054 MT of coal cargo and 290 tonnes of fuel oil and 50 tonnes of diesel. The ship sank due to excessive ingress of water and the generators of the ship failing to operate due to heavy flooding.

The ship sank about 20 Nautical Miles off the coast of Mumbai in the morning of 4th August, 2011. The Crew Members were rescued. This incident resulted in massive oil spill which spread over to the coastal shore of Mumbai at Juhu Beach, Raigad District, Dadar and Alibaug, Uttan in Bhayandar and Gorai beach. There are three components of water and environmental pollution. Firstly, the sunk ship itself, secondly, the cargo in the ship and lastly, the oil spill. Different statutory laws and international conventions would be attracted. In other words, laws of India in the form of different statutes and International Law in the form of conventions would apply to the different stages of the case in hand. The conventions attracted in the present case are of two kinds. One to which India had become a signatory prior to the date of occurrence and the other to which it became a signatory post the date of incident. In terms of Article-253 of the

Constitution of India, legislation is to give effect to international agreements. Article-253 opens with a non-obstante clause that is irrespective of the articles regulating the relation between the Union and the States in the field of legislation in terms of this Article, the Parliament has the power to make any laws for the whole or any part of the territory of India for implementing any treaty/agreement or conventions with any other country or countries or any decision made in any international conference, association or other body. In terms of the well enunciated principles of acceptance and application of international treaties, it is an accepted canon that the international treaty to which India or any country is a signatory, if not ratified or adopted legislatively by the country then it may not be enforceable in absolute terms as law of that land. However, if that country is a signatory to an international treaty and its authorities had approved the decision to amend the law in that regard and the same has been enacted then it will be binding, enforceable in absolute terms of law. Still, if the country is a signatory to such law and the treaty is signed and accepted by the country but law in that behalf has not yet been enacted, in that event the essence or the spirit of the convention would have to be accepted and enforced, though every part of the convention may not be enforceable as law. Article-18 of the Vienna Convention on the Law of Treaties, 1969 clearly states the above decision and in fact obliges a State to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty. It is also stated that a State may record itself as having given its consent to the text of the treaty by signature in defined circumstances noted by Article-12, that is, where the treaty provides that signature shall have that effect, or where it is otherwise established that the negotiating states were agreed that signature appears from the full powers of its representative or was expressed during the negotiations. However, the signature has additional meaning in that in such cases and pending ratification, acceptance or approval, a State must refrain from acts which would defeat the object and purpose of the treaty and until such time as its intentions with regard to the treaty have been made clear. (Reference: International Law, MALCOLM N SHAW, 6th Edn.)

The International Convention on Civil Liability for Bunker Oil Pollution is a convention to which India became a signatory on 10th June, 2015 and the Union Cabinet approved accession thereof. However, the Act of 1958 has yet not been amended. At this stage, Amendment Merchant Shipping Bill, 2015 is only proposed. In terms of this, Article 1 of this Convention defines "Ship", as any seagoing ship and seaborne craft, of any type whatsoever. The convention defines 'person', 'ship owner' and 'registered owner' as separate terms. 'Bunker Oil' has been defined to mean, 'any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil'. Incident' means 'any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage'.

'Pollution damage' means: '(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and (b) the costs of preventive measures and further loss or damage caused by preventive measures'.

This Convention shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a State Party, and

(ii) in the Exclusive Economic Zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 Nautical Miles from the baseline from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

45. Article-3 talks about the liability of the ship owner. It says that except as provided in paragraphs 3 and 4, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences. Where more than one person is liable in accordance with paragraph 1, their liability shall be joint and several. Paragraphs 3 and 4 of Article-3 carve out the exceptions which we are not concerned with in the present case, as admittedly, none of the exceptions apply to the present case. The claim for compensation for damage caused to the environment by pollution shall be made against the shipowner, otherwise than in accordance with this Convention. Article-4 provides "Exclusions". Article-9 deals with jurisdiction and states that where an incident has caused pollution damage in the territory, including the territorial sea, or in an area referred to in Article 2(a)(ii) of one or more States Parties, or preventive measures have been taken to prevent or minimise pollution damage in such territory, including the territorial sea, or in such area, actions for compensation against the shipowner, insurer or other person providing security for the shipowner's liability may be brought only in the courts of such State Parties.

International Convention on Civil Liability for Oil Pollution Damage is the other Convention with which we would be concerned. India is not only a signatory to this notification but the Act of 1958 was amended in 1968 to incorporate the provisions of this Convention into the law of land by inserting Chapter-XB in the Act. However, this Convention is applicable primarily to the cargo ship carrying oil exclusively or which are oil tankers.

International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL) is relevant. India is a signatory to this Convention and in fact has amended the Act of 1958 by incorporating the contents of this convention by enacting Chapter-XIA in the Act of 1958. This convention as such is not a liability fixing convention. It primarily covers prevention of pollution of marine environment by ships from operational and incidental causes and has been updated by amendments through the years. Since this Convention finds its place in the Indian law as afore-stated, we would have to primarily rely and refer to Chapter-XIA of the Act of 1958 which applies to this case and contemplates the provisions of pollution by oil in terms of Section 356A of the Act of 1958. The provisions of Chapter-XIA which are relevant for the purposes of this case are Section 356-B which defines 'cargo' to include blast and ship's stores and fuel as well. The Convention means the Convention of 1973 and as amended by Protocol of 1978 as above indicated. These provisions also contemplate issuance of international pollution, prevention certificate that will be in

consonance with the protocol which have been acceded to in India. 'Ship' means a ship of any type, whatsoever, operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms. All Indian and foreign ships are expected to obtain and possess pollution prevention certificate from the prescribed forum. In terms of Section 356G, a surveyor or any person authorised in this behalf may go, at any reasonable time, on board an oil tanker or other ship to which any of the provisions of this Part apply, for the purposes of (a) ensuring that the prohibitions, restrictions and obligations imposed by or under this part are complied with; (b) satisfying himself about the adequacy of the measures taken to prevent pollution; (c) ascertaining the circumstances relating to an alleged discharge of a substance which is subject to control by the convention from the oil tanker or other ship in contravention of the provisions of this part; (d) inspect any record required to be maintained on board; and (e) checking the validity of the International Pollution Prevention Certificate.

46. The surveyor may obtain records through the master of the ship which would be admissible in terms of Section 356G of this Act. Section-356J of Chapter-XIA is of great significance. In terms of this provision, the Central Government is vested with the powers to give a notice to variety of persons specified in the section if it is satisfied that: (a) oil or noxious liquid substance is escaping or is likely to escape from a tanker, a ship other than a tanker or any off-shore installation; (b) the oil or noxious liquid substance so escaped or likely to escape is causing or threatens to cause pollution in any part of the coast or in the coastal waters of India. It can also require a person to whom such notice is served to take action in relation to the purposes stated therein and even prescribe the removal. Notwithstanding anything, contained in sub-section (2), the Central Government is also vested with the power, in case of grave emergency, to proceed to take such measures as may be deemed necessary and any measures so taken shall be deemed to have been taken under section 356K. The scheme of this chapter clearly shows that in consonance with the said international convention, the Act provides for the power to issue a notice, issuance of directions for preventing the pollution, to take measures for prevention and control of pollution itself in the case of emergency and even to the said extent, the Central Government could issue directions to the ship to render services, if the situation so demands in terms of Section 356L. It will be useful at this stage to refer to language of the Sections 356(J), (K) and (L) which read as follows:

"356J. Power to give notice to owner, etc. of polluting ship.--(1) Where the Central Government is satisfied that-

(a) [oil or noxious liquid substance] is escaping or is likely to escape from a tanker, a ship other than a tanker or any off-shore installation; and

(b) the [oil or noxious substance] so escaped or likely to escape is causing or threatens to cause pollution of any part of coasts or coastal waters of India, it may, for the purpose of minimising the pollution already caused, or, for preventing the pollution threatened to be caused, require-

(i) the owner, agent, master or character of the tanker,

(ii) the owner, agent, master or charterer of the ship other than a tanker,

(iii) the owner, agent, master charterer or operator of a mobile off-shore installation,

(iv) the owner, operator, lessee or licensee of offshore installation of any other type, or all or any of them, by notice served on him or as the case may be on them, to take such action in relation to the tanker, ship other than a tanker, mobile off-shore installation, or, as the case may be, off-shore installation of any other type or its cargo or in relation to both, as may be specified in such notice.

(2) Without prejudice to the generality of sub-section (1), the notice issued under that sub-section may require the person or person on whom such notice is served to take action relating to any or all of the following matters, namely;-

(a) action for preventing the escape of oil from the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type;

(b) action for removing oil from the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type in such manner, if any, and to such place, if any, as may be specified in the notice:

(c) action for removal of the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type to a place, if any, as may be specified in the notice;

(d) action for removal of the oil slicks on the surface of the sea in such manner, if any, as may be specified in the notice.

(e) action to disperse the [oil or noxious liquid substance] slicks on the surface of the sea in such manner, if any, as may be specified in the notice.

(3) The Central Government may, by any notice issued under sub-section (1), prohibit the removal-

(a) of the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type, from a place specified in the notice;

(b) from the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type, of any cargo or stores as may be specified in the notice, except with its previous permission and upon such conditions, if any, as may be specified in the notice.

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is of the opinion that the pollution caused or likely to be caused has or may present a grave emergency, proceed to take such measures as may be deemed necessary and any measures so taken shall be deemed to have been taken under section 356K.

356K. Powers to take measures for preventing or containing [oil or noxious

liquid substance] pollution-(1) Where any person fails to comply, or fails to comply in part, with any notice served on him under section 356J, the Central Government may, whether or not such person is convicted of an offence under this Part by reason of his having so failed to comply, cause such action to be taken as it may deem necessary for-

(i) carrying out the directives given in the notice issued under section 356J; and

(ii) containing the pollution already caused or preventing the pollution threatened to be caused, of coastal waters or, as the case may be, of any part of the coast of India by oil escaped or threatening to escape from the tanker, a ship other than a tanker, a mobile oil-shore installation or offshore installation of any other type.

(2) Subject to the provisions of Part XB, any expenditure or liability incurred by the Central Government in, or by reason of, the exercise of powers under sub-section (1) in relation to any tanker, ship other than a tanker, mobile off-shore installation or offshore installation of any other type in respect of which a notice had been issued under section 356J, or its cargo of oil that had escaped or was discharged into the sea, shall be a debt due to the Central Government by the person or persons on whom the notice was served and may be recovered from that person, or as the case may be, from all or any of those persons and shall be a charge upon all or any tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type owned by that person or persons which may be detained by the Central Government until the amount is paid.

Provided that provisions of Part XB of this Act shall not apply to measures taken in respect of any off-shore installation which is not a ship within the meaning of this Act except that in the event of pollution damage caused by any such off-shore installation the person who is liable for the damage may claim exoneration from any liability if he proves that such damage-

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with intent to cause that damage by any other person; or

(c) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in exercise of its functions in that behalf.

356L. Power of the Central Government to give directions to certain ships to render certain services--(1) Where for the purposes of taking any measures under sub-section (1) of section 356K, services of any Indian ship become necessary for-

(i) lightening or transporting any cargo or equipment from or to the polluting ship; or

(ii) providing any assistance to any other ship or equipment engaged in

rendering services under clause(i), the Central Government may, if it deems it necessary so to do, direct, by an order in writing, the owner of any Indian ship, tug, barge or any other equipment to provide such services or assistance as may be specified in that order.

(2) The owner of any ship, tug, barge or any other equipment with respect to which an order under subsection (1) has been made shall be entitled to tariff rates of freight and charter hire, at reasonable rates having regard to current market conditions.

Provided that where tariff rates of freight are not fixed or where there is any dispute about reasonable rate of charter hire, the freight or, as the case may be, charter hire, shall be paid at such rates as may be fixed by the Director-General by an order in writing.

(3) Where in pursuance of the proviso to sub-section (2), the Director-General makes any order fixing rates of freight or charter hire, he shall determine reasonability of such rates of freight or charter hire by examining such witnesses, documents and accounts as he may deem necessary."

47. If any person fails to take action as required in the notice or to comply with the order issued under Section 356L, such person or offender could be penalised with imprisonment which may extend to six months or a fine of Rs. 10 lakhs or as prescribed under Section 436 and the schedule attached thereto.

The other relevant convention is the UN Convention on the Law of the Sea (UNCLOS). Article-211 of this convention requires that States acting through the competent organisation or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from ships and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of Coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary. It also requires that the States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from ships flying their flag or of their registry.

The provisions relevant for the present case and which are required to be examined by the Tribunal can be usefully reproduced at this stage. The relevant clauses 210, 211(5), 219, 221 and 235 read as under:

"Article 210: Pollution by dumping:

1 . States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping.

2 . States shall take other measures as may be necessary to prevent, reduce and control such pollution.

3 . Such laws, regulations and measures shall ensure that dumping is not carried out without the permission of the competent authorities of States.

4 . States, acting especially through competent international

organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

5. Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf shall not be carried out without the express prior approval of the coastal State, which has the right to permit, regulate and control such dumping after due consideration of the matter with other States which by reason of their geographical situation may be adversely affected thereby.

6. National laws, regulations and measures shall be no less effective in preventing, reducing and controlling such pollution than the global rules and standards.

Article 211: Pollution from ships:

5. Coastal States, for the purpose of enforcement as provided for in section 6, may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from ships conforming to and giving effect to generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

Article 219: Measures relating to seaworthiness of ships to avoid pollution:

Subject to section 7, States which, upon request or on their own initiative, have ascertained that a ship within one of their ports or at one of their off-shore terminals is in violation of applicable international rules and standards relating to seaworthiness of ships and thereby threatens damage to the marine environment shall, as far as practicable, take administrative measures to prevent the ship from sailing. Such States may permit the ship to proceed only to the nearest appropriate repair yard and, upon removal of the causes of the violation, shall permit the ship to continue immediately.

Article 221: Measures to avoid pollution arising from maritime casualties:

1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences. **2.** For the purposes of this article, "maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo.

Article 235: Responsibility and liability:

1 . States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.

2 . States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction. **3.** With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.

48. India is a signatory of this Convention and in fact in furtherance to this Convention, the Indian Parliament enacted the Act of 1976. This was an enactment to provide for matters relating to territorial waters, continental shelf, exclusive economic zone and other maritime zones. Importantly, this Act came into force with all the provisions on 15th January, 1977. Section-2 of this Act talks about "limit" in relation to the territorial waters, continental shelf, the exclusive economic zone or any other maritime zone of India, and means the limit of such waters, shelf or zone with reference to the mainland of India as well as the individual or composite group or groups of islands constituting part of the Indian territory. In terms of Section-3(1), the sovereignty of India extends and has always extended to the territorial waters of India (hereinafter referred to as the territorial waters) and to the seabed and subsoil underlying, and the airspace over such waters. According to Section-3(2), the limit of the territorial waters is the line every point of which is at a distance of 12 Nautical Miles from the nearest point of the appropriate baseline. Section-4 permits the use of Indian territory water without prejudice to the provisions of any other law for the time being in force, all foreign ships (other than warships including submarines and other underwater vehicles) shall enjoy the right of innocent passage through the territorial waters in terms of Section-4. The innocent passage is innocent so long as it is not prejudicial to the peace or good order or security of India. The Contiguous Zone of India is an area beyond and adjacent to the territorial waters, and the limits of contiguous zone is the line every point of which is at a distance of 24 Nautical Miles from the nearest point of the baseline referred to in Sub-section (2) of Section 3.

49. In terms of Section-6, the Continental Shelf of India comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 Nautical Miles from the baseline referred to in sub-section (2) of section 3 where the outer edge of the continental margin does not extend up to that distance.

Section-6(2) clearly states that India has, and has always had full and exclusive sovereign rights in respect of its continental shelf. Without prejudice to the generality of the provisions of sub-section (2), the Union has in the Continental Shelf,-

(a) sovereign rights for the purposes of exploration, exploitation, conservation

and management of all resources;

(b) exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, off-shore terminals, installations and other structures and devices necessary for the exploration and exploitation of the resources of the continental shelf or for the convenience of shipping or for any other purpose;

(c) exclusive jurisdiction to authorise, regulate and control scientific research; and

(d) exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution.

50. Section-7 deals with Exclusive Economic Zone. The Exclusive Economic Zone of India is an area beyond and adjacent to the territorial waters, and the limit of such zone is 200 Nautical Miles from the baseline referred to in sub-Section 2 of Section-3 of this Act. Even in the Exclusive Economic Zone, in terms of Section-7(4), India has:

(a) sovereign rights for the purpose of exploration, exploitation, conservation and management of the natural resources, both living and non-living as well as for producing energy from tides, winds and currents;

(b) exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, off-shore terminals, installations and other structures and devices necessary for the exploration and exploitation of the resources of the zone or for the convenience of shipping or for any other purpose;

(c) exclusive jurisdiction to authorize, regulate and control scientific research;

(d) exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution; and

(e) such other rights as are recognised by International Law.

All these limits under this Act are alterable. The Government of India having regard to international law and state practice may alter these limits in consonance with the procedure prescribed under these very sections.

From the language of the above provisions, it is clear that all distances are to be measured from the baseline. All the limits of the territorial waters, the contiguous zone, the continental shelf, the exclusive economic zone are to be measured from the baseline i.e. the line which starts from the shore of land in Indian Territory. The other important factor is that for the Continental Shelf, Exclusive Economic Zone the rights that are to be exercised by the Government of India are much larger in their ambit and scope than the right exercised in the Contiguous Zone though in the territorial waters there is complete sovereignty of Government of India. But fact of the matter is that the Continental Shelf, Exclusive Economic Zone would in any event overlap the limits of Contiguous Zone. The rights in relation to this zone are rights of some importance and significance, particularly, in the case of the present act where they have to be brought into service to prevent and control of marine pollution.

Another convention which will be relevant is the Nairobi Wreck Removal Convention, 2007. This convention has been ratified by the Indian Government on June, 2015,

however, it has so far not become part of the enacted law of land. This convention is primarily found on the premise that all States are conscious of the facts that wrecks, if not removed, may pose hazards to navigation or the marine environment or so far as that there was need to adopt uniform international rules and procedure to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved and also recognizing the benefits to be gained through uniformity in legal regimes governing responsibility and liability for removal of hazardous wrecks, noticing the importance of UNCLOS signed in Montego Bay, Jamaica on 10th December, 1982, when this Convention was enacted.

Article-1 of this convention defines various expressions, convention area, ship, maritime casualty, wreck, hazard, related interests, removal, registered owner, operator of the ship, affected states, state of the ship's registry, organization, and secretary general. These are some of the important definitions which would require attention for proper appreciation of the matters in issue. They have been defined as under:

"Convention area" means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 Nautical Miles from the baselines from which the breadth of its territorial sea is measured.

"Ship" means a seagoing ship of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and Wreck Removal Convention Act 2011 (c. 8) Schedule -- Wreck Removal Convention 11 floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

"Maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo.

"Wreck", following upon a maritime casualty, means:

- (a) a sunken or stranded ship; or
- (b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or
- (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
- (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

"Hazard" means any condition or threat that:

- (a) poses a danger or impediment to navigation; or
- (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.

"Related interests" means the interests of a coastal State directly affected or threatened by a wreck, such as:

- (a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
- (b) tourist attractions and other economic interests of the area concerned;
- (c) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and
- (d) offshore and underwater infrastructure.

"Removal" means any form of prevention, mitigation or elimination of the hazard created by a wreck. "Remove", "removed" and "removing" shall be construed accordingly.

"Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, "registered owner" shall mean such company.

"Operator of the ship" means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.

"Affected State" means the State in whose Convention area the wreck is located. Wreck Removal Convention Act 2011 (c. 8) Schedule -- Wreck Removal Convention 12.

"State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.

"Organization" means the International Maritime Organization.

"Secretary-General" means the Secretary-General of the Organization."

In light of the above definition Article, Article-2 deals with objectives and general principles. A State party may take measures in accordance with this convention in relation to the removal of a wreck which poses a hazard in the convention area. Such measures have to be proportionate to the hazards and what is reasonably necessary to remove the wreck and all are expected to co-operate including the State parties under Article-2. The convention is applicable to wrecks in convention area. Specific exclusions are provided but none of these exclusions are of any consequences for our purpose. Article-5 provides that a State party shall require the master and the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck. The details of ship along with

details of hazards are to be provided. While determining the hazards, the factors as stated under the Article-6 are to be taken into consideration. These determinative factors are with regard to type, size and construction of wreck, depth of water, proximity of shipping routes or established traffic lanes, nature and quantity of the wreck's cargo, submarine topography of the area, prevailing meteorological and hydrographical conditions, acoustic and magnetic profiles of the wreck; proximity of offshore installations, pipelines, telecommunications cables and similar structures; and any other circumstances that might necessitate the removal of the wreck.

51. The affected State shall use all practicable means, including the good offices of States and organizations, to warn mariners and the States concerned of the nature and location of the wreck. All measures to facilitate the removal of the wreck are required to be taken by the affected states in accordance with the procedure laid. The registered owner in terms of Article-10 of this convention would be liable for the cost of locating, marking and removing the wreck unless the exceptions are proved. The settlement of disputes under Article-15 has to be through negotiations, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice including Part XV of the UNCLOS, 1982, which shall apply mutatis mutandis. Article-16 provides that nothing in this convention shall be to the prejudice of the rights and obligation of any state under the UNCLOS, 1982 and under the customary international law of the sea.

This convention is a clear indicator of understanding the requirements in relation to removal of wreck resulting of accidents or otherwise. In light of this convention, it is not expected of any Nation to cause damage by way of a wreck or otherwise of ships or other materials including cargo in the territorial or even for that matter exclusive economic zone of any other country. It would apparently amount to breach of the convention and disrespect to the set international environmental regime. This convention has a primary concern towards the wreck's removal and its resultant hazards thereof. As we have already noticed, India has ratified this convention, however, it has not become part of the enacted law of the land. Still this convention has to be respected and the wreck which is apparently hazardous or polluting should be and has to be removed. The whole purpose is to protect the marine environment and to ensure that the wreck is not permitted to cause havoc and pollute the marine environment indefinitely.

The BASEL Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal deals with protocol, liability and compensation. The management of hazardous waste has been on the international environmental agenda and it was indicated as one of the three priority areas in the United Nations Environment Program (for short, 'UNEP') on environmental law. Overreaching objectives of BASEL Convention are to protect human health and environment against adverse effects of hazardous wastes. Its scope of application gives wide range of definition of waste as hazardous waste, based on their article, composition and characteristics.

52. This convention does not have a direct application on the subject matter of the present petition but the information provided is more valuable. Thus, indirectly, this is also a relevant Convention. Under Annexure-VIII of the Convention, the wastes named in this annexure are characterised as hazardous under Article-1, para-1A of this Convention. Metal and metal bearing wastes have been considered to be hazardous. Metal based waste consisting of alloys of: Antimony, Arsenic, Beryllium, Cadmium, Lead, Mercury, Selenium, Tellurium, Thallium; Waste having as constituents or contaminants, excluding metal waste in massive form of: Antimony; antimony

compounds, Beryllium; beryllium compounds, Cadmium; cadmium compounds, Lead; lead compounds, Selenium; selenium compounds, Tellurium; tellurium compounds and Wastes having as constituents or contaminants any of: Arsenic; arsenic compounds, Mercury; mercury compounds, Thallium; thallium compounds. Wastes having as constituents any of the Metal carbonyls, Hexavalent chromium compounds are treated as hazardous wastes in the Schedules of this Convention.

53. The Convention primarily provides the details of the hazardous substances which when dumped in water or at other places can degrade the marine environment. Therefore, there is a need to control and prevent such pollution and wherever necessary, even the removal of such material from the sea etc.

54. This specifies the management of hazardous waste by taking the measures contemplated in the Convention. The Convention primarily is meant for control of trans-boundary movement of hazardous waste and their disposal. It requires the States to take necessary measures to ensure that the management of the hazardous waste and other waste including their trans-boundary movement and disposal, would be consistent with the protection of human health and the environment, whatever the place of disposal. The convention defines hazardous waste of different kinds and categories in terms of its Schedule. The wastes are substances or objects which are disposed of or which are intended to be disposed of or which are required to be disposed of by the provisions of the national law.

55. The Convention on Biological Diversity conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components and its importance for evolution and for maintaining life sustaining system of the biosphere also realising that the conservation of biological diversity is a common concern of the mankind and that States have sovereign rights over their own biological resources and also keeping in mind that biological diversity is being significantly reduced by certain human activities, the fundamental requirement for the conservation of bio-diversity is the in-situ conservation of the ecosystems and natural habitats and the maintenance and recovery of viable populations and of species in their natural surroundings, that the contracting parties opted for with the formation of this convention. This Convention was ratified by India on 18th February, 1994. The Indian Parliament while enacting the Bio-Diversity Act, 2002 in its Preamble noticed the Convention on 29th December, 1993. The main objective of this Convention is the sustainable use of the components and fair and equitable use of benefits arising out of the utilisation of genetic resources. The principle of this Convention was adopted in the Act of 2002. Article 2 of this Convention defines bio-diversity as follows-

"biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of eco-systems;

This definition is identical to Section 2(b) of the Act of 2002. Article 9, while dealing with ex situ Conservation, states the measures that could be taken for the conservation of biological diversity. Article 10 requires sustainable use of components for biological diversity. The underlying feature of both the Convention and the Act, is to conserve biological diversity and prevent its abuse at different levels. The Act even provides for penal consequences if there is violation of the provisions contained under Section 3, 4 and 6 of the Act. The board authorities and the committees were constituted primarily

with the intention of regulating and conserving the biological diversity of the country.

56. Right to Clean and Decent Environment is a fundamental right as enshrined in Article-21 of the Constitution of India. Right to life is a fundamental right which now has been expanded to give complete protection to right for clean environment. The constitutional scheme in relation to environment has multi-fold dimensions. On one hand, Article-21 gives complete and absolute right to the citizens, and on the other hand Article-51A(g) imposes a fundamental duty upon citizens and every person to protect the environment and ecology and lastly Article-48A mandates the State by placing upon it a duty under the Directive Principles of State policy to protect and improve the environment and safeguard forest and wildlife. Besides all these, the judicial pronouncement by the Supreme Court of India which in terms of Article-141 of the Constitution are the law of land have given new dimensions to the environmental jurisprudence and commanded the State to protect the environment and to ensure decent and clean environment for its citizens.

57. The Act of 1958 was enacted with the objective to foster the development and to ensure the efficient maintenance of the Indian Mercantile Marine Department in a manner best suited to serve the national interests and for that purpose for establishing the National Shipping Board and to provide for the registration, certification, safety and security of Indian ships and generally to amend and consolidate the law relating to merchant shipping. This was, as already indicated by various International Conventions, followed by different amendments in this Act of 1958. Chapter XB of the Act of 1958 deals with civil liability for oil pollution damage and applies to every Indian and Foreign ship while it is at a port or place in India or within the territorial waters of India or any marine areas adjacent thereto over which India has exclusive jurisdiction in regard to control of marine pollution under the Act of 1976. However, this Chapter is only applicable to the ships which are carrying oil in bulk as cargo. Chapter XIA of the Act of 1958 deals with the provisions relating to containment of pollution of the sea by oil. Under this chapter cargo includes ballast and ship's stores and fuel and it refers to the International Convention for the Prevention of Pollution from Ships, 1973. 'Ship' means a ship of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms. The obtaining of pollution certificate is mandatory. As already discussed under Section 356 (J-L), the Central Government has the power to issue notice/directions and even to take measures itself for prevention and control of pollution and for removal of pollutants. Under the provision of Section 356(J) it is the owner, agent, master or charterer of tanker or charterer of ship and even a operator of mobile off-shore installation who are liable to be served with a notice in accordance with the provisions of the Section 356(J) and K) and consequences thereof. This obviously means that the application of the Act in relation to prevention, containment and removal of pollutant is not only applicable to the owner of the ship but also applicable to the persons like agent, master or charterer. All of them are jointly and severally liable for compliance and in the event of default therewith, for punitive action. At this stage it will be appropriate to refer to Section 71 which falls under Chapter V of the Act of 1958. This Chapter primarily deals with the registration of the Indian Ships, procedure, transfer, alteration, national character and miscellaneous provisions. Section 71 creates liability of the owner and it reads as follows.

71. Liability of owners.--Where any person is beneficially interested otherwise than by way of mortgage in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all the pecuniary penalties imposed by this or

any other Act on the owners of ships or shares therein, so nevertheless that proceedings for the enforcement of any such penalties may be taken against both or either of the said parties with or without joining the other of them.

58. Section 71 clearly postulates that the owner necessarily does not have to be the registered owner but it could be any person where any person is beneficially interested otherwise than by way of mortgage in a ship or a share in the ship registered in the name of any other person the person so interested shall, as well as registered owner, be subject to pecuniary penalties imposed under the Act. In other words the liabilities and penalties arising under the Act are not confined to the registered owner. The Legislature in its wisdom has used very wide terms for fixation of liability under the provisions of the Act. This provision therefore would have to be construed liberally and given an expanded meaning rather than a narrower or restricted meaning. It is not only the pecuniary penalties imposed under this Act that would apply to such a person but even under other Acts the liability could be imposed. The concept of joint and several liabilities and even without co-joining of all of them is permitted under this provision.

The Act of 1986 as already noticed in its definition of the word 'environment' includes water, air and land and the interrelationship which exists among human beings, plants, micro organisms and other creatures.

59. 'Environmental pollutant' means any solid, liquid or gaseous substance present in such quantity as may be, or tend to be, injurious to the environment. 'Hazardous substance' means any substance or preparation which by reason of its chemical or physico-chemical properties is liable to cause harm to human beings, other living creatures, plants or micro organisms. As is evident, an explanation of very wide magnitude has been used in this Act with the purpose to protect the environment and ecology in all spheres. Section 3 empowers the Central Government to take such measures as it deems necessary to protect and improve the environment. Under Section 5, the Central Government is vested with the power of issuing directions for the purpose of protecting or taking remedial measures for such protection and they could extend even to the extent of closing the industries and directing stoppage of water or electricity supply.

60. Now, lastly under this head we would deal with relevant provisions of the Act of 2010. The Act primarily aims to provide effective and expeditious environmental justice related to protection of environment and conservation of forest and other natural resources. The Act defines the word 'Environment' similarly in terms of the Act of 1986. It defines the terms 'Environment', 'hazardous substances' and 'person' as follows.

(c) "environment" includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;

(f) "hazardous substance" means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986 (29 of 1986), and exceeding such quantity as specified or may be specified by the Central Government under the Public Liability Insurance Act, 1991 (6 of 1991);

(j) "person" includes-

(i) an individual,

(ii) a Hindu undivided family,

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

61. Under Section 17 the liability to pay relief or compensation for such death, injury or damage under that provision is of the 'person responsible'. We have referred to these provisions primarily to show the persons who would become liable within the ambit and scope of the provisions of the Act of 2010. The definition of 'hazardous substances' is again a very wide definition and would attract action if there is any injury to human beings, living beings or to the environment. The 'person responsible' is again a term of wide connotation capable of receiving liberal construction. A person who has carried on an activity which has resulted in pollution would become liable whatever be his relationship with the property, activity, ship or factory etc. So far as he is responsible for carrying on that activity to any extent, the liability would be co-extensive.

62. We have already under the previous issue held that Respondent No. 5, 7 and 11 are the registered owners/owners and/or persons interested in the ship and its commercial activities. The report submitted by the Mercantile Marine Department, Mumbai under the order of the DG Shipping India, had stated therein that being the owner, Respondent No. 5 is responsible for the incident and consequences thereupon lying upon the owner of the ship. Under the provisions of the Act of 1958 it is the 'person interested' and in terms of Section 356J read with Section 71 the agent, charterer, master and even the operator of a mobile off-shore installation are liable or responsible. Under the BASEL Convention the person 'includes' any natural and legal person. Other Conventions clearly state and give a very wide responsibility upon the various persons including the ship owner, agent, charterer and the person responsible for managing the ship and even the persons who have commercial interests in the ship. All these persons are liable and cannot avoid their liability merely on the ground of insufficiency of clear documentary evidence. The Conventions and the Acts afore-referred require that the marine environment should be protected and wherever necessary even the wreck should be removed along with the cargo as a whole. Various documents have been placed on record by different parties, to establish a clear connection of the position under these Conventions and laws, and would place liability on the Respondents for making good the loss of environment and ecology particularly the marine.

63. Undisputedly, the beaches were seriously polluted by oil spill, mangroves were destroyed and so was the aquatic life. The sunken ship in the sea and the cargo are a continuous source of pollution. The Convention requires it and it ought to be removed from the sea. It is in fact strange that Respondent No. 6 being the owner of the consignment cargo, made no efforts to remove the cargo from the sunken ship or to take preventive steps to ensure that the cargo does not cause pollution. The coal contains hazardous substances as even clarified in the BASEL Convention. It is an undisputed scientific proposition that coal contains elements of antimony, cadmium, arsenic, mercury, lead, etc. The report by the Annamalai University also establishes the

pollutants contained in the coal which cause pollution. The ship itself can be a source of regular pollution which we shall discuss under a different head. Hereafter, the fact of the matter remains that Respondent No. 5, 7 and 11 are liable and responsible directly for the sinking of the ship and the cargo, oil spill and resultant pollution arising therefrom. Respondent No. 6 is liable for cargo pollution and has completely failed in taking any preventive and precautionary measures to prevent the pollution resulting from the coal. The insurance company on the terms of its policy, is also liable; however it is contended by them that at best they are liable for the claims of reimbursement and have no liability for direct payment.

64. Consequently, we hold that Respondent No. 9, as an insurer, is liable under its policy for the damage, degradation and pollution of the marine environment caused by oil spill, the sunken ship and its cargo. The policy also states that the liability is under the 'pay to be paid' clause. The liability to pay for the claims in terms of the policy and the attendant circumstances is unquestionable. It is equally certain that the liability is not primary liability but is the liability on account of reimbursement. The Bunker Convention as aforeferred, in terms of Article 9 creates a liability on the insurer. The liability is to be controlled by the terms of the policy *stricto sensu*. To that extent, the question relating to determination of liability would squarely fall within the jurisdiction of the Tribunal but the disputes between the insured and the insurer arising out of the policy including mode and methodology of payment would squarely fall outside this Tribunal's jurisdiction. Thus, we leave determination of consequential questions open, to be determined by the forum of proper jurisdiction under the Romanian law. The insured and insurer both are free to take up these matters, if they so desire, in accordance with law before the competent forum.

As already noticed, the insurance policy dated 27th April, 2011 had the validity period upto 27th April, 2012. As on the date of the accident, the ship was insured in all respects. It was a P & I Insurance subject to the policy's terms and conditions. The insurance in terms of Clause 9 covered pollution risks and fines. Under Clause 11, the maximum limit of the claim was also stated. What was excluded has specifically been provided under Clause 20. It was terrorism and the matters related to terrorism. All other liabilities were secured under the Policy. Other exclusions provided under the policy also do not apply to the present case. Under Article 12(2), the insurance was subject to procurement of prescribed certificates, which the Insurance Company must and ought to have examined prior to the issuance of the policy. The policy specifically dealt with the claim on account of wreck removal even if the period of the policy is expanded or is under three months' notice period. The various clauses of this policy read in conjunction with Article 9 of the Bunker Convention, undoubtedly create liability in relation to the incident itself and the pollution caused by oil spill, ship and the cargo, even presently lying in the seabed. It also is responsible for the compensation that would have to be awarded amongst these even for removal of the wreck. Determination of liability, in relation to environment and pollution of marine environment, would be well within the jurisdiction of this Tribunal.

65. Respondent No. 10 and 12 do not have any personal liability, Respondent No. 10 was only appointed to receive the claims, if any, and forward it to Respondent No. 9 for settlement. As such Respondent No. 10 is not the person interested or liable in terms of the above law. Similarly, Respondent No. 12 has acted on humanitarian grounds and at the behest of Respondent No. 11, that too only for providing bunkers while the ship was in difficulty and about to sink. Further, by providing accommodation and passage to the crew members Respondent No. 12 has rendered assistance purely on humanitarian grounds. This participation by Respondent No. 10 and 12 does not bring them within

the ambit and scope of personal liability as per the law afore-noticed. They are the persons against whom the Tribunal cannot pass any decree for default or payment of compensation.

66. The various conventions that we have referred to and their various clauses clearly show that although obligation lay upon the Respondents to ensure the prevention of pollution and damage to the marine environment, yet they failed to take precautionary measures and did not even ensure the seaworthiness of the ship. The Conventions are required to be respected and implemented not only by the Member States, but also by the entities from any State, particularly those dealing in commercial activity of transportation through sea. The Respondents have failed to discharge their obligation and are, therefore, liable under the Precautionary Principle.

Thus, to conclude this issue we hold that Respondent No. 5, 6, 7 and 11 would be primarily liable and responsible for facing the consequences of the accident and for taking remedial measures and for payment of environmental compensation for the pollution resulting therefrom.

Issue No. 4: Whether the Tribunal has jurisdiction to entertain and decide the present case and whether or not the provisions of the Merchant Shipping Act, 1958 oust the jurisdiction of this Tribunal?

67. In order to provide a complete and comprehensive answer to this issue, it is necessary for us to examine the expressions 'sovereignty', 'sovereign rights' and 'sovereign functions'. The expressions which appear in different conventions and the laws in force are relevant for the present case. The Conventions and the Acts referred to these expressions differently and in different contexts, such as that of territorial jurisdiction as well as enforcement of law. Thus, proper understanding of these expressions would be necessary before applying them to the facts of the given case. Sovereignty is a quality of right. It is a bundle of rights. It depends on facts and circumstances of each case. Ordinarily, it is the supreme power which governs the body politic or society which constitutes the states and this power is independent of the particular form of government, whether monarchical, autocratic or democratic. 'Sovereignty' and 'acts of State' are two different concepts. The former vests in a person or body which is independent and supreme both externally and internally whereas latter may be an act done by a delegate of sovereign within the limits of the power vested in him which cannot be questioned in a Municipal Court. It all depends on the nature of power and manner of its exercise. Legislative supremacy under the Constitution arises out of constitutional provisions and the Constitution is supreme in Indian democracy. The exercise of Sovereignty amounts to the exercise of all rights that a sovereign exercises over its subjects and territories, of which the exercise of penal jurisdiction under the criminal law is an important part. In an area in which a country exercises Sovereignty, its law will prevail over other laws in case of a conflict between the two. Though, it is difficult to define Sovereignty with exactitude, but the courts have admitted to explain the term in its fullest sense. We may refer to some of the judgments where the meaning of the word 'Sovereignty' has been explained in its context.

68. Sovereignty, means "supremacy in respect of power, dominion or rank; supreme dominion authority or rule. Sovereignty is the right to govern. The term sovereignty as applied to states implies "supreme, absolute, uncontrollable power by which any state is governed, and which resides within itself, whether residing in a single individual or number of individuals, or in the whole body of the people. Sovereignty according to its normal legal connotation is the supreme power which govern the body politic, or

society which constitutes the state and the power is independent of the particular form of government whether monarchical, autocratic or democratic, *Govindrao v. State of Madhya Pradesh*, MANU/SC/0041/1982 : AIR 1982 SC 1201.

Sovereignty is the supreme, absolute and uncontrollable power by which any independent state is governed; supreme political authority, paramount control of the constitution and frame of government and its administration; the self sufficient source of political power from which all specific political powers are derived; the international independence of a State combined with the right and power of regulating its internal affairs without foreign dictation; also a political society or State which is sovereign and independent, *Black's Law Dictionary*, 5th Edn., p1252.

69. The term "sovereign" is difficult to define. It is the exercise of sovereign power which gives States sufficient authority to enact any law, subject to limitations of the Constitution to discharge their functions. The Indian State, between the Centre and the States, has sovereign power. The sovereign power is plenary and inherent in every sovereign State to do all things which promote the health, peace, morals, education and good order of the people. Sovereignty is difficult to define. This power of sovereignty is, however, subject to constitutional limitations, *Synthetics and Chemicals Ltd. v. State of UP*, MANU/SC/0595/1989 : AIR 1990 SC 1927; (1990) 1 SCC 109: (1989) Supp 1 SCR 623 (Constitution of India, Preamble).

70. According to Laski in *A Grammar of Politics*, 1957 Reprint, Chap.-II, p. 50: the legal aspect of sovereignty is best examined by a statement of the form given to it by John Austin. In every legal analysis of the State, he argued, it is first of all necessary to discover in the given society that definite superior to which habitual obedience is rendered by the mass of men. That superior must not itself obey any higher authority. When we discover the authority which gives commands habitually obeyed, itself not receiving them, we have the sovereign power in the State. In an independent political community that sovereign is determinate and absolute. Its will is illimitable because, if it could be constrained to act, it would cease to be supreme, since it would then be subject to the constraining power. Its will is indivisible because, if power over certain functions or persons is absolutely and irrevocably entrusted to a given body, the sovereign then ceases to enjoy universal supremacy and therefore ceases by definition to be sovereign. *Sardar Govindrao v. State of Madhya Pradesh*, MANU/SC/0041/1982 : AIR 1982 SC 1201 (1204): (1982) 2 SCC 414: (1982) 3 SCR 729. [C.P. & Berar Revocation of Land Revenue Exemption Act, 37 of (1948), s. 5(3)(ii)].

71. Sovereignty has been defined as "the supreme authority" in an independent political society. It is essential, indivisible and illimitable. However, it is now considered and accepted as both divisible and limitable, and we must recognise that it should be so. Sovereignty is limited externally by the possibility of a general resistance. Internal sovereignty is paramount power over all actions, within, and is limited by the nature of the power itself, *Union of India v. Sukumar Sengupta*, MANU/SC/0300/1990 : AIR 1990 SC 1692 (1701): 1990 Supp SCC 545.

"It is well to distinguish the senses in which the word sovereignty is used. In the ordinary popular sense it means Supremacy, the right to demand obedience. Although, the idea of actual power is not absent, the prominent idea is that of some sort of title to exercise control. An ordinary layman would call that person (or body of persons) Sovereign in a State who is obeyed because he is acknowledged to stand at the top., whose will must be expected to prevail, who can get his own way, and make others go his, because such is the

practice of the country. Etymologically, the word of course means merely superiority, and familiar usage applies it in monarchies to the monarch, because he stands first in the State by his real power great or small." James Bryce, *Studies in History and Jurisprudence*, 504-05(1901).

72. Sovereignty means supremacy in respect of power, dominion or rank; supreme dominion authority or rule. It implies supreme, absolute, uncontrollable power, by which any state is governed, *Sardar Govindrao v. State of M.P.*, MANU/SC/0041/1982 : AIR 1982 SC 201, 1204 (C.P. & Berar Revocation of Land Revenue Exemption Act (37 of 1948). S. 5(3)(ii). Sovereignty, Politic, Body Politic. A people whom province hath cast together into one island or country are in effect one great body politic, consisting of the head and members, in imitation of the body natural, as is excellently set forth in the statute of appeals, made 24 H 8 c. 12, which styles the King as the supreme head, and the people a body politic (these are the very words), compact of all sorts and degrees of men, divided into spirituality and temporality. And this body never dies. Sir Robert Atkyns, LCB, *Trial of Sir Edw. Hales* (1686), 11 How. St. Tr. 1204.

All Government rest mainly on public opinion, and to that of his own subjects every wise sovereign will look. The opinion of his subjects will force a sovereign to do his duty, and by that opinion will he be exalted or depressed in the politics of the world. Lord Kenyon, *Trial of John Vint and others*, (1799) 27 How. St. Tr. 640.

(references: Dr. Shakil Ahmad Khan, P Ramanatha Aiyar's, *the Law Lexicon*, 3rd Edn., 2012, Lexis Nexis Butterworths Wadhwa, Nagpur, Wharton's *Law Lexicon*, 15th Edn. 2009, Universal Law Publishing Co., and Sumeet Malik, *The Law Lexicon with Maxims*, 1st Edn. 2016, Eastern Book Company)

73. The Supreme Court in the case of *Agricultural Produce Market Committee v. Ashok Harikum*, MANU/SC/0597/2000 : (2000) 8 SCC 61 held that defence of the country raising armed forces making peace or war, foreign affairs, power to acquire and retain territory, are functions, which are indicative of external Sovereignty and are political in nature. They are, therefore, not amenable to the jurisdiction of ordinary civil Court inasmuch as the State is immune in such matters. It is also clear that every Government functions need not be sovereign. State activities are multifarious from the primal sovereign power, which exclusively inalienably could be exercised by the sovereign alone, to all the welfare activities, which would be undertaken by any private person. Welfare activity undertaken by the State is not sovereign function of the State. The expression of 'sovereign rights' is not as of now does not appear to have been defined or its meaning explained. Sovereign is a person or body or State in which independent and supreme authority is vested; a chief ruler with supreme power. One who has supremacy or rank above or authority over others, the recognised supreme rule of a people or country under monarchical government system.

74. 'Right', it is a legally protected interest. With the removal of the protection by statute, the right ceases to exist, *Mithilesh Kumari v. Prem Behari Khare*, MANU/SC/0318/1989 : (1989) 2 SCC 95. In other words, it is a liberty of doing or possessing something consistently with law. It is an interest recognised and protected by moral or legal rules. However, a definition has been drawn between a right and a legal right. A right is an averment of an entitlement arising out of legal rules. A legal right may be defined as an advantage or benefit conferred upon a person by a rule of law, *Shanti Kumar R. Canji v. Home Insurance Co. of New York* MANU/SC/0017/1974 : (1974) 2 SCC 387. In a strict sense, legal rights are correlative of legal duties and are defined as interests which the law protects by imposing corresponding duties on others.

But in a generic sense, the word 'right' is used to mean an immunity from the legal power of another.

75. To put it clearly, sovereignty bestows full rights, or supreme authority, on a country within its territorial waters, which stretches to 12 Nautical Miles. Sovereign rights in an Exclusive Economic Zone, which are much further out to sea, "no longer concerns all of activities, but only some of them". Sovereign rights are not rights deriving from sovereignty but rights of specific functional purpose. The phrase 'sovereign rights' in Article-56 of UNCLOS suggests Cyprus rights are exclusive, not preferential over other States.

76. From the analysis of the above, it is clear that these expressions have to be understood in their correct perspective and that perspective has to have a nexus to and relation with the reference in which they are used. In a very limited sense, they could appear to have overlapping meanings but when examined with reference to a situation or the facts or the language of the document, they are to be construed with clarity.

77. Now, we shall deal with the conventions in so far as they are relevant for the question of jurisdiction. Firstly, we may refer to the International Convention on Civil Liability for Bunker Oil Pollution Damage-2001. This Convention as already noticed, is providing that State shall take all measures necessary to prevent and reduce pollution of marine environment. Further, it provides that, with the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the further development of relevant rules of international law. It recognises the importance of establishing strict liability for all forms of oil pollution which is linked to an appropriate limitation of the level of that liability. Article-2 provides for application of the Convention that pollution damage caused to the territorial sea. While Article-2 (A)(ii) deals with the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 Nautical Miles from the baselines from which the breadth of its territorial sea is measured. Once these two clauses of the article are read together, unless otherwise is specifically provided in the law of the country or under this Convention itself, the pollution damage caused either in the territorial waters or to the limit of the exclusive economic zone are actionable. Preventive measures, compensation and damage for pollution could be provided in terms of this Convention in the Courts or Tribunals of the country where the damage has occurred. Even if all other laws were silent, in relation to a given state, still this Convention would have ample application for invoking the jurisdiction of a Court or Tribunal in accordance with the law on this account, for pollution of marine environment. Similarly, if we read Article-8 and Article-3 of the Civil Liability on Oil Pollution Damage-1969, as amended to be 1992, it also reflects similar situation. It provides that where an accident has caused pollution damage and territory including territorial sea or an area referred to in Article-2 of one or more contracting States or preventive measures have been taken to prevent or minimise such pollution damage and action for compensation may only be provided in Courts of such contracting State of States. Article-3 and Article-2 of 1969 Convention both of which was amended by 1992 Convention, Article-3 provides that pollution damage caused in the territorial sea and in exclusive economic zone of the contracting state would be the area covered under the jurisdiction. It is identical to the earlier Convention and provides that it would not extend more than 200 Nautical Miles from the baseline from it the breath is to be measured. Thus, the effect of this Convention is also the same and even a pollution or damage done within that area i.e.

the exclusive economic zone would be actionable.

Under the International Convention for Prevention of Pollution from Ships, 1973 (MARPOL), a ship has to fly the flag of a party, certificates to be obtained and inspections to be provided. The ship has to be seaworthy and it must adhere to other terms and conditions provided under this Convention. Article-4 of this Convention provides that any violation of the requirements of the present Convention shall be prohibited and sanctions shall be established, therefor, under the law of the Administration of the ship concerned wherever the violation occurs. If the Administration is informed of such a violation and is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible, in accordance with its

78. Article-9 of the International Convention on Civil Liability for Bunker Oil Pollution Damage-2001 provides that where an incident has caused pollution damage in the territory, including the territorial sea, or in an area referred to in Article 2(a)(ii) of one or more States Parties, or preventive measures have been taken to prevent or minimise pollution damage in such territory, including the territorial sea, or in such area, actions for compensation against the shipowner, insurer or other person providing security for the shipowner's liability may be brought only in the courts of any such States Parties.

The jurisdiction in terms of Article-9 of this Convention has to be construed in light of the international law in force at the time of application.

Cumulative reading of the above Conventions, show that these Conventions are not intended to primarily interfere with or affect the sovereignty of the State but to take appropriate remedies and actions in relation to the territorial seas and even in respect of Exclusive Economic Zone. Furthermore, these Conventions show that protections, actions and remedies available including that of protection of marine environment, claim of damages and compensation are not restricted to the territorial waters of the State over which it exercises sovereignty. The Exclusive Economic Zone is also covered for specific purposes stated therein and protection of marine environment in that zone is specifically stated and covered.

79. Thus, it will not be appropriate to state that in relation to marine environment and pollution being caused in the exclusive economic zone the concerned State or contracting party is without remedy and has no control whatsoever. The laws of the State would come into play, except where their application is excluded or they are in conflict with the Convention.

The Conventions have referred to all the three zones, namely, Territorial Sea Waters, Continental Shelf and Exclusive Economic Zone. Of course, the extent of control and application of law to these respective zones would depend upon the facts of a given case and the law applicable. The most important enactment that needs to be deliberated with some minuteness is the Act of 1976. Various provisions of this Act, we have already discussed above. However, at the cost of repetition, it needs to be noticed that it was with the intent to achieve a robust legal framework specifying the nature, scope of, exclusive rights, jurisdiction and control in relation to various maritime zones that this Act was brought into force. Section 3(1) deals with 'Sovereignty' over territorial waters. Over the territorial waters, sovereignty of India extends completely. It extends to 12 Nautical Miles from the nearest point of appropriate baseline. Contiguous Zone of India is an area beyond and adjacent to territorial waters and extends upto 24 Nautical Miles from the point of baseline. Continental Shelf of India comprises the seabed and

subsoil of submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 Nautical Miles from the baseline. The Central Government would have full and exclusive sovereign rights in respect of its continental shelf without prejudice to the generality of the provisions in relation to the purpose and matters specifically incorporated under sub-section-3 of Section-6. Exclusive Economic Zone of India is an area beyond and adjacent to the territorial waters and the limit of such zone is 200 Nautical Miles from the baseline referred to in sub-section-2 of Section-3. Over this zone also, the Government of India exercises sovereign rights, exclusive rights and exclusive jurisdiction to and for the purposes stated in sub-section-4 of Section-7. Two main features of these provisions are: firstly, that the limits stated under the respective sections are liable to change or extension, subject to issuance of appropriate notification by the competent authority and after such notification, the limits are extended by the Parliament of India. Secondly, under Sections 6 and 7 the sovereign rights of India provide for exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution. This can be achieved only in accordance with law. No act or privilege either under the International Conventions or the domestic law can be exercised except in accordance with law. In other words, the rights of the Indian Government in terms of Section 6(3)(d) and 7(4) (d) can be achieved only with the help and aid of the laws in force in that behalf. By the very necessary implication, the environmental laws with regard to marine environment and to prevent and control marine pollution would come into play and would aid the means to achieve the purpose and the right protected under these provisions of the Conventions.

80. Sovereign right is a recognised legal right and has to be exercised in accordance with law. This right cannot be rendered in-effective and un-executable on a plea which otherwise is contrary to the spirit of the statute and the International Conventions in force. So far as Section-3 is concerned, all the environmental laws would automatically become applicable as it is a zone within the Indian sovereignty. Sub-section-4(e) of Section-7 further strengthens this view that the rights which are recognised under International law or International Convention would become part of the sovereign rights of the State that is the very object and purpose of this statute.

We may also refer to the provisions of the Act of 1958 to indicate the jurisdiction to which the foreign ships will be subject to in the coastal waters of India. Section 352B provides that every ship while it is at a port or place in India or within the territorial waters of India or any marine area adjacent thereto over which India has or may hereafter have exclusive jurisdiction in regard to control of marine pollution under the Act of 1976 or any other law for the time being in force, civil liability of oil pollution under Chapter-XB of the Act would be applicable.

81. Furthermore, in terms of Section-356B of the Act of 1958, the 'coastal waters' means any part of the territorial waters of India, or any marine areas adjacent thereto over which India has, or, may hereafter have, exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976 (80 of 1976) or any other law for the time being in force would be squarely covered under Chapter-XIA for the purpose of prevention and containment of pollution of the sea by oil.

The cumulative reading of both these provisions clearly shows that a foreign ship will be subject to Indian jurisdiction if it is or the incident has occurred in any of the zones afore-stated. The provisions of the Act of 1958 would be appropriate and would operate

because they by virtue of their very enactment become operative in relation to that area. There is nothing in the Act to say that the Act of 1976 has excluded the application of this Act; in fact both these Acts are complementary to each other and operate in their respective fields. Both the Acts of 1958 and 1976 would have to be construed and applied harmoniously.

82. Some of the Respondents before us had argued with vehemence that the environmental laws including the National Green Tribunal Act would not be applicable to any area beyond the territorial waters of India, as the Central Government has not issued a notification extending the operation of the Act of 1986 and the Act of 2010 in terms of sub-section-7 of Section-7. We find no substance in this submission. Firstly, sub-section-7 of Section-7 operates only in relation to the Exclusive Economic Zone and no other zones i.e. the Continental Shelf and Contiguous Zone of sea waters. The present ship admittedly was 20 Nautical Miles from the baseline of coastal area in Mumbai, where she sank. This location falls within the ambit and scope of Contiguous Zone. In that zone, sovereign rights can be exercised though for a limited purpose. Even under Section 6 and 7, the sovereign rights are specifically enforceable inasmuch as India has exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution.

83. This sovereign right is exclusive in terms of Act of 1976. The International Conventions specifically stipulate that such right of State is protected even in Exclusive Economic Zone. Marine pollution is a subject of definite dimensions with diverse impacts. One incident of oil spill or pollution that results from the sinking of a ship may affect number of countries simultaneously. Depending upon the location and geographical limitations, that is the precise reason that various conventions while giving complete freedom to the State to exercise its sovereign rights within that area, also limits the scope thereof specifically providing for protection against maritime pollution.

Section 3 of the Act of 1986, read with the provisions of Section 356J of the Act of 1958 would also provide jurisdiction and make a ship, its Agent, Master liable for following the directions as may be issued in relation to a ship for marine pollution in the Territorial Waters, the Continental Shelf, the Exclusive Economic Zone and other Maritime Zones, and these notices were as a matter of fact issued by DG Shipping. This itself could bring the matter within the jurisdiction of the Central Government and consequently providing jurisdiction to the Tribunal. We may also notice here that the ship sank in the Contiguous Zone which has overlapping limits with the Continental Shelf and Exclusive Economic Zone, as all of them have to be measured from the baseline in terms of sub Section 2 of Section 3 of the Act of 1976. Once there is overlapping of an area; under Section 6(3)(d) and Section 7(4)(d) exercise of sovereign rights for preservation and protection of marine environment and to prevent marine pollution is mandated and it being of exclusive jurisdiction to India would require no specific Notification in terms of sub section 7 of Section 7 and sub section 6 of Section 6 in relation to the environmental laws including the Act of 2010. These laws ipso facto would become operative by virtue of these provisions and the International Conventions. Furthermore, there is no conflict between International Conventions and law of the land rather they are complementary to each other insofar as achieving the object of protecting the marine environment is concerned. Thus, in our considered view, the lack of specific Notification would not render the environmental laws ineffective and inapplicable in face of the constitutional law, statutory provisions and International Conventions.

84. The Indian Constitution is supreme. Part III of the Constitution relating to

Fundamental Rights is the paramount chapter of the Indian Constitution. The golden triangle of Article 14, 19 and 21 has been held to be the basic structure of the Constitution. Article 21 has been expanded so as to include the right to clean and decent environment. This right is an integral part of right to life. The protection against marine pollution and protection of coastal areas is part of the environment of the country. As we have already discussed the Act of 1986, that defines the word 'environment' in widest possible terms. Once it has been held that right to clean and decent environment is part of right to life then the constitutional duties, Directive Principles and Citizen's duties qua the environment would equally apply to the protection of marine environment as well. Under Article 1 of the Constitution, the territory of India shall comprise the territories of the States, the Union territories and such other territories as may be acquired. The Territorial Waters, the Contiguous Zone and the Exclusive Economic Zone shall be part of Indian Territory, of course with certain limitations. Article 297 (3) authorizes the Parliament to specify from time to time the limits of the Territorial Waters, the Continental Shelf, the Exclusive Economic Zone, and other maritime zones of India etc. The Constitution of India does not define these terms. It is the only the Act of 1976, which explains these limits. Since the right to clean and decent environment is enshrined in the Indian Constitution itself, thus its protection in terms of Constitutional law would equally apply automatically. The exercise of this right and protection of the environment would equally apply in the areas where there is Indian sovereignty and/or it has sovereign rights read with International Conventions.

It needs to be specified here that the Court and Tribunal can look into the provisions of International Treaties and Conventions, and particularly when, they are not in conflict with the law of the land. Once we extend this principle to the facts and circumstances of the case, then it can in no way be stated that all the conventions afore-referred, do not bring the cause within the jurisdiction of the Government and consequently that of the Tribunal. Sovereign rights are to be exercised in accordance with both International Conventions and Statutory Provisions. The Supreme Court in the case of *Aban Loyd Chiles Offshore Ltd. v. Union of India*, MANU/SC/2045/2008 : (2008) 11 SCC 439 has held as under:

"100. The question whether the Courts can look into the provisions of the international treaties/conventions is no longer *res integra*. This Court in *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey* has held that even in the absence of municipal law, the treaties/conventions can be looked into and enforced if they are not in conflict with the municipal law. It was further held that the same may not be looked into but can also be used to interpret municipal laws so as to bring them in consonance with international law.

101. However, in the event where they do not run into such conflict, the sovereignty and the integrity of the republic and the supremacy of the constituted legislatures in making the laws may not be subject to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The Court held as under:

"5....The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament. Comity of Nations or no, Municipal Law must prevail in case of conflict. National Courts cannot say yes if Parliament

has said no to a principle of international law. National Courts will endorse international law but not if it conflicts with national law. National courts being organs of the National State and not organs of international law must perforce apply national law if international law conflicts with it. But the Courts are under an obligation within legitimate limits, to so interpret the Municipal Statute as to avoid confrontation with the comity of Nations or the well established principles of International law. But if conflict is inevitable, the latter must yield."

102. In *Vishaka and Ors. v. State of Rajasthan and Ors.*, this Court considered the question as to what would be the position in law if there was no law for effective enforcement. It was held as under:

"14....The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them...."

103. Our municipal law, i.e., Maritime Zones Act, 1976 is not in conflict with the international law, rather the same is in consonance with UNCLOS, 1982.

85. In support of the argument, reliance has also been placed on the case of *Republic of Italy (supra)*. In that case, the Supreme Court had observed that enactments like Indian Penal Code and Code of Criminal Procedure would not automatically apply to the Contiguous Zone and Exclusive Economic Zone and that it would require a Notification. That position of law can hardly be disputed, but in the present case we are not concerned with any law which does not itself form part of the Act of 1976 and International Conventions. Once it is an integral part of that Statute and Convention the restriction would be rendered ineffective.

86. The judgment of the Supreme Court would not be of any benefit to the respective respondents. Not only is the case specifically covered under the Statute and the Convention but even under the general principles of law, Act of 1986, Act of 2010 and the Constitution of India. The case would squarely fall within the ambit and scope of the jurisdiction of the Tribunal.

87. Coming to the other leg of the argument, in relation to jurisdiction the contention is that as the proceedings under the Act of 1958 had been initiated by issuance of notice in terms of Section 356J of the Act of 1958 and a FIR under Section 7, 8, 9 of the Act of 1986 and under Sections 43 and 45A of the Act of 1974 had been registered with the Yellow Gate Police Station, Mumbai, the jurisdiction of the Tribunal shall stand ousted. This argument is again without any substance. Chapter XIA deals with prevention and containment of pollution of the sea by oil and this is a very limited and specific jurisdiction vested in the Central Government. The Indian Coast Guard had issued a notice under Section 356J of the Act of 1958 which is primarily concerned with containment of accidental pollution. In this behalf, preventive steps were taken and other ships, bodies and authorities were directed to help in saving the crew and avoiding the environmental pollution. As already noticed, a number of ships had been called to help in rescue operation, prevention and control of the pollution. So the exercise of jurisdiction under the Act of 1958 stood exhausted when measures were

taken to prevent further continuation of oil spills and other ships were called upon to help and when the crew was rescued and other preventive steps were taken. In this behalf, the coastal authorities were even summoned to help in the operation and a sum of rupees more than rupees three crores as already stated, was incurred by the Indian Coast Guard for which they have prayed for refund and/or reimbursement thereof. This jurisdiction under the Act of 1958 is not relatable to compensation and damage caused to the environment, more particularly, when it is a continuing offence of causing pollution and damage, even in future. The degradation and damage to the environment and ecology more particularly in the marine environment is a matter which would be squarely covered under the jurisdiction of this Tribunal. As of now, it has not even culminated in filing of challan before the Court of competent jurisdiction. We are informed that none of the parties had challenged the said FIR including owner of that ship.

It is a settled position in law that there could be concurrent proceedings initiated and continued under different laws unless and until they are hit by the Principle of Double Jeopardy and/or are specifically barred under a statute. However, in the present case, the jurisdiction of this Tribunal under Sections 15 & 17 of the Act of 2010 is independent of any other proceedings. In exercise of the powers vested in the Tribunal, directions could be issued for preventing and controlling of pollution and removal of the pollutants spread by the ship and its cargo as well as direct payment of environmental compensation. In fact, the proceeding under the Act of 1958 has been carried out by the Central Government in exercise of the statutory provisions but it does not include judicial proceedings pending before a Court or Tribunal. Similarly, the pendency of investigation with respect to lodging of FIR would again not be an obstacle in institution and continuation of the proceedings before this Tribunal. It is a settled principle of law that under the independent jurisdiction where criminal proceedings are initiated, civil proceedings, even on the same cause of action are not excluded or barred. It is more so when the civil proceedings are proceeded with under a special statute relating to the subject in question. All these three Acts operate in different fields and have no conflict. Once different Acts operate in their own field there cannot be stated to be multiplicity of litigation. The criminal offences committed under Sections 7, 8 & 9 of the Act of 1986 and/or under Section 43 & 45A of the Act of 1974 would not divest the Boards or forums or the Tribunal under the provisions of the same Acts from carrying out civil proceedings for compensation, restoration and restitution. These are independent proceedings. These three enactments operate in their own sphere and the proceedings in accordance with law can be initiated, continued and brought to their logical end. The Respondents could hardly take the plea of multiplicity of litigation for two reasons. Firstly, this is no ground in the eye of law as, when the law permits initiation and continuation of proceedings, such proceedings will have to be continued. Secondly, even from their own conduct none of the Respondents can take this plea as a matter of right inasmuch as it is a plea in equity and not in law. The Respondents have not come to the Tribunal with clean hands and none of the proceedings overlap with the proceedings and judgments of the Tribunal. The issues before the Tribunal are completely distinct and different. Even the proceedings taken and the direction issued under 356J and K of the Act of 1958 would come to the aid of continuation of these proceedings, as they have suggested that pollution was caused by oil spill as well as by the ship and the cargo. The presentation prepared by the DG Shipping and the Annamalai University have also established contribution of pollution and damage on the part of the Respondents. Thus, we decide this issue in favour of the Applicant and against the Respondents.

88. The violation of the directions issued under Section 356J and K of the Act of 1958,

results in penal consequences and that is in accordance with the provisions of Section 436 of the said Act. None of the Respondents had ever objected to the jurisdiction of the Indian Government to issue directions under Section 356 J and in fact they conceded thereto and so would be liable for the consequences that would flow therefrom.

Issue No. 5: Whether the Ship, M.V. RAK Carrier was seaworthy at the commencement of the voyage and remained so, till its arrival at about 20 Nautical Miles off the coast of Mumbai where it sank on 4th August, 2011?

89. From the record before the Tribunal, it appears that the ship in question sailed with cargo of 60054 MT of coal on 14th June, 2011 from Indonesia to Dahej in Gujarat. The Respondents have stated that the ship had registry certificate, insurance, telecommunication certificate, trim and stability certificate, SOPEP certificate, statement of compliance of International Anti Fouling Systems, Bunker Blue Card. Some of these documents have been placed on record by Respondent No. 11. In accordance with these documents, the ship was registered with the Republic of Panama and was flying the flag of Panama itself. The ship was registered and satisfied the requirements of the provisions of the Act of 1958 in that behalf. In the Commercial and Brokerage Agreement, which was entered into between Respondents No. 5 and 11, Respondent No. 5 has made a declaration under clause-VII of the agreement that it was obliged to keep the ship in a fit and seaworthy state through their operational manager as well as their technical manager and team throughout the voyage and whatever engagements/assessments are made under the said agreement by Respondent No. 11. This agreement had been signed between Respondents No. 5 and 11. This is what has been relied upon by the Respondents to demonstrate that the ship in question was seaworthy. However, these facts stand denied by the incident and the accident investigation report. The ship in fact was facing technical and mechanical problems since 29th July, 2011 as it remained anchored off Mumbai coast and did not carry on with its voyage to Dahej in Gujarat. According to Respondent No. 12, they had been approached through their sister concern in Qatar to provide bunkers and other assistance and mechanical help to the ship as it was in some serious difficulties and unable to sail. Respondent No. 12 then had provided the bunker and other help to the ship to make it seaworthy. However, these efforts failed to bring the desired results and the ship sank on 4th August, 2011. The condition of the ship in terms of engine maintenance and bunker was so below the required standards that it faced fear of sinking and even the crew members of the ship had to be rescued by the Indian Coast Guard in such an emergency situation. Not only this, as already stated even other ships were called to aid with saving of the ship and its crew. However, ultimately, only the crew could be saved. We would now revert to the inspection reports that have been placed on record. The D.G. Shipping, Government of India had directed and appointed an inspection team to inspect the ship through Mercantile Marine Department to know the exact condition of the ship and the possibility of it covering the last part of the voyage. The Mercantile Marine Department, Mumbai had submitted its report after conducting physical inspection of the ship on the morning of 4th August, 2011. According to this report, the anchorage area was 20 miles from Mumbai coast. As per the facts recorded in this report, the ship was built in the year 1984 at Hitachi Zosen Corp. Ariake, Nagasu, Japan. With a deadweight 63695, engine power 15400 BHP, service speed 14 knots. On 14th June, 2011, the ship sailed from port Lubuk Tutung, Indonesia for port Dahej, India and was loaded with 60054 MT cargo of coal in bulk. Ship arrived on 21st June and sailed on 24th June, 2011 after receiving bunkers, store, some spares. It is reported that to avoid unexpected pollution no attempts were made to pump out ballast from No. 1 DBT port and starboard or No. 2 DBT starboard tanks,

ship sailed through Malacca Strait in same condition of stability with trim down by head about 1.7 meters. On 27th June, 2011, it entered Bay of Bengal. On 29th June, 2011 water was seen in No. 1 cargo hold from aft hatch entrance above the cargo in level with 12-13th rung of ladder. Water from No. 1 DBT port and starboard was pumped out which was filled in time and again at varying levels, but the reason of water filling in DB tanks could not be traced. Ship had frequent engine stoppages and black outs due to technical snags in the generators, boilers and other auxiliary machineries during her passage in Bay of Bengal and also on her next leg of voyage up to Mumbai. While ship was off Colombo, the urgent message about ingress of water in No. 1 cargo hold was sent by the master to managers on 5th July, 2011 and request for supply of heavy duty submersible pump was made. However, the company did not arrange for the same and advised the ship to continue the voyage. The source of ingress of water in DBT and cargo hold could not be found. Ship experienced SW monsoon weather around the south coast of Sri Lanka and in the Arabian Sea. From 5th July onward the ship experienced frequent break down of the main engine. On 18th July, around 2300 hrs Chief Engineer reported to the master that he could not transfer diesel oil from DB tank to service tank. Service tank had around 6 ton which was not enough to complete the voyage to reach the destination, Dahej. The message was conveyed to the fleet manager of the company who advised them to call the Mumbai port. The Master informed the port and VTMS and gave reason for the call. The remaining part of the report is necessary to be referred to at this stage which is as under:

"On 19th July vessel dropped anchor around 0900LT in "B" anchorage of Mumbai outer harbour. On this date there was water also seen in No. 2 cargo hold. Vessel asked for supply of D.O. also some provisions and spares for generator and 2 submersible pumps to pump out the water from hold No. 1 and 2. This was the important item which vessel required to pump out water from cargo holds.

On 24th July supply boat "ALBATROSS 19" approached the vessel for replenishment of bunkers but could not do so due to very rough weather, hence the supply was deferred till weather subsides. On 29th July supply boat arrived again and transfer of bunker was arranged by connection of long hose (150m). 30 MT of D.O., 25MT of FW, Generator spares and small submersible pump was supplied. But this small submersible pump served no purpose.

After replenishment bunkers E/R was given due notice to prepare engine and C/O was asked to heave up anchor to proceed to Dahej. After 20 minutes of having heaved up anchor the C/E reported to Master that there was some problem in generator and would take some time to rectify it. C/O was then asked again to drop anchor.

Master reported the matter to company stating that ship could not sail till she is seaworthy and it was not possible to continue to voyage to Gulf of Khambhat with one generator, as it was not safe to drift somewhere in Gulf of Khambhat during monsoon. The Owner representatives asked him not to sail if it was not safe and stay at Mumbai till repairing of generator. After repair on 1st August generator started working but the ship could not sail because of water in Hold No. 1 & also in Hold No. 2 which increased the forward draft. Water from cargo holds through coal cargo could not be pumped out through hold bilge pumps, so Master called the Owner for urgent supply of big size submersible pumps.

Due to continuous ingress of water in forward cargo hold and double bottom

tanks, the forward freeboard had reduced so much that continuous solid seas was shipping on deck, particularly on port side which broke fuel oil filling pipe to forward fuel oil tanks (port and stbd.)

By 3rd August the trim to forward increased more as ingress of water continued adding water in forward cofferdam as well fuel oil tank. The water from holds and these tanks could not be pumped out by bilge and ballast pumps. All these happenings were reported the Master that supply boat has been arranged which shall leave the port at 2300 hrs and reach the ship by 0300 hours on 04th August.

Master called up the technical superintendent who was in Mumbai since 4th August 2011 and apprised him of the situation on phone that the forecastle bulwark was almost submerged in water.

As the situation appeared out of control and grave, the Master called Owner, Managers & Superintendent informing them that he will have to call up Mumbai port and its VTMS for assistance.

Master called VTMS for assistance around 0700 on 4 August 2011 and in a quick response VTMS briefed Navy. Immediately after receiving the distress signal from the ship, Coastguard, Navy Helicopters and boats were deployed for rescue operations.

With joint rescue operation by Indian Navy, Coast Guard, merchant vessel M.V. Stella and towing vessel Smit Lumba and 30 crew members of ship which included 21 Indonesians, 6 Jordanians, and 2 Romanians were brought safely ashore from sinking vessel MV RAK CARRIER.

There was oil leak reported from sunken ship, the coast guard ship Samudra Prahar on patrol immediately responded and used dispersant to neutralize the oil spill. Later the pollution by her oil was reported up to 7 miles and to some beaches of Mumbai."

90. This report noticed that apparently there was no loss of life but pollution was reported. This preliminary enquiry had been prepared while taking into consideration the DG Shipping guidelines and instruction to Surveyors, applicable IMO resolution and guidelines on casualty investigation. During the inquiry, the investigation team recorded the statement of master, officers and the marine casualty report was prepared with the assistance of the master. A significant observation made by the inspecting team was that no sufficient time was allowed for briefing and familiarising of the joining crew with regard to the ship specific operation of her equipment, machineries and to check the condition of various compartments and the system of ballast, bilge, bunker, etc. This shows that the owner of the ship withheld the information available to them and even failed to ensure that the crew management and master inspect the ship in its entirety and he did not provide them with complete information about the ship. In this report, even the photographs were taken of the ship, the ships and the helicopters were called for rescue purposes. The photographs on record show the ship was in such unsustainable condition that even the boat that had approached to supply the diesel oil could not do so because of heavy water inside the ship and due to heavy swell boat had to return. On 29th July, 2011, the supply boat Albatross 19 again came with 150 mtrs of hose, generator spare parts and fresh water. The boat supplied 30 MT of DO, 25 MT of FW and spare parts. The boat also supplied one small plastic submersible pump. After the boat cast off, the ship heaved up anchor and proceeded to sea. After some time, the

Chief Engineer reported to the master that there was some problem in the generator, so the master dropped the anchor once again, to rectify the defect. The Master informed the company wherein the company advised the master to proceed only on one generator and repair the second generator en-route to Dahej. Master expressed apprehensions for proceeding on one generator and decided to continue at anchorage till the other generator was repaired. On 30th July, 2011 the water level in cargo hold No. 2 was same as of No. 1 cargo hold, above the cargo level. On 31st July, 2011, there was water seen in No. 3 cargo hold too, slightly above the cargo level. There was water flooded in forward cofferdam too. There was water ingress suspected in No. 1 fuel oil tanks through this pipe. Photographs were taken by the investigation agent clarifying the situation. On 3rd August, 2011, the master again desperately asked to supply high capacity submersible pumps. The owner's representative who was in Mumbai, replied that boat with pumps will start from port at 2300 hrs and will reach by 0300 hrs on 4th August, 2011. On 3rd August, 2011, at around 2000 hrs high level alarm sounded in ballast pump room for No. 1 fuel oil tanks forward. On 4th August, 2011, at about 0530 hrs, Chief Officer called the master to the wheelhouse to see the situation. Master found the forecastle bulwark almost submerged in water. The master called the owner once again and asked for whereabouts of the boat with pumps and conveyed to him that situation had worsened considerably. The master instructed the Chief Engineer to start the ballast pump and bilge pump, after starting the pumps for 10 to 30 minutes, the pumps did not take any suction. The master briefed owners and the managers about the grave situation and informed them that he shall be calling Mumbai VTS for help. On 4th August, 2011, master called Mumbai VTS for assistance around 0700 hrs. In response to distress call from ship the Mumbai VTS called Indian Navy to rescue the crew. Indian Navy called the master and informed that a tug boat Smit Lumba will proceed to them. Master asked the tug to come and help in pumping out water from hold No. 1, 2 and 3 and if tug can cut the anchor chain of the ship and tow her to safe location. Tug master replied that the tug will be able to reach only by 0100 hrs. The Navy helicopters came at about 0830 hrs and master decided to reduce the number of crew from the ship. 15 to 16 crews were sent ashore by the helicopter. Around 0930 hrs progressive flooding of hold No. 3 & 4 started and hold No. 3 was full of water. Till that time, tug had not arrived. Thus, the helicopter rescued the remaining last group of master, Chief Officer and 3rd engineer also to the Naval base. The photographs have been placed on record to show the Navy helicopter rescuing the crew of the sinking ship.

91. In this background, it would be useful to refer to the observations, conclusions and the recommendations in the report, which read as under:

"Observations:

- After taking over from the previous owner proper maintenance of the machineries, hull, and cargo holds, ballast tanks have not been carried out properly. It appears from the statements of the ship's personals that after vessel's class have been suspended by the Lloyds, the vessel was either not classed or was classed with a non-IACS member. This shows that there was a lack of maintenance taken place during the change of the ownership of the vessel.
- There are indications that statutory surveys of the vessel were carried out in a biased manner by the surveyor of the recognised organization who holds a senior management designation in manager's office to whom the document of compliance is issued. The name of the Auditor to RO is spelled differently on DOC, SMC and ISSC.

- After takeover of vessel and on joining of sailing crew there were numbers of deficiencies and defect on deck and engine reported to the representative of owner/manager on board but no effort were made to rectify them.
- Vessel after berthing at Lubuk Tutung Port, two Diesel generators were not working. While carrying out repair ship staff found that there were no spares available to carry out repairs of the machineries, which means after taking over the vessel, owner have not put enough effort to supply adequate spares on board before here commercial deployment. Vessel was sailing on high seas and the technical snags were not reported to the concerned authorities.
- Based on the statements received from the ship staff during sailing, it is understood that the auxiliary boiler also had frequent water tubes cracks, several times which were frequently welded and repaired by the ship staff. From time to time Chief Engineer informed the same to the owner through the master but necessary action were not taken by the owner.
- It appears from the above mentioned points that from the beginning of the taking over of the vessel, proper care and maintenance were not taken by the owner. There was shortage of spare and equipments to deal with contingencies.
- There was no sufficient time allowed for briefing and familiarize of joining crew with regard to ship specific operation of her equipment, machineries and to check condition of various compartment and system of ballast, bilge, bunker, etc.

Conclusion:

- Water ingress to various ballast tanks, Cargo holds and fuel oil tanks which was noticed by the ship staff and necessary pumping out arrangement were carried out with whatever pumps available on board, which was not sufficient enough to tackle the distress situation arisen on board even though ingress of water had been detected in time the contingency plan to deal with ingress of water was not effectively implemented.
- Master neither asked any help from shore not considered. Even master did not consider heaving up of anchor and heave to weather, in order to reach the site of damaged pipe and repair the same. As the diameter of the broken pipe was 6 inches and ship staff was unaware of the status (open/shut position) of isolating/filling valves. The high level alarm for fuel oil tank sounded in the ballast control room indicates the ingress of water in tank either by flooding from forward cofferdam bulkhead or the filling pipe.
- While vessel was sinking Maritime Assistance Service (MAS) was not intimated as required by the international regulations.
- At the time of sinking, vessel had large amount of bunkers and ship's officers failed to discharge their duties as required by SOPEP PLAN in

preventing the oil pollution of sea.

- There was no risk assessment at the first instance of finding water in No. 1 cargo hold and No. 1 DBT port and starboard.
- Chief Officer and Second Engineer are the maintenance officers for deck and engine machineries respectively of the ship and they failed to take effective measures during contingency period as machineries were not maintained properly. Poor loading, non-follow up of sequence and delayed de-ballasting was the cause of vessel sailing down by head and because the vessel was down by head it was not possible to take suction from the fuel.
- Poor monitoring of cargo hold bilges and ballast tank sounding was an important cause of accident. Also the senior staff made no effort to trace the origin of water ingress in cargo holds and the filling of DBTs.
- Watch keeping officers second officer and third officer and watch keeping engineer third engineer and fourth engineer were observed to be negligent and did not maintain their proper watch. Duty officer failed to bring to the notice of master/chief officer about not shifting the loading crane to other cargo holds as per loading sequence. Continued loading at forward holds caused the vessel to complete cargo with 70 cm trim by head.
- Poor housekeeping by the ship staff and poor maintenance of the vessel, not complying with the previous class requirements and not engaging well reputed classification later on, proves to be the main cause of the casualty. It is understood although the vessel had a valid safety management systems implemented on board; still is observed the system has failed to achieve its goal.
- Technical failure of main engine, auxiliary engine and machineries was an important contributing factor of accident.
- Heavy weather condition added to flooding of ship compartments and causing sinking.

Recommendation:

- Risk Assessment: Risk assessment is a continuous process and must be reviewed if the circumstances change or there are indications that there exists greater risk than initially assumed. Failure of equipment is an indication that the risk assessment did not identify all factors and safety barriers were insufficient. Hazard identification, risk assessment with severity and probability of occurrence must be evaluated and preventive application of controls to be decided and implemented. Later the risk assessment must be reviewed and updated, if necessary. The controls may be applied either to reduce the likelihood of occurrence of an adverse event, or to reduce the severity of the consequences.
- Risk Management Log: It is recommended to maintain a "Risk Management Log" on board which shall include risk name and description, likelihood, severity, priority, and mitigation/contingency

plans, and any metrics defined for tracking the risk dependencies. The risk rating and priority should be determined.

- Master's overriding Authority-ISM Element 5: This ship's master in the event of any interference from the external sources should not hesitate to use his overriding authority for safety of crew, ship and environment protection provided, under the Safety Management System. As it was noticed by the crews that No. 1 and then No. 2 hold flooded with water on 3rd August, 2011 but master ordered abandon ship on 4th August, 2011 endangering life of crew by keeping them on board when vessel was un-seaworthy.

- Training on critical operations and emergencies-ISM Element 6: The organisation is recommended to impart training to all crew of its fleet on emergency drills and other critical operations which contributed to this incident and review their safety manual accordingly. High freeboard, watertight integrity and a good stability are indispensable safety factors for the work. Crew of specialised vessels need to be fully familiarized with the vessel they are operating.

- Age of Vessel: It is recommended that vessel more than 25 years in age calling Indian ports should be classed with IACS (International association of classification societies).

- STABILITY OF VESSEL: The Master shall ensure that the conditions of stability, hull strength, draft and trim of the vessel at sea and on arrival/departure at/from port and during loading/unloading cargo and bunkering, have been worked out, to secure safety of the vessel. He shall confirm the safety of the vessel by proper GM, stress and other factors as being within appropriate limits.

- WATERTIGHT INTEGRITY: The importance of keeping various opening viz., hatch entrance, stores and mast house doors, air pipes, sounding pipes, vent, valves etc closed when at sea and severe consequences resulting due to non compliance must be a part of drills and training onboard. This should be made a part of emergency preparedness procedures.

Appropriate measures must be taken to ensure the early detection of any ingress of water into working order prior to each departure port. High freeboard, watertight integrity and a good stability are indispensable safety factors and must be maintained.

- MAINTENANCE OF THE SHIP AND EQUIPMENT-ISM ELEMENT 10: The Company should establish that the ship is maintained in conformity with the provisions of the planned maintenance system established by the safety management system of the company. The Company should ensure that inspections are held at appropriate intervals; any non-conformity is reported, with its possible cause. Appropriate corrective action should be taken and records of these activities are maintained. The ship staff should identify the procedures in case of sudden operational failure of ship's equipment and machinery, which may result in hazardous situations.

- **SVDR: CHAP-5, SOLAS Regulation 20:** A vessel's VDR (voyage data recorder) where fitted must be considered "Critical Equipment". Ships Owners/Managers must develop documents and guidance on operation, maintenance and requirement for retaining of Voyage Data always in connection with abnormal situations to assist in casualty investigation. This would assist Owners and Flag State administration in investigation and prevent further incidents from happening by promulgating recommendations based on findings of the incident. Ships staff should make all efforts to remove the hard disk from VDR and carry along before abandoning the vessel.
- **SAFETY CULTURE:** The Management is recommended to encourage a genuine safety culture on board ships and ashore which is the best safeguard against accidents. Awareness and constant vigilance on the part of all those involved and the establishment of safety as a permanent and natural feature of organizational decision-making will manage risks well.
- **ADDITIONAL SAFETY MEASURES FOR BULK CARRIER:** The Bulk Carriers built before 1 July 1999 shall comply with SOLAS Chapter XII Regulation 9 for bilge well water level alarm audible and visible on navigational bridge.

92. The findings recorded in this report cast a shadow of suspicion on the genuineness of the certificates issued prior to commencement of the voyage. In fact, the report categorically records that in all possibility, the surveyors and certification in the ship was done in a biased manner. It was stated to be de-class when inspected. After purchase, the ship condition of class was imposed with 7 numbers of deficiencies on record. These findings are indicative of a fact that all was not well with the ship prior to commencement of the voyage. The genuineness of the documents was subject to doubt. Thereafter, during the voyage at Singapore and till the time it reached about 20 Nautical Miles off the shore of Mumbai coast, it had number of technical and mechanical problems. In fact, the ship had entered the Contiguous zone of Indian waters on 19th July, 2011 from that date till it approached the VTMS on 4th August, 2011. Still, no effort was made to get in touch with the official authority for appropriate remedial measures and to ensure that the ship did not sink. Various requests were made to the owner of the ship by the master to send help by ships including bunker, oil and more importantly the pumps, high revolution pumps to ensure that the water which was entering the ship could be removed but no help was sent in time. Assurance was given that small ship had started with requisite help. Respondent No. 12 which provided the bunkers and other help like providing diesel etc was doing so on humanitarian grounds and no steps were taken keeping in view the requirements of the ship. The master of the ship made desperate call for help to the owners which was met with no response and ultimately the master had to get in touch with VTMS which then deployed Indian Navy helicopters and it was only with extraordinary, efficient and timely steps taken by VTMS with the help of other ships and Indian Navy that every crew of the ship could be saved. Crew was lifted in batches. The owner of the ship as well as the charterer ensured that ship did not receive proper mechanical and technical assistance during its voyage. Even after Singapore, every time the master was directed to continue with the voyage without even repairing the pumps. One of which had become non-functional. Denial of appropriate repairs seen in the light of the conduct of the owner of the ship and other interested parties makes it obvious that they never cared to save the ship as their intention was to probably let the ship sink in Indian waters and to let remain there

indefinitely.

The two diesel generators were not working after it started its voyage from Lubuk Tutung port and it was even found that no spare was available to carry out repairs of the machines. The owner had not put enough effort to supply the adequate spares on board before her commercial deployment. Ship was sailing on high seas and technical snag was not reported to the concerned authorities. After taking over the ship, no efforts were made to rectify the defects, after taking over the ship was not classed with a known IACS member. These deficiencies and non-performance clearly points out that from the beginning of taking over of ship proper care and maintenance were not taken by the owner. In the conclusions, the report points out serious deficiencies even during the voyage ultimately leading to the sinking of the ship.

93. The manner in which the events have unfolded themselves and the contents of the report clearly makes out a case against the Respondents on the doctrine of *res ipsa loquitur*. It is a doctrine that belongs to the field of law of torts. It is attracted where the events and happening speaks for itself and no other proof of negligence is required beyond the accident itself. The condition of the ship, role of the owner, persistent demands of the master of the ship to the owner and other interested persons and the role played by the VTMS, Indian Navy and other ships clearly makes out the case of negligence and shows the intent of the Respondents No. 5, 7 and 11 to let the ship sink rather than to take the burden of incurring huge expenditure on repairing the same and ensuring its voyage back home.

94. The cumulative effect of the documentary evidence before us is that there were no fair intentions of these Respondents to save the ship as permitting the ship to sink with cargo was a more economical option than taking out the ship, towing it and removing the cargo. It is the case where economic interests have certainly prevailed over environmental interest. Another aspect which needs to be discussed at this stage is that besides the provisions of Act of 1958, Article 219 of the UN Convention on Law of the Sea deals with measures relating to seaworthiness of ship to avoid pollution. A State which, upon request or on their own initiative, has ascertained that a vessel within one of their ports or at one of their off-shore terminals is in violation of applicable international rules and standards relating to seaworthiness of vessels and thereby threatening damage to the marine environment shall, as far as practicable, take administrative measures to prevent the vessel from sailing. Such States may permit the vessel to proceed only to the nearest appropriate repair yard and thereupon after removal of deficiencies can be permitted to sail. In the normal course of business, if the master and management of the ship had informed the authorities at Singapore on 19th July, 2011 and subsequently from its location near Mumbai, the correct position in regard to the ship, then the authorities would have inspected the ship and found out the deficiencies. At that stage, the ship was not about to sink. It is evident from the record that such approach was adopted by the Respondents to avoid investigative aspect by the competent authority as well as the penal consequences. No appropriate remedial measures were taken by the Respondents. In fact, Respondent No. 5, 7 and 11 commanded the master not to get in touch with the requisite authorities and to continue with its voyage until the master exercised the threat and actually informed the authorities on 4th August, 2011. The Articles that we have referred to in the Conventions even also make it obligatory upon the ship owner and all others concerned to sail a ship only when it is seaworthy and would not cause marine environmental pollution. In terms of the Regulation-10 of the International Convention for Safety of Life at Sea, 1974 (SOLAS), it is evident that a certificate 'Cargo Ship Safety Construction Certificate shall be issued after survey of hull, machinery and equipment of

cargo ships. Cargo certificate appears to have been issued without compliance of the Convention as the deficiencies pointed out in the report belies the stand taken by the Respondents that the ship was seaworthy. No effort has been made by the concerned Respondents to place on record the Safety Management Certificate as required under the Convention.

95. Similarly, Voyage Date Recorder System-Certificate of Compliance (Regulation V/18.8, SOLAS 1974), International Oil Pollution Prevention Certificate (Regulation 7, Annex-I, MARPOL) and Document of Compliance (Regulation IX/4, SOLAS 1974; IS Code Para-13,) have not been placed on record. The contention on behalf of the ship owner and persons interested that they were not able to collect the record is again untenable. Under the Convention and the law in force, the certificates are to be kept on the Deck which will be the last portion of the ship to sink. The ship was in serious trouble since 19th July, 2011 and they had more than ample time to collect all their records.

Respondent No. 11 has placed the copies of most of the certificates on record before the Tribunal, but did not even make an effort to place these documents before the inspecting authorities at the relevant time nor did they offer any plausible explanation in that behalf. It must be noticed, that on the basis of the documents produced, statements recorded and upon physical inspection, the inspection report has specifically recorded a finding that the documents of seaworthiness in relation to the ship were issued with a biased mind.

(emphasis supplied).

96. To ensure seaworthiness is the obligation of all the persons responsible for the voyage of the ship. To provide seaworthy ship before beginning of the voyage is an absolute obligation of the carrier, and could not be discarded by show of due diligence. The implied warranty was stated in *Steel v. State Line Steamship Company* by Lord Blackburn as an obligation "not merely that they should do their best to make the ship fit, but the ship should really be fit". The only relevance of the standards of the reasonably prudent owner is to ask whether, if he had known of the defect (my emphasis), he would have taken steps to rectify it. Normally, seaworthiness is divided into three components; i) physical condition of the ship and its equipments, ii) the competence and efficiency of the crew and master and iii) the adequacy of stores and documentation. This was so explained by Justice Cresswell in "*Papera Traders Co. Ltd. v. Hyundai Merchant Marine Co. Ltd.* (2002) 1 Lloyd's Rep. 719. [Reference: The carriage of Goods by Sea Conventions-A comparative study of Seaworthiness and the list of exclusions]

97. In the present case, all the three components have been specifically found to be deficient and/or even non-performing. Much less to say that they in fact failed to take remedial and rectifiable steps within a reasonable time, in fact, not till the ship sank. Thus, we conclude that the ship was not seaworthy at the time of commencement and continuation of the voyage.

Issue No. 6: Whether on 4th August, 2011 the Ship while it sank or immediately thereafter caused pollution by oil spill or otherwise? Further, whether the sunk ship even presently lying in the Contiguous Zone' along with its cargo, has caused in the past and is a continuous source of pollution at that site to the sea, aquatic life and/or to the shore itself?

98. At the cost of repetition, we may notice the undisputed and admitted facts. The ship

was on voyage from Indonesia to Dahej, Gujarat. It was carrying more than 60054 MT coal in its holds. The Ship contained 290 MT of oil and 50 tonnes of diesel oil. It is further undisputed that it developed mechanical defects even at Singapore and thereafter. It reached the off shore Mumbai coast on 19th July, 2011. Facing mechanical and technical defects, a distress call was made in the morning of 4th August, 2011. Few hours thereafter the ship sank. When the ship sank, there was serious oil spill in the entire area and on 5th August, 2011. Thin/broken sheen of oil of approximately 200m in breadth extending towards south easterly direction upto 2.5 Nautical Miles with every passing day, it was increasing in width and distance and gradually it reached the shore of Mumbai. It affected various beaches amongst others, including Juhu, Madh, and Marve. It is proved on record that there was continuous leakage of approximately 2-2.5 T oil moving ENE-ESE direction upto 7 Nautical Miles from the sunken ship on 7th August, 2011. The Coast Guard team comprising of 30 enrolled personnel alongwith 70 workers of Brihan Mumbai Municipal Corporation started the cleanup operation at all the five beaches. The quantum of oil spill and diesel was very high and intense. The Respondent No. 12 had also sent oil and diesel to the ship. As per the master, he was unable to transfer the oil from one section to another because the pumps were not working effectively. The inflow of water into the ship was increasing with the passage of time on the one hand, while on the other, oil spill and leakage from the ship was also increasing at a very rapid speed.

99. During the first few hours, oil was leaking at the rate of 1-2 tonnes per hour and on August 12, 2011 according to the Applicant, the rate of oil spill was 7 to 8 tonnes per day as per the information of coast guard. The oil spill has caused various kinds of pollution. It had affected the water, aquatic life, the mangroves on the coast and it even affected the human health and marine environment in the coastal area. It cannot be disputed that such a heavy layer of oil in the water has affected the mangroves and other living beings at the shore. It is one of the three sources of pollution and in fact the pollution resulting from the sunken ship and pollution resulting from the cargo are the other two causes of pollution. We have mentioned above the pollution resulting from the oil spill. The ship contains various metallic parts, wooden and PVC material and paint coatings, grease & oil, wood and most importantly asbestos. Each one of them is a source of water pollution. It is bound to affect the aquatic life and the sea water itself. It may be that it would not do so immediately but over a period of time. It is a scientifically established fact that the ship with all its infrastructure is likely to be a continuous pollutant of the marine environment.

D.G. Shipping had written different emails with regard to oil pollution on the coast of Mumbai caused by the incident of 4th August, 2011. It is on record that M/s. Libra Shipping Services which had signed the Charter Party Agreement with Respondent No. 7, in the mails had stated that due to escape or due to discharge of oil from the ship, the same was found floating around the beaches and bay, river, channels, creek and water ways within the coastal line waters of India. This had resulted in deleterious impact on fauna and flora in the area and eco-system as a whole. It also cause unlawful nuisance in and around the public place including but not limited to the beaches, bay river channels, water way and creek within the coastal water of India. On record it has also been pointed out that a Monsoon Advisory, 2009 was issued to the ship, drawing their attention which in turn stated that in the event of release of oil or hazardous substance or other wastes from the ship specified in the International Convention on Prevention of Pollution at Sea (MARPOL), 1973-78 and other relevant Conventions as applicable the master shall immediately report all such incidents to the concerned authorities, Indian Coast Guard, Maritime State Board. These authorities were required to send the first report on marine casualty on pollution incident to DG Commencer

Mumbai. In other words, if the appropriate reports were sent by the master of the ship to the authorities, the extent of pollution could have certainly been controlled in a timely manner, if not entirely prevented. The oil could have been transferred to other ships thus preventing and controlling the marine pollution.

In co-ordination with Maharashtra Pollution Control Board, National Environmental Engineering Research Institute had conducted an environmental assessment of Mumbai oil spill from the ship in question. In this report, firstly, it was specified that the report was based upon a survey conducted by this institute. The methodology of assessment had been explained in the report. It refers to selective sampling, random sampling, systematic sampling, shoreline Sediment Monitoring and Assessment Methodology, etc. Beach fauna and coastal flora assessment was also done during the study. It noticed short term impact on sediments. Methodology of remote sensing also adopted. This detailed study also related to each of the beaches afore-stated. The report concluded that the cost of damage incurred as a result of the sinking of the ship and the oil spill was huge. Especially the evaluation of the cost of environmental damage comprehend the technical factors like type of oil, physical, biological of economic characteristic of the coast, weather and sea conditions, spill amount, time and year of spill, response methodology and effectiveness are to be taken into consideration. The damage assessment could be ecological, social and economic. Then the report proceeded further to say that the damage mentioned in the report cannot be equated in rupee term due to the fact that there are many indirect damages which are intangible. Studies have also shown that effects of oil spill can have wide ranging impacts that can lead to long lasting environmental disasters. The oil spill may impact the environment by physical, smothering organism, chemical toxicity, ecological changes, indirect effects. Besides all these, the oil spill particularly at the beaches can also adversely affect the tourism.

100. We may, at the cost of repetition, now again refer to the Report of NEERI-2013 and the other studies on the subject. The MV RAK Carrier, which sank nearly 20 Nautical Miles off the Mumbai coast on 4th August, 2011, due to water ingress, was carrying 340 tonnes of Bunker oil (290 tonnes of Furnace Fuel Oil and 50 tonnes of Low Sulfur High Flash High Speed Diesel (LSHFHSD) oil) at the time of accident. As per the NEER Report the spillage of fuel oil from was reported on 6th August, 2011 from sunken vessel [NEERI (2013), Environmental Assessment of Mumbai Oil Spill from MV RAK Carrier, Final Report 42pp]. The continuous trail of the oil leak from the vessel was observed up to 12 Nautical Miles, being very thick oil up to 1 nautical mile, thick layer of oil up to 2 Nautical Miles and there after only oil sheen was seen till 12 Nautical Miles, during initial period of accident. Though prearrangement were made to combat oil spill, considerable amount reached shoreline of Bandra, Gorai, 5-6 km stretch of Alibaug coast, along Juhu beach where large oil patches were observed. The spilled fuel oil also traveled to different other coast line of the Mumbai Metropolitan region (MMR) and nearby areas like Madh, Aksa beach etc. On 7th August, 2011 as well, continuous trail of spilled oil was observed up to 12 Nautical Miles, very thick layer up to 1 nautical mile and thick layer up to 2 Nautical Miles and thin layer or oil sheen thereafter along 12 Nautical Miles. On 8th August 2011 oil trail was observed up to 5 to 8 Nautical Miles as compared to 12 Nautical Miles earlier. The tar balls were observed at the mouth of the estuary near Alibaug as at Dadar and Bandra bandstand silvery patches of oil sheen were seen. Oil leakage continued next day with fresh oil and tar balls reported at Gorai and Juhu beach. Signs of spilled oil were also seen at INS Kunjali, Colaba, and about five Nautical Miles from Mahalaxmi temple.

101. The NEERI Report further points out that the multirate visualization of oil spread areas procured from National Remote Sensing Centre (NRSC) Hyderabad was used to

understand local dynamics and spatial distribution of spilled oil along the nearest coastline. On 9th August 2011, continuous band (Green) of oil was seen distributed through 18 o 43'21"N, 72 o 16'04"E to 19 o 04'11"N, 72 o 35'28"E, drifting toward entire shoreline of Mumbai. On 10th August continuous slick (Red) was seen drifting towards Juhu and other southern coastlines of Mumbai (18 o 42'39"N, 72 o 14'45"E to 19 o 08'57"N, 72 o 34'15"E). Some broken patches (Red) were also seen heading towards Gorai, Madh and Aksa beaches (19 o 10'23"N, 72 o 34'32"E to 19 o 17'41"N, 72 o 39'59"E). On 11th August 2011 two patches of slick (Blue) were drifted from the sunken ship-one towards southern coastline i.e. towards beaches of Alibaug (18 o 44'03"N, 72 o 19'59"E to 18 o 39'54"N, 72 o 29'30"E) and the other towards coastline of Juhu, Dadar areas (18 o 55'23"N, 72 o 32'47"E to 19 o 06'53"N, 72 o 42'36"E). On the day of 13th August 2011, more oil slicks (Sky blue) drifted towards shoreline into broken patches towards Alibaug coastline (18 o 40'26"N, 72 o 15'18"E to 18 o 39'58"N, 72 o 24'05"E) and some comparatively smaller patches headed in the direction of Juhu beaches (19 o 06'16"N, 72 o 41'49"E to 19 o 05'25"N, 72 o 43'09"E). Three patches (Maroon) were seen on 16th August 2011, two headed towards Juhu (18 o 40'48"N, 72 o 14'18"E to 18 o 45'42"N, 72 o 22'39"E) and southern part of Mumbai (18 o 51'39"N, 72 o 29'32"E to 18 o 57'28"N, 72 o 32'56"E) and the third showed movement towards Alibaug region (19 o 05'36"N, 72 o 37'38"E to 19 o 08'10"N, 72 o 38'59"E).

102. According to the NEERI Report, the impact of oil spill on different regions varied depending upon the locations in close vicinity of oil spill as well as extent of spread. Juhu, Gorai, Aksa and Madh were distinctly impacted, while Marve and Alibaug beaches show comparatively less impact. Oil slick movement indicate that though it was closer to south Mumbai locations such as Colaba, Navy Nagar etc, the impact was not high. The open sandy beaches of Juhu were severely impacted from the oil spill. Thick patches were seen along the shoreline, with high density of tar balls in various area of beach. Oil soaked debris was also seen accumulated in patches along the stretch of Juhu beach. The stretch of 5.80 km. was severely affected due to spilled oil along the Juhu beach.

103. On the basis of assessment of the oil spill condition the NEERI observed that even after a month of incident, shiny oil spots were prominently visible together with oil soaked debris along the coastline of Juhu beach. Madh Sandy beaches of about 2.60 km showed patches of oil along the shoreline with tar balls. After a month, tar ball aggregates were seen along the beach, but no visible oil was seen near inter tidal zone and on bed rock of the Madh island. About 2.0 Km stretch of sandy beach of Aksa showed high level impact of oil spill. Oil sheen on accumulated water along with high density of tar balls were seen along the entire shoreline. Tar ball aggregates and large oil clumps were visible even after one month. The entire stretch of 1.90 km of Gorai Beach had high level impact with Tar ball clumps and melted tar balls. Tar balls were clearly visible along the sandy coastline of Gorai. Even after a month some patches of melted oil mixed with the sand were also seen in this area. Marve beach was least impacted and only few tar balls were seen during assessment. The entire stretch of 5.40 km of Alibaug beach, comprising of sandy beaches, lower areas of water (during low tide) as also non-sandy area like bedrocks were impacted, however the impact was not severe.

104. A critical assessment of the NEERI 2013 Report reveals that the NEERI Team, which was assigned the job of assessing the environmental impacts of the Oil Spill from the MV RAK has, unfortunately, shown total negligence to the work assigned to it. Except for reporting the geographical coordinates of the spread of the oil spill, the team has not even bothered to calculate the total area where the oil spill spread after the

accident, which could have been done quite easily from the satellite data available with the team. Leaving aside the data on impact on the aquatic community vis-a-vis the oil spill, even the basic data regarding the plant and animal community of the affected area are lacking in the report. Even though the Report has been prepared and submitted in April, 2013, the discussion is frozen in time to September, 2011; it does not deliberate on anything post-September, 2011. It seems the team was only interested in knowing whether the oil spill touches the coast line or not and nothing else. Under these circumstances, in order to know whether the oil spill has any impact on the marine community and if yes, to what extent, we are left only with one choice, that is to take help from studies made in other parts of the world in respect of similar cases.

105. Sanders et al (1980) conducted an exhaustive study spread over several years on the impact of oil spill caused by the barge 'Florida' that ran aground early in the morning of September 16, 1969 on a rocky shoal off Fasset's Point, West Falmouth, Massachusetts, and spilled 50,000 to 700,000 liters of Number 2 fuel oil into Buzzards Bay. The oil spread over more than 1000 acres, including four miles of coastline [see Sanders et al (1980) Anatomy of an oil spill: long-term effects from the grounding of the barge Florida off West Falmouth, Massachusetts; J. Marine Research 38(2): 265-381]. As per their study within twelve hours after the spill, marine animals began to die in great numbers. Mortality was most severe close to the accident site and least and of shortest duration at the more distant offshore stations. Faunal changes matched in intensity and duration the gradient of pollution by #2 fuel oil from the Florida, but were only occasionally related to granulometry of the sediments. The fauna in Wild Harbor River was unstable in density, diversity, and composition. Fluctuations in composition were successional. After more than five years the fauna there had only slightly recovered. Even if the fauna began to recover in diversity and density, the animals continued to suffer the ill effects of the oil; Physiological and behavioral disorders caused by the oil resulted in impairment of growth and reproduction, and in death.

106. Loya & Rinkevich (1980) reviewed the research studies conducted during 1975-1980 on the impact of oil pollution on the coral reef communities [Loya & Rinkevich (1980), Effects of Oil Pollution on Coral Reef Communities Marine Ecology-Progress Series 3: 167-180]. According to them oil pollution should be considered not only with a view toward short-term but also chronic effects. However, little attention is given to what happens with the oil once it is out of sight. Community structure and species abundances of marine organisms may change for long periods of time following a single oil spill and perhaps even more so in areas subjected to chronic oil pollution. Thus, 12 years after the Tampico Maru' accident, abundances of certain species were still different from previous abundances (Mitchell et al., 1970), and 11 years after a spill caused by the wreck of a tanker in Casco Bay, Maine, residues of hydrocarbons which could be traced to the tanker were still present at the wreck site (Mayo et al., 1974). Loya & Rinkevich (1980) conclude that there is growing evidence to show the detrimental influence of oil pollution on coral-reef communities. According to them laboratory experiments and long-term field studies in the Red Sea witness detrimental effects of oil pollution on reef corals, such as complete lack of colonization by hermatypic corals in reef areas chronically polluted by oil, decrease in colony viability, damage to the reproductive system of corals (smaller number of breeding colonies, decrease in number of ovaria per polyp, fewer planulae per coral head and premature planulae shedding), lower life expectancy of planulae and abnormal behavioural responses of planulae and corals. Other detrimental effects on reef corals caused by crude oil, mainly reported from the Caribbean, included lower growth rates, direct damage to tissues, thinning of cell layers and disruption of cell structure damage to tactile stimuli and normal feeding mechanisms, excessive mucus secretion leading to

enhanced bacterial growth and eventual coral destruction [see Loya & Rinkevich (1980) Effects of Oil Pollution on Coral Reef Communities Marine Ecology-Progress Series 3: 167-180].

107. Matkin et al (2008) studied the impact of the oil spill on the killer whale population. The oil spill was caused by running aground of the supertanker 'Exxon Valdez' on March 24, 1989, on Bligh Reef in northeastern Prince William Sound, Alaska, spilling 42 million liters of crude oil, the largest oil spill in USA history [Matkin et al (2008) Ongoing population-level impacts on killer whales *Orcinus orca* following the 'Exxon Valdez' oil spill in Prince William Sound, Alaska Marine Ecology Progress Series Vol. 356: 269-281; doi: 10.3354/meps07273]. Storms and currents drove the oil through the western portion of the Sound and westward to Kodiak Island and the Alaska Peninsula, nearly 900 km from the spill site. According to them one resident pod (a group of individuals from a single female) the AB Pod, and one transient population, the AT1 Group, suffered losses of 33 and 41%, respectively, in the year following the spill. Sixteen years after 1989, AB Pod had not recovered to pre-spill numbers. Moreover, its rate of increase was significantly less than that of other resident pods that did not decline at the time of the spill. The results of this study underscored 3 key aspects of killer whale behavior and ecology that leave them highly vulnerable to natural or anthropogenic disasters such as oil spills. First, free-ranging killer whales do not or cannot detect or avoid crude oil sheens at the water's surface and are thus susceptible to inhalation of vapors and/or oil, skin contact, and, especially in the case of mammal-eating transients, to ingestion. Second, it is clear that resident killer whale pods, even under optimal conditions, may take decades to recover from the impacts of an oil spill or other disturbance, particularly if reproductive females and/or juvenile females are lost. Third, in a small, isolated and threatened population like AT1, a major environmental perturbation can greatly hasten the decline toward extinction.

108. From the above discussed cases, it becomes quite apparent that oil spill has significant negative impacts on the marine ecology, particularly on the aquatic community. Impact of immediate nature includes the mortality of different animal species, both microscopic and macroscopic invertebrates like mollusks, arthropods, echinoderms, etc. and vertebrates, especially fish. Long term impacts include the change in the community structure caused mainly by changes in physiological and biological behavior of different species in the community due to differential impact of the oil spill.

109. It may be noted that not only the spilled oil, that spreads over the water surface and also forms tar balls, affects the aquatic community, even the dispersants used for controlling the oil spills have been shown to be harmful for the organisms living in the area. As per NEERI Report around 7390 liters of Oil Spill Dispersant (OSD) and 1500 liters of Type-III OSD were used during the oil spill control operation, which continued from 8th August till 23 August, 2011. The use of oil dispersants is a controversial countermeasure in the effort to minimize the impact of oil spills. The risk of ecological effects depends on whether oil dispersion increases or decreases the exposure of aquatic species to the toxic components of oil. For example Ramachandran et al (2004) have reported an increase in exposure of fish to hydrocarbons with dispersion for all the three oils used by them for their experiment. They opined that the risk of Polycyclic Aromatic Hydrocarbons' (PAH) toxicity to pelagic species of fish, especially to sensitive life stages such as eggs and larvae, is enhanced by chemical dispersion. [Ramachandran et al (2004), Oil dispersant increases PAH uptake by fish exposed to crude oil Ecotoxicology and Environmental Safety, 59: 300-308].

110. From the above analytical examination of the various studies, it is evident that the Report of NEERI-2013 requires a critical analysis as the assessment in this Report lacks complete discussion and appropriate conclusions. Thus, it will not be possible for the Tribunal to wholly rely upon the Report of NEERI-2013. The other studies and reports cumulatively and clearly show that the oil spill has caused serious damage and degradation to the marine environment. The loss is not what has been actually suffered so far but it would have adverse impacts even in the future as well. Ship:

111. The Head of the Department of Marine Science, Annamalai University, Tamil Nadu had also submitted two reports i.e. Interim Report and Final Report in furtherance to the order of the Tribunal which primarily dealt with pollution resulting from ship itself and the cargo (coal). When the matter was being heard, the Tribunal on 8th July, 2013 passed the following order:

"During the course of the hearing, Learned counsel appearing for the parties pray for further time to answer the following:-

- a) Whether the sunk ship per se with its components excluding the fuel oil is likely to cause water pollution.
- b) Whether the coal in a heavy quantity in the sea water would cause water pollution or not.
- c) If the both above questions are answered in the affirmative even then does the resulting pollution loses its impact because of huge quantity of water (sea water).
- d) Whether India is a party to any international treaties that deals with sinking or abandonment of ships in the high seas or the territorial water of any country.

In the meanwhile Notice also be issued to the Department of Marine Science, Anna Malai University, Chennai and to head of its Department to be present on the next date of hearing and submit a Report on the above questions to this Tribunal. Registry to issue Notice to the said University today itself by email fax and telephonically. Ministry of Shipping to file its Affidavit within two weeks from today. List on 01st August, 2013."

112. In furtherance to the above order, initially an interim report was submitted and thereafter a final report. It provided an answer to the above question. It was stated that, if the duration was short, then the chemical substances in the ship would have a lesser pollution impact. However, referring to The International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), it was stated that cases of pollution from noxious liquid substances, harmful substances and garbage from ships would cause pollution. One negative side, the sunken ship contains metallic parts, which over the years may become corroded to the point where they are liable to start leaking toxic substances. Some of these toxic substances, such as mercury, are not biodegradable and can cause contamination of the food chain in the ocean. It was also noticed that ship wrecks and waste dumping into the Ocean are among the sources of marine pollution.

113. Studies have shown that it can also have irreversible effects on marine ecosystem. Data from oil spills and laboratory research indicate that the egg and larva forms of many species are especially sensitive to petroleum hydrocarbons, even in an

extremely small quantity and at low concentration and that the impact on many life stages of numerous species, especially birds and fur-bearing marine mammals such as seals, sea lions, and sea otters, can be severe. And long term exposure to low concentrations can sometimes be as harmful as acute, short term exposure to higher concentrations. Some 75% of sunken wrecks date back to the Second World War; their metal structures are ageing and their metal plates are deteriorating, thus threatening to release their contents into the ocean due to the effects of corrosion. The mechanism of steel and iron rates of corrosion in under-water wrecks are reasonably well understood (MacLeod, 2002). Corrosion will affect the marine growth by reducing the level of dissolved oxygen, which in turn affects the salinity and water temperature.

114. Besides what we have stated above, one of the adverse impacts of the sunk ship is release of asbestos from the ship with the passage of time. This would be consumed by the fishes and other species in the sea water which will have a double disadvantage. Firstly, it would harm such species themselves and secondly, it will then travel in the food chain reaching human beings. Having dealt with the pollution resulting from the ship and oil spill, now let us also examine the adverse impacts of the ship's cargo on the marine environment.

In this regard, it may be noticed that in furtherance to the order of the Tribunal dated 8th July, 2013, the two reports submitted by Annamalai University also dealt with the pollution resulting from 60054 MT of coal in the ship, which is now lying on the seabed since 4th August, 2011. The ship in question was chartered by Respondent No. 6. Admittedly, Respondent No. 6 is the owner of the consignment. Reports submitted by Annamalai University show that coal is a heterogeneous material and varies widely in texture and content of water, carbon, organic compounds and mineral impurities. Its constituents include potential toxicants such as polycyclic aromatic hydrocarbons (PAHs) and trace metals/metalloids. When sufficient quantity of coal is present in the marine environment, it will certainly have physical impact on organisms, similar to those of other suspended or deposited sediments. Coal often contains a wide range of pollutants including antimony, arsenic, mercury, lead and other elements that are toxic even at low concentration. There is every possibility that the pollution effects may be dissipated in the long run due to the presence of large quantum of sea water. The pollution effect gets diluted with increasing distance from the sunken ship. However, local damage to biodiversity, to endangered critical habitats nearer to the sunken site is inevitable at the time of accident and this includes physical damage also. It is also stated in the report that in the present case, the ship was carrying 60054MT of coal, mined from Indonesia and the coal is assumed to be of the bituminous type with higher heat content, containing several inorganic and inorganic chemicals including toxic ones. Many of these chemicals may disperse or leach from coal spilled by the ship upon contact with water. There are studies referred in the report which are inconclusive. It is also stated that physical effects of coal can have more immediate effect on the biota than any potential toxic effects. Though toxicological effects of coal have received little attention and this aspect needs research intervention on biological response to coal especially at higher levels of biological organization.

115. At this stage, we may also refer to the impact of dumping of coal on the marine environment based on different studies and conventions.

116. A Panama-flagged cargo ship named MV RAK Carrier sank nearly 20 Nautical Miles off the Mumbai coast on 4th August, 2011, due to water ingress. The geographical position of the sunken ship is 18o 46'29"N, 72o 29'19"E.

117. The 1982 United Nations Convention on the Law of the Sea (Article 1.1.4) defines marine pollution as "the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities". The ship sinking accident is said to have led to the pollution of the marine environment on three counts: (a) Dumping of the cargo on the ship, i.e., coal in to the sea; (b) Release of the Fuel oil stored on board and the resultant oil spill and (c) wreckage of the ship itself, which contained different materials used in its fabrication, i.e., metallic parts, asbestos, wooden and PVC material and paint coatings.

118. Coal, a naturally occurring combustible solid, is one of the most important and abundant energy sources of the world. From its introduction 4,000 years ago as a fuel for heating and cooking, to its 19th and 20th century use in generating electricity and as a chemical feedstock, coal, along with oil and natural gas, has remained an important source of energy. Coal is a heterogeneous material and different forms vary in their physical and chemical properties.

119. The American Standards Association (ASA) and the American Society for Testing Materials (ASTM) has established four coal classes or ranks--anthracite, bituminous, sub-bituminous, and lignite-based on fixed-carbon content and heating value measured in British thermal units per pound (Btu/lb). Anthracite, a hard black coal that burns with little flame and smoke, has the highest fixed-carbon content, 86-98%, and a heating value of 13,500-15,600 Btu/lb. Bituminous coal has 46-86% fixed-carbon content and a heating value of 11,000-15,000 Btu/lb. It is the most abundant economically recoverable coal globally and the main fuel burned in steam turbine-powered electric generating plants. Sub-bituminous coal has 46-60% fixed-carbon content and a heating value of 8,300-13,000 Btu/lb. The fourth class, lignite, a soft brownish-black coal, has also 46-60% fixed-carbon content, but the lowest heating value, 5,500-8,300 Btu/lb.

120. Coal has been traded by sea at least since Roman times. Transport of coal by sea (including international trade) is dominated by hard coals, bituminous types in particular. The latter are used for electricity generation ('thermal' or 'steam' coal) and for industrial processes, particularly the manufacture of steel ('coking' coal). Anthracite is the least abundant of the world's coal stocks and consequently represents only a very small part of world trade in coal, despite its high energetic and economic value. From a chemical standpoint, coal is a heterogeneous mixture of carbon and organic compounds, with a certain amount of inorganic material in the form of moisture and mineral impurities. The composition of a bituminous coal by percentage is roughly: carbon, 75-90; hydrogen, 4.5-5.5; nitrogen, 1-1.5; sulfur, 1-2; oxygen, 5-20; ash, 2-10; and moisture, 1-10. In addition to its predominant elemental building block, carbon, coal contains a multitude of inorganic constituents that may greatly affect its behaviour in, and interactions with, the environment. These chemical properties not only affect the behaviour of a specific type of coal in its intended use, but also significantly determine its behaviour in the environment.

121. With the decrease of the global oil resources, coal has become more attractive for electricity production and accordingly its maritime transport has increased significantly over the years. Concomitant with increase in its maritime transport, risk of collier accidents and sinking of large quantities of unburnt coal into the marine habitat has increased. Presence of such huge quantities of coal on the sea bed and its impact on the

marine ecology vis-a-vis marine pollution has attained great importance as such accidents are bound to affect the economic resources of a country. Knowing how coal behaves when immersed in seawater could indeed provide much useful information to implement accurate emergency responses. The coal under transportation generally has a particle size of 0-50mm. The ways in which trace elements are bound within different minerals in product coal mean that the surface area available for leaching is dependent on the particle size distribution. Furthermore, fine particles of coal are likely to float and/or form 'froth' on the surface, therefore the particle size distribution is also likely to indicate the percentage of coal that may initially be entrained in local currents and removed from a bulk carrier accident site [Lucas & Planner (2012), Grounded or submerged bulk carrier. The potential for leaching of coal trace elements to seawater, Marine Pollution Bulletin 64 (2012) 1012-1017]. Coal particle sizes <0.25 mm formed 'froth' on the seawater surface. These size fractions are likely to be entrained by local currents and transported away from a grounded/submerged bulk carrier, particularly with a hull breach. Results also indicate that all coal particles <0.5 mm, are likely to be suspended and would be particularly susceptible to transport by ocean currents. The mass of coal that floats means that approximately 15.5% of the cargo may be potentially lost to ocean currents. The negative impact of fine particles of coal on fish growth is consistent with the response of marine fish to increased suspended sediments which is thought to be caused by visual impairment leading to reduced prey capture success and increased foraging time and energy expenditure. Post mortem investigation on the coal-exposed fish by Berry et al (2016) revealed coal in the alimentary tracts, which was mistakenly ingested and could have physically blocked normal feeding and digestion contributing to starvation and debilitation. In addition, suspended coal affect the fish respiration by clogging the gills filaments [Berry et al (2016), Simulated coal spill causes mortality and growth inhibition in tropical marine organisms. Sci. Rep. 6, 25894; doi: 10.1038/srep25894].

122. As coal settles out of suspension onto the sea bed, its most direct effect is likely to be smothering of animals and plants. Deposition of coal on the sea bed is bound to cause changes in the physical environment, particularly the character of the substratum, and give rise to indirect effects on benthic organisms. These may include infilling of rocky crevices that act as important habitats for benthic organisms such as crabs and lobsters [Shelton (1973), Some effects of dumped solid wastes on marine life and fisheries: in North Sea Science, NATO North Sea Conference, Scotland (Goldberg, ed.) MIT Press, 415-436] and reduced sediment stability due to the relatively high credibility of coal particles, making the sediment less suitable for animals to live in.

123. Unburnt coal can be a significant source of acidity, salinity, trace metals, hydrocarbons, chemical oxygen demand and, potentially, macronutrients to aquatic environments, which pose potential hazards to aquatic organisms [Cheam et al. (2000), Local impacts of coal mines and power plants across Canada. II. Metals, organics and toxicity in sediments. Water Quality Research Journal of Canada 35, 609-631]. A fraction of these compounds may be leached from coal upon contact with water, such as during open storage or after spillage into the aquatic environment. In the marine environment, significant impacts of acidic leachates are unlikely, due to the vast buffering capacity of seawater bicarbonate. While coal-generated salinity may not be important for the marine environment from a mass-loading perspective, the elemental composition of coal pile runoff may differ from sea water.

124. As a decomposition product of ancient plants, coal contains virtually every element found in living plant tissues, including trace metals. Metals may be present as dissolved salts in pore waters, as metallo-organic compounds, or as mineral impurities

[e.g., iron in pyrite, Iron sulphide (FeS), and zinc in sphalerite, Zinc sulphide (ZnS)]. Many studies have indicated links between the minerals present in coal and the concentration of particular trace elements [see Ward (2002), Analysis and significance of mineral matter in coal seams. *International Journal of Coal Geology* 50, 135-168]. For example, Arsenic (As), Cadmium (Cd), Lead (Pb), Mercury (Hg), Antimony (Sb), Selenium (Se), Thallium (Tl) and Zinc (Zn) are often associated with sulphides and, therefore, show strong correlations with, for example, pyrite content of coal. Chromium and a number of other elements tend to associate with aluminosilicates, and strontium and barium are often found in the presence of carbonates and aluminophosphate minerals. Trace elements in coal of major concern include Arsenic (As), Boron (B), Cadmium (Cd), Mercury (Hg), Molybdenum (Mo), Lead (Pb), Selenium (Se), Sulphur (S), while those of minor concern include Chromium (Cr) Copper (Cu) Nickel (Ni) Vanadium (V) Zinc (Zn) Fluorine (F), Chlorine (Cl). No leaching from coal to seawater was observed for Se, Hg, Sn and Cr. There was net removal of As, B and V from seawater, that is, these elements were adsorbed to the coal resulting in a lower concentration in seawater. Leaching from coal to seawater was observed for Cd, Cu, Pb, Mn, Mo, Ni and Zn [Lucas & Planner (2012) Grounded or submerged bulk carrier. The potential for leaching of coal trace elements to seawater, *Marine Pollution Bulletin* 64: 1012-1017].

125. Unburnt coal contains uranium (U) and thorium (Th), and a variety of radioactive isotopes from the natural decay series of ^{238}U , ^{235}U and ^{232}Th , along with traces of ^{40}K . Concentrations of Th and U for most types of coal show a range of 0.5-10 ppm and 0.5-20 ppm, respectively [Swaine (1990), *Trace Elements in Coal* London: Butterworths]. There are no explicit studies in the literature on the aqueous leachability of radioactivity from unburnt coal, such as from storage piles, but it is reasonable to assume that the released radioactivity will be lower than in fly ash, where the entire coal matrix is destroyed. McDonald et al. (1992), conducting a nationwide survey of radioactivity in coastal U.K. sediments, found a 710-fold concentration of ^{238}U relative to sea water in sediments at a site receiving coal spoils from a local colliery. Concentration factors for ^{210}Pb (Lead) and ^{210}Po (Polonium) were approximately 1900, compared with 300-650 for a nearby, coal-free sediment sample. Given that concentrations of radioactive elements in coal are of a similar order of magnitude as in soil or shale, and assuming a similarly low bioavailability, biological effects from the traces of radioactivity in coal can be considered highly unlikely [Ahrens & Morrissey (2005), *Biological Effects of Unburnt Coal in the Marine Environment*, in: *Oceanography and Marine Biology: an Annual Review* (Gibson et al Editors) 43: 69-122]. There is, however, little published evidence demonstrating direct toxic effects of unburnt coal to marine organisms and communities. This paucity of evidence seems to uphold the hypothesis that unburnt coal is an ecotoxicologically relatively inert substance [Chapman et al. (1996) Coal and deodorizer residues in marine sediments -- contaminants or pollutants? *Environmental Toxicology and Chemistry* 15: 638-642]. Given the extensive compositional heterogeneity of coal and the diversity of weathering and exposure conditions, it seems improbable that coal as a whole can be labelled as 'toxicologically benign'.

126. As the previous discussion has shown, coal contains a plethora of compounds that may be leached upon contact with water and that have the potential to cause toxic effects to aquatic biota. The amount of material that is leachable crucially depends on the coal type, mineral impurities and leaching conditions. For example, the majority of inorganic impurities are typically present as particulate minerals, discrete from the coal macerals (Ward 2002). Whether potentially toxic components of coal actually exert a negative impact on aquatic biota is determined by their bioavailability and the

concentration they attain in the receiving environment. Thus, even though trace metals may be leached from coal piles, their concentrations after dilution by large volumes of water, such as coastal seas, may become negligible compared with other sources. Furthermore, formation of insoluble salts upon contact with sea water, complexation by dissolved organic matter in sea water or in coal leachates, adsorption onto particle surfaces, or redox reactions that result in changes of speciation or solubility may render metals leached from coal biologically unavailable. Metals and metalloids that are readily soluble under low pH conditions, such as Cd, Cu, Pb, Zn and As may become insoluble upon contact and dilution of leachates with alkaline sea water. On the other hand, particle-bound metals and metalloids that are soluble under alkaline conditions, such as Cr and Se, may become solubilised upon contact with sea water. No leaching from coal to seawater was observed for Se, Hg, Sn and Cr. There was net removal of As, B and V from seawater, that is, these elements were adsorbed to the coal resulting in a lower concentration in seawater. Leaching from coal to seawater was observed for Cd, Cu, Pb, Mn, Mo, Ni and Zn. [Jaffrennou et al (2007) Simulations of accidental coal immersion; Marine Pollution Bulletin 54: 1932-1939].

127. The majority of the organic carbon in coal is believed to exist in the form of large, 5- or 6-membered rings of aromatic molecules and aromaticity increases with rank or coalification. Among the aromatic compounds, polycyclic aromatic hydrocarbons (PAHs) are of particular environmental interest, because they can be mutagenic or can exert narcotic toxicity when present in bioavailable form. Studies of aquatic sediment contamination in the state of Washington (U.S.) have found high PAH concentrations within a few kilometres of industrial facilities or river systems draining coal-bearing strata [Barrick & Prahl (1987), Hydrocarbon geochemistry of the Puget Sound region: III. Polycyclic aromatic hydrocarbons in sediments. Estuarine Coastal and Shelf Science 25: 175-191]. PAHs that commonly occur in measurable concentrations in coal leachates include naphthalene, phenanthrene, chrysene, fluoranthene and pyrene. Because PAHs are poorly water soluble and highly hydrophobic, they have a high affinity for particles, and especially for the hydrophobic domains of organic matter or condensed forms of carbon [Bucheli & Gustafsson (2000), Quantification of the soot-water distribution coefficient of PAHs provides mechanistic basis for enhanced sorption observations. Environmental Science and Technology 34: 5144-5151]. According to Chapman et al (1996) coal appears to be a contaminant rather than a pollutant in aquatic sediments; that is, constituents such as PAHs do not readily leach, are not bioavailable, and do not adversely affect exposed biota. However, the presence of coal can, if undetected, result in highly variable PAH measurements in sediments and in unrealistically high TOC concentrations.[Chapman et al (1996) Coal and Deodorizer Residues in Marine Sediments-Contaminants or Pollutants? Environmental Toxicology and Chemistry, Vol. 15, No. 5: 638-642].

128. Coal particles may bind and stabilise PAHs either by incorporation into the solid coal matrix or by strong adsorption to surfaces that probably act quite similarly to activated carbon [Ghosh et al. (2001), Particle-scale investigation of PAH desorption kinetics and thermodynamics from sediment. Environmental Science and Technology 35: 3468-3475]. The presence of coal in aquatic sediments can therefore result in elevated and highly variable PAH and total organic carbon (TOC) concentrations to which equilibrium partition theory does not apply. In a study of freshwater fishes, Carlson et al. (1979) observed that rainbow trout and fathead minnows (*Pimephales promelas*) exposed to centrifuged coal leachates for 3-24 wk showed no increased mortality, no diminished growth and no pronounced PAH bioaccumulation. However, a lower spawning success was observed in fathead minnows during 2-4 wk exposures [see Ahrens & Morrissey (2005) Biological Effects of Unburnt Coal in the Marine

Environment, in: *Oceanography and Marine Biology: an Annual Review* (Gibson et al Editors) 43: 69-122].

129. Concerning the organic matter dissolved from coal into seawater, it was shown that the presence of coal induces an increase in the organic matter content in seawater, which leads to an oxidative degradation of organic matter, and hence to the consumption of oxygen [Johnson & Bustin (2006), *The fate of coal dust in the marine environment. International Journal of Coal Geology* 68: 57-69]. Thus, an accidental immersion of coal in seawater could lead to anoxic conditions, which could be detrimental to the local benthic flora and fauna. Jaffrennou et al (2007) during their experiments observed that, whenever coal was immersed into seawater, the seawater fluorescence intensity increased two-or threefold, which corresponded to a humic acid release from coal into seawater which could reach 2 mg/L, while natural seawater contains only 0.85 mg/L humic acids. They further opined that although the concentration of humic acids during their experiments was not high enough to induce anoxic conditions, in case of a massive accidental coal immersion, concentrations of humic acids could become sufficient to induce anoxic conditions [Jaffrennou et al (2007), *Simulations of accidental coal immersion; Marine Pollution Bulletin* 54: 1932-1939]. According to Sanchez (2014) the PAHs, studies demonstrate that "Sampling, analysis, and interpretation of PAHs in sediments from such sources as coal remain problematic" (Chapman et al, 1996). However, recent studies show that the amounts released by coal into the seawater are too low to be detectable (Jaffrennou et al., 2007). Therefore it is not likely that they will have any significant impact on the ecosystem. [Sanchez (2014), *Coal as a marine pollutant, World Maritime University (Malmo, Sweden) Dissertations Paper* 479].

130. From the foregoing discussion it is apparent that the unburnt coal, when accidentally dumped in large quantities in to the sea, does have some negative impact on the marine ecosystem. (a) It directly affects the marine community by smothering the individuals coming underneath the dump. (b) Fine coal particles remain suspended in the water column and thus affect the respiratory as other metabolic activities of the animals living in the area. (c) Suspension of the fine coal particles in the sea water affects the entry of the solar radiation and hence the photosynthetic activity of the marine plant community. (d) Release of chemical constituents of the coal in to the sea water affects the chemical equilibrium of the water, which in turn is bound to have impact on the community structure of the marine organisms.

Besides the above studies, a study had been undertaken in relation to the contamination resulting from coal ship that sunk in 1891 near Victoria, British Columbia. Studies in 2009 and 2012, for instance, indicated that the sunken vessel remains to this day a source of poly-cyclic aromatic hydrocarbons (PAHs) and other pollutants. In a 2009 literature review, researchers at the University of Vienna observed that PAHs from unburnt coal may be an important source of aquatic contamination, but they concluded that the issue has "not been well studied". Studies have also shown that oxidizing coal particles reduce the oxygen available for clams, mussels, barnacles and crab larvae, with damage reverberating up the food chain. In fact, the bottom-dwelling invertebrates affected by coal dust make up a large share of the seasonal food for salmon and herring. The sea creatures are more likely to be affected by physical changes to their environment, such as by dredging, than by oxygen depletion.

131. A study in Canada found that coal in the water can be a source of acidity, salinity, trace metals, hydrocarbons, chemical oxygen demand and potentially, macro-nutrients. Studies have also shown that materials in coal can react with seawater to produce

"localized ocean acidification". All these factors pose potential hazards to aquatic organisms, such as by increasing the risk of invasive species taking hold, as a 1996 study found.

132. The presence of coal which contains heavy metals capable of acidic reaction in the sea water is hazardous to the environment. The studies have also concluded that it can harm the flora and fauna living on the sea bottom. In other words, the damage and resultant pollutant pollution will not only affect life in the sea, at the sea bottom and the shore but would also harm the marine environment by getting it introduced in the food chain. The effects of these pollutants are likely to increase with the passage of time and it is not in the interest of the environment that the ship and the cargo should be permitted to lie in the sea bottom indefinitely. This pollution has two aspects. First is the damage that has already been done due to oil spill, sunken ship and cargo and the other is that it is a continuous source of pollution for times to come. Thus on the one hand, it would require orders in relation to the pollution already caused and on the other it calls for preventive and precautionary measures for controlling the pollution of marine environment futuristically.

In light of the above detailed discussion, we conclude the issue that there was definite pollution of marine environment by oil spill. The sunken ship alongwith its cargo caused pollution and is a continuous source of marine pollution. It needs to be removed from the seabed of the Contiguous Zone of the Indian water at the earliest.

Issue No. 7: What compensation, damages and which of the Respondents are liable to pay for causing pollution and degradation of marine environment in terms of Sections 15 and 17 read with Section 20 of the National Green Tribunal Act, 2010?

133. Article-235 of the United Nations Convention on the Law of the Sea provides that the States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief, in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction. The States shall co-operate in the implementation of existing international law. This Article, clearly, provides the ambit and scope of fulfilment of international obligation in relation to protection and preservation of marine environment as well as for providing compensation for marine environmental pollution effectively and expeditiously. This object has been incorporated in Indian laws, under the Acts of 1958 and 1976. As far as the legal system in India is concerned, the Act of 2010 squarely applies to the situation at hand. The provisions of the Act of 2010 are very unambiguous and clearly demonstrate the legislative intent for providing of compensation expeditiously and effectively. Section-17 provides that where any damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule-I, the person responsible shall be liable to pay such compensation for such injury or damage as may be determined by the Tribunal. The Act of 1986 is a Scheduled Act under the Act of 2010. Section-15 provides for relief and compensation to the victims of pollution and other environmental damage arising under enactments in Schedule-I as well as restitution of property damaged and for restitution of the environmental damage caused as a result of the polluting activity or accident. Sub-section-3 of Section-17 mandates that the Tribunal shall in case of an accident apply the Principle of No Fault. Section-20 states that the Tribunal shall, while passing an order, apply the principles of Sustainable Development, the Precautionary Principle and

the Polluter Pays Principle. In other words, these accepted principles of environmental jurisprudence have statutory application to the decision of cases, by the Tribunal. The payment of compensation for damage caused as a result of the oil spill is, dependent to a large extent upon the legal regime applicable within the country in which the incident or damage occurs. We are really not concerned in the present case with the payment of compensation. It is sufficient to say that the Principle of Strict Liability or No Fault Liability would place onus on Respondents No. 5, 7 and 11 in relation to the oil spill and pollution caused by sinking of the ship. While in relation to the cargo, Respondent No. 6 is responsible for the pollution caused by it as it is the owner of the said cargo. From the evidence on record, it is clear that it was not a case of ship sinking accidentally simpliciter, as the attendant circumstances and documentation show that the intent of the concerned Respondents was susceptible to doubts. Their conduct in not rendering adequate help and providing requisite machines and tools is indicative of the earlier condition of the ship which, even at the time of inspection subsequent to purchase did not reflect the true position, which was that the ship was not in a seaworthy condition. Further, the conduct of the Respondents No. 5, 7 and 11, when the ship was in trouble right from Singapore onwards, indicates that they were not really concerned with the ship sailing free of technical or mechanical deficiencies or defects. They only wanted the ship to continue with its voyage and stuck to that stand till it sank on 4th August, 2011. It was not Respondents No. 5, 7 and 11 that took steps for saving of the ship and its crew, but it was admitted on the part of the Master of the ship that VTMS at Mumbai came to their rescue in a big way and saved the life of the entire crew, however, the ship could not be saved. These facts do cast a shadow of doubt on the intent of these Respondents. Resultantly, a heavier onus lies upon these Respondents to prove their pleaded stand, with respect to the Principle of Strict Liability. The Principle of No Fault Liability by its very virtue places the onus upon the Respondents to prove that they had adhered to the Doctrine of Due Diligence, and had carried out the essence of the Precautionary Principle and that the accident occurred despite all reasonable care and caution and efforts on their part. This is quite conspicuous by its very absence in the documents and affidavits filed by these Respondents. The present case has another feature that is, it is not a case of a particular claimant bringing his action before the Tribunal for compensation of the loss or injury that he has suffered. It is a case where the Applicant had approached the Tribunal in larger public interest and complaining of large scale pollution caused by oil spill and further pollution caused by sinking of the ship and its cargo. This is a continuing cause of action. The pollution persists.

We have referred to various reports right from the Accident Investigation Report prepared by the Mercantile Marine Department on the orders of DG Shipping, the NEERI report and Annamalai University report and international studies, which show that there was definite pollution caused by the oil spill which adversely impacted the sea water, shore, aquatic life, mangroves and tourism on five different beaches of Mumbai. These reports have also shown that the persistent lying of the ship in the sea along with its cargo, the coal would, besides having immediate adverse impact on the marine environment, will with the passage of time negatively impact the marine environment as well, in different ways. The coal may contain hazardous substances like arsenic, mercury, thallium and asbestos, which will eventually enter the food chain. The higher concentration could have short term effects and the milder concentration could have their own adverse impacts in the long run.

134. Thus, the pollution is not limited to an individual or a singular item. It is a problem of multiple sources of pollution, resulting from oil spill, sinking of the ship and its cargo. It will affect the marine environment that includes sea water, aquatic life, shore, seabed, mangroves, tourism and public life of the people living at the shore. The

adverse impacts were not seen only at a singular point but at multiple beaches as afore-stated.

135. The adverse impacts on the environment due to oil spill and sinking of ship with cargo as already noticed, may manifest themselves in the form of physical smothering of organisms, chemical toxicity, ecological changes and other indirect effects. The purpose of no fault or strict liability is not only to place the onus upon the Respondents in the application, but also to ensure that what is proved by the Applicant in relation to damage and degradation of marine environment is restored and restituted or in any case is prevented from further damage and re-occurring pollution. After receiving the distress call from the master of the ship, VTMS had initiated action immediately without losing any time. They involved the Indian Navy, their helicopters, other ships and a large number of workers, firstly, to prevent and control the damage by oil spill which they were not able to remove in its entirety despite their efforts and secondly, to save the crew and the ship. They could save the crew but the ship could not be saved because of its massive technical faults, to the extent that the pumps for restricting the water ingress were non-functional and no help had been provided by Respondents No. 5, 7 and 11 to the ship for 16 days before 4th August, 2011 when it sank in the Contiguous Zone of Indian waters. It is clear from the document placed on record that six ships have been deployed by the Coast Guard besides employing various helicopters, etc. A sum of Rs. 3,11,86,954.43/- (Rupees Three Crore Eleven Lakh Eighty Six Thousand Nine Hundred Fifty Four and Forty Three Paise only) had been spent by the Coast Guard as capitation charges and towards the pollution response efforts undertaken by them. This amount does not include the cost of the effort made by all the deployed forces on different accounts for prevention and control of pollution and in trying to prevent the ship from causing damage to the marine environment.

136. The damage caused by pollution, cannot be computed in terms of money with exactitude and precision. This has to be on the basis of some hypothesizing or guess work as is necessary to be applied in such cases. For instance, the damage caused to the aquatic life, mangroves, sea shore and tourism are incapable of being computed exactly in terms of money. The mangroves were destroyed as a consequence of the oil spill. The quantum of leakage of oil during the first few days, was at the rate of 1-2 tonnes per hour and on August 12, 2011 according to the Applicant, the rate of oil spill was 7 to 8 tonnes per day as per the information of the Coast Guard. It shows the massive oil spill from the ship. Thereafter the ship has been lying at the present location (20 Nautical Miles from the baseline of the Mumbai shore). The ship itself has deadweight 63695 with a cargo of 60054 MT and with all other metallic and non-metallic substance such as asbestos, machines, oil, grease and other elements including the coal as cargo of the sunken ship. All this is bound to cause, in fact, has caused pollution of marine environment. The environment as already noticed under the Indian jurisprudence has been given a very wide meaning and practically covers whatever one can think the term may include.

The claims worth Rs. 3,79,97,450.57/- (Rupees Three Crore Seventy Nine Lakh Ninety Seven Thousand Four Hundred Fifty and Fifty Seven Paise only) have also been filed by the Shipping Corporation of India, Oil and Natural Gas Corporation Limited and Directorate General of Lighthouse in relation to what they had spent during these operations to save the ship, the crew and to prevent further damage. Thus, making a total of Rs. 6,91,84,405/- (Rupees Six Crore Ninety One Lakh Eighty Four Thousand Four Hundred and Five only). These were also placed on record by the DG Shipping. Thus, these claims are also part of the damage and pollution caused and control and prevention measures taken by different authorities on and after 3rd and 4th August,

2011. The Supreme Court of India in the case of M/s. Sterlite Industries (India) Ltd. v. Union of India, MANU/SC/0284/2013 : 2013(4) SCC 575, had evoked the Principle of Strict Liability and imposed a penalty of Rs. 100 crores for operating without obtaining consent of the Board under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, on an approximate basis and the court further said that in relation to pollution caused it was not possible to determine the same with exactitude. The Supreme Court of India in the case of M.C. Mehta vs. Kamal Nath and Ors. MANU/SC/0189/2002 : AIR 2002 SC 1515 by invoking the Polluter Pays Principle after issuance of show cause notice, imposed the pollution fine in addition to payment for restoration of environment and ecology. A sum of Rs. 10 lakh was directed to be paid on account of environmental fine and the Supreme Court did not compute the same on some calculations as it was a general charge payable for polluting the environment.

Evoking the 'Precautionary Principle' in light of the facts of the present case, it is evident that Respondent No. 5, 6, 7 and 11 have completely ignored this principle and did not take due precautions at the appropriate time. Even after the accident, none of them have taken any steps to remedy the wrong since they are content with the dumping of the ship along with its cargo in Indian waters as they have not suffered any liability in that regard. This is a patent and flagrant violation of the Precautionary Principle. Serious pollution has been caused by the oil spill and by the sinking of the ship and the cargo.

137. The pollution is diverse and has serious impact on marine environment. This pollution is a continuing one and does not come to an end with the pronouncement of this judgment. They have a liability to remove the ship wreck and the cargo from the present location. Thus, in our considered view, besides Rs. 6,91,84,405/- (Rupees Six Crore Ninety One Lakh Eighty Four Thousand Four Hundred and Five only), they should be held liable to pay Rs. 93,08,15,595 crores as environmental compensation (inclusive of Rs. 6,91,84,405/- spent on mitigation measures) for default, negligence in the upkeep of the ship and cargo and the persistent pollution caused by them to the marine environment, particularly on the shore, to tourism and public health at large in terms of Sections 15 and 17 read with Section 20 of the Act of 2010. Thus, it will be a total of 100 crores. They have a liability to pay for their default, negligence and the pollution that they have already caused on the basis of the Polluter Pays Principle. Accordingly, we answer this issue against the Respondents holding that Respondents No. 5, 7 and 11 shall be liable to pay a total sum of Rs. 100 crores as environmental compensation. Respondent No. 6 is liable for environmental compensation for chartering a ship of this kind, dumping of 60054 MT of coal in the Contiguous zone of Indian waters. We have already discussed in detail that coal contains hazardous substance and is likely to cause pollution and is causing pollution of the marine environment. Thus, he would be liable to pay environmental compensation of Rs. 5 crores. The amount paid shall be utilised for restitution and restoration of the damage done as well as to ensure that no further pollution results from the sunken ship and the cargo. These amounts would also be utilised for restoring the mangroves to their original position or plantation of accepted species in that area. The Committee appointed under this judgment would recommend a complete plan in that behalf. Respondent No. 5, 7, 11 would be liable to pay Rs. 100 crores and Respondent No. 6 would be liable to pay Rs. 5 crores and all of them jointly and severally would be responsible for removing the ship wreck and cargo from its present location.

Issue No. 8: Whether the insurance company incurs no liability whatsoever in the facts and circumstances of the case?

Issue No. 9: What is the effect of the winding up proceedings pending before the Romanian Court in relation to the insurance company on the proceedings pending before this Tribunal?

138. We would prefer to take up issues No. 8 and 9 for discussion together as they relate to a common entity that is, the insurance company, its liability and the consequences of winding up proceedings pending in a Romanian Court in relation to the insurance company. According to the Applicant, Respondents No. 6, 7 and 11, Respondent No. 9- M/s. Astra Asigurari Insurance are liable for all the consequences arising in relation to the voyage or sinking of the ship in question. Respondent No. 5 as originally impleaded had filed a very short affidavit and later on after amendment, Respondent No. 5 was ordered to be proceeded against ex parte. Thus, there is no stand of Respondent No. 5 in relation to these issues. However, Respondents No. 7 and 11 have common interest with Respondent No. 5 in relation to the ship in question as already held. Respondent No. 9 had filed a detailed reply and its submission in relation to these issues. It claims that it is not liable under the contract of insurance. It is stated that insurance is a contract of good faith. A breach of the party's obligation under the contract must absolutely render such contract void. Respondent No. 5 has voided the insurance contract by breaching the warranty undertaken. As a result of the loss of seaworthiness of the ship over the course of voyage, Respondent No. 9 has disclaimed its liability. It is then averred that under the pay to be paid clause, for instance, when a claim is raised, the ship owner has to make such payment, and only subsequently can such owner recover from the insurer. Lastly, it is submitted that the Respondent No. 9 - M/s. Astra Asigurari Insurance is being liquidated and the liquidation proceedings are ongoing in a Romanian Court and as a consequence the proceedings before this Tribunal, with respect to Respondent No. 9, should not be proceeded with any further.

It has been pleaded and we have already held that Respondents No. 5, 7 and 11 are responsible for the ship, its activities including the sinking of the ship. Respondent No. 6, besides these Respondents, is liable and responsible in relation to the cargo of the ship. There is no dispute to the fact that on 27th April, 2011, which is a date subsequent to the purchase of the ship, its inspection, etc. that the ship was insured by policy No. 024CT/27.04.2011. Under this policy, the Ship-Rak Carrier had been insured. The policy was taken in the name of Delta Shipping Marine Services S.A.-Respondent No. 5 as it is the assured and owner of the Ship. The managers in the policy were described to be Saqer Logistics FZE and it was reinsured by Syndicate of LLOYD'S plus other reinsurers, through RFIB Group Limited, London, UK. It was a P & I policy subject to the terms and conditions of the policy. It covers pollution risks and pollution fines as well. Maximum limit under the policy was US\$10,000,000 a.o.a.o.o. in respect of claims under Section 2.10 US\$ 100, 000a a.o.a.o.o. in respect of claims for pollution fines under Section 2.20. The insurance specifically provided for deductible warranties. It was a contract of indemnity insurance between the two. Clause-16 of the policy which was the "Pay to be Paid" clause states that, unless and to the extent that the insurance company otherwise decides, all claims against the insurer are paid in the first instance and then reimbursed by the company. This insurance was subject to valid class, statutory and ISM certificate throughout the insurance contract. The 'exclusion' clause excludes any and all claims in respect of oil pollution arising out of any incident to which the United States Oil Pollution Act, 1990 and CERCLA are applicable and excluding claims for liabilities towards crew to the extent that they are recoverable under the relevant State's Social security insurance or equivalent. The insurance policy was to remain valid for 90 days, even if the insurance company cancel the policy it has to give three months written notice. In other words, the policy would remain valid for three months despite notice of termination. The policy specifically deals with any claim

of wreck removal within 30 days extension period which should be attributable to deficiencies put forward in the post entry condition survey which will not be reimbursed which obviously means that prior to 30 days period, the wreck claim would lie. It is also on record that vide its letter dated 14th February, 2012, the insured had submitted its claim which was replied to vide mail dated 17th February, 2012 stating that the insurance company had no liability in light of the incident report issued by the Master, Chief Engineer and Chief Officer to Yellow Gate Police Station showing that the owners are in breach of clause-14 of the policy. Clause-14 provides for warranty and states that at the commencement of each insured voyage the insured shall be bound to effect due diligence to make matter insured seaworthy in all respects for the purpose of the particular adventure.

139. According to the Respondents including Respondent No. 11, the liability of Respondent No. 9 is absolute and there is no breach as alleged. On the contrary, it is submitted that, the policy is in force and even the Bunker Blue Card was valid for the period from 28th April, 2011 to 27th April, 2012 and ship capsized on 28th August, 2011. On the date of the ship casualty, there was valid insurance for pollution damage and in absence of registered owner, the Respondent is liable to pay for pollution damage.

140. In view of the above facts, it is clear that there was valid insurance policy and a Bunker Blue Card as on the date of the accident when the ship sank. There is no document placed on record before us by Respondent No. 9 to show the policy to be terminated or cancelled for breach of warranty clause or otherwise three months prior to the date of the accident. The reliance placed on record in the mail dated 27th February, 2012 is without any basis. This document was created subsequent to the accident and it cannot in any way retrospectively affect the terms and conditions of the policy. There is no doubt to the fact that there is some suspicion as to the genuineness and correctness of the certificates and documents issued for voyage of the ship from Indonesia to Dahej in Gujarat. However, the ship was insured prior to the date of inspection and the Charter Party Agreement was entered into on 28th May, 2011. The insurance company in any case ought to have inspected all the requisite documents. It was for the insurance company to carry on its inspections to satisfy itself whether the ship was seaworthy and could be insured or not. At this belated stage, the stand of the insurance company would not stand the test of legal scrutiny and would be only considered as an afterthought. Respondent No. 5 had lodged his claims and informed the insurance company of the accident. However, in terms of Clause-16, the 'Pay to be Paid' clause, liability of the insurance would be that of reimbursement of that claim, that is, the insured has to pay the damages first and thereafter claim the reimbursement from the insurance company. This submission of the insurance company has substance. Once the party has entered into a contract, it is bound by the terms and conditions of the contract. The discretion solely lies with the insurance company to decide whether it would entertain the claim otherwise than as a claim of reimbursement or not. None of the parties can turn around and challenge the content of the insurance policy. These contents would bind the parties for the entire transaction. While we reject the plea of the insurance company that it had terminated the policy, we accept the claim that in terms of Clause-16 of the policy they have a liability only of paying claims by way of reimbursement.

Protection and Indemnity Insurance certificate issued by Respondent No. 9 in favour of Respondent No. 5 is for insuring the registered owner against all third party unquantified risks such as pollution damages. It is compulsory for a sea going vessel to have such insurance. In fact, this is also mandatory under the Act of 1958. It is also the

contention that in absence of the registered owners, the liability to compensate towards pollution damage rests on Respondent No. 9, as there was a P & I insurance policy in force on the date of the accident. Limits of insurance have been fixed, to which we have already referred above. The Bunker Blue Card is a proof that the policy was current and insurance was in place. The liability of damages on account of pollution and other events has to be the responsibility of Respondent No. 5 and/or the respondent No. 9. We have already held that the responsibility for different damages and environmental compensation lies upon Respondent No. 5, 7, 11 and 6, respectively. The liability of the insurance company to reimburse these claims cannot be disputed. However, how these claims are to be settled and paid would be a matter which possibly cannot be determined by this Tribunal as the policy is subject to Romanian law. The liability and payment with respect to Respondent No. 5, 7 & 11 will be determined under this judgment on one hand and Respondent No. 9 on the other, cannot be enforced before this Tribunal.

141. Now, dealing with the question that there are liquidation proceedings against the insurance company pending in a court in Romania under the provisions of Romanian law. The decision of the bankruptcy procedure has the effect of suspending the right of all judicial or extrajudicial actions and enforcement measures directed against the insurance/reinsurance receivables. We are afraid that the proceedings before this Tribunal would not be liable to be stayed because of winding up petition before the Romanian Court. First and foremost, the Romanian law and the orders of the Romanian Courts would not have any extra territorial jurisdiction and would not bind the Courts, Tribunals in India and/or the legal system of India. No treaty or law has been brought to our notice by any of the parties before us that the position in law is any different. Reference was also made to Section 446 of the Indian Companies Act, 1956 which is in pari materia to Section 279 of the Act of 2013. These provisions would come into play only when the winding up proceedings are pending before the Indian Courts under the Indian Legal System. It is undisputed that no proceedings are pending before any Company, Court or Forum in India, as far as Respondent No. 9 is concerned. It is also undisputable that Respondent No. 9 is not a company registered in India. At this stage, it also needs to be noticed that Respondent No. 9 had filed its main reply to the application on 8th January, 2013. Thereafter, it argued the matter on various occasions without any demur or protest. They conceded to the jurisdiction of the Tribunal and it was only, now, at the final stage that this objection was raised in the written submission filed on 23rd May, 2016. The objection firstly does not lie before this Tribunal as discussed above and secondly, even if it has any significance, by their conduct and specifically arguing the matter on different occasions without reservations they would be deemed to have waived any such objection, in fact and in law. Thus, in view of the above discussions, we partially answer the issue against Respondent No. 9 and partially in its favour. The liability of the insurance company, Respondent No. 9 to pay the damages is upheld while actual payment of the claim and its settlement will be on account of reimbursement and would be on the contracted term of "Pay to be paid". The present application is not liable to be stayed before this Tribunal due to pendency of winding up proceedings before the Romanian Court. In any case, no order of setting aside these proceedings by Court of any competent jurisdiction has been placed on record. The location of the ship falls within the ambit of the Contiguous Zone of India. Sovereign rights can be exercised in that zone though for a limited purpose.

The conclusions, directions and the relief-the parties to the present lis are entitled to:

Issue No. 10: The directions that are required to be issued in the present case?

Issue No. 11: Relief?

142. Having answered the issues in favour of the Applicant and against the respective Respondents, now we will deal with the final aspect of this judgment in relation to the above issues. From the analysis of the above findings, it is a clear case where negligence is attributable to Respondents No. 5, 6, 7 and 11. It is not a case of sinking of a ship by accident simpliciter, but it is a case where element of mens rea can be traced from the unfolding of the events that finally led to the sinking of the ship on 4th August, 2011. Non-rendering of requisite help/assistance by Respondent No. 5 and other persons interested and responsible, to the Master of the Ship, despite the fact that they had complete knowledge about the status of the ship prior to the occurrence of the incident on 4th August, 2011. Furthermore, these Respondents did not adhere to the Principle of Due Diligence pre-voyage, for which they had sufficient means and time. The ship had developed mechanical and technical snags at Colombo and Singapore and the Master of the ship had asked for help there during its onward journey. There is nothing on record to show that Respondent No. 5 and other Respondents provided timely assistance to the Master of the ship. It is also on record that there were repeated requests for help and for stoppage of the voyage in the meanwhile. During the entire duration, the owners and the other Respondents directed the ship to continue with its voyage, even though one of the pumps and a generator of the Ship had been rendered non-functional. This is really a case where the doctrine of res ipsa loquitor comes completely into play and the events speak for themselves to the extent that it hardly requires any further evidence to establish the element of negligence, carelessness and ill-design for sinking of the ship with the cargo itself. The reports on record exhibit the callous attitude of the persons interested in the ship towards its seaworthiness and safe voyage to Dahej in Gujarat. We have discussed in great detail all concepts of this case and have held that Respondents No. 5, 7 and 11 are liable for all the degradation, damage and pollution of marine environment and the consequences of the defaults in not complying with the Conventions and the law in force in the Indian Waters (Contiguous Zone). While Respondent No. 6, who had chartered the ship is responsible and liable for damage and pollution resulting from the cargo, for which, despite the fact that years have gone by, it has made no effort either to remove the cargo or even take the minutest preventive or pre-cautionary measures for controlling and preventing pollution of marine environment.

143. International Convention on Civil Liability for Bunker Oil Pollution Damage extends its application even to the Exclusive Economic Zone that runs upto 200 Nautical Miles. This Convention imposes liability upon the present ship owner, registered owner to pay damages for an incident, which has resulted in pollution as a result of leakage of bunker oil.

International Convention for Prevention of Pollution from Ships (MARPOL) 1973, as modified upto 1978 desires to achieve complete elimination of international pollution of marine environment by oil and other harmful substances and minimisation of accidental discharge of such substances. Under this Convention, the Respondents were required to take all measures to ensure that there was no pollution caused by oil spill.

Nairobi International Convention on the Removal of Wrecks, 2007 made it obligatory upon the State party and individuals to remove the wrecks and cargoes from the Exclusive Economic Zone. Wreck' included a sunken or stranded ship. 'Hazardous' was anything which may reasonably be expected to result in major harmful consequences to marine environment. 'Coal', as already indicated, contains hazardous substances, which upon chemical reaction are capable of polluting the marine environment. Annexures to

BASEL Convention clearly state that Antimony, Arsenic, Beryllium, Cadmium, Lead, Mercury, Selenium, Tellurium and Thallium are hazardous substances. This Convention clearly directs that the marine environment should be protected against such hazardous substances even in matters of transportation.

144. The Respondents in different capacities, i.e. owner, charterer, manager, a party interested and responsible, were under specific obligation to take appropriate measures and protect the marine environment. They have miserably failed to do so. On the one hand, these Conventions lay specific obligations upon these Respondents to take precautionary and preventive measures, while on the other the United Nations Convention on the Law of the Sea vests in a State, the right to exercise its sovereign rights to protect and preserve the marine environment in its Exclusive Economic Zone. In other words, the State has to take all possible steps in consonance with the law for protecting and preserving the marine environment in its Contiguous and/or even the Exclusive Economic Zone. This very Convention requires the States to take appropriate steps and adopt laws and regulations for implementation of prescribed rights and control the pollution of marine environment caused by dumping.

The synthesis and the essence of the International Conventions on the subject require that dumping should be discouraged in all events lest it becomes a regular feature for economic interests and an 'easy option' for disposing of ships which are not seaworthy. Thus, an approach which would help to suppress the mischief should be adopted.

145. On the true and purposive construction of all the International Treaties afore-referred and the laws in force in India relating to its Territorial Waters, Contiguous Zone and Exclusive Economic Zone, no country enjoys the privilege of sailing an unseaworthy ship to another country and dumping the same in the territorial waters, contiguous or economic exclusive zone of that country. Every country has a right to protect its marine environment. Dumping of a ship with its cargo would result in two distinct pollutions besides serious pollution arising out of oil spill. They are pollution by ship itself where it will affect the sea water and aquatic life resulting in pollution becoming part of the food chain and affecting public health, and repetitive possible damage to other ships enroute. The other is the pollution by cargo, as in the present case by coal, as chemical reactions will lead to release of toxic substances like Arsenic, Mercury, Tellurium, and Beryllium which are contained in it. The affected country has a right to ask for removal of the ship wreck in accordance with international conventions. Even the cargo needs to be removed. It is only in extraordinary circumstances that an alternative to removal can be considered. Amongst others but primarily on the ground that removal of wreck and cargo is likely to cause greater harm to ecology and marine environment. The attendant circumstances could be impracticability and absence of technical know-how etc. The determinative consideration would be the extent of impact on the environment.

Reverting to the statutory principles of law contained in the Act of 2010, it has to be noticed that in terms of Section 17 of the Act, it is the Principle of 'No Fault Liability' that has to be applied. Furthermore, Section 20 mandates that the Tribunal while passing the order and deciding the matters has to statutorily apply the Principle of Sustainable Development, Precautionary Principle and Polluter Pays Principle. Once these two provisions are read in conjunction, the obvious result is that the Principle of Strict Liability will have to be applied against the Respondents and they will become liable to pay the damages/environmental compensation and comply with other directions, on the basis of the Precautionary Principle and Polluter Pays Principle. The contentions raised by the respective Respondents have been found to be unworthy of acceptance by the Tribunal. In fact, the Respondents, particularly Respondents No. 5, 7

and 11 have decimated every rule relating to inspections, seaworthiness and certification. They essentially must suffer the consequences of their defaults and for causing marine environmental pollution. It may not be possible to state environmental compensation with exactitude, however, keeping in view that we have to apply the Principle of Strict Liability and the fact that the Respondents have failed to discharge their onus satisfactorily, the Tribunal has to adopt an approach to determine the compensation on the basis of what is just and fair, in addition to the specific costs incurred by the different agencies. The liability of the interested Respondents co-exists as joint and several. Wherever there is default in compliance with the law, it per se invites the liability for making good, the loss of and damage to the ecology and marine environment. The damage stands established not only to the aquatic life but also to sea water and the shore. There has been degradation and damage to the Mangroves, adverse impact on human and aquatic life on shore, tourism and activities of the fishermen. The oil spill caused substantial damage, it spread over the water surface and also formed tar balls affecting the aquatic community. Even the dispersants used for controlling the oil spill had been shown to be harmful for the organisms living in the area. It was because of the negligence and callous attitude of the Respondents that the specialized pollution control ship of the Indian Coast Guard, 'Samudra Prahari' was diverted from routine patrol and emergency towing ship Smit Lumba was directed to proceed to render assistance to the ship. Indian Navy had to deploy its ship and helicopter to save the ship and the crew, large forces of workmen were also employed. Having caused such tremendous damage and loss to the aquatic life and marine environment the Respondents are liable to pay Environmental Compensation. The reports on record clearly show that the documents in favour of the ship were issued in a biased manner and the ship was not seaworthy, right from the inception of its voyage. The accident investigation report, the report by NEERI and the report by Annamalai University show that there was serious marine pollution caused by the oil spill. They, inter-alia, also sufficiently indicate that continuous pollution will result from the ship and its cargo. The NEERI report had even stated that Sepias got killed due to the oil spill. It is a matter of common knowledge that other elements of the marine environment also got polluted as a result of the oil spill.

146. The Supreme Court of India, in the case of Sterlite Industries India Ltd. v. Union of India MANU/SC/0284/2013 : 2013 (4) SCC 575 had held that where the industry had violated the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and had operated without obtaining consent, it was liable to pay damages of Rs. 100 crores for the default period. The Court applied the Rule of Strict Liability but did not strictly compute the damages with exactitude. It only enforced the liability on general principle for awarding of damages for non-compliance to the law in force. In fact, any other approach would run contra to the Principle of Strict Liability. This judgment has been followed by the Tribunal in a large number of cases. Reference can be made to the cases of S.P. Muthuraman MANU/GT/0116/2015 : 2015 ALL (I) NGT Reporter (2) (Delhi) 170; Krishan Kant Singh v. National Ganga River Basin Authority(2014) ALL (I) NGT Reporter 3 (Delhi) 1 and M.C. Mehta v. Kamal Nath & Ors. MANU/SC/0189/2002 : AIR 2002 SC 1515. Thus, we are of the considered view that the determined damages of Rs. 100 crores should be paid by and recovered from Respondents No. 5, 7 and 11, jointly and severally while Respondent No. 6 is held liable to pay Rs. 5 crores as environmental compensation for dumping of the cargo in the sea and then failing to take any precautionary or preventive measures. The consignment of 60054 MT of coal has caused marine pollution and continues to be a cause and concern for environmental pollution. The Respondents are defaulting entities which have not complied with law and have adopted a most careless and reckless attitude in relation to protecting the marine environment.

147. This case is a fit case where we must spell out clearly the directions that should be issued by the Tribunal and the relief that should be granted to the parties. Therefore, we pass the following Order/Directions:-

1. On the true and purposive construction of the International Conventions and the statutory provisions afore-referred, no party from any country in the world has the right/privilege to sail an unseaworthy ship to the Contiguous and Exclusive Economic Zone of India and in any event to dump the same in such waters, causing marine pollution, damage or degradation thereof.

2 . The Ship (M.V. RAK Carrier) and its cargo should be removed by Respondents No. 5, 6, 7 and 11 or they should cause it to be removed within a period of six months from the date of submission of the Report of the Committee before the Tribunal.

3 . Respondents No. 5, 7 and 11 are held liable to pay environmental compensation of Rs. 100 Crores to the Ministry of Shipping, Government of India in terms of Sections 15 and 17 read with Sections 14 and 20 of the Act of 2010, for causing marine environmental pollution by sinking of the ship in the Contiguous Zone of Indian waters (Arabian Sea) at 20 Nautical Miles offshore Mumbai coast.

4. The above Rs. 100 Crores shall include the expenses incurred by the Coast Guard and other forces for the prevention and control of pollution in different ways, as stated above, caused by the oil spill and saving the crew etc. Out of this amount, a sum of Rs. 6,91,84,405 shall be adjusted and paid to the respective agencies.

5 . Respondent No. 6 is held liable to pay a sum of Rs. 5 crores as environmental compensation in terms of Sections 15 and 17 read with Sections 14 and 20 of the Act of 2010 for dumping 60054 MT Coal in the seabed and causing pollution of marine environment, in different ways as stated above.

6. The liabilities to pay environmental compensation as afore-directed are on account of and subject to adjustments, after the submission of the final report by the Committee.

7. We constitute the following Committee:-

- 1.** Additional Secretary, Ministry of Shipping.
- 2.** DG, Ministry of Shipping.
- 3.** Member Secretary, Central Pollution Control Board.
- 4 .** Senior Officer not below the rank of Inspector General from the Indian Coast Guard.
- 5.** Professor from Annamalai University.
- 6 .** Independent Expert to be nominated by the Ministry of Shipping, who is expert in removal and dismantling of ships.
- 7 .** Senior Scientist from the National Institute of Oceanography, Dona Paula, Goa.

8. A nominee from the National Physical Laboratory, Navrangpura, Ahmedabad, Gujarat who is well conversant with Geo-Chemistry.

8. The above Committee shall carry out the study and report to the Tribunal within one month from today, whether the removal of the ship wreck and cargo from the present location should be directed as per Conventions afore-referred and in the interest of marine environment and/or in the alternative, whether it is necessary to leave the wreck of the ship and its cargo to remain at the present location, again in the interest of the environment and/or it is not practically possible to remove the wreck of the ship and the cargo.

This Committee shall also recommend that if the wreck of the ship and cargo has to be permitted to lie at the present location in future, then the measures that are necessary to be taken in the interest of marine environment. Further, it shall state what compensation should be paid by the Respondents at regular intervals for preventing and controlling the pollution arising therefrom. This exercise should be completed within one month and a report positively submitted to the Tribunal.

This Committee appointed under this judgment would recommend a complete plan in that behalf.

9. We hold Respondent No. 9 liable for claims awarded in this judgment, however, on the Principle of 'Pay to be Paid'.

148. With the above directions and relief, as afore-ordered, this application stands disposed of with no orders as to costs in the peculiar facts and circumstances.

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ANNEXURE R-2

MANU/SC/0315/2019

Equivalent/Neutral Citation: 2019(2)BomCR901, 2019(9)FLT586, 2019 INSC 315, (2019)3MLJ396, 2019(4)SCALE218, (2019)18SCC494, [2019]4SCR995

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 5016, 8002-8003, 12326, 9227 of 2016, 1343 of 2017, 10995, 10993, 10994 of 2016, 2246 of 2018, 10992, 12157, 12152, 12156, 12158, 12160, 12159 of 2016, 4923-4924 and 14966 of 2017

Decided On: 05.03.2019Mantri Techzone Pvt. Ltd. **Vs.** Forward Foundation and Ors.**Hon'ble Judges/Coram:**

A.K. Sikri, S. Abdul Nazeer and M.R. Shah, JJ.

Counsels:

For Appearing Parties: Udaya Holla, Adv. General, Shashi Kiran Shetty, Maninder Singh, Dharuv Mehta, Mukul Rohatgi, Neeraj Kishan Kaul, R. Venkataramani, Sajan Poovayya, Kiran Suri, Basavaprabhu S. Patil, Sr. Advs., Mahesh Thakur, Anuparna Bordoloi, Savyasachi Sahai, Vipasha Singh, Gaurav Goel, V.N. Raghupathy, Advs., Devasa & Co., Devashish Bharuka, Justine George, Prabhas Bajaj, Kanika S., Ravi Bharuka, Sarushree, Satish Kumar, Gaurav Agrawal, George Thomas, Anurag Gharote, A.S. Bhasme, Abid Ali Beeran P., Nishanth Patil, Rohit Prasad, Ananth Suresh, S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Shekhar G. Devasa, Bhuvanendra K.V., S. Mahesh, Manish Tiwari, Luv Kumar, Praveen Vignesh, Priyadarshi Banerjee, Pratibhanu S. Kharola, Saransh Jain, Meka Venkata Rama Krishna Madhavam Sharma, Sriparna Dutta Choudhury, Udayaditya Banerjee, Mahesh Agarwal, Ankur Saigal, Sarans Jain, Tanvi Manchanda, Nithin P., Priyanka M.P., E.C. Agrawala, S.J. Amith, Rithika Gambir, A. Shwarya Kumar, Vipin Gupta, Parikshit P. Angadi, Chinmay Deshpande, Geet Ahuja, Parikshit Angadi, Anup Kumar, O.P. Bhadani, Rajesh Mahale, Anand Sanjay M. Nuli, Dharm Singh, Sandeep Grover, Pankhuri Bhardwaj and Pai Amit, Advs.

Case Category:

APPEAL AGAINST ORDERS OF STATUTORY BODIES - TRIBUNALS

JUDGMENT**S. Abdul Nazeer, J.**

1. These appeals have been preferred Under Section 22 of the National Green Tribunal Act, 2010 (for brevity 'NGT Act') challenging the judgment and order dated 07.05.2015 and 04.05.2016 respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short 'the Tribunal').

2. The Appellants in Civil Appeal Nos. 5016 of 2016 and 8002-8003 of 2016 are Respondent Nos. 9 and 10 in the Original Application No. 222 of 2014 (hereinafter referred to as 'the Respondent Nos. 9 and 10'). The said Application was filed by Respondent Nos. 1 to 3 herein (hereinafter referred to as 'the applicants'). Respondent Nos. 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as Respondent Nos. 1 to 4 in the application. Respondent Nos. 12 and 13 herein were subsequently impleaded in the application (for short 'the impleaded Respondents').

3. The State of Karnataka has filed Civil Appeal Nos. 4923-4924 of 2017, challenging the general condition and direction No. (1) contained in the order of the Tribunal dated 04.05.2016. The other appeals have been filed by different entities, who were not parties before the Tribunal challenging the order of the Tribunal dated 04.05.2016 insofar as it directs a buffer/green zone of 75 meters in respect of lakes, 50 meters in respect of primary Rajakaluves, 35 meters in case of secondary Rajakaluves and 25 meters in case of tertiary Rajakaluves with retrospective effect. According to them, they are adversely affected by the aforesaid condition in the impugned order.

4. The applicants filed O.A. No. 222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short 'the KIADB') to Respondent Nos. 9 and 10 vide Notifications dated 23.04.2004 and 07.05.2004 respectively for setting up of Software Technology Park, Commercial and Residential complex, hotel and Multi Level Car Parks. The Master Plan formulated by the Bangalore Development Authority (for short the 'BDA'), identifies the allotted land as 'Residential Sensitive', though the same land was identified in the Draft Master Plan as 'Protected Zone'. It was further contended that the Revenue Map in respect of properties as referred in the Land Lease Agreements has multiple Rajakaluves (Storm Water Drains). The development projects in question sit right on the catchment and wetland area which feeds the Rajakaluves, which in turn drains rain water into Bellandur Lake. The project will thus encroach two Rajakaluves of 1.38 acres and 1.23 acres each.

5. The Satellite Digital Images of the area from the year 2000 to 2012 show encroachment upon these Rajakaluves, as well as the manner in which they are covered by the construction. The State Level Expert Appraisal Committee (for short 'SEAC'), which was to assist the State Level Environment Impact Assessment Authority (for short 'SEIAA'), held its meetings on various dates to examine the project. It had required the Appellant No. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short 'BWSSB') for the project in question. It was also observed that the project lies between the Bellandur Lake and the Agara Lake. Respondent No. 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11.11.2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

6. It was alleged that NOC was issued covering an area of 17,404 sq. mtrs. whereas the built up area, as noted by SEAC, is 13,50,454.98 sq. mtrs. Respondent No. 9 obtained NOC from BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent No. 9 had approached the Karnataka State Pollution Control Board (for short 'the KSPCB') for obtaining clearance, which was granted on 04.09.2012 subject to the fulfillment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by the KSPCB to Respondent No. 9 also contained a condition with regard to obtaining Environmental Clearance from the Competent Authority and no construction was to commence until such clearance was granted.

7. Applicants further contended that Respondent No. 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of SEAC in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over the ecologically sensitive area of the lake catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities, the applicant submitted that the conversion of

land from 'Protected Zone' to 'Residential Sensitive Area' is violative of the law. The project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the Rajakaluves. Respondent Nos. 9 and 10 started to level the land by filling it with debris, thus causing damage to the drains. The conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the Rajakaluves have been violated. It has in turn, affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is in violation of Wetlands (Conservation of Management) Rules, 2010 (for short 'Rules of 2010').

8. It was submitted that SEIAA in its meeting dated 29.09.2012, decided to close the file pertaining to Respondent No. 10 due to non-submission of requisite information and the application thereof was rejected in November, 2012. Despite the rejection, Respondent No. 10 commenced construction on the project in full swing.

9. The applicants also relied upon the findings of the Joint Legislative Committee, constituted under the Chairmanship of Shri A.T. Ramaswamy in the month of July 2005, which stated that there were 262 water bodies in the Bangalore city in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 kms. of Rajakaluves have been encroached upon in several places and have become sewage channels. The applicants also relied on the Report of the Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil suggesting immediate remedial action in order to remove encroachments on the lake area and the Rajakaluves and preservation of the lakes in and around Bangalore city. It was further contended that other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore Metropolitan Area which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tank is not polluted. The Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas. The applicants claim to have obtained monitoring report of the project by Respondent No. 5, Ministry of Environment and Forests, through RTI on 21.08.2013. The report dated 14.08.2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that the Bellandur lake is not affected by the construction and operational phase of the project. This approach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

10. The Lake Development Authority (for short 'the LDA'), after inspection in the catchment area of the Bellandur Lake submitted its report dated 12.06.2013 which confirms that the project will have disastrous impact, including deleterious effect on the Bellandur Lake. This report was brought to the notice of KIADB. The LDA has also opined that the land should be classified and maintained as sensitive area. The KIADB called upon Respondent No. 9 to comply with the Rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, Respondent Nos. 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardizing the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 meters buffer zone is to be created around the lakes and 50 meters buffer zone to be created on either side of the Rajakaluves. It was also pleaded that Respondent No. 9 had obtained the NOC from

BWSSB only with regard to residential units and not for the entire project and that the Environmental Clearance obtained by Respondent No. 9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of Respondent No. 9 alone is approximately 4.5 million liters per day, i.e. 135 million liters per month, which is more than what the BWSSB supplies to the entire Agaram Ward. The construction of respective projects by Respondent Nos. 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of the Bellandur lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the water bodies.

11. Respondent No. 9 in its objections contended that it was incorporated with the objective of establishing an Information Technology Park and R & D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. It had submitted the proposal to establish such Information Technology Park and other facilities to the State Government and requested for allotment of land for the project. Its proposal was considered in 78th High Level Committee meeting held on 21.06.2000 and after examining the proposal, it was approved by the Government on 06.07.2000. Before the State High Level Committee, it had informed that its requirement was 110 acres of land, 25 MW of power from the Karnataka Power Transmission Corporation Limited (for short the 'KPTCL'), and four lakh litres of water per day from BWSSB. The lands for the project were initially notified vide Notification dated 10.02.2004. Subsequently, the lands were allotted vide letter dated 28.06.2007 for which Lease-cum-Sale Agreement was signed on 30.06.2007. Considering the overall development of the State of Bangalore, this Respondent proposed a Mixed Use Development Project consisting of an Information Technology Park, residential apartments, retail, hotel and office buildings with a total built up area of 13,50,454.98 sq mtrs. The Project was conceived as a zero waste discharge project. The project is located one and a half kms. away from the southern-side of the Bellandur Lake. Towards the North, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the East, lies the Project of Respondent No. 10 and Another developer is also developing a project on the western side. It has obtained sanction plan on 04.07.2007 which was renewed from time to time.

12. Respondent No. 9 claims that it has obtained NOC from Airport Authority of India on 09.04.2010. Bharat Sanchar Nigam Ltd., vide its communication dated 16.04.2010, granted clearance for the project construction. BWSSB, vide its communication dated 26.04.2011 issued NOC for portion of the proposed construction to be built. The Bangalore Electricity Supply Company Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental Clearance was granted by SEIAA vide communication dated 17.04.2012. The Director General of Police has issued NOC and KSPCB vide order dated 04.09.2012 accorded its consent for construction of the said project subject to the conditions stated therein. It was further stated that after grant of the Environmental Clearance on 17.09.2012, the same was published in the leading newspapers "Kannada Prabha" and "The Indian Express" on 12.03.2012 and 14.03.2014 respectively.

13. It submitted a modified the building plan which was approved by KIADB vide its letter dated 30.08.2012, which was valid up to 10.08.2014. It started the construction

of the project in November 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the Environmental Clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs. 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.

14. Respondent No. 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and *mala fide*. It had submitted a revised proposal in respect of its project in question and to obtain fresh clearance on 31.08.2007 with an investment of Rs. 179.22 crores. The State High Level Committee had cleared the project which was communicated to it on 25.01.2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains and secondary storm water drains that exist in its properties. It has clearances from various authorities, including Environmental Clearance and consent for establishment.

15. KIADB stated that after possession of the land was handed over to Respondent Nos. 9 and 10, one year time was granted for the implementation of the project which was extended from time to time. The building drawings were approved on 04.07.2007, and the modified building drawings were approved on 26.04.2011 and 30.08.2012 with specific conditions. In its meeting held on 16.07.2013, it was resolved to inform Respondent No. 9 to fully comply with the Ecology and Environment Rules and to obtain approvals from the LDA and KSPCB. LDA vide its letter dated 24.09.2013, had informed KIADB that the construction activity in the catchment area in the Bellandur Lake could drastically impact the Lake with deleterious effects and asked it to stop construction activity of Respondent Nos. 9 and 10. However, the validity of the building drawings was again extended up to 10.08.2014. The Lokayukta on 17.12.2013 had written a letter in respect of complaint filed by the South East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21.12.2013 to keep in abeyance the approval accorded and even the re-validations of plans. This was also informed to Respondent No. 9. The Board took a decision which was communicated to Respondent No. 9 on 02.01.2014, wherein it asked the Respondent No. 9 to stop all construction activities on the allotted lands. The said communication was challenged by Respondent No. 9 and on the stop-work notice, stay was granted by the High Court of Karnataka. The stop-work notice dated 23.12.2013 issued by Bruhat Bengaluru Mahanagara Palike (for short 'BBMP') was also stayed vide order dated 21.01.2014. The proposal submitted by Respondent Nos. 9 and 10 had been approved by the State Government. The land allotted to Respondent Nos. 9 and 10 does not consist of any Rajakaluves.

16. The LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only when certain newspaper reports surfaced during the month of June, 2013 and till that time it was in the dark. After the complaints, it inspected the Bellandur Lake and the Agara Lake on 12.06.2013 and prepared an inspection report. In the report, it was noticed that large scale construction activities were going on in the catchment area of Bellandur Lake and that there was a

change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB vide letter dated 06.07.2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31.08.2013, that Respondent No. 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23.09.2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it also communicated its objections to KIADB mentioning that construction activity would be in contravention of the directions of the Supreme Court. Despite these warnings, KIADB granted approval to the extension of the building drawings of the project in favour of the project proponents with certain conditions, like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed. Further, the natural sloping pattern of the project site was not to be altered and the lakes and other water bodies within and/or at the vicinity of the project area should be protected and conserved. Despite the objections, the plans were approved and approvals were extended from time to time. It has taken a categorical stand that the projects as approved by the KIADB would have adverse impact on Bellandur and Agara Lakes.

17. On the basis of the pleadings of the parties, the Tribunal framed the following questions for consideration and determination:

1. Whether the application filed by the applicants and supported by Respondent Nos. 11 and 12, is barred by time and thus, not maintainable?
2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?
3. Whether the present application is barred by the principle of *res judicata* and/or constructive *res judicata*?
4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petitions 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and
5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

18. The Tribunal by its order dated 07.05.2015 at Annexure A-2, disposed of the applications with the following directions:

1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal *inter alia* but specifically on the issues stated hereinafter:

- a) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
- b) CEO of the Lake Development Authority, Karnataka State.

- c) Chief Town Planner of BBMP, Bangalore.
 - d) Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.
 - e) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.
 - f) Dr. Siddharth Kaul, former Advisor to MoEF.
 - g) A Senior Officer from the National Institute of Hydrology, Roorkee.
- 2) Member Secretary of the Karnataka State Pollution Control Board shall act as the Convener of the Committee and would submit the final report to the Tribunal.
- 3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the water bodies with particular reference to lakes.
- 4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake, particularly Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify, if any Rajakaluves have been covered by the construction activities of Respondent Nos. 9 and 10 or by any of the projects in the area in question.
- 5) Committee should submit in its report, if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.
- 6) The Committee shall substantially notice if any of the conditions of the Environmental Clearance order in each case of Respondent Nos. 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.
- 7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The Committee shall also report, whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.
- 8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly in the city of Bangalore.
- 9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letters dated 4th July, 2007 and 22nd April, 2008

respectively. Further, the Committee would also report whether both Respondent Nos. 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing, etc. in terms of letters dated 11th October, 2013 and 3rd January, 2013, issued by the Karnataka Industrial Area Development Board to Respondent Nos. 9 and 10 respectively.

10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and water bodies.

11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both Respondent Nos. 9 and 10 are hereby restrained from creating any 3rd party interests or part with the possession of the property in question or any part thereof, in favour of any person.

12) The Committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the water bodies in the city of Bangalore.

13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the water bodies in and around of the area in question.

14) For the reasons stated in the judgment, Respondent No. 9 is liable and shall pay a sum of Rs. 117.35 crores, while Respondent No. 10 shall pay a sum of Rs. 22.5 crores respectively being 5 per cent of the project value, within two weeks from today. The said amount would be paid to the KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the Project Proponent in that area, after taking approval of the Tribunal.

15) We make it clear that the said Respondents would not be entitled to pass on the amount in terms of direction 14, on to the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly.

19. Feeling aggrieved by the said order, Respondent Nos. 9 and 10 filed Civil Appeal Nos. 4829 and 4823 of 2015 before this Court. This Court by its Order dated 20th May, 2015 passed the following order:

One of the main contentions raised by the Appellants in these Appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs. 117.35 crores against the original Respondent No. 9 (the Appellant in C.A. No. 4832 of 2015) and Rs. 22.5 crores against Original Respondent No. 10 (the Appellant in C.A. No. 4829/2015) is imposed.

On the aforesaid averment, we feel that it would be more appropriate for the Appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

With the aforesaid liberty granted to the Petitioners, the appeals are disposed of. Certain preliminary issues are decided against the Appellants which are also the subject matter of challenge. However, it is not necessary to deal with the same this stage. We make it clear that in case the said application is decided against the Appellants or if ultimately on merits, it would be open to the Appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment can also be raised.

The counsel for the Appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty. Mr. Raj Panjwani points out that the Tribunal has allowed the Appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties.

20. In relation to Issue No. 5, an opportunity of hearing was granted to the Respondents. The Tribunal passed order dated 06.04.2016 on these applications as under:

M.A. No. 603 of 2015 and M.A. No. 596 of 2015

These Applications have been filed on behalf of the Respondent 9 & 10 respectively. It is not necessary for us to refer to any details in view of the directions that we propose to issue in this case.

Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme Court of India primarily on the question of imposition of Environmental Compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf.

With the above directions the M.A. No. 603 of 2015 and M.A. No. 596 of 2015 stand disposed of without any order as to cost.

21. It is evident from the above orders that the Tribunal had granted opportunity to the parties to address it "limited question", as aforementioned. The Tribunal after hearing the parties passed an order dated 04.05.2016 as under:

General Conditions or directions:

1. In view of our discussion in the main Judgment, we are of the considered view that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP - 2015 provides 50m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake

which is certainly much bigger water body and its utility as a water body/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:

- (i) In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e. lakes/wetlands.
- (ii) 50m from the edge of the primary Rajkulewas.
- (iii) 35m from the edges in the case of secondary Rajkulewas
- (iv) 25m from the edges in the case of tertiary Rajkulewas

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents-Project Proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake development Authority shall carry out this operation in respect of all the water bodies/lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified by CPCB/MoEF.

3. Bangalore city receives treated potable water of 1360 MLD from river Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of ground water exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

- i. At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a pre-requisite for grant of EC.
- ii. All the project proponents should necessarily use only treated sewage water for construction purpose and this should

be reflected in EC as a condition for construction phase.

iii. Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

Specific Conditions/Directions for Respondent 9;

In addition to the above directions which should be equally part of EC condition in respect of Respondents Nos. 9 & 10, following specific conditions shall apply to Respondent No. 9:

i. Reclaimed area of the lake to the extent of 3 acres 10 guntas in survey No. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent No. 9 to the concerned Authorities immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.

ii. In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the Rajkalewa should be maintained as green belt.

iii. Several irrigation canals or tertiary Rajkalewas taking off from the Agara tank were passing through the area of Respondent No. 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between the Agara lake and the Belandur Lake, Respondent No. 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.

iv. The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic meters in the depth range of 0 to 9 meters. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by SIEAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur lake.

v. The Kharab land identified by Revenue Dept. admeasuring 1 acre 2 guntas should be demarcated and maintained separately as green belt.

vi. The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.

vii. In view of the heavy traffic load in the adjoining Sarjapur road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

10. Though, at the time of hearing prior to passing the Judgment, we had heard the parties on all aspects but still we have provided re-hearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent No. 9 calls for no variation and the Respondent No. 9 should be called upon to pay the said amount of Rs. 117.35 Crores determined under the judgment prior to commencement of any project activity at the site. Respondent No. 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent No. 10 and the fact that the remedial measures can more effectively be taken by the Respondent No. 10, we reduce environmental compensation payable by Respondent No. 10 to Rs. 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

General Directions:

1. We direct SEIAA, Karnataka to issue amended order granting Environmental Clearance within four weeks from today incorporating all the conditions stated in this judgment and such other conditions as it may deem appropriate in light of this judgment and Inspection Note of the Expert Members. The Project Proponents would be permitted to commence activity only after issuance of amended Environmental Clearance order.

2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting Environmental Clearance, this Judgment, Notification of 2006 and other laws in force.

3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the Authorities concerned are directed to incorporate such conditions in the projects to whom Environmental Clearance

and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other Lakes/wetlands in the city of Bengaluru.

4 . We hereby direct the State of Karnataka to submit a proposal to the MoEF for demarcating wetlands in terms of Wetland Rules 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and the MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.

5. Both the Respondents Nos. 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their Banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said Respondents.

6 . There is a serious discrepancy even in regard to the measurement of land as far as Respondent No. 9 is concerned. Admittedly the Respondent has been allotted and is in possession of land admeasuring 63.94 acres, though Environmental Clearance has been granted for 2,92,636.03 Sq. Meters which is equivalent to 72.22 acres. For this reason alone, Environmental Clearance cannot be given effect to. While issuing the amended Environmental Clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent No. 9 to submit a fresh layout plant and the entire project may be revised in accordance with law.

7. Both the Respondents (Project Proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended Environmental Clearance that would be issued.

8 . The amount of environmental compensation will be deposited prior to issuance of amended Environmental Clearance.

With the above directions, the Original Application No. 222 of 2014 and Misc. Applications Nos. 596/2016 and 603/2016 are finally disposed of while leaving the parties to bear their own costs.

22. Appearing for the Appellants in C.A. No. 5016 of 2016, Shri Mukul Rohatgi, learned senior Counsel, has submitted that the State Government in exercise of the power conferred under the Karnataka Industrial Areas Development Act (for short 'KIAD Act') declared the land in question as an industrial area. Thereafter, the land in question has

been acquired by the State Government in the year 2004. Following the acquisition, on 28.06.2007, the land was allotted to the Appellant by the KIADB. The SEIAA granted environmental clearance which was followed by public notice concerning clearance on 14.03.2012. Neither the allotment of land nor the environmental clearance was challenged before the Tribunal. Thus, none of the statutory decisions or processes, are the cause of action for the purpose of the application. The averments made in the original application does not satisfy or meet the requirements of Section 14(1) and (3) of the NGT Act and the original application does not spell out the cause of action relevant for the purpose of said provision. Since the statutory processes and clearances could not have been challenged for being hit by Section 14(3), the construction activities which were the alleged cause of action could not have been challenged. Therefore, the Tribunal ought to have held that the application was not maintainable.

23. Further the application is barred by limitation. Though environmental clearance was granted on 17.02.2012 and it was published in two leading newspapers on 12.03.2012 and 14.03.2012, modified plan was approved by the KIADB on 30.08.2012, the application ought to have been filed within six months from the date on which cause of action for the dispute first arose in terms of Section 14 of the NGT Act. The present application has been filed in March, 2014 which was much beyond the prescribed period of limitation. No application seeking condonation of delay has been filed accompanying the application. Hence, the Tribunal ought to have dismissed the application on the ground that as it is barred by time.

24. It was also argued that buffer zone laid down by the NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22.06.2007. This is contrary to the Karnataka Town and Country Planning Act, 1961 (for short 'the Planning Act').

25. Shri Neeraj Kishan Kaul and Shri R. Venkataramani, learned senior Counsel appearing for the Appellants, in this case have also made similar submissions. It was argued that the direction imposing penalty/compensation is illegal on the ground that the applicants did not allege that the construction work of the project has caused environmental wrong. No wrong or injury either to Bellandur lake water body or to Bellandur lake area, has been alleged and established. As such, there is no question of any enquiry relating to imposition of penalty or any compensation.

26. Shri Maninder Singh, learned senior Counsel appearing for the Appellants, in C.A. Nos. 5016 and 10995 of 2016, while supporting the submissions made by Shri Rohatgi, has submitted that the Appellant has obtained sanction and approvals for the project from the competent authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible i.e. 30.09.2013. Hence, imposing penalty/compensation is entirely unsustainable.

27. Learned Advocate General, Shri Udaya Holla, appearing for the Appellant-State of Karnataka in C.A. Nos. 4923-4924 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of the NGT to the extent of setting aside the buffer zone in respect of water bodies and drains specified in the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of the NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or *vires* of any statutory provision/Regulation. Therefore, the order of the NGT to that

extent is liable to be set aside.

28. Learned senior Counsel appearing for the Appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 meters buffer zone around the lakes and a buffer zone of 50 meters, 25 meters and 15 meters from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, the NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 meters around the lake and 50, 35 and 25 meters respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by the NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan.

29. On the other hand, Shri Sajan Poovayya, learned senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the Appellants in C.A. Nos. 5016 of 2016 and 8002-8003 of 2016 (Respondent Nos. 9 & 10). He has no objection to set aside the order in so far as the Appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of the NGT in paragraph (1) of the order dated 04.05.2016 except the directions issued against Respondent Nos. 9 and 10. In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeal Nos. 4923-4924 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents Nos. 9 and 10.

30. Shri Poovayya has strongly opposed the submissions made by the learned senior Counsel appearing for the Appellants in C.A. No. 5016 of 2016 and C.A. Nos. 8002-8003 of 2016. It is submitted that the Tribunal is a specialized body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The jurisdiction of the Tribunal is provided Under Sections 14, 15 and 16 of the NGT Act. Section 14 provides for the jurisdiction over all civil cases where a substantial question relating to environment is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. The Tribunal has the jurisdiction Under Section 15(1)(a) of the NGT Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Sections 15(1)(b) and 15(1) (c), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas, as the Tribunal may think fit. Sections 15(1)(b) and 15(1)(c) have not been made relatable to enactment specified in Schedule I of the Act. Section 15(1)(c) is an entire island of power and jurisdiction read with Section 21 of the Act. He submits that whenever ecology is being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment. The limitation provided in Section 14 is period of six months from the date on which cause of action first arose whereas in Section 15 it is five years. Therefore, the petition is not barred by time.

31. He has further submitted that the provisions of Section 33 shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force. This gives the Tribunal overriding powers over anything inconsistently contained in KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short 'KMC Act'). Therefore, the Tribunal while

providing for restoration of environment in an area can specify buffer zone around specific lakes and water bodies in contravention with zoning Regulation.

32. Regarding limitation, he has submitted that the application filed by Respondents 1 to 3 was not an application simplicitor Under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's report dated 12.06.2013 and the Ministry of Environment Forest and Climate Change Monitoring Committee report dated 14.08.2013 for restoration of ecologically sensitive land and for maintaining sensitive area in its natural condition so that ecological balance of the area is not disturbed. Therefore, the petition was Under Section 15 of the Act and it can be filed within five years from the date on which the cause for such compensation or relief first arose.

33. It was further submitted that right to appeal Under Section 22 is not a vested right unless provided by statute. Exercise of Appellate Jurisdiction without the fulfillment of statutory mandate would be without jurisdiction. Section 22 of the Act provides for an appeal on the ground specified in Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC'). Under Section 100 of the Code of Civil Procedure, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the Appellate Court. In the instant case, the appeal does not involve any substantial question of law hence it has to be dismissed *in limine*. He has taken us through various materials placed on record in order to substantiate that the direction passed and penalty imposed by the Tribunal upon to project proponents are sustainable. He prays for dismissal of the appeals.

34. We have carefully considered the submissions of the learned Counsel of the parties and perused the materials placed on record.

35. Before considering the other contentions of the learned Counsel for the parties, let us first consider the scope of enquiry in appeals filed Under Section 22, which is as under:

22. Appeal to Supreme Court.- Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may, entertain any appeal after the expiry of ninety days, if it is satisfied that the Appellant was prevented by sufficiency cause from preferring the appeal.

36. It is settled that there is no vested right of appeal unless the statute so provides. Further, if a statute provides for a condition subject to which the appropriate Appellate Court can exercise jurisdiction, the Court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfillment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided Under Section 22 is to be read subject to the conditions provided therein.

37. Section 22 provides for an appeal to the Supreme Court on the grounds specified in Section 100 of the Code of Civil Procedure. Under Section 100 Code of Civil Procedure, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the Appellate Court. The scope of appeal Under Section 22,

therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in **Sir Chunilal V. Mehta and Sons, Ltd. v. Century Spinning and Manufacturing**, MANU/SC/0056/1962 : 1962 Supp. (3) SCR 549. This Court has laid down the test as under:

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

38. It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not *ipso facto* permit the Appellants to agitate their appeal to seek re-appreciation of the factual matrix of the entire matter. The Appellants cannot seek to re-argue their entire case to seek wholesale re-appreciation of evidence and the factual matrix that has been considered by the Tribunal is *ex facie* impermissible Under Section 22. There cannot be fresh appreciation or re-appreciation of facts and evidence in a statutory appeal under this provision.

39. The first question raised by the learned Counsel is in relation to the maintainability of the application before the Tribunal.

40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialized judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life Under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.

41. The jurisdiction of the Tribunal is provided Under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction Under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, Under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See **Kishore Lal v. Chairman, Employees' State Insurance Corporation** MANU/SC/2148/2007 : (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers Under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self contained jurisdictions.

46. Further, Section 18 of the Act recognizes the right to file applications each Under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra. the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning Regulations under these statutes or the RMP.

48. The second question raised by the Appellants is that the petition is barred by time. According to Appellants, environmental clearance was granted to the Respondent No. 9 on 17.02.2012 for which notice was published in the leading newspaper on 12.03.2012

and 14.03.2012. Modified building plan was approved on 30.08.2012, which was followed up to 10.08.2014. Similar events had taken place in regard to the project of Respondent No. 10 who had been granted environmental clearance on 30.09.2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March, 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.

49. The OA No. 222 of 2014 was not an application *simpliciter* Under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's ("LDA") Report dated 12.06.2013 and the Ministry of Environment, Forest and Climate Change ("MoEF") Monitoring Committee Report dated 14.08.2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition Under Section 15 of the Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

50. In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.

51. Shri R. Venkataramani, learned senior Counsel, appearing for the Appellant in CA No. 5016 of 2016 has submitted that the constructions had not commenced before the grant of environment clearance. The inspection report dated 11.01.2012 of the Chairman of the KSPCB observes that "no construction" had commenced on the date of inspection. This report cannot be overlooked on the basis of some dumping of debris which could not be attributed to the Appellant. He has pointed out the report of the Committee appointed by the Tribunal in the month of August 2015, wherein it was stated that "it started construction after obtaining clearance". In this regard he has also taken us through various documents placed on record and submits that there is absolutely no justification in imposing monitoring penalty/compensation without assessment of impact.

52. The Tribunal has pointed out on the basis of the Committee report of August 2015, that the Appellant had encroached 3 acres 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes, and wetland being adversely affected by these projects. That is why, the Tribunal has observed as under:

72. In light of the above scope of the project and records before the Tribunal and the defaults on the part of the Project Proponents, the cumulative adverse effects of the activities undertaken by the Respondents before us can be summed up as under:

- 1) The construction of both the projects had started prior to the grant to Environmental Clearance.
- 2) The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment.
- 3) Revenue Map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
- 4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
- 5) Google Satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13th November, 2000 and 23rd November, 2010. Secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance.
- 6) Restriction in regard to extraction of ground water was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.
- 7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved: The inspection report by the MoEF clearly notes that condition Nos. (xxxix) and (xl) in the Environmental Clearance of Respondent No. 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase.

53. In paragraph 81, the Tribunal has observed as under:

81. ...Another very important aspect which cannot be overlooked by the Tribunal is with regard to the Respondent Nos. 9 & 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with condition No. xxxix and xl (or alike conditions) in the order granting the Environmental Clearance. This has even been noticed by the MoEF in its monitoring report dated 14th August, 2013. These Respondents never applied for variation or amendment of these conditions and continued

with their construction activities. This renders these Respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof.

54. In our view, the findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee's report and the inspection note of the Expert Members. Therefore, the directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity.

55. We are also of the view that it is impermissible for the Appellants to seek a factual review through the methodology of re-appreciation of factual matrix by this Court Under Section 22 of the NGT Act.

56. Shri R. Venkataramani, learned senior Counsel has also raised a subsidiary issue relating to *res judicata*. According to him, Respondent Nos. 12 and 13 filed Writ Petition Nos. 3656-57/2013 seeking similar reliefs in a representative capacity. The issues raised therein are same as those canvassed in the application before the Tribunal. The reliefs sought for are essentially the same. Hence, the applications are barred by the principle of *res judicata*.

57. The Tribunal has answered this issue in paragraphs 47 to 51 of the order. There was no dispute in so far as filing of the writ petitions is concerned. However, the parties are not common nor the issues in application and the writ petitions are directly and substantially the same. After examination of the pleadings, the Tribunal has recorded a finding of fact that there is no commonality of a cause of action or likelihood of a conflict between the judgments. The prayers and the geneses of the respective proceedings are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment ecology and its restoration while the proceedings before the High Court relate to entirely different issues with acquisition of land, its allotment and transfer to the third party. These issues in both the proceedings are neither substantial nor materially identical.

58. After elaborately considering this question, the Tribunal has concluded as under:

51. For these reasons, we find no merit in this contention of Respondent Nos. 9 and 10. The purpose of the doctrine of *res judicata* is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of re-agitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality in so far as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The 'cause of action' in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor constructive *res judicata*. We also hold that culmination of proceedings before the Tribunal into a final

judgment would not offend the principle of 'judicial propriety', because of the Writ Petitions pending before the Hon'ble High Court of Karnataka.

59. We do not find any error in the aforesaid conclusion of the Tribunal. We are of the view that the Tribunal was justified in holding that the objections taken by the Respondent Nos. 9 and 10 do not satisfy the basic ingredients to attract the application of *res judicata* or *constructive res judicata*.

60. The State of Karnataka is aggrieved by the following offending portion of the order dated 04.05.2016:

1. In view of our discussion in the main Judgment, we are of the considered view that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP - 2015 provides 50m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:

(i) In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e. lakes/wetlands. (ii) 50m from the edge of the primary Rajkulewas.

(iii) 35m from the edges in the case of secondary Rajkulewas

(iv) 25m from the edges in the case of tertiary Rajkulewas

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents-Project Proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake development Authority shall carry out this operation in respect of all the water bodies/lakes of Bangalore.

61. We have already noticed that Shri Poovayya has no objection to set aside the aforesaid impugned portion of the order in so far as the Appellants in all the appeals except the appeals filed by Respondent Nos. 9 and 10. The aforesaid portion of the order contains not only general directions but also certain directions against Respondent Nos. 9 and 10. Therefore, only that portion of the order which does not pertain to Respondent Nos. 9 and 10 needs to be quashed.

62. In the light of the above discussion, we pass the following order:

i) Civil Appeal No. 5016 of 2016 and Civil Appeal Nos. 8002-8003 of 2016 filed by the Appellants/Respondent Nos. 9 and 10 are hereby dismissed. The impugned judgment and order in so far as Appellants/Respondent Nos. 9 and 10 are concerned is sustained.

ii) All the other appeals are hereby allowed and the direction/condition No. (1) in the order dated 4.5.2016 is hereby set aside except the direction issued against Respondent Nos. 9 and 10.

63. There will be no order as to costs.

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MANU/SC/0815/2021

Equivalent/Neutral Citation: AIR2021SC5147, 2021(6)ALLMR827, 2021(11)FLT922, 2021 INSC 624, 2021(5)KLT626, 2021(12)SCALE184, (2022)13SCC401, [2021]10SCR1

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 12122-12123 of 2018, Civil Appeal Nos. 86/2019, 5902/2019, Civil Appeal No. 6273 of 2021 (Arising out of SLP (C) No. 6732/2021), Civil Appeal No. 6274 of 2021 (Arising out of SLP (C) No. 5930/2021), Civil Appeal No. 6275 of 2021 (Arising out of SLP (C) No. 6733/2021), Civil Appeal No. 6276 of 2021 (Arising out of SLP (C) No. 16448 of 2021 (Diary No. 11655/2021)), Civil Appeal No. 6277-6278 of 2021 (Arising out of SLP (C) No. 16449-16450 of 2021 (Diary No. 13789/2021)), Civil Appeal No. 6279 of 2021 (Arising out of SLP (C) No. 16451 of 2021 (Diary No. 13811/2021)), Civil Appeal No. 6280-6281 of 2021 (Arising out of SLP (C) No. 16452-16453 of 2021 (Diary No. 13890/2021)), Civil Appeal No. 2897/2021, Civil Appeal No. 6282 of 2021 (Arising out of SLP (C) No. 11426 of 2021), Civil Appeal No. 6283 of 2021 (Arising out of SLP (C) No. 11427 of 2021), Civil Appeal No. 6262 of 2021 (Diary No. 16948 of 2021), Civil Appeal No. 6284 of 2021 (Arising out of SLP (C) No. 11798 of 2021), Civil Appeal No. 6285 of 2021 (Arising out of SLP (C) No. 12669 of 2021) and Civil Appeal No. 6286 of 2021 (Arising out of SLP (C) No. 16454 of 2021 (Diary No. 19534/2021))

Decided On: 07.10.2021Municipal Corporation of Greater Mumbai **Vs.** Ankita Sinha and Ors.**Hon'ble Judges/Coram:***A.M. Khanwilkar, Hrishikesh Roy and C.T. Ravikumar, JJ.***Counsels:**

For Appellant/Petitioner/Plaintiff: E.M.S. Anam, AOR, V. Giri, Sr. Adv., Abhilash M.R., Sayooj Mohandas M., Amith Krishnan, M. Thangathuraj, Advs., Sandeep Singh, AOR, Ashish Wad, Tamali Wad, Pimple Sharad, Sukriti Jaggi, Sidharth Mahajan, Advs., J.S. Wad and Co., AOR, A. Karthik, AOR, Enoch David, Simon Joel, Smrithi Suresh, Saaketh Kasibhatla, Arsh Khan, Advs., Krishnan Venugopal, Sr. Adv., Mahesh Agarwal, Rohan Talwar, Shivendra Singh, Advs., E.C. Agrawal, AOR, Usha Nandini V., AOR, S. Thananjayan, AOR, K. Sakthivel, Promila, Aaina Verma, Jaswanti, Advs., Rashi Bansal, AOR, Seshatalpa Sai Bandaru, AOR, Sajan Poovayya, Sr. Adv., A.K. Shrivastava, Shivam Sinha, Priyansha Indra Sharma, Chetan Saxena, Sharan Balakrishnan, Pratibhanu Singh, Rahul Jajoo, Advs. and Arpit Shukla, AOR

For Respondents/Defendant: Gurmeet Singh Makker, AOR Md. Shahid Anwar, AOR, C.K. Sasi, AOR, Mukesh Verma, Adv., Yash Pal Dhingra, AOR, S.J. Amith, Adv., Purushottam Sharma Tripathi, AOR, Mukesh Kumar Singh, Adv., Tahir Ashraf Siddiqui, AOR, Jogy Scaria, AOR, Beena Victor, M. Priya, Ravi Lomod, Advs., K. Parameshwar, AOR, Jobi Jose Kondody, Aex M. Scaria, Advs., Usha Nandini V., AOR, Biju P. Raman, Saritha Thomas, Advs., James P. Thomas, AOR, Bobby Thomas, Adv., Sanjay Parikh, Sr. Adv., Abhimanue Shrestha, AOR, Satwik Parikh, Divyansh Khurana, Advs., Zulfiker Ali P.S., AOR, Faisal M. Aboobaker, Lakshmi Sree P., Sadiya Shakeel, Advs., Nidhesh Gupta, Sr. Adv., Vanshdeep Dalmia, Adv., Nishtha Kumar, AOR, Harish Vasudevan, Japneet Kaur, Vriti Gujral, Pallavi Singh, Advs., Anand Grover, Sr. Adv., Astha Sharma, AOR, Mantika Haryani, Simranjeet Singh Rekhi, Advs., Suvidutt M.S., AOR, Anu B., Dhanya C. and Vijayalakshmi Raju, Advs.

Case Category:

APPEAL AGAINST ORDERS OF STATUTORY BODIES - TRIBUNALS

JUDGMENT**Hrishikesh Roy, J.**

Estragon: Let's go.

Vladimir: We can't.

Estragon: Why not?

Vladimir: We're waiting for Godot.¹

1. Leave granted in the Special Leave Petitions.

2. The consideration to be made in these matters is whether the National Green Tribunal (for short "the NGT") has the power to exercise Suo Motu jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short, "the NGT Act 2010").

3. In the lead case in this group, i.e. the Civil Appeal No. 86 of 2019, the NGT noticed an Article titled "Garbage Gangs of Deonar: The Kingpins and Their Multi-Crore Trade" in the online news portal, The Quint. The Article spoke of how mismanagement of solid waste had an adverse impact on the environment, public health and lives of individuals living in the vicinity of the dumping ground in Mumbai city.

4. The NGT took suo motu cognizance of the above Article vide order dated 07.08.2018 and directed that the Article writer Ankita Sinha be the Applicant in the case OA No. 510 of 2018, registered at the NGT's instance. Thereafter, steps were taken for inspection of the Deonar Dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of Greater Mumbai (for short "the MCGM"). Pursuant to the Report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, the NGT vide order dated 30.10.2018 noted that 'damage to the environment and public health is self-evident' and ordered MCGM to pay compensation to the tune of Rs. 5 crores.

5. This Court while entertaining the Civil Appeal No. 86/2019 of MCGM, ordered stay on the operation of the order passed by the NGT and thereafter arranged for analogous consideration of the related cases where the common threshold jurisdictional issue arises on whether the NGT has the power to exercise suo motu jurisdiction.

6. Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, Mr. Dhruv Mehta, Mr. Atmaram Nadkarni, Mr. Krishnan Venugopal, Mr. V. Giri, Mr. Sajan Poovayya and Mr. Sidhartha Dave, learned Senior Counsel together with Mr. E.M.S Anam, Ms. Amrita Sharma, Mr. S. Thananjayan have taken a common stand. They have argued that the NGT is a Tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act suo motu, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as Under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed. The learned Counsel also argue that the NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, the NGT by acting suo motu cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with the NGT (which is available

with superior courts) is highlighted to keep away suo motu power from the NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in later part of this order.

7 . Projecting the contrary view, Mr. Nidhesh Gupta, the learned Senior Counsel appearing for the aggrieved party in SLP(C) No. 6732/2021, Mr. Sanjay Parikh, learned Senior Counsel for the Intervener in C.A. No. 86/2019 and Mr. Gopal Sankaranarayanan, learned Senior Counsel appearing for the Impleader I.A. No. 71482/2021 in the SLP(C) No. 6732/2021, by referring to the special role envisaged for the NGT and the history of its incorporation, make equally powerful submission in support of exercise of suo motu jurisdiction, by the NGT.

8. Mr. Anand Grover, the learned Senior Counsel was appointed as the Amicus Curiae to assist the Court and he was heard at length. The counsel acknowledges the NGT's role and position under the Act and its wide jurisdiction over environmental matters but Mr. Grover is of the view that the NGT is incapable of triggering action on its own. In other words, the NGT cannot act suo motu without someone moving the Forum as otherwise the forum then would be perceived to be judging its own cause. Since suo motu power is not conferred under the NGT Act, the specialized tribunal has to be moved by an outside party. But the format of the application is not important and even a letter addressed by an interested party, will clothe the NGT with power to take action is the concessional submission of Mr. Grover.

9 . Representing the Central Government, Ms. Aishwarya Bhati, the learned Additional Solicitor General of India submitted that Suo Motu power is not exercisable by the NGT since the same has not been conferred on the forum under the NGT Act, unlike the situation in the now repealed National Environment Tribunal Act, 1995 (hereinafter referred to as the "NET Act"). The counsel refers to the provisions of the NGT Act and submits that the concept of locus standi was expanded for NGT's intervention Under Section 18(2)(e) but the tribunal is not vested with suo motu power to take action on its own unlike the High Courts and the Supreme Court. The learned ASG, however, submits that even on receipt of a letter, the NGT can commence action on environmental matters. Thus, on exercise of epistolary jurisdiction by the NGT, the ASG is on the same page as the amicus curiae but as earlier noted both counsel argue for keeping away the suo motu power from the NGT.

10.1. Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away suo motu power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered v. Dharminder Bhohi* MANU/SC/1004/2013 : (2013) 15 SCC 341 wherein, provisions of the Recovery of the Debts Due to Banks and Financial Institutions Act, 1993 were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus, Section 19(25) conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

10.2. Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore v. Union of India* MANU/SC/5319/2006 : (2008) 1 SCC 125, opined on behalf of a Division

Bench that,

67. ...The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts.

10.3. The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak v. Achyut Kashinath* MANU/SC/0969/2011 : (2011) 9 SCC 541, observed as under:

34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised.

11.1. The second limb of contention is that the Act is applicable to 'disputes' as, necessarily referring to a lis between two parties. The counsel has relied upon *Techi Tagi Tara v. Rajendra Singh Bhandari and Ors.* MANU/SC/1217/2017 : (2018) 11 SCC 734 wherein the term 'substantial question relating to environment' was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

19. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute--it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.

20. ...In *Prabhakar v. Deptt. of Sericulture* [Prabhakar v. Deptt. of Sericulture, MANU/SC/1041/2015 : (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] the following definition of "dispute" was noted in paras 34 and 35 of the Report: (SCC p. 21)

34. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:

"Dispute".--to argue about, to contend for, to oppose by argument, to call in question--to argue or debate (with, about or over)--a contest with words; an argument; a debate; a quarrel;

35. Black's Law Dictionary, 5th Edn., p. 424 defines "dispute" as under:

Dispute.--A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject

of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.

11.2. The amicus curiae has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial system but not for any other ameliorative, restorative or preventative functions.

12.1. Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb suo motu powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as Under Article 226 and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.*, MANU/SC/0223/2019 : (2019) 19 SCC 479 Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

41. ...Suffice it to say that the NGT is not a tribunal set up either Under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act.....

43. ...In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(b) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down Rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers Under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges and Immunities of State Legislatures*, In re [*Powers, Privileges and Immunities of State Legislatures*, In re, MANU/SC/0048/1964 : (1965) 1 SCR 413 : AIR 1965 SC 745], made in the following words: (SCR p. 499: AIR p. 789, para 138)

138. We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.

'Prima facie', says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular

matter is within the cognizance of the particular court [Halsbury's Laws of England, Vol. 9, p. 349]'.

For this reason also, we are of the view that the State Government order made Under Section 18 of the Water Act, not being the subject-matter of any appeal Under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in BSNL [BSNL v. TRAI, MANU/SC/1264/2013 : (2014) 3 SCC 222], we are of the view that the NGT has no general power of judicial review akin to that vested Under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in Wilfred J. v. Ministry of Environment & Forests [Wilfred J. v. Ministry of Environment & Forests,] must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected.

12.2. The argument has been that the superior Courts exercising discretionary powers Under Article 32 and Article 226, to safeguard fundamental rights, can venture into judicial review. But such a power not being expressly conferred on the NGT would suggest the limited nature of the Forum's powers, which would exclude any suo motu exercise.

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

13.1. In order to understand the contours of jurisdiction of the NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which shaped the creation of the NGT and the broad issues that they sought to address through the specialized institution should now be brought to the fore.

13.2. The precursor to the NGT Act was the 186th Report of the Law Commission of India dated 23.9.2003 where the Law Commission had made the following pertinent observation espousing the case for the creation of a specialized Court to deal with environmental issues:

It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.

These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached Under Article 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer Courts at the District and State level, the High Courts have consistently refused to entertain writ petitions Under Article 226 because parties have a remedy before the fora established under the Consumer

Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.

It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts.

13.3. The above would suggest that the Law Commission was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on permanent basis to assist them. Therefore, NGT was conceived as a complimentary specialized forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court.

13.4. The NGT, therefore, was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts. It was explicitly noted that the creation of the NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum. The 186th Law Commission Report provided the following reasoning,

Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court Under Article 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil Court, in the Environmental Courts. If we vest powers of Judicial review as Under Article 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in *L. Chandra Kumar v. Union of India*, MANU/SC/0261/1997 : 1997 (3) SCC 261.

No doubt, the Environment Court exercising powers of a Civil Court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter.²

Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of the NGT.

13.5. This is how the proposed forum was made free from the Rules of evidence and the NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts etc. The observance of the principles of natural justice was however mandated.

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

14.1. The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 2, 3, 4, 5 and 6 of the Statement of Objects and Reasons being relevant are extracted hereinbelow:

2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life Under Article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to 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 under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a specialized tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.

14.2. A reading of the Statement of Objects and Reasons shows that paragraph 4 thereof refers to the National Environmental Tribunal Act, 1995 (NET) which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a large number of environmental cases are pending in higher Courts which involve

multi-disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialized environmental Courts.

14.3. Significantly, the Statement of Objects and Reasons also refers to right to a healthy environment being a part of the right to life Under Article 21 of the Constitution of India. This was consistent with the earlier mentioned 186th Law Commission Report highlighting that the body so created, would aim to "achieve the objectives of Article 21, 47, 48A, 51A(g) of the Constitution of India by means of a fair, fast and satisfactory judicial procedure". An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction.

14.4. The paragraph 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a sui generis forum.

14.5. The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

14.6. The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of the NGT.

III. THE NEED FOR PURPOSIVE INTERPRETATION

15.1. While adequate clarity is discernible in the phraseology that is employed Under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgment, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging societal concerns and these have prompted us to opt for purposive interpretation. The Statue will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise Interpretation of Statutes, authored by Justice G.P. Singh who explained thus,

When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the Rule was later fully adopted by the

Supreme Court.

It is a Rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The Rule is referred to as an 'elementary rule' by Viscount Simonds; a compelling Rule by Lord Sommervell of Harrow; and a "settled rule" by B.K. Mukherjee J. "I agree" said Lord Halsbury, "that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it."

15.2. The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional Courts flagging their environmental concerns.

15.3. The application of the Heydon's Rule could adequately aid us here as the Rule directs adoption of that construction which "shall suppress the mischief and advance the remedy" as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co. v. State of Bihar* MANU/SC/0083/1955 : 1955 (2) SCR 603 : AIF 1955 SC 661,

...the office of all judges is to make such construction as shall suppresses the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.

15.4. Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

A purposive construction of an enactment is one which gives effect to the legislative purpose by--

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.

15.5. Justice Frankfurter of US Supreme Court in 'Some Reflections on the Reading of Statutes', has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner,

The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.

...

Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'.¹¹

Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo's phraseology in *Panama Refining Co. v. Ryan*, and the same is taken as a lodestar in our quest,

the meaning of a statute is to be looked for, not in any single section, but in all

the parts together and in their relation to the end in view.³

15.6. The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.⁴ The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights Under Article 21 and also deal with vital environmental policy and its regulatory aspects.

IV. SALIENT STATUTORY FEATURES OF NGT ACT-

16.1. Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions will require the Court's attention. Section 2(1)(c) of the NGT Act defines the term "environment"; Section 2(1)(m) defines "substantial question relating to environment". Chapter III relates to jurisdiction, power and proceedings of the Tribunal. The Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) "as the Tribunal may think fit". Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) "any person aggrieved including any representative body/organization" and the locus standi is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the Code of Civil Procedure and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the Rules of evidence contained in the Evidence Act, 1872. While discharging functions Under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

16.2. While on the statutory provisions, it is seen that the Central Government has framed the National Green Tribunal (Practice & Procedure) Rules, 2011 (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

24. Order and directions in certain cases-The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.

16.3. The said Rules make it clear that the NGT has been given wide discretionary

powers to secure the ends of justice. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

16.4. By choosing to employ a phrase of wide import, i.e. secure the ends of justice, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.

16.5. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

16.6. Another distinguishing feature of the environmental forum is on the aspect of locus standi which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT.

16.7. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights Under Article 21 of the Constitution.

V. NON-ADJUDICATORY ROLES OF NGT

17.1. As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts Under Article 226 of the Constitution or by the Supreme Court Under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See Vellore Citizens' Welfare Forum v. UOI MANU/SC/0686/1996 : (1996) 5 SCC 647; M.C. Mehta v. UOI MANU/SC/0175/1997 : (1997) 2 SCC 353 etc.]

17.2. The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc. As one looks at these enactments, an expanded role for the NGT is clearly discernible. The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

17.3. For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of lis, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of the environment and also

preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

17.4. The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report,

The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time.

18. We have earlier discussed that the NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active "dispute", but the formulation of decisions.

19.1. With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India* MANU/SC/0642/2012 : (2012) 8 SCC 326, highlighted the NGT's role in the context, in the following words:

40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to

coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice.

19.2. In the above case, this Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of the NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered suo motu by the Courts.

VI EXERCISE OF SUO MOTU POWER BY NGT

20. Let us now explore whether the NGT in discharge of its functions, should also have suo motu power. The specialized tribunal's exercise of suo motu powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments. However, As long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

21.1. Explaining the purpose for constituting the special court to deal with environmental issues, in *Mantri Techzone (P) Ltd. v. Forward Foundation* MANU/SC/0315/2019 : (2019) 18 SCC 494, Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:

40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment. The right to healthy environment has been construed as a part of the right to life Under Article 21 by way of judicial pronouncements.

Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.

21.2. As can be seen from the quoted passage, this Court recognized that the NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context observed that the Tribunal has special jurisdiction for enforcement of environmental rights.

21.3. Elaborating further, in paragraphs 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that,

46. ... As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is

in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

21.4. Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri v. DDA* was not to constrict the suo motu powers of the NGT. To appreciate the implication of the ratio in *Rajeev Suri*, it must be noticed that it was in the specific context of 'Merits Review' and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute.

21.5. Thus, the ratio in *Rajeev Suri* to the quoted extent will not clash with the view propounded here as the exposition is not to allow any inherent power of residuary character for the NGT. In its own domain, as crystallized by the statute, the role of the NGT is clearly discernible.

21.6. The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in *Andhra Pradesh Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Ors.* MANU/SC/0032/1999 : (1999) 2 SCC 718 where Justice M. Jagannadha Rao speaking for a Division Bench referred to a comparable court in Australia and noted the following,

The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters.

The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

VII. UNIQUENESS OF NGT vis-à-vis OTHER TRIBUNALS

22.1. While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals Under Article 323A; Tribunals Under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights Under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

22.2. The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok Bhushan in *State of Meghalaya v. All Dimas Students Union* MANU/SC/0877/2019 : (2019) 8 SCC 177, fittingly observed thus:

163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain v. CIT* [*L. Hirday Narain v. CIT*, MANU/SC/0268/1970 : (1970) 2 SCC 355], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14: (SCC p. 359)

14. The High Court observed that Under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right--public or private--of a citizen.

22.3. Reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising "wide range of jurisdiction" and the "wide range of powers", given to it by the statute.

23. During the course of its functioning, the NGT has been recognized as one of the most progressive Tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. To understand how the NGT is perceived globally, we may usefully refer to the views of Chief Justice Brian Preston of the Land and Environment Court of NSW Australia,

The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the Rule of law and promoting good governance.⁵

VIII. THE SUI GENERIS ROLE OF NGT

24.1. The NGT being one of its own kind of forum, commends us to consider the concept of a sui generis role, for the institution. The structure of Sui generis institutions was explained in *Paramjit Kaur v. State of Punjab* MANU/SC/0596/1998 : (1999) 2 SCC 131, wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,

14. The concept of sui generis is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any

subject topically, then the body to which such power to arbiter is entrusted acts sui generis, that is, on its own and not under any law.

24.2. In DG NHA v. Aam Aadmi Lokmanch, Justice S. Ravindra Bhat commenting on the sui generis role of the NGT, so appropriately stated as follows:

8. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this Court, is not warranted.

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76. The power and jurisdiction of the NGT Under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.

77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (Under Section 16) and its original jurisdiction Under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued.

24.3. In that case, this Court repelled the argument for a restricted jurisdiction for the NGT, and fittingly observed in paragraph 76 that the powers conferred on the NGT are both reflexive and preventive and the role of the NGT was recognized in paragraph 77 as "an expert regulatory body", which can issue general directions also albeit within the statutory framework.

24.4. The above discussion would advise us to say that the NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court. Many of those cases transferred to the NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate suo motu proceedings should also be available with the NGT.

24.5. The NGT is a Tribunal with sui generis characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multidimensional environmental issues allows for an all-encompassing framework for environmental

justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

25.1. Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take suo motu cognizance of matters, for effective discharge of its mandate.

25.2. The analysis for this segment should commence with Section 14 of the NGT Act and the same being of great relevance is being extracted hereunder,

14. Tribunal to settle disputes.-(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

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

(3) No application for adjudication of dispute under this Section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose: Provided that the Tribunal may, if it is satisfied that the Applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

25.3. The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

25.4. In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function Under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions Under Section 14(1) can be undertaken and those may not involve any formal

application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities Under Section 14(1) and that wide arena of NGT's functioning.

25.5. The other pertinent provisions relating to, inter-alia, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

25.6. It may also be relevant to bear in mind that while dealing with contested cases, the NGT is required to pass "award" and "order" and the statute repeatedly uses the word "decision". Therefore, it is appropriate to correlate the word "decision" to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in DG, NHAI (supra).

25.7. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in State of Punjab and Anr. v. Shamlal Murari and Anr. MANU/SC/0494/1975 : (1976) 1 SCC 719 has so correctly prioritized the substantive rights and observed succinctly,

8. ...We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

25.8. While discussing the NGT's power and responsibility, it is essential to keep in mind the Principle 10 of the Rio Declaration which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

X. THE PRECAUTIONARY PRINCIPLE

26.1. Tracing the origin of the Precautionary Principle, Scott Lafranchi in his treatise⁶ has expounded on the proactive role of the authorities in the following passage:

Many consider the German development of Vorsorgeprinzip to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm. The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that

holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies.

26.2. The origin of the Precautionary Principle itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

26.3. As earlier seen, Section 20 of the NGT Act which includes the term "decision", in addition to "order" and "award", also require the Tribunal to apply the 'Precautionary Principle' and the statutory mandate being relevant is extracted:

20. Tribunal to apply certain principles.-The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.

26.4. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other 'decisions' or 'orders' to governmental authorities or polluters, when they fail to "to anticipate, prevent and attack the causes of environmental degradation"⁷. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

26.5. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, 'The Nature of the Judicial Process', stated thus,

It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided.

The above could be a pointer towards the preemptive functions of the NGT as a sui generis body.

XI. ENVIRONMENTAL JUSTICE AND ENVIRONMENTAL EQUITY

27.1. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.⁸ Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced

distribution of environmental risks as well as protections, including application of sustainable development principles.

27.2. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in their Reflections on the Role of the Courts in Environmental Law, wrote the following evocative passage on the concept of environmental justice,

Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity," which is understood to mean the fair distribution of environmental risks and protection from environmental harms.⁹

27.3. There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people.

Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school," whereas the people who reside there do little or nothing to harm their community.¹⁰

When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An "equal footing" conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalized classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

27.4. The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of locus standi.

The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities.⁹

27.5. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the 'Blindfold of Lady Justice', which symbolizes

"the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class."¹² The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

28.1. Proceeding with the above understating, we can comfortably place the NGT within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing-Environmental Law And Policy In India, have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights¹³, liberalizing the concept of locus standi in environmental matters, exercising suo motu powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.¹⁴

28.2. By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a pollution free environment for a holistic existence.¹⁵ Most crucially, the expansion of Right to Life Under Article 21 by this Court has become a touchstone to determine many environmental concerns. In Subhash Kumar v. State of Bihar, this Court explicitly held the following,

Right to life is a fundamental right Under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.¹⁶

28.3. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the 'Absolute Liability Principle'¹⁷ by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative.

The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. . . . The right was recognized as part of the right to life in 1991. . . . The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law.¹⁸

28.4. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a sui generis environmental discourse.¹⁹ There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the 'at risk' nature of some populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.²⁰

28.5. Justice T.S. Doabia in *Environmental & Pollution Laws in India*, has highlighted the larger societal concerns which have informed this Court's deliberation when dealing with environmental matters,

The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.

...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned.²¹

28.6. Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic, welfare oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, as has been noted, stood transferred to the NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior Court was surely expected to be seen in the Tribunal's approach.

28.7. Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental Rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand Management & Development Authority v. Central Empowered Committee* MANU/SC/0015/2021 : (2021) 4 SCC 309 so succinctly said that,

40. 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.

28.8. It is this environmental Rule of law that has been encapsulated with the NGT's creation at this Court's behest. Professor Domenico Amirante in a comparative analysis of similar bodies across the world, notes that,

With reference to the judicial enforcement of environmental law-which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order-the National Green Tribunal of India seems to be the most comprehensive and promising among the specialized environmental Courts created in Asia over the last decade.²²

The NGT therefore, is the institutionalization of the developments made by this Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

X. CONCLUSION:

29. Before we set out our conclusion, we acknowledge the able contribution of Mr. Anand Grover as amicus curiae, assisted by Ms. Astha Sharma, AOR who were requested to assist the Court on the central issue of suo motu jurisdiction of NGT.

30. The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a sui generis institution and not unus multorum, and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.

31. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists²³ with many countries declaring climate emergencies and many others being urged to follow suit²⁴.

32. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long term and very often irreparable environmental damage which are expected to be arrested by the NGT, urge this Court to advert to what is termed as the 'Seventh Generation' sustainability principle, or the 'Great Law of the Iroquois' (as it originates from the Iroquois Tribe) which requires all decision making to withstand for the benefit of seven generations down the line.

33. It is vital for the wellbeing of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

34. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with

expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "global impacts of climate change will fall disproportionately on minority and low-income communities".²⁵ Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for serving the ends of environmental justice, as the statute itself requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

35. The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for the NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

36. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

37. When the Registry of the NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate suo motu action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist the NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of suo motu jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

38. One could admit to the argument of danger of suo motu jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedural safeguards clarified above in play, the nature of the trigger itself viz. a letter or a 'suo motu' initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

39. Institutions which are often addressing urgent concerns gain little from procedural nitpicking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

40. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical Godot to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is vested with suo

motu power in discharge of its functions under the NGT Act.

41. Having answered the common legal issue involved in all these cases regarding the suo motu jurisdiction of NGT, we direct delinking of these cases for now being heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

¹Beckett, S. (1954). Waiting for Godot: Tragicomedy in 2 Acts

²Chapter II, 186th Law Commission Report

³MANU/USSC/0240/1935 : 293 U.S. 388 (1935) (dissenting)

⁴Sarah Mathew v. Institute of Cardio Vascular Diseases MANU/SC/1210/2013 : (2014) 2 SCC 62, New India Assurance Co. Ltd. v. Nusli Neville Wadia MANU/SC/0166/2008 : (2008) 3 SCC 279

⁵GILL, G. (2020). Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall? Asian Journal of Law and Society, 7(1), 85-126

⁶Scott LaFranchi, Surveying the Precautionary Principle's Ongoing Global Development: The Evolution of an Emergent Environmental Management Tool, 32 B.C. Env'tl. Aff. L. Rev. 679 (2005)

⁷Vellore Citizens (supra), S. Jagannathan v. Union of India MANU/SC/0188/1997 : (1997) 2 SCC 87, Karnataka Industrial Areas Development Board v. C. Kenchappa and Ors. MANU/SC/8159/2006 : (2006) 6 SCC 371

⁸Schlosberg D., Defining Environmental Justice: Theories, Movements, and Nature (Oxford University Press 2009)

⁹Schiffer, L.J., & Dowling, T.J. (1997). Reflections On The Role Of The Courts In Environmental Law. Environmental Law, 27(2), 327-342

¹⁰Jeff Todd, A "Sense of Equity" in Environmental Justice Litigation, 44 HARV. ENVTL. L. REV. 169, 193 (2020)

¹¹47 Columbia Law Review 527

¹²Ibid

¹³Rural Litigation And Entitlement Kendra and Ors. v. State Of U.P. and Ors. MANU/SC/0043/1985 : AIR 1985 SC 652, Charan Lal Sahu v. Union of India MANU/SC/0285/1990 : (1990) 1 SCC 613, Virender Gaur v. State of Haryana MANU/SC/0629/1995 : (1995) 2 SCC 577

¹⁴See M.A.A. Baig, Environmental Law And Justice (1996). Domenico Amirante, Environmental Courts In Comparative Perspective: Preliminary Reflections On The National Green Tribunal Of India (2012). M.K. Ramesh, Environmental Justice: Courts And Beyond, Indian Jo. Of Env'tl. L. 20(2002)

¹⁵Maheshwara Swamy, N. Law Relating to Environmental Pollution and Protection. India, Thompson Reuters, Vol.I, Ed. 5

¹⁶(1991) 1 SCC 74

¹⁷M.C. Mehta v. Union of India, MANU/SC/0092/1986 : 1987 SCC (1) 395

¹⁸Rajamani, Lavanya. 2007. Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability. Journal of

Environmental Law

¹⁹Supra, Note 5

²⁰M.C. Mehta v. Union of India MANU/SC/0291/1986 : (1986) 2 SCC 176, Indiar Council for Environmental-Legal Action v. Union of India MANU/SC/1112/1996 : (1996) 3 SCC 212, A.P. Pollution Control Board v. M.V. Nayudu MANU/SC/0032/1999 : (1999) 2 SCC 718, A.P. Pollution Control Board II v. M.V. Nayudu MANU/SC/2953/2000 : (2001) 2 SCC 62

²¹Justice T.S. Doabia, Environmental & Pollution Laws in India, 3rd Ed., Vol 2 (2017)

²²Domenico Amirante, Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India, 29 Pace Envtl. L. Rev. 441 (2012)

²³Indian Network for Climate Change Assessment, Climate Change and India: A 4X4 Assessment-A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16 November 2010

²⁴Secretary-General's Remarks at the Climate Ambition Summit. United Nations. United Nations, December 12, 2020

²⁵Supra Note 6

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ANNEXURE R-4

MANU/SC/0642/2012

Equivalent/Neutral Citation: AIR2012SC3081, 2012 6 AWC6177SC, 2012 6 AWC(Supp)6177SC, 2012(2)FLT745, 2012 INSC 326, JT2012(7)SC399, 2012(7)SCALE293, (2012)8SCC326, [2012]12SCR947

IN THE SUPREME COURT OF INDIA

Writ Petition (Civil) No. 50 of 1998

Decided On: 09.08.2012

Bhopal Gas Peedith Mahila Udyog Sangathan and Ors. **Vs.** Union of India (UOI) and Ors.

Hon'ble Judges/Coram:

S.H. Kapadia, CJI, A.K. Patnaik and Swatanter Kumar, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Sanjay Parikh, Aagney Sail, Mamta Saxena, A.N. Singh, Bushra Parveen, Naveen R. Nath, Karuna Nundy and Anupam Lal Das, Advs.

For Respondents/Defendant: Mohan Parasaran, ASG., Vijay Hansaria, Raju Ramachandran, Sr. Advs., S. Wasim A. Qadri, Rekha Pandey, Sunita Sharma, M. Khairati, D.S. Mahra, Anil Katiyar, B. Krishna Prasad, C.D. Singh, Sunny Choudhary, Abhimanyu, Ayusha Kumar, Madhu Sikri, Rishi, S. Chandra Shekhar, Advs.

Case Category:

LETTER PETITION AND PIL MATTER

ORDER

Swatanter Kumar, J.

1 . Unlike natural calamities that are beyond human control, avoidable disasters resulting from human error/negligence prove more tragic and completely imbalance the inter-generational equity and cause irretrievable damage to the health and environment for generations to come. Such tragedy may occur from pure negligence, contributory negligence or even failure to take necessary precautions in carrying on certain industrial activities. More often than not, the affected parties have to face avoidable damage and adversity that results from such disasters. The magnitude and extent of adverse impact on the financial soundness, social health and upbringing of younger generation, including progenies, may have been beyond human expectations. In such situations and where the laws are silent or are inadequate, the courts have unexceptionally stepped in to bridge the gaps, to provide for appropriate directions and guidelines to ensure that fundamentals of Article 21 of the Constitution of India (for short "the Constitution") are not violated.

2 . The Bhopal Gas Tragedy is a glaring example of such imbalances and adverse impacts, where by court's intervention, poor and destitute have been provided relief and rehabilitation.

3 . The Bhopal Gas Leak Disaster occurred on the intervening night of the 2nd/3rd of December, 1984. Data reflecting the exact number of affected persons was not available initially. Earlier, it was felt that only a small number of persons were adversely affected in terms of health or otherwise by the leakage of toxic gases from the Union Carbide

Unit at Bhopal. However, the Scientific Commission for Continuing Studies on Effects of Bhopal Gas Leakage on Life Systems (for short the 'Scientific Commission') released a Report titled '*The Bhopal Gas Disaster: Effects on Life Systems*' in July, 1987 which suggested otherwise. This Report stated that for the estimated population of 2,00,000 exposed to the toxic gases in the severely and moderately affected areas of Bhopal and the variety of long-term problems anticipated in the crisis period, the number of exposees covered so far by the Indian Council of Medical Research (for short the 'ICMR') through the epidemiological surveys constitute less than 20 per cent of the population. With the passage of time, this figure of the affected population has swollen to nearly 5,00,000. By the same Scientific Commission, it was also found that in general, the output of the epidemiological project so far had not equalled the magnitude of the tasks assigned to them, presumably due to lack of resources, trained staff as well as physical inputs. An opportunity for mounting such a massive long-term longitudinal study on a population exposed to a one-time acute chemical stress may not present itself again and hence it would be a pity if that opportunity was missed. Various steps were recommended by the Scientific Commission, from time to time, to tackle the two main aspects of this disaster. Firstly, health care of the affected victims and secondly, research work with the object to deal with the acute problems arising from this disaster on the one hand and to suggest preventive steps on the other.

4. Writ Petition (Civil) No. 50 of 1998 was filed by the Bhopal Gas Peedith Mahila Udyog Sanghathan as a public interest litigation under Article 32 of the Constitution. This petition was founded on the rights available to the victims of the Bhopal Gas Disaster under Article 21 of the Constitution and it was prayed that they were entitled to receive free and proper medical assistance from the Respondents, the Union of India and the State of Madhya Pradesh. It was also prayed that the Respondents be directed to take effective steps in that regard which inter alia included providing of free medicines and preparing a detailed plan of medical rehabilitation that ensured the availability of basic medical facilities to the gas victims. Lastly, it was also prayed that the ICMR be directed to resume and conduct research studies and to make public the reports published by it so as to provide the basic ground for issuance of appropriate directions by this Court.

5. This Court has been passing various directions right from the filing of this petition and has directed certain effective and positive steps to be taken by the Union of India as well as the State of Madhya Pradesh to ensure providing of appropriate medical treatment to the gas victims. It is no use referring to the different orders passed by this Court from time to time in detail. However, we will be referring to some of the important orders in brief which have a bearing on the issue now pending before this Court and for passing of the final directions.

6. To begin with, the ICMR had undertaken certain research works immediately after the Bhopal Disaster and appropriate steps had been taken, as claimed by the State and the Central Government, to deal with the medical problems of the gas victims. However, it appears from the record and has been averred before us that after 1994, the ICMR allegedly took an irrational decision to disband all Bhopal Gas Disaster related medical research. This abandoning of research work has been seriously criticised in the present petition. Certain appeals had been filed against the order of the High Court of Madhya Pradesh which came to be registered as Civil Appeal Nos. 3187-3188 of 1988, which were subsequently clubbed with Writ Petition (Civil) No. 50 of 1998. I.A. Nos. 32-35, 36-37 in Civil Appeal Nos. 3187-3188 of 1988 titled "*Union Carbide Corporation Ltd. v. Union of India*" were filed for seeking different directions, upon which and vide order dated 15th May, 1988, this Court directed creation of the Bhopal Memorial Hospital and

Research Centre (for short 'BMHRC') and the Bhopal Memorial Hospital Trust (for short 'BMHT/the Trust') which was constituted for the purposes of healthcare of the affected gas victims. This hospital initially was to run for a period of eight years which term was extended from time to time and then finally, vide order dated 2nd May, 2006, the term was extended till completion of its object. Further, vide order dated 17th July, 2007, this Court also sought report from the ICMR on various toxic effects of the leaked gas.

7. This Court also, by order dated 17th September, 2004 passed in Writ Petition (Civil) No. 50 of 1998, ordered the constitution of two expert committees being the 'Monitoring Committee' and the 'Advisory Committee'. The latter was formed by ICMR under the Chairmanship of Director General of ICMR and its terms of reference were as follows:

(i) To examine the treatment practices currently followed by medical personnel in the hospitals/clinics run by the Government for the Bhopal Gas victims for the various ailments suffered by them.

(ii) To recommend/advise on the appropriate line of treatment to be offered to the Bhopal gas victims.

(iii) To recommend/advise on the structure and content of the research to be undertaken in order to improve the quality of the treatment being offered to the Bhopal Gas victims.

8. The Advisory Committee has been submitting its reports from time to time and it was assured by the State Government that the said Committee will be provided with all facilities and technical inputs. Then, the ICMR conducted its research investigation in the form of 24 major research projects ranging from epidemiology to molecular biology implemented by 15 National Institutes. Vide letter dated 17th February, 2004, from the Director General of ICMR to the Government of Madhya Pradesh it was indicated that with respect to future needs for research, ICMR would facilitate the Madhya Pradesh State Government by constituting a Committee of experts which would look into the work carried out between 1985 to 1994 as well as the subsequent research by the Centre for Rehabilitation Studies under the Bhopal Gas Tragedy Relief and Rehabilitation Department (for short, the 'BGTRRD'), Bhopal from 1995 till date, so as to provide guidelines for future research. On 24th June, 2010, the Union Cabinet passed a resolution directing the ICMR to establish a new permanent research centre at Bhopal which was done on 11th October, 2010, namely, the National Institute of Research in Environment Health (for short the 'NIREH'). The research work is being continued by the ICMR, while it submits its report to this Court from time to time. The vision document was duly prepared by the NIREH.

9. In the background of this vision document, it is stated that after the Methyl Isocyanate (MIC) gas episode at Bhopal, various research programmes were conducted by the ICMR to monitor the research programme and also to undertake long term epidemiological studies to record the morbidity and mortality of the cohort of gas exposed and control population.

10. In order to ensure smooth running of the BMHT, a corpus had been created which was provided with funds and contributions that were invested from time to time and the total corpus, as of now, constitutes Rs. 436.47 crores. Out of this amount, Rs. 226.61 crores has been invested in RBI Bonds in Banks, Rs. 196.54 crores in FDRs in Banks, Rs. 11.65 crores in the short term deposits in Flexi/Quantum in Banks and Rs. 1.67

crores is the bank balance.

11. During the pendency of this petition, various directions had been passed by this Court to ensure smooth working of the Trust in both the fields of health care and research work. We may refer to some significant orders passed by this Court.

12. The surveys conducted by the ICMR, including the epidemiological survey in 1994, showed multi-organ symptoms amongst the persons exposed and there was tremendous increase in symptoms exhibited by the affected persons. There was even shortage of medicines and various representations were made requesting improvement thereof. Vide order dated 17th September, 2004, the Court had spelt out the terms and conditions for the Monitoring Committee and the Advisory Committee. It related to procedural matters, functioning and terms of reference of the respective Committees. The paramount functions of the Monitoring Committee were to monitor suitability, availability and maintenance of medical equipments, deployment of adequate and competent medical personnel, more specifically the treatment offered at the hospitals and the functioning of these hospitals run by the Government for the Bhopal Gas victims, purchase and availability of medicines to the affected persons etc. Similarly, the Advisory Committee, while determining its own rules of procedure, was to examine the treatment practices currently followed by the medical personnel in the hospitals run by the Government for these victims in relation to various ailments suffered by them. Further, this Committee was to recommend and advice on the appropriate line of treatment to be offered to the Bhopal gas victims. It was further to recommend and advise on the kind of medical equipments and medicines required to be procured to improve the quality of treatment being offered to the victims as well as to initiate and recommend community health initiatives in health education and community participation for prevention and care.

13. Then vide order dated 17th July, 2007, the Court directed the State of Madhya Pradesh to take necessary steps for computerising the records of the hospital so that the details of the patients and/or their ailments were made permanent record to ensure their proper treatment in future. One of the factors which invited the attention of the Court at that time was that the patients who were not the victims of the gas tragedy had also started coming to the hospital, which led to passing of an order wherein the Court required the Monitoring Committee to submit a report if the treatment facilities afforded to such patients were adversely affecting the treatment of the gas victims.

14. Various reports were submitted by the two Committees afore-mentioned which were considered from time to time by this Court. Vide order dated 15th November, 2007, the Court had called upon the State of Madhya Pradesh to provide answers to the questions which were raised by the Monitoring Committee which was overseeing the functions of the hospital and the research work. Report was also sought from the ICMR on various toxic effects of the gas.

15. Thereafter, because of certain events, the Chairman of BMHT resigned. The co-ordination and smooth functioning of these units was found to be lacking and many applications in this regard were filed before the Court. As already noticed, the Court had directed setting up of a hospital for treatment of Bhopal Gas victims vide its order dated 15th May, 1988 in furtherance to which the hospital was established and even the Trust was registered on 11th August, 1988. There existed uncertainty in the decision making process. The Attorney General for India made a statement that the Union of India had decided to take over the BMHRC and run it through Department of Biotechnology and Department of Atomic Energy. In furtherance to this statement, the Court disposed of

I.A. No. 58-59 of 2009 and vide its order dated 19th July, 2010, the Court directed the Central Government to take steps for winding up the Trust and taking over the management of the hospital.

16. Thereafter, certain IAs came to be filed before this Court. In these IAs, different parties had prayed for issuance of different directions in relation to the working, management and control of BMHRC. IA Nos. 62-63 of 2011 in Civil Appeal Nos. 3167-3188 of 1988 have been filed with the prayer that the Union of India be directed to take charge of the corpus funds of the erstwhile BMHT through its Department of Biotechnology and Department of Atomic Energy and transfer the accounts of BMHT to the new management. It was also prayed that the management of the erstwhile BMHT be relieved of all its responsibilities pertaining to management of the corpus and new authorised signatories be appointed for its accounts. One of the Petitioners in the main petition filed an application being IA No. 14 of 2012, primarily relying upon the letter written by Dr. Sathyamala, (Member, Advisory Committee) to Dr. P.M. Bhargava, (Member, Advisory Committee and Chairperson of the Task Force). It was prayed that the same be taken on record and the Advisory Committee be directed to submit minutes of its meetings dated 13th August, 2009, 22nd September, 2010 and 10th December, 2011. Petitioner Nos. 1 and 3 have filed IA No. 16 of 2012 wherein they have prayed for issuance of certain directions. In this application, it has been stated that the Monitoring Committee in its reports dated 10th June, 2005, 31st October, 2005, 12th July, 2006, 20th December 2006, 7th August, 2007 and 27th May, 2008 have consistently recommended computerization of the hospital records and issuance of 'health booklets' to the gas victims. It is averred that recommendations of the Advisory Committee have not been complied with by the State Government, the ICMR and even the Union of India. They have also made a suggestion for issuance of 'smart cards' to the gas affected victims besides issuance of proper health booklets. The NIREH, as established by the ICMR, though was a welcome step, according to these applicants much is desired of the functioning of NIREH. The allegation is that the decision makers at the ICMR are doing everything on their part to ensure that the crucial issues affecting the life and health of the gas victims remain unaddressed at a macro level. All the concentration presently is on building the infrastructure for the NIREH. On this premise, the applicants have prayed that the orders of the Court should be complied with by the State of Madhya Pradesh as well as the ICMR for issuance of 'health booklets' and 'smart cards' to the affected persons. They also prayed for adoption of a common referral system among various medical units under BMHRC and under the BGTRRD so that the gas victims are referred to the appropriate centres for proper diagnosis, investigation and treatment in terms of the nature and degree of injury suffered by each one of them and also in terms of therapeutic requirements. They also prayed that NIREH be directed to set up completely computerized and centrally networked Central Registry, to maintain proper medical records of all gas victims, to streamline and intensify epidemiological studies among the gas-affected population and to prepare treatment protocol for treating each category of ailment that the gas victims are suffering, such as respiratory diseases, eye-related diseases, gastro-intestinal diseases, neurological diseases, renal failure, urological problems, gynaecological problems, mental disorders, etc.

17. In other IAs/ replies filed on behalf of different parties, it has been pointed out that the Monitoring Committee should have the jurisdiction over all hospitals, including non-governmental hospitals and clinics in Bhopal. They should also be vested with powers of recommending penal action against the persons who are found to be defaulting in carrying out the appropriate treatment or following the directions of the Monitoring Committee from time to time. It has also been prayed that the research work could be

carried out by private laboratories or private research units besides the research work being carried on by the ICMR and/or its established unit. It was also brought out from the record before the Court that there is no co-ordination between the various functionaries dealing with this tragedy and, in fact, the views of the Advisory Committee are not given due weightage by the implementing agencies, thereby adding to the suffering and agony of the affected parties.

18. No doubt, the BMHT was established for providing medical treatment and care to the gas victims. Both the Monitoring Committee and the Advisory Committee, appointed by this Court, had different earmarked areas of their respective operation, though their aim was common. The Advisory Committee was required to advise as per its expertise on matters which the implementing agencies, i.e., the Trust as well as the State Government, were expected to perform. On the other hand, the Monitoring Committee was required to oversee the functioning of the research work as well as the timely providing of medical care and treatment to the gas affected victims. Functions of each of these bodies were sufficiently and unambiguously spelt out in different orders of this Court. After submission of the reports by the respective Committees, this Court had also passed various directions for the better and improved performance of these units, so as to ensure better medical care and requisite treatment to the gas victims.

19. As we have already noticed, with the passage of time this disaster has attained wider dimensions and greater concerns, which require discharge of higher responsibilities by all the agencies. In terms of Article 21 of the Constitution, all the gas victims are entitled to greater extent of multi-dimensional health care, as their sufferings are in no way, directly or indirectly, attributable to them. It was, primarily and undoubtedly, the negligence on the part of the Union Carbide Ltd. that resulted in leakage of the MIC gas, causing irreversible damage to the health of not only the persons affected but even the children who were still to be born.

20. The first and foremost question that arises for consideration of this Court is as to whether this matter should be kept pending before this Court or should it be transferred to an appropriate forum, including the High Court, for a more effective and purposeful management of these institutions and to ensure that they satisfactorily serve the purpose of 'public service and benefit' for which they have been constituted. Various applications filed before this Court and reports submitted by the Committees, as afore-referred, are to provide requisite help to the gas victims, as it is not possible for the poor victims to approach this Court for issuance of appropriate directions from time to time. This Court has already ordered providing of basic requirements and constitution of Advisory Committee and the Monitoring Committee. While the management of BMHT was taken over by the Union of India, through Ministry of Health and Family Welfare, the hospital was to run under the direct control of Department of Bio-Technology and Department of Atomic Energy and subsequently, the hospital was also placed under the control of the Ministry.

21. In our considered opinion, it will be appropriate that day-to-day directions are passed by a jurisdictional High Court. Such Court would be in a better position to appreciate the requirements of the gas affected victims as well as to exercise better control over the functioning of the said Committees and organizations. Such direct control would improve the functioning of these units and their inter and intra co-ordination resulting in better mutual performance. Therefore, we consider it not only desirable but also in the interest of all concerned that this matter should henceforth be dealt with by the High Court of Madhya Pradesh, Bench at Jabalpur.

22. In addition to the directions issued by this Court from time to time, it is also necessary for this Court to pass some further directions to provide clarity and precision and also to ensure effective implementation of the various orders which shall remain an integral part of this wide scheme sought to be enforced for the betterment of the gas victims. As far as the argument that there should be privatization of the research work and the Monitoring Committee should be empowered to have control over all hospitals where the gas victims may go for treatment, including private hospitals and clinics of Bhopal is concerned, the same is without any substance. We are of the considered opinion that it would neither serve the ends of justice nor the interest of the gas victims. On the contrary, there would be multi-differential research without any substantive result. Furthermore, the Monitoring Committee has been constituted by this Court vide its order dated 17th September, 2004, with a definite object and specifically assigned functions and terms of reference. There is no justification, much less any need, for expanding the scope of its functioning or bringing the private hospitals/clinics within the jurisdiction of this Empowered Monitoring Committee. Both these prayers, thus, need to be declined, which we do hereby decline.

23. Certainly, there are certain other matters which require attention of this Court. Matters in relation to better co-ordination between the functioning of the authorities, issuance of 'Health Booklets' and 'Smart Cards' to the gas victims, computerization of medical records of the hospitals, taking over of corpus of the BMHT, management of the Trust and certain matters where the State of Madhya Pradesh has failed to effectively accept the recommendations of the Committees, are some of the matters where we would have to issue certain further directions. From the record before us, it appears that the meeting of the Monitoring Committee was held on 29th March, 2011. In this meeting, the Committee proposed that further powers be vested in it for improving the quality of medical care available to the Bhopal gas victims. The proposal of the Committee reads as under:

The Monitoring Committee for Medical Rehabilitation of Bhopal Gas Victims proposes to have the following powers to be vested upon it by the Hon'ble Supreme Court for improving the quality of medical care available to the Bhopal Gas Victims.

1. Powers to take up matters on the basis of complaints made by any individual gas victim or representatives of organization of gas victims. Such complaints may be against any individual official of the department of Bhopal Gas Tragedy Relief and Rehabilitation or any employee in the hospital and other health care centers meant for medical care of gas victims or employed by any agency that is working under the Department of Bhopal Gas Tragedy Relief and Rehabilitation.

2. Powers to direct the concerned department of the State government to ensure facilities such as sufficient office space with furniture and furnishings, office staff including one secretary and one doctor to act as coordinating officer and one each of Hindi and English stenographer-cum typist and one peon and for transportation of members one vehicle with seating capacity for at least five persons.

3. There should be provision of payment of honorarium to members of the committee and also to other persons who are assigned some specific job by the Committee. It is proposed that Rs. 1,000/- per meeting or hospital inspection may be granted.

4. Powers in respect of the following matters namely:

(i) Requisitioning any official document or inspect any official records that the Monitoring Committee finds relevant.

(ii) To ask concern institutions and/or officers for their examination and record their view.

(iii) This Committee should have the facilities of collection of sample of medicine etc as may be required from time to time for detailed examination for this drug controller may be requested for these. Collection samples of medicines, food and other items that may be necessary for assessment of quality of medical care provided at the health care facility. Drug controller may be requested to depute drug inspector for collecting sample etc. to complete the process of inquiry wherever it may be necessary.

5. Powers to recommend penal action against any officer who without any reasonable cause has failed to implement the recommendations of the Monitoring Committee within the time limit prescribed.

6. Powers to award studies to selected agencies (that could include non government agencies) is may be required from time to time for proper assessment of the quality of care provided at different health care facilities within the jurisdiction of the Monitoring Committee.

7 . Powers to engage the services of experts in different fields for assessment of quality of care for implementations of recommendations made by the Monitoring Committee.

8 . Powers to call for public hearing for recording and redress of grievances and creating awareness about the activities of the Monitoring Committee among the Bhopal Victims.

The Monitoring Committee for Medical Rehabilitation of Bhopal Gas Victims shall have jurisdiction over all the hospitals, clinic, day care centres and other health care units and centers meant for the medical rehabilitation of the Bhopal Gas Victims including those run by the Department of Bhopal Gas Tragedy Relief and Rehabilitation.

The foregoing power and functions of the Authority shall be subject to the supervision and control of the Hon'ble Supreme Court. The direction of the Hon'ble Supreme Court dated 10.01.2011 would be taken into consideration by the Monitoring Committee.

24. These recommendations of the Monitoring Committee have been answered by the State by filing an independent reply. In this reply, it has been stated that the recommendation with regard to jurisdiction over all hospitals and clinics is contrary to the terms of the order of this Court dated 17th September, 2004. The power to receive complaints from the affected parties has already been permitted. The Monitoring Committee is also empowered to conduct hearing and collect evidence by requisitioning of the records and examination of the officers from various departments and the hospital. The State also has no objection to the Committee collecting the samples of

medicines in accordance with the provisions of the Drug and Cosmetics Act, 1940 and the Drug and Cosmetics Rules, 1945. It is also the stand of the State Government that they have implemented most of the directions issued by the Monitoring Committee.

25. Another aspect that has been brought to the notice of this Court is that adequate space for office of the Monitoring Committee is not available. This makes it difficult for the public to gain accessibility to the small space that has been provided by the State to the said Committee. This is hampering its functioning in accordance with the orders of this Court.

26. It is commonly conceded before us that the corpus money stands completely transferred to the Ministry of Health and Family Welfare, Department of Health Research (for short 'DHR') and they have also taken over the management of BMHRC.

27. Thus, it is necessary for us to deal with the various prayers made in the above application and the background leading to the filing of such application in its correct perspective. We have to take a balanced approach which would further the cause of accurate research and better medical care in favour of the gas victims. The Union of India has already passed a resolution directing the ICMR to establish a permanent research centre at Bhopal which, as already noticed, has already been established in the name of NIREH. This itself is sufficiently indicative of the intent of the Government of India to provide and procure necessary machinery for research related works as well as to further the process of getting much needed scientific manpower and research, which can contribute in research activities relating to gas affected persons.

28. The Advisory Committee is performing its advisory function continuously. Definite replies had been filed on behalf of the State of Madhya Pradesh and the Government of India ensuring their full cooperation and complete implementation of the recommendations of these Committees, so as to provide adequate medical facilities to the affected persons and the completion of the research work.

29. As already noticed, suggestions made by the Monitoring Committee in its Report dated 29th March, 2011 have been broadly accepted by the State of Madhya Pradesh, except for two of such proposals. The reservation of the State Government on the issue of assistance of non-governmental organisation and experts from outside in assessing the quality of care and research work, appears to be for valid and good reasons. We wish to make it clear that the recommendations of the Empowered Monitoring Committee, as afore-mentioned, shall not be deemed to have been accepted by this Court, except where directions in that behalf have been specifically passed by this Court in the operative part of this order.

30. Vide letter dated 12th April, 2012, the ICMR while making a reference to the order of this Court dated 19th July, 2010 had informed that the administrative control of BMHRC, after winding up of BMHT, had been transferred to the DHR, Ministry of Health and Family Welfare, Government of India and all other matters, including administrative, financial and legal, pertaining to BMHRC would be dealt with by the DHR. All documents were also admitted to have been transferred, except the corpus of the Trust. It was suggested that the Corpus of BMHT with accumulated interest along with original documents/receipts be transferred to the Secretary, DHR-cum-DG, ICMR and it was also stated that BMHT had been wound up as per the directions of this Court with effect from 19th July, 2010.

31. The BMHT had been constituted under the Deed of Trust dated 11th August, 1998.

Since then, it had carried on its activities under the guidance of the Monitoring Committee, the Advisory Committee and as per the orders of this Court. The BMHT was to remain irrevocable for all times and the Trust Deed was to be construed and have effect in accordance with the Indian laws as per the terms and conditions of the Trust.

32. In terms of the clauses of this Deed, initially the Trust was to stand possessed of the Trust property and income thereof. This possession was to remain both during and after termination of the said period of eight years for the purposes and objects stated therein, which primarily were related to providing for infrastructure of the hospital and grant of medical aid to the poor, without distinction of race, caste or creed to the gas affected victims.

33. The accounts of the Trust had been audited and the chartered accountants submitted their Report dated 15th July, 2011 pointing out no irregularity or objections to the accounts of BMHT. This Report was submitted to the Members of the Governing Body of the BMHT. In the opinion of the Chartered Accountants, the balance sheet of the state of affairs of BMHT upto 19th July, 2010 along with accounts giving the required information, gave the true and fair view and was in complete conformity with the accounting principles generally accepted in India. Similar remarks have been made in regard to the Income and Expenditure Account wherein an excess of income over expenditure can be seen for the said period.

34. It would still be in the interest of BMHT itself, particularly when the management and the corpus of the BMHT have been transferred to the Union of India that the Government agency, besides regularly inspecting the accounts of the BMHT, also gave their final report for the period ending July 2010. The Auditor General of the State of Madhya Pradesh would be the appropriate authority to inspect the accounts of the BMHT regularly even when the management and corpus thereof is transferred to the Union of India.

35. Having noticed in detail the factual aspect of this case, the suggestions made by various applicants, recommendations of the expert bodies and keeping in mind the very object for which the present Public Interest Litigation was instituted, we are of the considered view that issuance of certain specific directions are inevitably called for. These orders would be to ensure proper progress and implementation of the 'Relief and Rehabilitation programme' for the penurious gas victims as well as to ensure that the research work is result-oriented and continued with exactitude. We make it clear that these directions shall be in aid of the various orders passed by this Court from time to time in the present petition and not in derogation thereto. In other words, all orders passed by this Court with specific reference to the orders mentioned above, shall be read mutatis mutandis to these directions and shall remain in force. The orders-cum-directions are:

1) This Public Interest Litigation (Writ Petition (Civil) No. 50 of 1998) shall stand transferred to the jurisdictional Bench of Madhya Pradesh High Court for better and effective control in this case. All applications filed henceforth shall be dealt with and disposed of by the concerned Bench of the High Court, in line with the various orders passed by this Court, so as to ensure proper functioning of the 'Relief and Rehabilitation Programme', working of the expert bodies and utmost medical care and treatment to the gas victims.

2) We request the Chief Justice of the Madhya Pradesh High Court to ensure that the case is dealt with by a Bench presided over by the Chief Justice himself

or a Bench presided over by the senior most Judge of that Court or any other appropriate Bench in accordance with the High Court Rules of that Court or any special legislation governing the subject in that behalf.

3) Since the space already provided appears to be insufficient, the State of Madhya Pradesh is hereby directed to ensure provision of proper and adequate office space for the Monitoring Committee and the Advisory Committee, to perform their functions effectively. The space so provided should be accessible to public so that the gas victims can conveniently approach the Monitoring Committee for redressal of their grievances and difficulties.

4) We also direct the State Government to provide proper infrastructure to the Committees in the independent office space provided to it. The members would also be entitled to receive Rs. 1,000/- honorarium for each effective meeting. However, no honorarium shall be payable on a day when the meeting is adjourned or no effective business is performed in the meeting of the Committee.

5) The Monitoring Committee has already been authorised and it is hereby clarified that it would hear the complaints and, if necessary, can even call for the records from the concerned hospital or department, record the statements of Government servants or employees of the hospital and make its recommendations to the Government for taking appropriate steps. If no action is taken by the State Government even upon a reminder thereof, the Committee would be well within its jurisdiction to approach the High Court for appropriate directions. We make it clear that the Empowered Monitoring Committee shall have no penal jurisdiction. It shall discharge its functions strictly within the framework of the powers vested and functions awarded to it under the orders of this Court. Such suggestions of the Monitoring Committee shall be primarily recommendatory and reformatory in their nature and content.

6) The Empowered Monitoring Committee shall have complete jurisdiction to oversee the proper functioning of the hospital, i.e., BMHRC as well as other Government hospitals dealing with the gas victims. This jurisdiction shall be limited to the problems relateable to the gas victims and/or the problems arising directly from the incident or even the problems allied thereto. We make it clear that the Empowered Monitoring Committee shall have no jurisdiction over the private hospitals, nursing homes and clinics in Bhopal. However, it does not absolve the State of Madhya Pradesh and the Medical Council of India from discharging its responsibilities towards the gas victims who are being treated in private hospitals, nursing homes or clinics. We do expect these authorities to hear the grievances of the complainants as well as to ensure maintenance of due standards of treatment in these hospitals, nursing homes or clinics.

7) We direct the ICMR as well as NIREH to ensure that the research work is carried on with exactitude and expeditiousness and further to ensure disbursement of its complete benefit to the gas victims. We do not permit the research work to be carried out by any private/non-governmental institution, except the ICMR and NIREH.

8) The Government of India has already resolved to establish the NIREH and carry on the research work, for which it has been provided due infrastructure.

Thus, we see no reason why the research work should not progress at the requisite pace in all fields while providing benefits for proper care and treatment of patients in the various hospitals in Bhopal. We further issue a clear direction to the Union of India and the State of Madhya Pradesh to render all assistance, financial or otherwise, to ensure that there is no impediment in the carrying on of the research work by the specialized institutions.

9) The Monitoring Committee must operationalize medical surveillance, computerization of medical information, publication of 'health booklets' etc. The Monitoring Committee shall also ensure that the 'health booklets' and 'smart cards' are provided to each gas victim irrespective of where such victim is being treated. This direction shall apply to all the hospitals run by the Government or otherwise, in Bhopal. We direct the State Government to provide assistance in all respects to the Empowered Monitoring Committee and take appropriate action against the erring officer/officials in the event of default.

We also direct complete computerization of the medical information in the Government as well as non-government hospital/clinics, which should be completed within a period of three months from today.

10) We are informed that there are large number of vacancies of doctors and supporting staff in the hospitals and allied departments. In the BGTRRD, 80 per cent posts of specialists and 30 per cent of doctors are lying vacant. Some posts are also lying vacant in the Fourth Grade staff. Thus, we direct the concerned authorities to take appropriate steps in all respects not only to fill up these vacancies but also to provide such infrastructure and facilities that the doctors are not compelled to or prefer to resign from BMHRC employment and its various departments, due to inadequate facilities.

11) The Union of India, the State Government and the ICMR should even consider the proposal for providing autonomy to BMHRC and even make it a teaching institution so as to provide attractive terms, studies and job satisfaction therein. This will not only help in providing better opportunities of employment but would better serve the purpose of providing care and treatment of high quality to the gas victims.

12) It is indisputable that huge toxic materials/waste is still lying in and around the factory of Union Carbide Corporation (I) Ltd. in Bhopal. Its very existence is hazardous to health. It needs to be disposed of at the earliest and in a scientific manner. Thus, we direct the Union of India and the State of Madhya Pradesh to take immediate steps for disposal of this toxic waste lying in and around the Union Carbide factory, Bhopal, on the recommendations of the Empowered Monitoring Committee, Advisory Committee and the NIREH within six months from today. The disposal should be strictly in a scientific manner which may cause no further damage to human health and environment in Bhopal. We direct a collective meeting of these organizations to be held along with the Secretary to the Government of India and the Chief Secretary of the State of Madhya Pradesh within one month from today to finalize the entire scheme of disposal of the toxic wastes. The above direction is without prejudice to the appropriate orders or directions being issued by the court of competent jurisdiction.

13) The Advisory Committee, the Monitoring and the NIREH shall continue to file their respective quarterly reports before the High Court of Madhya Pradesh.

These reports shall be dealt with and appropriate directions be passed by the High Court in accordance with law.

14) We have already noticed that the management of BMHT has already been vested in the Ministry of Health and Family Welfare, Government of India and the working of BMHT has come to an end. We, thus, direct that the Union of India and the State of Madhya Pradesh shall take appropriate steps to ensure the dissolution of the Trust in accordance with law. The BMHT was initially formed for a period of eight years and then was constituted for an indefinite period under the orders of this Court. In the facts and circumstances of the case and the subsequent events, we direct that BMHT shall stand dissolved. All concerned to take steps in accordance with law, under which it was created and/or registered.

15) The corpus of BMHT has already been ordered to be transferred to the Government of India and would remain under the control of the Ministry of Health and Family Welfare. If any other steps are required to be taken, they shall immediately be taken by the concerned Ministry. We further issue a clear direction that all the Fixed Deposit Receipts, RBI Bonds, Short Term Deposits and the bank balance of the BMHT, Bhopal, shall stand transferred and be under the control of the said Ministry. If any steps even in this regard are required to be taken, we direct all concerned to take appropriate steps.

16) Accounts of BMHRC and the allied departments, as far as they are subject matter of the present writ petition, shall be audited by the Principal Accountant General (Audit), Madhya Pradesh. It shall also examine the accounts and the audit report dated 15th July, 2011 submitted by M/s. V.K. Verma and Company within three months from today.

17) We also direct the State Government and the Monitoring Committee to evolve a methodology of common referral system amongst the various medical units under the erstwhile BMHRC and BGTRRD to ensure that the gas victims are referred to appropriate centres for proper diagnosis and treatment in terms of the nature and degree of injury suffered by each one of them.

18) We also direct that the Monitoring Committee, with the aid of the Advisory Committee, NIREH and the specialized doctors of BMHRC, issues a standardised protocol for treating each category of ailment that the gas victims may be suffering from. This shall be done expeditiously. It will be highly appreciated if the Committee also prescribes scientific categorization of patients and injuries.

19) Lastly, we direct all concerned in the Union of India, State of Madhya Pradesh, Empowered Monitoring Committee, Advisory Committee, ICMR, NIREH, BMHRC and all other Government or non-government departments/ agencies involved in the implementation of Relief and Rehabilitation Programme and research activity, to carry out the above directions expeditiously and without demur and default.

We grant liberty to the applicants and/or the Petitioners or any other affected person to move the High Court of Madhya Pradesh, Bench at Jabalpur, in the event of violation, non-compliance or default of any of the above directions or any other orders passed by this Court.

36. Before we part with this matter, we consider it our duty to place on record our

appreciation for the able assistance rendered by the Learned Counsel appearing for the respective parties and the functions performed by the various Chairpersons and Committees constituted under the orders of the Court, including the Bhopal Memorial Hospital Trust.

37. This writ petition is transferred to the High Court of Madhya Pradesh in the above terms. All applications are disposed of accordingly.

38. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the 'NGT Act') particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule 1 should be instituted and litigated before the National Green Tribunal (for short 'NGT'). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and the NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before the NGT. This will help in rendering expeditious and specialized justice in the field of environment to all concerned.

39. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.

40. Normally, we would have even transferred this case to NGT. However, as it does not involve any complex or other environmental issues and primarily requires administrative supervision for proper execution of the orders of the Courts, we have considered it appropriate to transfer this case to the High Court of Madhya Pradesh. We may notice that the supervisory work concerns itself with regard to the proper functioning of the various Committees, which were constituted under the orders of the Court, to ensure proper running of the hospital established by the government and health care facilities available to the Bhopal Gas victims. Thus, the matter should be heard and supervisory jurisdiction be exercised by the High Court to better serve the ends of justice.

41. The Registry is directed to transmit the records of the Writ Petition No. 50/1998 to the Madhya Pradesh High Court, Bench at Jabalpur, forthwith and also send copies of this order to all concerned quarters of the Union of India, the State of Madhya Pradesh, the Monitoring Committee, the Advisory Committee, ICMR, BMHRC and the NIREH for compliance of these directions without delay and default.

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ANNEXURE R-5

MANU/SC/0223/2019

Equivalent/Neutral Citation: AIR2019SC1074, 2019(4)BomCR306, 2019(9)FLT697, 2019 INSC 220, 2019(1)KLT726, 2019(6)MhLj835, (2019)2MLJ686, 2019(4)MPLJ628, 2019(3)SCALE721, (2019)19SCC479, 2020 (1) SCJ 126, [2019]3SCR777

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 4763-4764, 8773-8774, 9542-9543 of 2013, 5782 of 2014, 1552-1554, 23 and 1582 of 2019

Decided On: 18.02.2019

Tamil Nadu Pollution Control Board **Vs.** Sterlite Industries (I) Ltd. and Ors.

Hon'ble Judges/Coram:

Rohinton Fali Nariman and Navin Sinha, JJ.

Counsels:

For Appearing Parties: Balaji Srinivasan, AAG, C.S. Vaidyanathan, K.V. Viswanathan, Guru Krishnakumar, C. Aryama Sundaram, R. Raizada, Sr. Advs., M. Yogesh Kanna, Siddhant Kohli, Vrinda Bhandari, Ravi Raghunath, Venkatraman, Akshay Nagarajan, G. Sivabalamurugan, G. Ananda Selvam, Vasantha Kumar, Karuppiyah, Vivek Bharathi, Vinod Khanna B., R. Nedumaran, Beno Bencigar, Parijat Kishore, Santosh Kumar Tripathi, Rohini Musa, Abhishek Gupta, Zafar Inayat, Arjun Singh, Deepak Goel, Ashutosh Kumar Sharma, Rajeev Dubey, Kamendra Mishra, Rachna Gupta, Nikhil Nayyar, K.V. Bharathi Upadhyaya and Vaiko, Advs. and Party-in-Person

Case Category:

APPEAL AGAINST ORDERS OF STATUTORY BODIES - TRIBUNALS

JUDGMENT**Rohinton Fali Nariman, J.**

1. The present appeals arise out of orders that have been passed by the National Green Tribunal ["**NGT**"] dated 31.05.2013, 08.08.2013, and 15.12.2018. The brief facts necessary to appreciate the controversy raised in the present case are as follows.

2. The Respondent, Sterlite Industries (India) Ltd./Vedanta Ltd., was operating a copper smelter plant at the State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) Industrial Complex at Thoothukudi, Tamil Nadu. On 01.08.1994, the Respondent received a No-Objection Certificate ["**NOC**"] from the Tamil Nadu Pollution Control Board ["**TNPCB**"] for the production of blister copper and sulphuric acid. The environmental clearance to the project by the Ministry of Environment, Forest, and Climate Change ["**MoEF**"] followed on 16.01.1995. On 17.05.1995, the State MoEF also granted environmental clearance to the Respondent. The TNPCB granted its consent under the Air (Prevention and Control of Pollution) Act, 1981 ["**Air Act**"] and Water (Prevention and Control of Pollution) Act, 1974 ["**Water Act**"] on 22.05.1995. After obtaining the requisite permissions, the consent to operate the plant was issued on 14.10.1996 by the TNPCB. Production commenced on 01.01.1997. However, the environmental clearances that were granted were challenged before the Madras High Court in Writ Petition Nos. 15501-15503/1996, 5769/1997, and 16961/1998. On 20.05.1999, the TNPCB granted its consent for production of two more products, namely, phosphoric acid and hydrofluorosilicic acid. On 21.09.2004, a Supreme Court Monitoring Committee was constituted to verify the compliance status of hazardous

waste management. It recommended to the MoEF that the environmental clearance for the proposed expansion should not be granted, and if granted, should be revoked. On 19.04.2005, the TNPCB issued consent to operate, subject to fulfillment of various conditions for the expanded capacity. Meanwhile, the Madras High Court, on 28.09.2010, allowed the various writ petitions that had been filed and quashed the environmental clearances granted to the Respondent and directed the TNPCB to close down the plant.

3. Meanwhile, on 23.03.2013, the residents of nearby areas started complaining of irritation, throat infection, severe cough, breathing problem, nausea etc. due to emissions from Sterlite Industries. Reports were obtained after inspection of the premises by the TNPCB. Based on these reports, the TNPCB issued a show-cause notice dated 24.03.2013 and directed closure of the unit Under Section 31A of the Air Act on 29.03.2013. This order was stayed by the NGT on 31.05.2013, allowing the Respondent to commence production subject to certain conditions. Against this, the TNPCB filed Civil Appeal Nos. 4763-4764 of 2013, which will be disposed of by the judgment delivered in this case. Finally, on 08.08.2013, the NGT set aside the TNPCB order dated 29.03.2013, against which, Civil Appeal Nos. 8773-8774 of 2013 were filed, which again will be disposed of by this judgment. It is important to note that the Appellants herein raised the issue of maintainability of the Respondent's appeal before the NGT, stating that an appeal should have been filed first before the appellate authority under the Air Act/the National Green Tribunal Act, 2010 [**"NGT Act"**]. This ground of maintainability was decided against the Appellants by the impugned order dated 08.08.2013.

4. Owing to various interim orders passed by the NGT, the Respondent continued to operate its plant. On 13.04.2016, the TNPCB granted consent to operate the plant for one year subject to certain conditions. Post inspection of the unit of the Respondent in March 2017, the TNPCB issued a show-cause notice dated 14.03.2017 for violations under the Air Act and the Water Act which, apparently, was not pursued. On 06.09.2017, an inspection report by the TNPCB was made, and an order passed on 07.09.2017, granting renewal of consent to operate only till 31.03.2018 subject to various conditions. Meanwhile, a protest had been organized in March 2018 by some persons against the proposed expansion sought by the Respondent. The Respondent, therefore, had to file Writ Petition No. 7313 of 2018 before the Madurai Bench of the Madras High Court for police protection. This Writ Petition was disposed of by an order dated 04.04.2018 with a direction to consider the Respondent's application. On 09.04.2018, the TNPCB refused renewal of consent to operate to the Respondent's unit based on non-compliance with certain conditions that were laid down under the Air Act and the Water Act. On 12.04.2018, the Respondent filed Appeal Nos. 36-37 of 2018 before the appellate authority Under Section 28 of the Water Act. In these appeals, various orders were passed, until, on 06.06.2018, the following order was passed:

APPLICATIONS 28 & 29/2018, APPLICATIONS 30 & 31/2018 AND APPEALS 36 & 37/2018:

Heard.

In view of the Government Order passed by the Government of Tamilnadu in G.O. Ms. No: 72, Environment & Forests (EC-3) Department Dated: 28.5.2018, directing the Tamilnadu Pollution Control Board to close the plant permanently, we feel it is not appropriate to hear the Appeals and decide the issue at this juncture.

Hence the Appeals and applications are adjourned to 10.7.2018.

On 10.07.2018, the matter was further adjourned as follows:

APPLICATIONS 28 & 29/2018, APPLICATIONS 30 & 31/2018 AND APPEALS 36 & 37/2018:

In view of the remarks made in the adjudication proceedings on 6.6.2018 and as the position is same now, the Appeals and Applications are adjourned to 21.8.2018.

Finally, on 18.12.2018, i.e., three days after the impugned order was passed by the NGT on 15.12.2018, an order passed by the appellate authority was as follows:

APPLICATIONS 28, 29, 30 & 31/2018 AND APPEALS 36 & 37/2018:

Ms. Janani, counsel for the Appellant and Mr. V. Vasanthakumar, counsel for the Respondent-Board are present. None is present on behalf of the 1st, 2nd and 3rd interveners.

Counsel for the Appellant seeks permission to withdraw the Appeals. She has also filed a memo to that effect.

In view of the order passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi on 15.12.2018 in Appeal No. 87 of 2018 setting aside the impugned order dated 9.4.2018 which is subject matter of these appeals pending before this Appellate Authority, the Appeals have become infructuous and hence they are closed.

5. On 12.04.2018, an order was passed by the TNPCB Under Section 33A of the Water Act and Section 31A of the Air Act directing that the Respondent's unit shall not resume production without obtaining prior approval/renewal or consent from the TNPCB. This was followed by two orders, both dated 23.05.2018, again issued under the same Sections, this time to close down the Respondent's unit and disconnect power supply to it. Finally, on 28.05.2018, an order was issued by the Government of Tamil Nadu Under Section 18(1)(b) of the Water Act stating:

It is brought to the notice of the Government that Tamil Nadu Pollution Control Board did not renew the Consent to Operate to M/s. Vedanta Limited, Copper Smelter Plant, SIPCOT Industrial Complex, Thoothukudi District in its order dated 9.4.2018. Subsequently, on 23.5.2018, Tamil Nadu Pollution Control Board has also issued directions for closure and disconnection of power supply to the Unit. The power supply has been disconnected on 24.5.2018.

2. Under Article 48-A of the Constitution, "the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".

3. Under Sections, 18(1)(b) of the Water Act, 1974 in the larger public interest, the Government endorse the closure direction of the Tamil Nadu Pollution Control Board and also direct the Tamil Nadu Pollution Control Board to seal the unit and close the plant permanently.

6. On the same date, the TNPCB issued a letter to the District Collector, inter alia,

directing him to seal the Respondent's unit. These six orders became the subject matter of a composite Appeal No. 87 of 2018 Under Section 16 of the NGT Act.

7. A writ petition was filed by the Respondent before the Madurai Bench of the Madras High Court on 18.06.2018 so that the Respondent could access its unit to maintain its plant. This was dismissed as withdrawn on 09.07.2018.

8. The Appellants then took up a plea of maintainability of the composite appeal. As this was not being disposed of by the NGT, this Court, by its order dated 17.08.2018, directed the NGT to render its final findings, both on maintainability as well as on merits. On 20.08.2018, the NGT constituted a Committee to go into the material produced by the parties to the Civil Appeal and to visit the site. This Committee was ultimately headed by Justice Tarun Agarwala, former Chief Justice of the Meghalaya High Court, together with two experts, one being a representative of the Central Pollution Control Board ["CPCB"] and another a representative of the MoEF. Aggrieved by this order, the Appellants knocked on the doors of this Court. This Court disposed of this appeal on 10.09.2018, by stating:

By our order dated 17.08.2018, we had made it clear that the NGT may continue to hear the matter both on merits as well as on maintainability and finally decide the matter on both counts.

Since our order is not referred to in the order dated 20.08.2018 passed by the NGT, we need only to state that once the Committee's report is given to the Tribunal, it will proceed to decide the matter in accordance with our order dated 17.08.2018.

xxx xxx xxx

A review petition that was filed against this order was dismissed.

9. The Committee constituted by the NGT then inspected the site on various dates in September/October, 2018, and heard all concerned parties as well as intervenors. It then came out with a detailed Enquiry Report dated 20.11.2018, in which it concluded as follows:

On the basis of the site visit, public hearing and after hearing the Appellant Company, State of Tamil Nadu, Tamil Nadu Pollution Control Board, and the intervenors and, upon consideration of the issues raised, the Committee is of the opinion:

1 . The impugned orders cannot be sustained as it is against the principles of natural justice.

No notice or opportunity of hearing was given to the Appellant.

2 . The grounds mentioned in the impugned orders are not that grievous to justify permanent closure of the factory.

3 . Other issues raised also does not justify the closure of the factory even if the Appellant was found to be violating the conditions/norms/directions.

4 . In the event the Hon'ble Tribunal is of the opinion that the factory should commence production, the committee is of the opinion that the

following directions may be issued.

- a) As per condition No. 44 of the Consent Order dated 19-04-2005, the Appellant should be directed to monitor ground water quality including heavy metals such as Arsenic, Cadmium, Silver, Copper, Fluoride, etc. in and around the factory premises and nearby villages once a month and such report should be furnished to the TNPCB.
- b) The sampling of the above should be taken in the presence of an official from TNPCB.
- c) In addition to the above, the sampling of effluent/emission and solid waste should also be done by a monitoring group to be constituted by TNPCB comprising a representative of the District Collector, an official of TNPCB, NGOs and academicians as per condition No. 43 of Consent Order dated 19-04-2005.
- d) Both the reports should be sent by TNPCB to CPCB for analysis. Recommendations made by CPCB should be followed.
- e) Copper slag dumped at all the eleven sites including the Uppar River should be removed. If copper slag has been used for landfill purposes, then the excess amount of the slag over and above the level of ground would be removed and thereafter the landfill should be compacted with one feet of soil, so that the copper slag is not blown away by the strong winds.
- f) The dead stock of copper slag lying in the dump yard inside the factory premises which has solidified should be removed in a time bound manner. Thereafter, the bottom of the dump yard and the side walls should be covered with HDPE liner. Further, the Company should ensure that the generation and disposal of copper slag is maintained in the ratio of 1:1 and that the Company at best, can retain 10 days generation of copper slag in its dump yard.
- g) The dead stock of gypsum lying in the dump yard inside the factory premises which has solidified should be removed in a time bound manner. Thereafter, the bottom of the dump yard and the side walls should be covered with HDPE liner. Further, the Company should ensure that the generation and disposal of gypsum is maintained in the ratio of 1:1 and that the Company at best, can retain 10 days generation of gypsum in its dump yard.
- h) The Company before disposing copper slag, gypsum (or) any other waste product will seek previous permission from the TNPCB.
- i) Application of the Company for obtaining valid authorization for disposal of hazardous waste under Hazardous & Other Wastes (Management, & Transboundary Movement) Rules,

2016 should be disposed of by the TNPCCB in a time bound manner.

j) Even though there is no requirement of analyzing the air samples through an accredited laboratory nonetheless a direction should be issued to the Appellant that they will conduct a periodical survey for ambient air quality/noise level/stack emission through accredited laboratories of MoEF & CC/NABL and furnish such report to the TNPCCB.

k) The Appellant company should be directed that they shall develop a green belt of 25 metres width around the battery limits of its factory by planting native and high foliage tree and also in and around the factory.

l) The State of Tamil Nadu/TNPCCB should collect data from their primary health centres and Govt. Hospitals to monitor the various ailments that are being complaint of by the inhabitants living in and around the factory premises.

m) The State Government should specify the module to the Appellant for conducting the proper and designed health monitoring study.

n) The direction No. (iii) on "Source Apportionment Study" and direction No. (ix) on "conducting a study on health hazards" passed by the NGT in its judgment dated 8/8/2013 in Appeal 58 of 2013 should be carried out by the Tamil Nadu State Government and TNPCCB. Such reports should be furnished to NGT in a time-bound manner.

o) The Appellant should be directed to start the construction of gypsum pond immediately and complete the same in a time bound manner as per the conditions laid down in the guidelines given by CPCB in October, 2014.

p) The Appellant shall undertake a fresh detailed hydrogeological study for determining aquifer vulnerability and migration of leachate from the existing phosphogypsum pond through a reputed organization approved by the TNPCCB as per condition No. 15 of the Consent Order dated 19/04/2005.

q) Direction should be given to the TNPCCB as well as to the Appellant to take independent ground water samples from the same points for the purpose of finding out groundwater pollution if any. Such reports should then be compared by the CPCB. Recommendations made by CPCB should be followed.

r) Directions/Regulation may be framed for import of high grade copper ore.

s) Irrespective of the norms, stack height in any case be increased in order to remove the ambiguity and the grievance of inhabitants of the people of the Tuticorin with regard to

emission of SO₂.

t) Till such time, the stack height is not increased, the production of copper as well as sulphuric acid should be restricted/reduced to match the existing stack height.

u) The transportation of copper ore concentrate from the port to the factory premises should be done in a closed conveyance or through a pipe conveyor system.

v) Self-monitoring mechanism needs to be prepared by the Appellant for the periodic monitoring of Ambient Air Quality/Stack emissions/Fugitive emissions/ground water quality/surface water quality/soil quality/slag analysis through third party and report shall be furnished to the concerned regulatory agencies.

w) All the monitoring data, compliance reports of CTE/CTO/EC and environmental statement shall be uploaded on the website of the Company.

x) TNPCB should be directed to commission "Regional Environmental Impact Assessment Study" in and around Tuticorin District by engaging a reputed national agency.

y) CPCB recommendations as contained in the order of NGT, dated 20.08.2018 to be complied with.

Both the Respondent as well as the Appellants made their detailed comments on the Committee's report. The NGT then heard final arguments and dictated the impugned order on 15.12.2018, in which it substantially accepted the Committee's recommendations. In doing so, it set aside the six impugned orders in the composite appeal. One major bone of contention of both the State of Tamil Nadu as well as the TNPCB in this case is that the appeal before the NGT is not maintainable and hence, the order dated 15.12.2018 is without jurisdiction.

10. As a postscript to this order, the TNPCB looked into the matter again, and issued yet another rejection letter dated 22.01.2019, by which the Respondent's application seeking renewal of consent to operate was rejected, stating that the conditions of various previous consents over the last 20 years had not been followed.

11. We have heard wide-ranging arguments from learned Counsel appearing on behalf of all the parties as well as the intervenors, on maintainability as well as on merits. Since we will be deciding this case on maintainability alone, we have not ventured to state anything on the merits of the case.

12. Shri C.S. Vaidyanathan, learned Senior Advocate appearing on behalf of the TNPCB, showed us various provisions of the Water Act, Air Act, and the NGT Act and argued that the six impugned orders before the NGT were orders which could not have been corrected by the NGT. Insofar as the first order dated 09.04.2018 was concerned, an appeal was pending before the appellate authority, as a result of which, the NGT, when it set aside the said order, could not have done so. Similarly, the orders dated 12.04.2018, 23.05.2018, and 28.05.2018, made Under Section 33A of the Water Act and Section 31A of the Air Act, were composite orders issued. As orders Under Section

31A of the Air Act were not appealable to the NGT either under the Air Act or Under Section 16 of the NGT Act, the Tribunal acted without jurisdiction in interfering with these orders. Further, the order dated 28.05.2018, issued by the Government of Tamil Nadu Under Section 18 of the Water Act, was certainly not an appealable order under either the Water Act or the NGT Act, and could only have been corrected in judicial review in a writ petition filed Under Article 226 of the Constitution of India or in a suit before a Civil Court. According to him, therefore, the setting aside of such an order was also completely without jurisdiction. Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the State of Tamil Nadu, added to these submissions. He cited some of our judgments as well as statutes and judgments of the English Courts to show that once an appeal is available to an appellate authority, after which an appeal lies to the NGT, a party cannot leapfrog directly to the NGT. Apart from this, the learned Senior Advocate also argued, based on the scheme of the Water Act, Air Act, and NGT Act, that all the appeals filed before the NGT were incompetent. Shri Guru Krishnakumar, learned Senior Advocate appearing on behalf of the TNPCB, also went on to criticize the order passed by the NGT dated 08.08.2013 on maintainability. According to him, no doctrine of necessity could be imported if an appellate tribunal was not constituted, as a result of which an appeal could not be argued before the appellate authority. Consequently, a leapfrog appeal would not be maintainable before the NGT. According to the learned Senior Advocate, this order also had to be set aside for the reason that even assuming that the appellate authority was not constituted on the date on which an appeal could have been preferred to it, the NGT, being a second appellate tribunal, would not have jurisdiction, and that either a suit or a writ petition Under Article 226 would have to be filed against the original order.

13. As against these arguments, Shri C.A. Sundaram, learned Senior Advocate appearing on behalf of the Respondents in all three appeals, sought to sustain the order of the NGT in these three appeals. The learned Senior Advocate painstakingly took us through all the orders that were impugned before the NGT, together with the relevant provisions of the Air Act, the Water Act, and the NGT Act. According to the learned Senior Advocate, so far as the order dated 09.04.2018 is concerned, thanks to a government affidavit filed, the appeal before the appellate authority had become infructuous, as a result of which, a direct appeal to the NGT would obviously become maintainable. Insofar as the combined orders Under Sections 33A and 31A of the Water Act and the Air Act, respectively, are concerned, according to him, an express appeal is provided to the NGT against orders passed Under Section 33A of the Water Act, and even if there is no appeal provided Under Section 31A of the Air Act, yet, as four out of five items in these orders dealt with the Water Act, the order could be stated to be substantially an order under the Water Act, and therefore, appealable as such. He added that, in any case, such orders could be corrected Under Section 14 of the NGT Act to avoid piecemeal litigation. Further, in any case, according to the learned Senior Advocate, a direction made Under Section 31A of the Air Act is undoubtedly equivalent to an order made Under Section 31 of the Air Act, and therefore, would be expressly appealable Under Section 16 of the NGT Act. Another without prejudice argument was made, that assuming all other arguments failed, these matters are only procedural, and therefore, appeals must necessarily land up before the expert tribunal which is so constituted as an expert tribunal to deal with all matters relating to the environment. For this, he referred to and relied strongly upon Sections 14, 15, 29, and 33 of the NGT Act. Insofar as the attack made upon the order dated 28.05.2018 of the Government of Tamil Nadu Under Section 18 of the Water Act is concerned, Shri Sundaram argued that on a proper construction of Section 18 read with the other provisions of the Water Act, only a general order, dealing with general matters, could be passed under the said Section, and not an order to shut down one particular industry. Since the Section 18

order purports to deal with only one particular industry, it is non est and liable to be ignored. An alternate argument made is that even though the order states that it is made Under Section 18, it can otherwise be traced to Section 29 of the Water Act as an order made in revision, and would, therefore, be appealable as such. The learned Senior Advocate then argued that, in any case, this is an order by which a direction has been made by the State Government to the TNPCB and, therefore, does not directly affect his client. He also argued that when this order was challenged before the NGT, the defence of the Government and the TNPCB would be that this is an order which, though binding on the TNPCB, would also impact the Respondent. This being the case, the NGT could always go into whether such a defence is a valid defence, and could, therefore, decide the matter. He also went on to state that the NGT is an expert body constituted specifically under a special Act, which is far better equipped than the High Court Under Article 226 exercising its powers in the writ jurisdiction, and therefore, all matters dealing with the environment should necessarily be decided by the NGT alone. He also relied upon our judgment in **L. Chandra Kumar v. Union of India and Ors.**, MANU/SC/0261/1997 : (1997) 3 SCC 261 [**L. Chandra Kumar**], in which it has been made clear that Tribunals can exercise powers of judicial review and that, therefore, being the equivalent of a High Court, the NGT could, in exercise of its powers of judicial review, have interfered with the State Government's orders passed Under Section 18 of the Water Act.

14. Having heard learned Counsel for all parties, it is important first to advert to the provisions of the three Acts in question.

15. The relevant Sections of the Water Act are as follows:

18. Powers to give directions.--(1) In the performance of its functions under this Act--

(a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and

(b) every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it:

Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

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25. Restrictions on new outlets and new discharges.--(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,--

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this Section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board Under Sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in Sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may--

(a) grant its consent referred to in Sub-section (1), subject to such conditions as it may impose, being--

(i) in cases referred to in Clauses (a) and (b) of Sub-section (1) of Section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this Section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in Sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this Section and Sections 27 and 30,--

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

26. Provision regarding existing discharge of sewage or trade effluent.--Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream or well or sewer or on land, the provisions of Section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that Section subject to the modification that the application for consent to be made Under Sub-section (2) of that Section shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette.

27. Refusal or withdrawal of consent by State Board.--(1) A State Board shall not grant its consent Under Sub-section (4) of Section 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.

(2) A State Board may from time to time review--

(a) any condition imposed Under Section 25 or Section 26 and may serve on the person to whom a consent Under Section 25 or Section 26 is granted a notice making any reasonable variation of or revoking any

such condition;

(b) the refusal of any consent referred to in Sub-section (1) of Section 25 or Section 26 or the grant of such consent without any condition, and may make such orders as it deems fit.

(3) Any condition imposed Under Section 25 or Section 26 shall be subject to any variation made Under Sub-section (2) and shall continue in force until revoked under that Sub-section.

28. Appeals.--(1) Any person aggrieved by an order made by the State Board Under Section 25, Section 26 or Section 27 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the appellate authority) as the State Government may think fit to constitute:

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(2) An appellate authority shall consist of a single person or three persons, as the State Government may think fit, to be appointed by that Government.

(3) The form and manner in which an appeal may be preferred Under Sub-section (1), the fees payable for such appeal and the procedure to be followed by the appellate authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred Under Sub-section (1), the appellate authority shall, after giving the Appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

(5) If the appellate authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then,--

(a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;

(b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable.

29. Revision.--(1) The State Government may at any time either of its own motion or on an application made to it in this behalf, call for the records of any case where an order has been made by the State Board Under Section 25, Section 26 or Section 27 for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it may think fit:

Provided that the State Government shall not pass any order under this Sub-section without affording the State Board and the person who may be affected by such order a reasonable opportunity of being heard in

the matter.

(2) The State Government shall not revise any order made Under Section 25, Section 26 or Section 27 where an appeal against that order lies to the appellate authority, but has not been preferred or where an appeal has been preferred such appeal is pending before the appellate authority.

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33A. Power to give directions.--Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.--For the avoidance of doubts, it is hereby declared that the power to issue directions under this Section includes the power to direct--

(a) the closure, prohibition or Regulation of any industry, operation or process; or

(b) the stoppage or Regulation of supply of electricity, water or any other service.

33B. Appeal to National Green Tribunal.--Any person aggrieved by,--

(a) an order or decision of the appellate authority Under Section 28, made on or after the commencement of the National Green Tribunal Act, 2010; or

(b) an order passed by the State Government Under Section 29, on or after the commencement of the National Green Tribunal Act, 2010; or

(c) directions issued Under Section 33-A by a Board, on or after the commencement of the National Green Tribunal Act, 2010,

may file an appeal to the National Green Tribunal established Under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.

16. The relevant Sections of the Air Act are as follows:

21. Restrictions on use of certain industrial plants.--(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such

application.

(2) An application for consent of the State Board Under Sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant such person shall make the application under this Sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in Sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in Sub-section (1), the State Board shall, by order in writing and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

(5) Every person to whom consent has been granted by the State Board Under Sub-section (4), shall comply with the following conditions, namely:-

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in Clause (i) or Clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;

(v) such other conditions as the State Board may specify in this behalf; and

(vi) the conditions referred to in Clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that--

(a) after the installation of any control equipment in accordance with the specifications under Clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under Clause (ii), or

(c) after the erection or re-erection of any chimney under Clause (iv),

no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the prior approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of the opinion that all or any of the conditions referred to in Sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board Under Sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

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31. Appeals.--(1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute:

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Appellate Authority shall consist of a single person or three persons as the State Government may think fit to be appointed by the State Government.

(3) The form and the manner in which an appeal may be preferred Under Sub-section (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred Under Sub-section (1), the Appellate Authority shall, after giving the Appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

31A. Power to give directions.--Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.--For the avoidance of doubts, it is hereby declared that the power to issue directions under this Section includes the power to direct--

(a) the closure, prohibition or Regulation of any industry, operation or process; or

(b) the stoppage or Regulation of supply of electricity, water or any other service.

31B. Appeal to National Green Tribunal.--Any person aggrieved by an order or decision of the Appellate Authority Under Section 31, made on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established Under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.

17. The relevant Sections of the NGT Act are as follows:

2. Definitions.--(1) In this Act, unless the context otherwise requires,--

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(m) "substantial question relating to environment" shall include an instance where,--

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

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

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

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

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

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14. Tribunal to settle disputes.--(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

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

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

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

15. Relief, compensation and restitution.--(1) The Tribunal may, by an order, provide,--

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas,

as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in Clauses (a), (b) and (c) of Sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this Section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.

16. Tribunal to have appellate jurisdiction.--Any person aggrieved by,--

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority Under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government Under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, Under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority Under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);

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

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority Under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, Under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

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

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this Section within a further period not exceeding sixty days.

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29. Bar of jurisdiction.--(1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

(2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court."

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33. Act to have overriding effect.--The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

18. It is important now to advert to both the orders dated 08.08.2013 and 15.12.2018, insofar as they deal with the maintainability of the appeals before them.

19. By the judgment of the NGT dated 08.08.2013, the NGT disposed of the plea on maintainability as follows:

62. Another aspect that would support the view that we are taking is the doctrine of necessity. Wherever in the facts and circumstances of the case, it is absolutely inevitable for a person to exercise another right available to it under the statute and where it is unable to exercise the preliminary right of appeal because of non-existence or non-proper constitution of the appellate authority and for its effective and efficacious exercise of right, it becomes necessary for the Appellant-company to invoke another remedy, then the same would be permitted unless it was so specifically barred by law governing the subject and the rights of the parties. It was upon the Appellant-company, particularly keeping in view the emergent situation created by issuance of the order dated 29th March, 2013, to avail of its right to appeal without any undue delay and as was rightly done by it within two days of the passing of the order. The unit of the Appellant-company had been directed to be shut down and the Appellant-company obviously could not have taken recourse to the remedy Under Section 31 of the Air Act as the authority itself was not properly constituted and was not functional. Besides the aid of the doctrine of necessity, the Appellant-

company has also placed its reliance on Section 31B of the Air Act. An appeal against the order passed by the appellate authority in exercise of its powers Under Section 31 of the Air Act lies to the NGT in terms of Section 31B of the Air Act. In other words, the appellate order passed by the proper authority Under Section 31 of the Air Act is appealable to the NGT in terms of Section 31B. Thus, the NGT is the appellate authority of the appellate authority constituted Under Section 31 of the Air Act by the State Government. The Appellant-company has itself given up its right of first appeal before the appellate authority in view of the peculiar facts and circumstances of the case. The Respondents have placed reliance upon the judgment of the Supreme Court in *Manohar Lal v. Union of India*, (2010) 11 SCC 557 where the Court had taken the view that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor the superior authority can mortgage its wisdom and direct the statutory authority to act in a particular manner. Firstly this judgment on facts and law has no application to the present case. Secondly, the non-constitution of the authority itself would bring the present case outside the application of the judgment of the Supreme Court in the case of *Manohar Lal* (supra).

63. We are unable to contribute ourselves to the contention raised that a direction passed Under Section 31A of the Air Act is not covered under the expression 'order' used in Section 31 of the Air Act. Any direction essentially would contain an element of order as it requires and calls upon the parties to comply with the same. 'Direction' itself means an order; an instruction how to proceed, like the judge's direction to the jury, while 'Order' is defined as a command, direction or instruction. This is how the *Black's Law Dictionary*, 9th Edition, refers to these two expressions. In other words, they can be used as synonyms. They are not conflicting terms and one can be read into the other. Thus, we find no substance in this contention raised on behalf of the Respondents.

64. An appellate authority, which is constituted under the statute, is completely distinct and different from an administrative authority constituted otherwise even to deal with adjudicatory proceedings. In the case of an appellate authority, it must satisfy the existence *de facto* and must function *de jure*, in accordance with law. If the appellate authority itself was not in conformity with the notification, it cannot be said that it could function in accordance with law without constitution of the three Member appellate authority. The cumulative effect of this discussion is that the objection in regard to maintainability is without any substance and is liable to be rejected. In view of this finding, it is not necessary for us to examine whether this could be treated as a petition Under Section 14 of the National Green Tribunal Act (for short 'the NGT Act') even if it was not maintainable in view of the objection taken by the Respondent in regard to maintainability of the present appeal.

20. Insofar as the judgment dated 15.12.2018 is concerned, the NGT, on maintainability, held as follows:

44. It is undisputed that this Tribunal is an Appellate Authority as far as orders of closure under the Air Act and the Water Act are concerned. The impugned orders dated 12.04.2018, 23.05.2018 and 28.05.2018 are such orders. Mere fact that an appeal against the order declining renewal of Consent to Operate is provided for and was filed cannot be in the facts and circumstances of the

present case, be a bar to exercise of powers of the Appellate Authority by this Tribunal. As already noted, the Appellate Authority has declined to proceed with the matter. The grounds in the impugned orders dated 09.04.2018, 12.04.2018, 23.05.2018 and 28.05.2018 are identical. If the appeals are held to be not maintainable, the Appellant will be without any remedy against the order of closure. Order of the Appellate Authority is also appealable before this Tribunal Under Section 16(f) of the NGT Act, 2010. We, thus, do not find any merit in this case in the objections of the Respondent.

45. Mere fact that the State of Tamil Nadu also endorsed the order of the TNPCB and that order of the State is not appealable to this Tribunal, does not deviate from the legal position that order of TNPCB is appealable to this Tribunal. Moreover, order of the State of Tamil Nadu is not a policy matter but mere endorsement of order of the TNPCB.

46. The judgments relied upon by the Respondents are distinguishable. Unlike *Educanti Kistamma v. Deokar's Distillery* [(2003) 5 SCC 669], this is not a case where the first order has not been challenged. Challenge before us is to the first order as well as subsequent orders. Basis for all the orders is common.

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48. The order of the Government of Tamil Nadu issued Under Section 18(1)(b) of the Water Act also cannot be said to be an independent order but relied on and endorsing the views of the TNPCB which is under challenge and that are not sufficient for ordering closure or refusal to grant even consent. If there are no other materials for the Government of Tamil Nadu to arrive at conclusion of closure on the ground of irreversible pollution being caused to the environment allowing the unit to function, then it cannot be said to be a policy decision to close down the industry permanently and if any order was passed based on the order by the Pollution Control Board, without independent application of mind and arbitrarily, then that can also be incidentally considered by the Tribunal for the purpose of deciding the question of legality of that order. So, under the present circumstances, it is not a case of this Tribunal entertaining the appeals where there is inherent lack of jurisdiction to entertain the same.

49. In the present proceedings, as already noted, the Appellate Authority having declined to proceed with the matter and the order of closure being appealable before this Tribunal, there is no ground to reject the appeal on the ground of maintainability so as to deprive the Appellant any judicial remedy in the matter.

(I) Re: Order dated 09.04.2018

21. This order is an order which rejected renewal of consent to operate, and therefore, is traceable to Section 27 of the Water Act and Section 21 of the Air Act. There is no doubt whatsoever that an appeal against an order made Under Section 27 of the Water Act is appealable to the appellate authority Under Section 28 of the said Act. Under Section 33B(a) of the said Act, if a person is aggrieved by an order or decision of the appellate authority Under Section 28, it is then appealable to the NGT. This is made clear also by Section 16(a) of the NGT Act. Equally, an order refusing consent Under Section 21 of the Air Act is appealable to the appellate authority Under Section 31 of the Air Act, and thereafter, from the said appellate authority's order, to the NGT, Under Section 31B of the Air Act and Section 16(f) of the NGT Act.

22. As has been stated hereinabove, it is clear that an appeal to the appellate authority under the Air Act and the Water Act was, in fact, preferred, being Appeal Nos. 36-37 of 2018. While these appeals were pending before the appellate authority, the composite Appeal No. 87 of 2018 was filed on 22.06.2018 before the NGT *inter alia* against the order of refusal of consent to operate dated 09.04.2018. Shri Sundaram, however, argued before us that the order dated 06.06.2018 made by the appellate authority, which we have set out hereinabove, makes it clear that the appeals could not be heard since the State Government had passed an order dated 28.05.2018 directing the TNPCB to close down the plant permanently. What is missed by Shri Sundaram is the fact that the said order expressly states that the appeals could not be decided *at this juncture* and were hence adjourned to 10.07.2018. The said appeals on 10.07.2018 were further adjourned, and it is only on 18.12.2018 that they were finally withdrawn as being infructuous in view of the fact that the NGT had passed its order on 15.12.2018 in which it had set aside the order dated 09.04.2018.

23. What becomes clear from the above narration of facts is the fact that while an appeal was still pending before the appellate authority, the NGT took up a matter directly against the original order dated 09.04.2018 which was challenged before the appellate authority even before the appellate authority could decide the same. However, Shri Sundaram referred to Section 28(4) of the Air Act and Section 31(4) of the Water Act to argue that appeals to the appellate authority must be decided expeditiously, and if they were not so decided, an appeal would lie to the NGT against a decision by the appellate authority not to decide the matter before it expeditiously. This argument must also be negated as, in point of fact, no appeal was preferred from any orders of the appellate authority adjourning the proceedings. As we have seen, an appeal was directly filed from the order of the TNPCB dated 09.04.2018.

24. At this point, it is important to advert to a few judgments of this Court. In **Kundur Rudrappa v. Mysore Revenue Appellate Tribunal and Ors**, MANU/SC/0528/1975 : (1975) 2 SCC 411, this Court, while dealing with Section 64 of the Motor Vehicles Act, 1939, stated:

4. The point that arises for consideration is whether any appeal lay Under Section 64 of the Act to the State Transport Appellate Tribunal against the issue of a permit in pursuance of an earlier resolution of the Regional Transport Authority granting the permit. It is only necessary to read Section 64(1)(a) which is material for the purpose of this appeal:

64. (1)(a) Any person aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him

...

may within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted Under Sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

We are not required to consider the other clauses of Section 64(1) which are admittedly not relevant. Section 64 has to be read with Rule 178 of the Rules which prescribes the procedure for appeal to the various authorities.

5. Appeal is a creature of the statute. There is no dispute that Section 64 of the Act is the only Section creating rights of appeal against the grant of permit and other matters with which we are not concerned here. There is no appeal provided for Under Section 64 against an order issuing a permit in pursuance of the order granting the permit. Issuance of the permit is only a ministerial act necessarily following the grant of the permit. The appeals before the State Transport Appellate Tribunal and the further appeal to the Mysore Revenue Appellate Tribunal are, therefore, not competent Under Section 64 of the Act and both the tribunals had no jurisdiction to entertain the appeals and to interfere with the order of the Regional Transport Authority granting the permit which had already been affirmed in appeal by the State Transport Appellate Tribunal and further in second appeal by the Mysore Revenue Appellate Tribunal. There was, therefore, a clear error of jurisdiction on the part of both the Tribunals in interfering with the grant of the permit to the Appellant. The High Court was, therefore, not right in dismissing the writ application of the Appellant which ought to have been allowed.

25. Similarly, in a concurring judgment of Sinha, J., in **Cellular Operators Association of India and Ors. v. Union of India and Ors.**, MANU/SC/1368/2002 : (2003) 3 SCC 186, the learned Judge observed:

27. TDSAT was required to exercise its jurisdiction in terms of Section 14-A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to Sub-section (7) of Section 14-A thereof. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of Sub-section (2) of Section 14 as also the dispute made in an application Under Sub-section (1) thereof. The approach of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is, therefore, wholly unsustainable. The extent of jurisdiction of a court or a tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by Parliament in the amending Act of 2000. TDSAT, thus, failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law.

26. In **B. Himmatlal Agrawal v. Competition Commission of India** Civil Appeal No. 5029/2018 [decided on 18.05.2018], this Court, while dealing with Section 53B of the Competition Act, 2002 held:

7. The aforesaid provision, thus, confers a right upon any of the aggrieved parties mentioned therein to prefer an appeal to the Appellate Tribunal. This statutory provision does not impose any condition of pre-deposit for entertaining the appeal. Therefore, right to file the appeal and have the said appeal decided on merits, if it is filed within the period of limitation, is conferred by the statute and that cannot be taken away by imposing the condition of deposit of an amount leading to dismissal of the main appeal itself if the said condition is not satisfied. Position would have been different if the provision of appeal itself contained a condition of pre-deposit of certain amount. That is not so. Sub-section (3) of Section 53B specifically cast a duty upon the Appellate Tribunal to pass order on appeal, as it thinks fit i.e. either confirming, modifying or setting aside the direction, decision or order appealed against. It is to be done after giving an opportunity of hearing to the parties to the appeal. It, thus, clearly implies that appeal has to be decided on merits. The

Appellate Tribunal, which is the creature of a statute, has to act within the domain prescribed by the law/statutory provision. This provision nowhere stipulates that the Appellate Tribunal can direct the Appellant to deposit a certain amount as a condition precedent for hearing the appeal. In fact, that was not even done in the instant case. It is stated at the cost of repetition that the condition of deposit of 10% of the penalty was imposed insofar as stay of penalty order passed by the CCI is concerned. Therefore, at the most, stay could have been vacated. The Appellate Tribunal, thus, had no jurisdiction to dismiss the appeal itself.

27. In *Raja Soap Factory v. S.P. Shantharaj*, MANU/SC/0231/1965 : (1965) 2 SCR 800, the Plaintiffs instituted an action in the nature of passing off against the Defendants in the High Court of Mysore, stating that they are exclusive owners of a particular trade mark. This Court found that exercise of jurisdiction by the High Court of Mysore is governed by Mysore Act 5 of 1962. Holding that the said High Court does not exercise any original jurisdiction, this Court held:

The High Court of Mysore is by its constitution primarily a court exercising appellate jurisdiction: it is competent to exercise original jurisdiction only in those matters in respect of which by special Acts it has been specifically invested with jurisdiction. The High Court is competent to exercise original jurisdiction Under Section 105 of the Trade and Merchandise Marks Act 43 of 1958 if it is invested with the ordinary original civil jurisdiction of a District Court, and not otherwise, and the High Court of Mysore not being invested by any statute of under its constitution with that jurisdiction was incompetent to entertain a passing off action.

But it was urged that in a State the High Court is at the apex of the hierarchy of civil courts and has all the powers which the subordinate courts may exercise, and it is competent to entertain all actions as a Court of original jurisdiction which may lie in any court in the State. For this exalted claim, there is no warrant in our jurisprudence. Jurisdiction of a court means the extent of the authority of a court to administer justice prescribed with reference to the subject-matter, pecuniary value and local limits. Barring cases in which jurisdiction is expressly conferred upon it by special statutes, e.g. the Companies Act; the Banking Companies Act, the High Court of Mysore exercises appellate jurisdiction alone. As a court of appeal it undoubtedly stands at the apex within the State, but on that account it does not stand invested with original jurisdiction in matters not expressly declared within its cognizance.

(at page 802)

28. In *Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd. and Ors.*, MANU/SC/1151/1997 : (1997) 4 SCC 452, Section 129-D of the Customs Act, 1962 was referred to, under which, the Board of Excise and Customs may direct a Collector to apply to the Appellate Tribunal for determination of points which arise out of an order or decision. In repelling an argument that even without such direction, the Union of India may file an appeal directly, this Court held:

10. ... The aforesaid provisions of the Act leave no room for doubt that they represent a complete scheme or code for challenging the orders passed by the Collector (Customs) in exercise of his statutory powers.

..... So far as departmental authorities themselves are concerned including the

Collector of Customs no direct right of appeal is conferred on the Collector to prefer appeal against his own order before the CEGAT. However there is sufficient safeguard made available to the Revenue by the Act for placing in challenge erroneous orders of adjudication as passed by the Collector of Customs by moving the Central Board of Excise and Customs Under Section 129-D(1) for a direction to the Collector to apply to the CEGAT for determination of such point arising out of the decision or order as may be specified by the Board of Revenue in this connection....

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12. ... But even if it is so, the statutory procedure laid down by Parliament in its wisdom for enabling the challenge to the adjudication order of the Collector of Customs by way of appeals or revisions as per the aforesaid relevant statutory provisions, to which we have made a mention, has got to be followed in such an eventuality. Bypassing the said statutory procedure a direct frog leap to CEGAT is contra-indicated by the statutory scheme of the Act. If such direct appeals are permitted the very scheme of Section 129-D(1) would get stultified. It must, therefore, be held that direct appeal filed by the Union of India through Industries Ministry to CEGAT Under Section 129-A(1) was clearly incompetent. It may be added that the Union of India could have used the mode set out in Section 129-D, but it did not do so.

29. In **Manohar Lal v. Ugrasen**, MANU/SC/0415/2010 : (2010) 11 SCC 557, one of the questions involved, Under Sub-paragraph 2(a) of the judgment, was as follows:

2. In these appeals, three substantial questions of law for consideration of this Court are involved. They are, namely:

(a) As to whether the State Government, a revisional authority under the statute, could take upon itself the task of a lower statutory authority?

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After reviewing a number of cases, this Court then concluded:

23. Therefore, the law on the question can be summarised to the effect that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor can the superior authority mortgage its wisdom and direct the statutory authority to act in a particular manner. If the appellate or revisional authority takes upon itself the task of the statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act.

30. In **Arcot Textile Mills Ltd. v. Regional Provident Fund Commissioner** MANU/SC/1120/2013 : (2013) 16 SCC 1, appeals lay to the Tribunal constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Under Section 7-I of the Act. Whereas appeals lay against orders passed Under Section 7-A of the Act, which provided for determination of monies due from employers, no appeal lay against orders made Under Section 7-Q of the said Act, which spoke of interest payable by the employer. This Court held:

20. On a scrutiny of Section 7-I, we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made Under Section 7-Q. It is well settled in law that right of appeal is a

creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See *Ganga Bai v. Vijay Kumar* [MANU/SC/0020/1974 : (1974) 2 SCC 393], *Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad* [MANU/SC/0300/1999 : (1999) 4 SCC 468], *State of Haryana v. Maruti Udyog Ltd.* [MANU/SC/0556/2000 : (2000) 7 SCC 348], *Super Cassettes Industries Ltd. v. State of U.P.* [MANU/SC/1677/2009 : (2009) 10 SCC 531: (2009) 4 SCC (Civ) 280], *Raj Kumar Shivhare v. Directorate of Enforcement* [MANU/SC/0249/2010 : (2010) 4 SCC 772: (2010) 3 SCC (Civ) 712], *Competition Commission of India v. SAIL* [MANU/SC/0690/2010 : (2010) 10 SCC 744].)

In paragraph 21, this Court further went on to hold that in case an order Under Section 7-A speaks of delay in payment as well as interest, a composite order passed would be amenable to appeal Under Section 7-I, as interest is only parasitic on the principal sum due Under Section 7-A. However, if an independent order is passed Under Section 7-Q for interest alone, the same was held to be not appealable.

31. From the above authorities, it is clear that an appeal is a creature of statute and an appellate tribunal has to act strictly within the domain prescribed by statute. It is obvious that an appeal would lie from an order or decision of the appellate authority Under Section 28 of the Water Act to the NGT only Under Section 33B(a) of the Water Act read with Section 16(a) of the NGT Act. Similarly, an appeal would lie from an order or decision of the appellate authority Under Section 31 of the Air Act to the NGT only Under Section 31B of the Air Act read with Section 16(f) of the NGT Act. Obviously, since no order or decision had been made by the appellate authority under either the Water Act or the Air Act, any direct appeal against an original order to the NGT would be incompetent. NGT's jurisdiction being strictly circumscribed by Section 33B of the Water Act, read with Section 31B of the Air Act, read with Section 16(a) and (f) of the NGT Act, would make it clear that it is only orders or decisions of the appellate authority that are appealable, and not original orders. On the facts of the present case, it is clear that an appeal was pending before the appellate authority when the NGT set aside the original order dated 09.04.2018. This being the case, the NGT's order being clearly outside its statutory powers conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction.

32. In fact, in the United Kingdom, there are several Acts under which a leapfrog appeal is permitted if a point of law of general public importance is involved. Thus, the Administration of Justice Act, 1969 states that such a leapfrog appeal directly to the Supreme Court may be filed on grant of certificate by the Trial Judge in the following terms:

12. Grant of certificate by trial judge.

(1) Where on the application of any of the parties to any proceedings to which this Section applies the judge is satisfied--

(a) that the relevant conditions are fulfilled in relation to his decision in those proceedings or that the conditions in Sub-section (3A) ("the alternative conditions") are satisfied in relation to those proceedings, and

(b) that a sufficient case for an appeal to the Supreme Court under this Part of this Act has been made out to justify an application for leave to bring such an appeal,...

(c).....

the judge, subject to the following provisions of this Part of this Act, may grant a certificate to that effect.

(2) This Section applies to any civil proceedings in the High Court which are either--

(a) proceedings before a single judge of the High Court (including a person acting as such a judge Under Section 3 of the Judicature Act 1925), or

(b).....

(c) proceedings before a Divisional Court.

(3) Subject to any Order in Council made under the following provisions of this section, for the purposes of this Section the relevant conditions, in relation to a decision of the judge in any proceedings, are that a point of law of general public importance is involved in that decision and that that point of law either--

(a) relates wholly or mainly to the construction of an enactment or of a statutory instrument, and has been fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings, or

(b) is one in respect of which the judge is bound by a decision of the Court of Appeal or of the Supreme Court in previous proceedings, and was fully considered in the judgments given by the Court of Appeal or the Supreme Court (as the case may be) in those previous proceedings.

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33. To similar effect are Sections of the Tribunals, Courts and Enforcement Act, 2007, and the Employment Tribunals Act, 1996. Such appeals in the U.K. are referred to as "leapfrog appeals" [see **S Franses Ltd. v. The Cavendish Hotel (London) Ltd**, MANU/UKWQ/0112/2017 : [2018] UKSC 62 (at paragraph 7)].

34. It is, therefore, clear that no such provisions, as are contained in the U.K. Acts, being present in any of the Acts that we are concerned with, such leapfrog appeals to the NGT would necessarily be without jurisdiction.

(II) Re: Orders passed Under Section 33A of the Water Act and Section 31A of the Air Act

35. We have referred to the orders dated 12.04.2018, 23.05.2018, and 28.05.2018 passed by the TNPCB Under Sections 33A and 31A of the Water Act and Air Act respectively. At this juncture, it is important to state that Section 33B of the Water Act and Section 31B of the Air Act were both enacted on 18.10.2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued Under Section 33A of the Water Act are appealable to the NGT, directions issued Under Section 31A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given Under Section 31A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. Shri Sundaram's argument that these orders being substantially relatable to the Water Act would, therefore, not hold, as such orders are composite orders made both under the Water Act and the Air Act. Equally disingenuous is the reference to Section 14 of the NGT Act which only refers to the original jurisdiction of the NGT and not to its appellate jurisdiction. Also, to state generally that the subject matter of environment lies with the NGT, is an argument of despair that must be dismissed for the reason that as held by us hereinabove, an appeal being a creature of statute, a statute either confers a right of appeal or it does not. In the present case, we have seen that so far as directions issued Under Section 31A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. The ingenious argument made by Shri Sundaram that, in any case, a "direction" Under Section 31A of the Air Act is nothing but an "order", and would, therefore, be appealable as such Under Section 31B of the Air Act read with Section 16(f) of the NGT Act would drive a coach-and-four through the statutory scheme that has just been adverted to. We have seen how all the appellate proceedings to the NGT, whether under the Air Act, the Water Act, or the NGT Act have been brought into force on the same date. Whereas the identical power to give directions by the Board under the Water Act is appealable to the NGT, the same power to give directions by the Board under the Air Act is not so appealable. The absence of any mention of Section 31A in Section 31B of the Air Act, given the statutory scheme as aforesaid, makes it clear that even this argument must be rejected. Also, "directions" that are issued Under Section 31A of the Air Act are of a different quality from "orders" referred to in Section 31 of the same Act. Directions are issued in the exercise of powers and performance of functions under the Act and are not quasi-judicial in nature, whereas orders that are appealed against Under Section 31 are quasi-judicial orders made, *inter alia*, Under Section 21 of the Air Act. For this reason also, we cannot accept the aforesaid argument of Shri Sundaram. However, Shri Sundaram argued, with particular reference to the explanation to Section 31A of the Air Act that "directions" partake of the nature of "orders" when closure of any particular industry or stoppage of supply of electricity *qua* any single industry is made, and therefore, such directions are appealable as orders Under Section 31 of the Air Act. This argument is also of no avail as Section 33A of the Water Act contains an identical explanation to that contained in Section 31A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. Hence, reference made to P. Ramanatha Aiyer's Law Lexicon and Black's Law Dictionary, which state that in certain circumstances, orders are also directions and vice versa, would not apply to the present case, given the express statutory scheme. In this connection, Shri

Sundaram cited **Kanhiya Lal Omar v. R.K. Trivedi** MANU/SC/0170/1985 : (1985) 4 SCC 678, and relied upon paragraph 17, where this Court held, referring to Article 324(1) of the Constitution of India, that a "direction" may be equated with a specific or a general order. The context of Article 324 being wholly different, it is obvious that this authority also has no application, given the statutory scheme in the present case.

36. Shri Sundaram then cited **Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth**, MANU/SC/0055/1984 : (1984) 4 SCC 27. In this judgment, the High Court had struck down Regulation 104 of the Maharashtra Secondary and Higher Secondary Boards Regulations, 1977, by which, no re-evaluation of an answer book given in an examination can be undertaken. In setting aside the High Court judgment, this Court stated that the process of re-evaluation of answer papers is extremely time consuming, would involve several thousand man-hours, and is bound to throw the entire system out of gear. Further, it is in public interest that the results of public examinations, when published, should have some finality attached to them [see paragraph 27]. It is in this context that this Court held:

29. ... It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, Rule or bye-law which would bring about the result of rendering the system unworkable in practice.

To bodily lift the aforesaid sentence and apply it to the fact situation here would be a huge leap which we are not prepared to make. Further, given the statutory scheme as aforesaid, it is not possible for us to provide an appeal where there is none in the guise of making an appellate system workable in practice.

37. Shri Sundaram then relied upon this Court's judgments in **Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.**, MANU/SC/0935/2016 : (2016) 14 SCC 161 and **Allokam Peddabbayya v. Allahabad Bank**, MANU/SC/0700/2017 : (2017) 8 SCC 272 for the proposition that the right of appeal is a statutory right, and like all other statutory rights, it can be waived, unless its waiver is detrimental to public interest. The question in these appeals is not whether an Appellant may waive a statutory right of appeal. The question is whether the NGT, which is only invested with the jurisdiction of entertaining an appeal from an order of an appellate authority, is jurisdictionally capable of entertaining an appeal directly from the original authority. It is clear, as has been held by us, that the NGT possesses no such jurisdiction.

38. One further argument was made that these matters are only procedural, and therefore, substantially, an appeal to the NGT would be maintainable. It is well settled that the right to appeal is not a procedural matter but a substantive one. In **Garikapati Veeraya v. N. Subbiah Choudhury**, MANU/SC/0008/1957 : 1957 SCR 488, this Court held:

From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

(at pp. 514-515)

This argument must, therefore, be rejected.

(III) Re: Order passed Under Section 18 of the Water Act

39. So far as the order dated 28.05.2018 is concerned, this order is expressly stated to be made Under Section 18 of the Water Act. There is no doubt whatsoever that such an order is not appealable to the NGT either under the Water Act or under the NGT Act. However, Shri Sundaram has argued that Section 18 is referable to orders generally made, and falls under Chapter IV of the Water Act, which deals with powers and functions of Boards, as opposed to the Sections that follow in Chapter V, which deals with prevention and control of water pollution, which orders are made against individuals and individual industries. On the assumption that Shri Sundaram is correct in this argument, it is clear that such order can only be set aside in a suit by a Civil Court, or Under Article 226 of the Constitution of India by a High Court. It is not possible to agree with the argument of Shri Sundaram that such orders can be ignored, being *non est*. It is settled that an administrative order, when made, does not bear the brand of invalidity on its forehead, as has been held in **Smith v. East Elloe Rural District Council**, MANU/UKHL/0005/1956 : [1956] 1 All E.R. 855 (at page 871), which has been followed by this Court in **State of Punjab v. Gurdev Singh**, MANU/SC/0612/1991 : (1991) 4 SCC 1 (at page 6); **Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.**, MANU/SC/0280/1997 : (1997) 3 SCC 443 (at page 455); **Pune Municipal Corporation v. State of Maharashtra**, MANU/SC/7170/2007 : (2007) 5 SCC 211 (at page 225); **Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group**, MANU/SC/0085/2011 : (2011) 3 SCC 363 (at page 369); and **Kandla Port v. Hargovind Jasraj**, MANU/SC/0080/2013 : (2013) 3 SCC 182 (at page 193). Therefore, this order can only be set aside either in a suit, or by the High Court in the exercise of judicial review. Faced with this, Shri Sundaram then argued that though the said order states that it is traceable to Section 18 of the Water Act, it can, in fact, be traced to Section 29 of the same Act. Section 29 deals with the revisional power, in which the State Government is to pass a quasi-judicial order after hearing both the State Board and the person who is affected. Quite obviously, this order is not a quasi-judicial order as the State Government has not found it necessary to hear either the State Board, or any person affected by such order. Further, such order does not purport to be an order which either affirms or sets aside any order made Under Sections 25, 26, or 27 of the Water Act. This argument of despair, therefore, must also be rejected.

40. Shri Sundaram then argued that this Court in **L. Chandra Kumar** (supra) made it clear that Tribunals that are set up, generally have the power of judicial review, save and except a challenge to the vires of the legislation under which such Tribunals are themselves set up. For this, he relied strongly upon paragraphs 90 and 93 of the judgment in **L. Chandra Kumar** (supra). It is important to notice that **L. Chandra Kumar** (supra) pertained to a Tribunal that was set up Under Article 323A of the Constitution of India. Under Article 323A(2)(d), the Administrative Tribunal so set up would be able to exercise the jurisdiction of all courts except the jurisdiction of the Supreme Court Under Article 136 of the Constitution. This would mean that the Administrative Tribunal so set up could exercise the jurisdiction of all High Courts when it came to the matters specified in Article 323A. This is further made clear by a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985, which read as follows:

14. Jurisdiction, powers and authority of the Central Administrative Tribunal.--(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to--

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning--

(i) a member of any All-India Service; or

(ii) a person not being a member of an All-India Service or a person referred to in Clause (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in Clause (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in Sub-clause (ii) or Sub-clause (iii) of Clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

*Explanation.--*For the removal of doubts, it is hereby declared that references to "Union" in this Sub-section shall be construed as including references also to a Union Territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of Sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this Sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this Sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to--

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person other than a person referred to in Clause (a) or Clause (b) of Sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

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28. Exclusion of jurisdiction of courts except the Supreme Court Under Article 136 of the Constitution.--On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except--

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force,

shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or matters concerning such recruitment or such service matters.

Article 323B of the Constitution of India also provides for Tribunals for certain other matters which are specified by Sub-clause (2) thereof. Suffice it to say that the NGT is not a Tribunal set up either Under Article 323A or Article 323B of the Constitution, but is a statutory Tribunal set up under the NGT Act. That such a Tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section

29 of the NGT Act (supra). Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985.

41. It is in the context of Article 323A and the Administrative Tribunals Act, 1985 that this Court in **L. Chandra Kumar** (supra) has observed in paragraph 93 as follows:

93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

42. In **Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India and Ors.**, MANU/SC/1264/2013 : (2014) 3 SCC 222 [**BSNL**], this Court had to construe the appellate power that is contained in Section 14 of the Telecom Regulatory Authority of India Act, 1997, by which, the TDSAT was conferred with the power to hear and dispose of appeals against any direction, decision, or order of the TRAI. In this context, after distinguishing the judgment in **L. Chandra Kumar** (supra), this Court held:

108. Before the 2000 Amendment, the applications were required to be filed Under Section 15 which also contained detailed procedure for deciding the same. While Sub-section (2) of Section 15 used the word "orders", Sub-sections (3) and (4) thereof used the word "decision". In terms of Sub-section (5), the orders and directions of TRAI were treated as binding on the service providers, Government and all other persons concerned. Section 18 provided for an appeal against any decision or order of TRAI. Such an appeal could be filed before the High Court. The Amendment made in 2000 is intended to vest the original jurisdiction of TRAI in TDSAT and the same is achieved by Section 14(a). The appellate jurisdiction exercisable by the High Court is also vested in TDSAT by virtue of Section 14(b) but this does not include decision made by TRAI. Section 14-N provides for transfer to all appeals pending before the High Court to TDSAT and in terms of Clause (b) of Sub-section (2), TDSAT was

required to proceed to deal with the appeal from the stage which was reached before such transfer or from any earlier stage or de novo as considered appropriate by it. Since the High Court while hearing appeal did not have the power of judicial review of subordinate legislation, the transferee adjudicatory forum i.e. TDSAT cannot exercise that power Under Section 14(b).

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114. ... From the above-extracted portion of the order it is evident that the Bench, which decided the matter, felt that the view taken by TDSAT would encourage rampant violation of the orders without any penal consequence and the entire scheme of the TRAI Act would become unworkable. The word "directions" used in Section 29 of the TRAI Act was interpreted to include orders and Regulations in the context of the factual matrix of that case and the apprehension of the Court that Section 29 would otherwise become unworkable, but the same cannot be read as laying down a proposition of law that the words "direction", "decision" or "order" used in Section 14(b) would include Regulations framed Under Section 36, which are in the nature of subordinate legislation.

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123. In *Union of India v. Madras Bar Assn.* [MANU/SC/0378/2010 : (2010) 11 SCC 1] and *State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.* [MANU/SC/0901/2012 : (2012) 10 SCC 353: (2012) 4 SCC (Civ) 1229: (2013) 1 SCC (Cri.) 35: (2013) 1 SCC (L & S) 56: (2012) 10 Scale 285], this Court applied the principles laid down in *L. Chandra Kumar case* [*L. Chandra Kumar v. Union of India*, MANU/SC/0261/1997 : (1997) 3 SCC 261: 1997 SCC (L & S) 577] and reiterated the importance of tribunals created for resolution of disputes but these judgments too have no bearing on the decision of the question formulated before us.

124. In the result, the question framed by the Court is answered in the following terms: in exercise of the power vested in it Under Section 14(b) of the TRAI Act, TDSAT does not have the jurisdiction to entertain the challenge to the Regulations framed by TRAI Under Section 36 of the TRAI Act.

In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(b) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down Rules or Regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers Under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in **Re: Special Reference**, (1965) 1 SCR 413, made in the following words:

We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior Court is entitled to determine for itself

questions about its own jurisdiction. "*Prima facie*", says Halsbury, "no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England*, vol. 9, p. 349].

(at page 499)

For this reason also, we are of the view that the State Government order made Under Section 18 of the Water Act, not being the subject matter of any appeal Under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in **BSNL** (supra), we are of the view that the NGT has no general power of judicial review akin to that vested Under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17.07.2014 in **Wilfred v. Ministry of Environment and Forests** must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected.

43. Shri Sundaram then argued that, in any case, this order is an order made by the State Government against the TNPCB, and is therefore, a direction to the TNPCB and not a direction to his client. If this were so, and the order had no effect on his client, there would have been no necessity to file an appeal before the NGT against such order. We have seen, however, that this order has been challenged on merits by the Respondent before the NGT. To then say that this order which is challenged would be defended on certain grounds, as a result of which, the NGT then gets vested with the jurisdiction to decide the same, is again to put the cart before the horse. It is clear that no appeal is provided against orders made Under Section 18 of the Water Act, and the attempt to bring the NGT in by the backdoor, as it were, would, therefore, have to be rejected. Also, to argue that as against a writ court acting Under Article 226 of the Constitution of India, the NGT is an expert body set up only to deal with environmental matters, again does not answer the specific issue before this Court. As we have held earlier, an appeal being a creature of statute, an order passed Under Section 18 of the Water Act is either appealable or it is not. If it is not, no general argument as to the NGT being an expert body set up to hear environmental matters can be of any help.

44. Equally, so far as the order dated 08.08.2013 is concerned, we have seen how the NGT stated that the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. This, again, is an argument that cannot be countenanced. If an appellate authority is either not yet constituted, or not properly constituted, a leapfrog appeal to the NGT cannot be countenanced. As has been held by us *supra*, the NGT is only conferred appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction.

45. In conclusion, we are cognizant of the fact that the Respondent's plant has been shut down since 09.04.2018. Since we have set aside the impugned judgments of the NGT on the ground of maintainability, the order dated 22.01.2019 passed by the TNPCB, being a consequential order, is also set aside. The Respondents are relegated to the position that the six orders impugned before the NGT, dealt with by the impugned judgment dated 15.12.2018, and the order dated 29.03.2013, dealt with by the final judgment dated 08.08.2013, are alive and operative. Given the fact that we are setting aside the NGT judgments involved in these appeals on the ground of maintainability, we state that it will be open for the Respondents to file a writ petition in the High Court

against all the aforesaid orders. If such writ petition is filed, it will be open for the Respondent to apply for interim reliefs considering that their plant has been shut down since 09.04.2018. Also, since their plant has been so shut down for a long period, and they are exporting a product which is an important import substitute, the Respondent may apply to the Chief Justice of the High Court for expeditious hearing of the writ petition, which will be disposed of on merits notwithstanding the availability of an alternative remedy in the case of challenge to the 09.04.2018 order of the TNPCB. The appeals are disposed of accordingly.

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ITEM NO.22

COURT NO.12

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 8137/2018

(Arising out of impugned final judgment and order dated 28-09-2016 in WP No. 6360/2015 passed by the High Court Of Judicature At Bombay At Nagpur)

THE STATE OF MAHARASHTRA & ANR.

Petitioner(s)

VERSUS

CENTRAL INDIA AYUSH DRUGS MANUFACTURERS ASSOCIATION & ORS.

Respondent(s)

WITH

SLP(C) No. 7951/2014 (IV-A)

IA No. 8599/2021 - APPROPRIATE ORDERS/DIRECTIONS)

C.A. No. 1057/2022 (XVII)

(IA No.17344/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.17339/2022-EX-PARTE STAY)

Date : 22-11-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE KRISHNA MURARI
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Mr. Pratap Venugopal, Adv.
 Ms. Surekha Raman, Adv.
 Mr. Akhil Abraham Roy, Adv.
 Mr. Abhishek Anand, Adv.
 M/S. K J John And Co, AOR

Mr. Shekhar Naphade, Sr. Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.
Ms. Kirti Dadheech, Adv.
Ms. Farha Hashmi, Adv.
Ms. Aishwarya Dash, Adv.

Mr. Nikhil Nayyar, Sr. Adv.
Ms. Pritha Srikumar Iyer, AOR
Ms. Nikita Garg, Adv.
Mr. Dhananjay Baijal, Adv.

For Respondent(s) Mr. Apoorv Khathor, Adv.

Mr. Vikas Mehta, AOR

Ms. Srishti Agnihotri, AOR
Ms. Sanjana Grace Thomas, Adv.
Ms. Mantika Vohra, Adv.

Ms. Aishwarya Bhati, Ld. ASG
Ms. Akanksha Kaul, Adv.
Ms. Ruchi Kohli, Adv.
Mr. T.S. Sabarish, Adv.
Mr. Rustam Chauhan, Adv.
Ms. Shagun Thakur, Adv.
Ms. Shreya Jain, Adv.
Mr. Gurmeet Singh Makker, AOR

Mr. Avijit Roy, AOR

Mr. P. Chidambaram, Sr. Adv.
Mr. Prashant Pakhiddey, Adv.
Mr. Byron Sequeira, Adv.
Mr. Kapil Kumar, Adv.
Mr. Abhay Kumar, AOR

Mr. Sabarish Subramanian, Adv.
Mr. Vishnu Unnikrishnan, Adv.
Ms. Shivani Jena, Adv.
Mr. P. Shankar, Adv.
Mr. Naman Dwivedi, Adv.
Mr. M. Yogesh Kanna, AOR

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

Special Leave to Appeal (C) No. 8137/2018

We have heard learned counsel for the parties.

The challenge made in this special leave petition to an order deciding the issue with regard to maintainability of writ petition before the trial court. The main matter is still pending adjudication.

Considering the aforesaid facts, we dispose of this leave petition with the observation that the High Court shall be free to proceed to decide the writ petition on merits as expeditiously as possible.

In so far as the question of maintainability of the writ petition before the High Court is concerned, the question is left open to be raised and decided in case, any party aggrieved by the final judgment of the High Court challenges the same.

With the aforesaid observations, the Special Leave Petition disposed of finally.

Pending application(s), if any, stand disposed of.

Special Leave to Appeal (C) No. 7951/2014

Challenges in this petition is to an order passed by the High Court transferring the petition and other applications to the appropriate Bench of National Green Tribunal for adjudication. The High Court by impugned order held that the challenge can be made before the National Green Tribunal under the National Green Tribunal Act, 2010 and as such, transfer the proceedings.

Learned counsel for the petitioner relies upon the judgment of this Court in "*Tamil Nadu Pollution Control Board Vs. Sterile India Limited*" (2019) 19 SCC, 479 to contend that the National Green Tribunal will have no power to entertain the question of constitutional validity of any enactment and the High Court committed a wrong in taking a contrary view.

Since in the connected appeal arising from the judgment of the Bombay High Court wherein the High Court has held that writ petition is maintainable before the High Court, we have remitted the matter back to consider the issue on merits leaving it open to the aggrieved party to raise the question of maintainability in case any challenge is made to the final order on merits. Accordingly, in this case also, we set aside the impugned order

passed by the High Court and restore the writ petition back to its original number requesting the High Court to consider and decide writ petition itself on merits. The question of maintainability of writ petition is left open to be raised and decided in case any challenge is made to final order passed by High Court.

With the aforesaid observations, this Special Leave Petition also disposed of finally.

Pending application(s), if any, stand disposed of.

Civil Appeal No. 1057/2022

Item No. 22.2 is detagged and listed separately for hearing.

(SONIA GULATI)
SENIOR PERSONAL ASSISTANT

(MATHEW ABRAHAM)
COURT MASTER (NSH)



2025 INSC 650

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14170 OF 2024

STATE OF UTTAR PRADESH & ANR.

...APPELLANT(S)

VERSUS

GAURAV KUMAR & ORS.

...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 14933 OF 2024

WITH

CIVIL APPEAL NO. 14000 OF 2024

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

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1. ***Affirmation:*** We unequivocally uphold the law and the regulations governing sand mining demanding zero tolerance for unauthorized activities. Strict adherence to these regulations is non-negotiable.

1.1. Unregulated sandmining disrupts riverine ecosystems, alters natural flow patterns, and leads to erosion and habitat loss.

Aquatic biodiversity suffers as spawning grounds are destroyed and water quality deteriorates. The destabilisation of riverbanks increases flooding, risking human life and animal habitat alike. Moreover, the illicit sand trade often operates under the shadow of organised crime, undermining the rule of law and weakening governance structures. Therefore, absolute standards with get tough policies, strict enforcement and quick accountability are compelling for effective regulatory control.

1.2. We have upheld the decision of National Green Tribunal¹ quashing e-auction notice dated 13.02.2023 issued by the State Government for sand mining and the consequent grant of Letters of Interest (LOIs) in favour of successful bidders on the ground that the auction was conducted in the absence of a valid, final and a subsisting District Survey Report (DSR). We have also held that a *Draft* DSR is not tenable. A draft DSR can never be the basis for a recommendation by the District Level Expert Appraisal Committee (DEAC) and for the District Level Environment Impact Assessment Authority (DEIAA) for B2 category projects pertaining to mining of

¹ Hereinafter, “NGT”.

minor minerals lease area less than or equal to five hectares to grant environment clearance.

2. **Facts:** District Magistrate, Saharanpur issued notice inviting e-tenders on 13.02.2023 for sand gravel, boulders, etc. available in the riverbed in Saharanpur district under the U.P. Sub Mineral (Remedy) Rules, 2021. Questioning the legality and validity of the e-auction notice, respondent no. 1, a resident of Haryana approached the National Green Tribunal by filing an original application invoking section 14 and 18 of the National Green Tribunal Act contending that the e-auction notice is illegal as there was no District Survey Report (DSR) as on that date. It was his contention that the last DSR for the Saharanpur district of 2017 expired in the year 2022. Thereafter, steps were taken to prepare a DSR for the succeeding 5 years for Saharanpur district, but only a draft DRS was ready by 13.01.2023. However, even before its finalization, the impugned e-auction notice was issued by District Magistrate, Saharanpur on 13.02.2023 which according to the respondent no. 1 is illegal and unsustainable in law.

3. **Proceedings before the NGT leading to Civil Appeals & Submissions:** NGT vide order dated 13.03.2023 constituted a Joint Committee comprising of the Central Pollution Control Board

(CPCB), State Pollution Control Board (UPPCB) and District Magistrate, Saharanpur (D.M.) to collect relevant information and submit a factual report. The Joint Committee submitted its report on 10.07.2023 indicating that pursuant to the e-auction notice dated 13.02.2023 Letters of Interest (LOI) were issued with respect to 14 sites for river bed mining. Accordingly, the NGT impleaded the parties holding LOIs as party respondents to the original application.

3.1. Pending further proceedings before the NGT, the State Expert Appraisal Committee (SEAC) considered the draft DSR and accorded its approval on 03.05.2024 and then, the State Environment Impact Assessment Authority (SEIAA) granted its approval to the fresh DSR in its 814th meeting on 24.05.2024.

3.2. However, in view of the fact that the last subsisting DSR issued in 2017 expired after five years, i.e. by 2022 and that only a draft DSR dated 13.01.2023 was subsisting when the impugned e-auction notice dated 13.02.2023 was issued, the NGT quashed the auction on the ground that it is in violation of the legal mandate under the 2006 EIA Notification, as amended in 2006, 2018 and

also the Enforcement and Monitoring Guidelines for Sand Mining, 2020 and decision of this Court in *State of Bihar v. Pawan Kumar*².

3.3. Questioning the legality and validity of the judgment of the NGT, 3 appeals are filed before us. The first Civil Appeal No. 14170 of 2024 is by the State of U.P., represented by Ld. ASG Aishwarya Bhati, assisted by Mr. Vishnu Shankar Jain. In the other Civil Appeal No. 14933 of 2024 and Civil Appeal No. 14000 of 2024 by M/s Vedanta Associates and Nutressaorganics India Pvt. Ltd., LOI holders, we have also heard Mr. Ranjit Kumar, Sr. Advocate, ably assisted by Mr. Vanshdeep Dalmia and also Mr. S.P. Singh, Sr. Advocate respectively.

3.4. Having considered submissions of the Ld. Counsels for the appellants in detail and having examined the relevant documents and material on record we had agreed with the reasoning and the conclusions drawn by the NGT and therefore proceeded to dismiss the civil appeals³. By way of this judgment, we supply detailed reasons for our decision.

4. ***Sandmining and its impact on Environment:*** Sand holds significant ecological and environmental value. Coastal dunes,

² (2022) 3 SCC 102. Hereinafter, "*Pawan Kumar*".

³ By order dated 12.02.2025.

river, and seabeds act as natural buffers against storms, floods, and rising sea levels, thereby enhancing climate resilience. Sand also supports vital ecosystems by providing habitat for numerous plant and animal species, including microorganisms crucial to nutrient cycling and water purification. Its role in maintaining the structural integrity of freshwater and marine systems underscores its contribution to biodiversity and environmental sustainability. As such, the stewardship of sand resources is not only an economic imperative but also an ecological necessity.

4.1. As per a study⁴ undertaken by the United Nations Environment Programme (UNEP), approximately 50 billion tonnes of aggregate sand and gravel are reportedly removed globally each year. With the rapid increase in global population and urbanization, the demand for sand continues to rise at an unprecedented rate.⁵ Consequently, it has become the most extracted mineral on the planet, with billions of tons being mined annually from riverbeds, lakes, coastlines, and deltas.

⁴ UNEP (2019). Sand and sustainability: Finding new solutions for environmental governance of global sand resources : synthesis for policy makers. United Nations Environment Programme, Nairobi.

⁵ Yi Han, *et al.*, 'Ecological impacts of unsustainable sand mining: urgent lessons learned from a critically endangered freshwater cetacean', Proceedings of the Royal Society, 2023.

4.2. The rate at which we are mining sand, for whatsoever purposes, is much higher than the replenishment rate. This imbalance between consumption and natural replenishment is what becomes the cause of worry.⁶ The geological processes that produce sand—like the weathering of rocks and the movement of sediments through rivers cannot match the rate at which we are extracting sand from nature. Further, human interventions, such as damming rivers or diverting their natural courses block the natural downstream flow of sediment. As a result, sand fails to reach the places where it would normally accumulate, the river deltas and coastal areas. Beaches are wearing away faster than natural forces can restore them, and riverbeds are being emptied more quickly than upstream erosion can replenish them.⁷

4.3. The need for development, and the concern to preserve ecology stands at crossroads when it comes to the issue of sand mining. The urgent need is to raise awareness that while sand is a crucial resource for economic and industrial development, it also

⁶ Marco Hernandez, Simon Scarr & Katy Daigle, *The Messy Business of Sand Mining Explained*, REUTERS (Feb. 18, 2021),

⁷ E.S. Rentier & L.H. Cammeraat, The environmental impacts of river sand mining, *Science of The Total Environment*, Volume 838, Part 1, 2022,

plays a vital role in climate resilience and preserving healthy ecosystems.

4.4. While a complete ban on sand mining would certainly restore ecology and preserve environment, we all know that such a measure is impractical. Way ahead is sustainable development with effective regulation. While development may be necessity for societal progress, it must be pursued with a balanced approach that prioritizes environmental conservation.⁸ It is imperative for regulatory authorities to design an effective and an efficient regulatory regime and implement it by maintaining absolute standards and strict enforcement⁹.

5. **Legal Framework:** We will now refer to the legal framework concerning mining and its regulation in India. The mining sector forms the backbone of key industries such as steel, cement,

⁸ Naveen Kumar, *Sand Mining in India – Grain of Despair: Failure of Regulatory Machinery*, 2023 SCC OnLine Blog OpEd 44.

⁹ *At the same time, while only so much can come from the regulatory side, we must also endeavor to explore alternatives to sand mining. Researchers from the University of Geneva (UNIGE) and the Sustainable Minerals Institute at the University of Queensland (UQ) have identified a sustainable alternative to natural sand, termed “ore-sand”.⁹ Derived from mineral processing waste, ore-sand offers a dual solution to two pressing global challenges: the growing demand for sand and the massive accumulation of mining waste, which currently amounts to 30–60 billion tonnes annually. By repurposing what was once considered discarded material, ore-sand not only reduces environmental pressure on natural ecosystems but also promotes a circular economy. According to experts like UNIGE’s Pascal Peduzzi and UQ’s Daniel Franks, this innovation can significantly cut down on mine tailings while providing a responsible, scalable sand resource. If adopted widely, ore-sand could help shift the global construction industry toward more sustainable and environmentally conscious practices.*

petroleum, petrochemicals, fertilizers, power generation and of course, for erection of civil infrastructure. Government of India Act, 1935 placed the subject of “mines” and “development of minerals” under the control of Central Legislature and Provincial Legislature vide Entry 36, List I and Entry 23, List II. However, there was no dedicated legislation to deal with issues of mining. With the advent of the Constitution, Entry 54 of List I¹⁰ and Entry 23 List II¹¹ became the source of legislative competence to enact laws for developing and regulating mining. Parliament enacted the Mines and Minerals (Regulation and Development) Act, 1957.¹² Section 2¹³ of MMRD Act is the declaration that it is expedient in the public interest that the Union should take under its control regulation of mines and development of minerals as indicated in Schedule I. However, the scope of this enactment was limited to development and regulation of mines and minerals, with no special emphasis on the environmental concerns. Hence, recourse has to be made to the environmental legislations such as the Water Act, 1974, Air

¹⁰ 54 (List I): Regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

¹¹ 23 (List II) Regulation of mines and minerals development subject to the provisions of List I with respect to regulation and development under the control of the Union.

¹² Act No. 67 of 1957. Hereinafter, “MMRD Act”.

¹³ Section 2. Declaration as to expediency of Union Control.—It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided.

Act, 1981 and the Environment Protection Act, 1986, and policies such as the National Mineral Policy, 2008, followed by the National Mineral Policy, 2019.

6. **Environment Protection Act, 1986:** The Environment Protection Act, 1986¹⁴, is an overarching legislation governing the field of environment protection. The object of the 1986 Act is to “provide for the protection and improvement of environment and for matters connected there with”. Section 3¹⁵ enable the Central Government to take such measures as are deemed or necessary for the purpose of protecting and improving the quality of the environment and also preserving, controlling and abating

¹⁴ Act No. 29 of 1986. Hereinafter, “1986 Act”.

¹⁵ **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.

(2) 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 following matters, namely:--

.....

(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

environmental pollution. Section 5¹⁶ gives the Central Government the power to issue directions.

7. **EIA Notifications:** In exercise of powers under section 3(2)(v) read with the Environment Protection Rules, 1986, the Ministry of Environment, Forest and Climate Change (MoEFCC) issued an important notification, popularly referred to as the EIA Notification 1994.

8. **EIA Notification, 1994:** The EIA Notification was a landmark regulation that made environmental clearance mandatory for certain industrial and developmental projects, including mining. It introduced a structured process for assessing the potential environmental consequences of proposed projects before granting approval. It was stipulated that the expansion or modernization of any activity, where such expansion would result in an increase in the existing pollution load or the establishment of a new project listed under Schedule I of the said Notification, shall not be undertaken in any part of India without obtaining prior

¹⁶ **5. Power To Give Directions.** - Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation--For the avoidance of doubts, it is hereby declared that the power to issue directions under this section 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.*

Environmental Clearance (EC) from the Central Government, in accordance with the procedure prescribed therein. This regulatory regime required project proponents to conduct an Environmental Impact Assessment (EIA), obtain public feedback, and implement mitigating measures to minimize environmental damage. It established a structured procedure for the grant of EC to ensure that industrial and developmental projects adhere to environmental safeguards. As per Para 2 of the Notification, any individual or entity intending to undertake a new project, or seeking expansion or modernization of an existing industry or project, as specified in Schedule I, was required to submit an application to the Secretary, MoEFCC.

8.1 Schedule I of the Notification enumerated 29 categories of projects that necessitated prior EC. Notably, Item 20 pertained specifically to mining projects, thereby bringing such activities under the purview of environmental regulation. This provision underscored the legislative intent to subject mining operations to rigorous environmental scrutiny, ensuring that mineral extraction did not proceed without due assessment of its impact on our ecology. Para 2 provided that in respect of mining projects, amongst others, the project proponent shall intimate the

Government of the location site, and it may grant clearance after conducting necessary investigation and survey.

9. **EIA Notification, 2006:** Twelve years after the EIA Notification 1994, MoEFCC issued the present notification EIA Notification, 2006¹⁷. Para 2 of the 2006 Notification reads as under;

“2. Requirements of prior Environmental Clearance (EC):-

The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category ‘A’ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category ‘B’ in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.”

9.1 Projects under the 2006 Notification were categorized into Category ‘A’ and Category ‘B’ based on spatial extent of potential impact on human health and natural and manmade resources. For projects included under Category A, EC from Central Government

¹⁷ Hereinafter, “2006 Notification”.

is mandated. As far as projects categorized under Category B are concerned, the EC shall be obtained from a new body created, the State Environmental Impact Assessment Authority, SEIAA. Further, Paras 5, 6 and 7 gives a detailed procedure for grant of prior EC. The same are extracted below for ready reference:

"5. Screening, Scoping and Appraisal Committees:

The same Expert Appraisal Committees (EACs) at the Central Government and SEACs (hereinafter referred to as the (EAC) and (SEAC) at the State or the Union territory level shall screen, scope and appraise projects or activities in Category 'A' and Category 'B' respectively. EAC and SEAC's shall meet at least once every' month.

(a) The composition of the EAC shall be as given in Appendix VI. The SEAC at the State or the Union territory level shall be constituted by the Central Government in consultation with the concerned State Government or the Union territory Administration with identical composition;

(b) The Central Government may, with the prior concurrence of the concerned State Governments or the Union territory Administrations, constitutes one SEAC for more than one State or Union territory for reasons of administrative convenience and cost;

(c) The EAC and SEAC shall be reconstituted after every three years;

(d) The authorised members of the EAC and SEAC, concerned, may inspect any site(s) connected with the project or activity in respect of which the prior environmental clearance is sought, for the purposes of screening or scoping or appraisal, with prior notice of at least seven days to the applicant, who shall provide necessity facilities for the inspection;

(e) The EAC and SEACs shall function on the principle of collective responsibility. The Chairperson shall endeavour to reach a consensus in each case, and if consensus cannot be reached, the view of the majority shall prevail.

6. Application for Prior Environmental Clearance (EC):

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and

Supplementary Form 1 A if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1 A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.

7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:

7(i) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:

- *Stage (1) Screening (Only for Category 'B' projects and activities)*
 - *Stage (2) Scoping*
 - *Stage (3) Public Consultation*
 - *Stage (4) Appraisal*
-”*

9.2 Under Para 8, the appropriate authority can either grant or reject prior EC. Para 9 deals with the tenure and validity of an EC and Para 10 provides for post grant monitoring. The Appendix III enumerates the generic structure of an EIA application and its essentials.

9.3 Over the years, amendments were brought about in this EIA Notification, 2006 for the purpose of strengthening the EC norms and laying down further procedures for close scrutiny. For the present purpose, we are not concerned with other details, except to indicate herein the background in which amendments leading

to requirement of District Survey Report, with which we are concerned, are incorporated in the notification. The starting point for this can be said to be the decision of this Court in *Deepak Kumar v. State of Haryana*¹⁸.

10. ***Deepak Kumar v. State of Haryana***: Validity of certain mining leases granting permission for sand mining in violation of environment norms in the State of Haryana came up for consideration before this Court. Deprecating the practice of issuing auction notice without conducting necessary studies to analyse the impact such mining will have on the ecology, this Court held;

“8..... Sand mining on either side of the rivers, upstream and instream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the years, India's rivers and riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers, etc.

9. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both instream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on

¹⁸ (2012) 4 SCC 629. Hereinafter, “*Deepak Kumar*”.

legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.

10. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3-6-2011 and 8-8-2011 have permitted quarrying, mining and removal of sand from instream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and riverbeds and sand extraction may have an adverse effect on biodiversity as well. Further, it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. The rivers mentioned in the auction notices are on the foothills of the fragile Shivalik Hills. Shivalik Hills are the source of rivers like Ghaggar, Tangri, Markanda, etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik Hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, River Yamuna.

11. We find that it is without conducting any study on the possible environmental impact on/in the riverbeds and elsewhere the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a riverbed has an impact on the river's physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 ha, separated by 1 km, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan.

* * *

25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive instream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

26. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long-term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on biodiversity as loss of habitat caused by sand mining will affect various species, flora and fauna and it may also destabilise the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48-A and Article 51-A(g) read with Article 21 of the Constitution.”

(emphasis supplied)

10.1 The above quoted observations became the jurisprudential basis for evaluating the DSR for gauging the impact assessment of sand-mining on the ecology and the environment in general even at the district level.

11. **EIA Notification 2016:** Following the decision of this Court in *Deepak Kumar (supra)* the Government amended the EIA Notification 2006 to introduce special procedure with respect to river bed mining, sand mining and mining of minor minerals. The preamble of this notification is important even for considering the nature, scope and ambit of the DSR which has fallen for our consideration. The relevant portion of the preamble is as under;

“And whereas, in pursuance to the order of Hon’ble Supreme Court dated the 27th February, 2012 in I.A. No.12-13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others etc., prior

environmental clearance has now become mandatory for mining of minor minerals irrespective of the area of mining lease;

And whereas, as a result of the above said Order of Hon'ble Supreme Court, the number of cases which are now required to obtain prior environmental clearance has increased substantially;

And whereas, the Hon'ble National Green Tribunal, vide its order dated the 13th January, 2015 in the matter regarding sand mining has directed for making a policy on environmental clearance for mining leases in cluster for minor minerals;

And whereas, the State Governments have represented for streamlining the process of environmental clearance for mining of minor mineral;

And whereas, the Ministry of Environment, Forest and Climate Change in consultation with State Governments, has prepared Guidelines on Sustainable Sand Mining detailing the provisions on environmental clearance for cluster, creation of District Environment Impact Assessment Authority and proper monitoring of sand mining using information technology and information technology enabled services to track the mined out material from source to destination;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following amendments in the said notification, namely:-

In the said notification,- (a) in paragraph 2, after the words "in the said Schedule", the following words shall be inserted, namely:- "and at District level, the District Environment Impact Assessment Authority (DEIAA) for matters falling under Category 'B2' for mining of minor minerals in the said Schedule"; (b) after paragraph 3, the following paragraph shall be inserted..."

12. Establishment of District Level Environment Impact Assessment Authority (DEIAA) & District Expert Appraisal Committee (DEAC) under Para 3A: As is evident from the above extracted portion of the preamble to the EIA Notification 2016, two

bodies namely, the DEIAA and DEAC have been established by inserting Para 3A to the EIA Notification, 2006 for grant of EC to a newly introduced category (by amending para 2), called category B2. The amended Para 3A establishing DEIAA and DEAC, is extracted herein below for ready reference;

"3A. District Level Environment Impact Assessment Authority:

(1) A District Level Environment Impact Assessment Authority hereinafter referred to as the DEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of four members including a Chairperson and a Member-Secretary.

(2) The District Magistrate or District Collector shall be the Chairperson of the DEIAA.

(3) The Sub-Divisional Magistrate or Sub-Divisional Officer of the district head quarter of the concerned district of the State shall be the Member-Secretary of the DEIAA.

(4) The other two members of the DEIAA shall be the senior most Divisional Forest Officer and one expert. The expert shall be nominated by the Divisional Commissioner of the Division or Chief Conservator of Forest, as the case may be. The term and qualifications of the expert fulfilling the eligibility criteria are given in Appendix VII to this notification.

(5) The members of the DEIAA who are serving officers of the concerned State Government or the Union territory Administration shall be ex-officio members except the expert member.

(6) The District Level Expert Appraisal Committee hereinafter referred to as the DEAC shall comprise of eleven members, including a Chairman and a Member-Secretary.

(7) The senior most Executive Engineer, Irrigation Department in the district of respective State Governments or Union territory Administration shall be the Chairperson of the DEAC.

(8) The Assistant Director or Deputy Director of the Department of Mines and Geology or District Mines Officer or Geologist of the district shall be the Member-Secretary of the DEAC in that order.

(9) A representative of the State Pollution Control Board or Committee, senior most Sub-Divisional Officer (Forest) in the district, representative of Remote Sensing Department or Geology Department or State Ground Water Department, one occupational health expert or Medical Officer to be nominated by the District Magistrate or District Collector, Engineer from Zila Parishad, and three expert members to be nominated by the Divisional Commissioner or Chief Conservator of Forest, as the case may be, shall be the other members of the DEAC. The term and qualifications of the experts fulfilling the eligibility criteria are given in Appendix VII to this notification.

10) The members of the DEAC who are serving officers of the concerned State Government or the Union territory Administration shall be ex-officio members except the expert members.

(11) The District Magistrate or District Collector shall notify an agency to act as Secretariat for the DEIAA and the DEAC and shall provide all financial and logistic support for their statutory functions.

(12) The DEIAA and DEAC shall exercise the powers and follow the procedure as specified in the said notification, as amended from time to time.

(13) The DEAC shall function on the principle of collective responsibility and the Chairman shall endeavor to reach a consensus in each case and if consensus cannot be reached, the view of the majority shall prevail.";

13. New category called Category B2 for sandmining in districts was introduced through para 4(iv): Paragraph 4 of the EIA notification 2006 relating to categorization of projects and activities was also amended and category B2 falling within the jurisdiction of the DEIAA, acting on the decision and recommendation of DEAC is introduced. Relevant portion of para 4(iv) is as under;

“4. Categorization of projects and activities:

(i)

(ii)

(iii)

(iv) *The 'B2' Category projects pertaining to mining of minor mineral of lease area less than or equal to five hectare shall require prior environmental clearance from DEIAA. The DELAA shall base its decision on the recommendations of DEAC, as constituted for this notification.”*

14. Preparation of District Survey Report Introduced through

Para 7(iii): Para 7 of the EIA Notification 2006 has already been reproduced. It relates to the process before grant of EC. While Para 7(i) related to the process for new projects, which comprises of four stages namely, screening, scoping, public consultation and appraisal respectively; para 7(ii) relates to process for expansion or modernisation or change of project mix in existing projects. It is in this very paragraph that the amendment introduces para 7(iii). Introduction of para 7(iii) for the first time contemplated preparation of DSR for sand mining or river bed mining and mining of other minor minerals. Para 7(iii) reads as under;

“7. Stages in the Prior Environmental Clearance (EC) Process for New Projects

(i)

(ii) ...

(iii) Preparation of District Survey Report for Sand Mining or River Bed Mining and Mining of other Minor Minerals:

(a) The prescribed procedure for preparation of District Survey Report for sand mining or river bed mining and mining of other minor minerals is given in Appendix X.

(b) The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI.”

15. Procedure for preparation of DSR introduced through

Appendix X: Procedure for preparation of the above referred DSR under para 7(iii) is laid down in great detail in Appendix X to the notification. Appendix X, apart from laying down the detailed procedure, also declares that the, “*District Survey Report shall form the basis for application for environmental clearance, preparation of reports and appraisal of projects. The Report shall be updated once every five years.*” Appendix X is as follows;

“PROCEDURE FOR PREPARATION OF DISTRICT SURVEY REPORT

The main objective of the preparation of District Survey Report (as per the Sustainable Sand Mining Guideline) is to ensure the following:

Identification of areas of aggradations or deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area.

The report shall have the following structure:

- 1. Introduction*
- 2. Overview of Mining Activity in the District*
- 3. The List of Mining Leases in the District with location, area and period of validity*
- 4. Details of Royalty or Revenue received in last three years*

5. *Detail of Production of Sand or Bajari or minor mineral in last three years*

6. *Process of Deposition of Sediments in the rivers of the District*

7. *General Profile of the District*

8. *Land Utilization Pattern in the district: Forest, Agriculture, Horticulture, Mining etc.*

9. *Physiography of the District*

10. *Rainfall: month-wise*

11. *Geology and Mineral Wealth*

In addition to the above, the report shall contain the following:

(a) District wise detail of river or stream and other sand source.

(b) District wise availability of sand or gravel or aggregate resources.

(c) District wise detail of existing mining leases of land and aggregates.

A survey shall be carried out by the DEIAA with the assistance of Geology Department or Irrigation Department or Forest Department or Public Works Department or Ground Water Boards or Remote Sensing Department or Mining Department etc. in the district.

Drainage system with description of main rivers

Methodology adopted for calculating mineral potential

The mineral potential is calculated based on field investigation and geology of the catchment area of the river or streams. As per the site conditions and location, depth of minable mineral is defined. The area for removal of the mineral in a river or stream can be decided depending on geo-morphology and other factors, it can be 50 % to 60 % of the area of a particular river or stream. For example in some hill States mineral constituents like boulders, river born Bajri, sand up to a depth of one meter are considered as resource mineral. Other constituents like clay and silt are excluded as waste while calculating the mineral potential of particular river or stream.

The District Survey Report shall be prepared for each minor mineral in the district separately and its draft shall be placed in the public domain by keeping its copy in Collectorate and posting it on district's website for twenty one days. The comments received shall be considered and if found fit, shall be

incorporated in the final Report to be finalised within six months by the DEIAA.

The District Survey Report shall form the basis for application for environmental clearance, preparation of reports and appraisal of projects. The Report shall be updated once every five years.

(emphasis supplied)

16. Challenge to the Notification 2016 the direction of NGT in Satendra Pandey's case: Environmental concerns were expressed that the amendments brought about by the EIA notification 2016 did not translate into action the mandate of this Court's decision in *Deepak Kumar (supra)*. These concerns were considered by the NGT in *Satendra Pandey v. MoEFCC*¹⁹ wherein the following directions were issued.

"22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra) by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/SIEAA as well as for cluster situation wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and time frame for replenishment after mining closure in an area; (vi) the MoEF & CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present

¹⁹ 2018 SCC OnLine NGT 2388.

Value of Ecological Services forgone because of illegal or unscientific mining.”

17. EIA Notification for prescribing procedure for preparation of DSR of minor minerals, other than sandmining and river bed mining: A further amendment was introduced to the EIA Notification, 2006 by the EIA Notification 2016 for the purpose of prescribing a separate procedure for preparing DSR for minor minerals other than sand mining and river bed mining through notification dated 25.07.2018. This amendment introduces Part II to Appendix X which reads as under;

**II. PROCEDURE FOR PREPARATION OF DISTRICT SURVEY
REPORT OF MINOR MINERALS OTHER THAN SAND MINING
OR RIVER BED MINING**

The District Survey Report shall be prepared for each minor mineral in the district separately and its draft shall be placed in the public domain by keeping its copy in Collectorate and posting it on district's website for twenty one days. The comments received shall be considered and if found fit, shall be incorporated in the final Report to be finalised within six months by the DEIAA.

The District Survey Report for minor minerals other than sand mining or River bed mining shall be as per structure mentioned below:

**FORMAT FOR PREPARATION OF DISTRICT SURVEY REPORT
FOR MINOR MINERALS OTHER THAN SAND MINING OR RIVER
BED MINING**

- 1) Introduction*
- 2) overview of Mining Activity in the District;*
- 3) general profile of the district;*

- 4) *geology of the district;*
- 5) *drainage of irrigation pattern;*
- 6) *land utilization pattern in the district: forest, agricultural, horticultural, mining etc;*
- 7) *surface water and ground water scenario of the district;*
- 8) *rainfall of the district and climatic condition;*
- 9) *details of the mining leases in the district.....*
- 10) *details of royalty or revenue received in last three years;*
- 11) *details of production of minor minerals in last three years;*
- 12) *mineral map of the district;*
- 13) *list of Letter of Intent (LOI) Holders in the district along with its validity....*
- 14) *total mineral reserve available in the District.*
- 15) *quality/ grade of mineral available in the District;*
- 16) *use of mineral;*
- 17) *demand and Supply of the Mineral in the last three years;*
- 18) *mining leases marked on the map of the district;*
- 19) *details of the area of where there is a cluster of mining leases viz. number of mining leases, location (latitude and longitude);*
- 20) *details of Eco-sensitive Area, if any, in the District;*
- 21) *impact on the Environment (Air, Water, Noise, Soil, Flora & Fauna, land use, agriculture, forest etc.) due to mining activity;*
- 22) *remedial Measures to mitigate the impact of mining on the Environment;*
- 23) *reclamation of Mined out area (best practice already implemented in the district, requirement as per roles and regulation, proposed reclamation plan);*
- 24) *risk Assessment & Disaster Management Plan;*
- 25) *details of the Occupational Health issues in the District. (Last five-year data of number of patients of Silicosis & Tuberculosis is also needs to be submitted);*
- 26) *plantation and Green Belt development in respect of leases already granted in the District;*
- 27) *any other information.*

18. ***Enforcement and Monitoring Guidelines for Sand***

Mining, 2020: It is important to mention at this stage that the MoEFCC has also issued the Sustainable Sand Mining Management Guidelines, 2016²⁰ and the Enforcement and Monitoring Guidelines for Sand Mining, 2020²¹. The 2020 Guidelines does not replace the 2016 Guidelines, rather, they both supplement and complement each other.

18.1 Building on the 2016 Guidelines, MoEFCC came with the 2020 Guidelines. One of the key objectives with which the said guidelines were framed was to regulate the sand and gravel mining in the country. Para 4.1.1 deals with preparation of DSR. It is recognized therein that, *“preparation of District Survey Report is a very important step and sustainable sand mining in any part of the country will depends on the quality of District Survey Report.”* A detailed procedure is given in para 4.1.1, the relevant portion of which is extracted as under;

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

b) The first step is to develop the inventory of the River Bed Material and Other sand sources in the District. In order to make the inventory of River Bed Material, a detailed survey of the

²⁰ Hereinafter, “2016 Guidelines”.

²¹ Hereinafter, “2020 Guidelines”.

district needs to be carried out, to identify the source of River Bed Material and alternative source of sand (M-Sand). The source will include rivers, de-siltation of reservoir/dams, Patta lands/Khatedari Land, M-sand etc.

.....

c) District Survey Report is to be prepared in such a way that it not only identifies the mineral-bearing area but also define the mining and no mining zones considering various environmental and social factors.

d) Identification of the source of Sand & M-Sand.....

e) Defining the sources of Sand/ M-Sand in the district is the next step for identification of the potential area of deposition/aggradation wherein mining lease could be granted.....

* * *

p) Public consultation-The Comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the sub-divisional committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & Patta land/Khatedari land, desiltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure-V. The details regarding cluster and contiguous cluster needs to be provided in Annexure-VI. The details of the transportation need to be provided in Annexure-VII.”

19. **Decision of this Court in State of Bihar v. Pawan**

Kumar²²: Considering the mandatory requirement of preparation of DSR, which shall form the basis for grant of EC for sand mining

²² (2022) 2 SCC 348. Hereinafter, “Pawan Kumar”.

in any districts, this Court specifically directed appraisal by SEIAA and SEAC as under;

16.2. Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed.

19.1 Further, noting the existence of the *Enforcement and Monitoring Guidelines for Sand Mining, 2020*, the Court directed as under;

“12. It could thus be seen that in accordance with the 2020 Guidelines, the DSR is required to be prepared before the auction/e-auction/grant of mining lease by Mining Department or Department dealing with mining activity in the respective States. It is further provided that the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a Sub-Divisional Committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. The Sub-Divisional Committee is further required to record its reasons for selecting the mining lease in the patta land. Various details are required to be given in the annexures appended to the said policy.

13. It is further to be noted that Appendix X of the Notification dated 15-1-2016, issued by MoEF and CC also provides for composition of the Sub-Divisional Committee:

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

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

(emphasis supplied).

19.2 We have also noted that the NGT has been taking a consistent stand about the mandatory requirement of a DSR being a condition precedent to carry mining activity.²³ Further, the decision of the NGT that DSR should be the basis for an application for grant of an EC and that an application without DSR is incomplete cannot be processed or proceeded further is correct in law.²⁴ We may add that a 'draft DSR' is virtually a non-existing DSR for purpose of grant of environmental clearance.

20. **Conclusion:** Having considered the regulatory regime introduced from time to time, increasing the width as well as the depth of scrutiny before granting an environmental clearance for sand mining, we are of the opinion that there is a mandatory requirement of preparation of a DSR. The DSR shall form the basis for application of environmental clearance. It shall also be the basis for preparation of reports and also appraisal of the projects. Another important facet of DSR is that it shall be prepared for all the districts and the draft is to be placed in the public domain. There is a requirement for keeping a copy of DSR in Collectorate. It must also be posted on the district's website for 21 days. After

²³ *Anjani Kumar v. State of U.P.*, 2017 SCC OnLine NGT 979.

²⁴ *Raza Muzaffar Bhat v. SEIAA, J&K*, Appeal No. 24/2022, NGT, Principal Bench.

comments are received, they shall be considered and if found correct, they will be incorporated in the final report. The final DSR will then be finalized within 6 months by the DEIAA. The lifetime of the report is five years. After five years the existing DSR will not be tenable and a new DSR will have to be prepared and finalized. The purpose and object of prescribing a lifetime of five years for subsistence of a DSR is for the reason that the position of ecology and the environment is rapidly changing and the position that exists five years back, may not subsist for later days. It is true that it might have changed even before the expiry of five years but a reasonable estimate, to work as a benchmark is a policy consideration. As a precautionary principle, it is not only legal and valid but is also mandatory. It must be enforced strictly and with all vigor.

21. We conclude by holding that:

- (i). A District Survey Report is a document of seminal importance as it enables informed decision making.
- (ii). Preparation of a DSR as per the procedure prescribed for its preparation under Appendix X, read with para 7(iii)(a), is required to be followed meticulously.

(iii). A valid and a subsisting DSR alone can be the basis for an application for grant of EC. A draft DSR is untenable for grant of an EC.

(iv). Preparation of reports and appraisal of projects by DEIAA and DEAC shall be on the basis of a valid and a subsisting DSR.

(v). DEIAA and DEAC are recognized as the authorities fastened with the statutory duty of preparing the DSR every five years and this duty compels them to have a comprehensive and a real time perspective of the environment position of the district including its eco-sensitivity and other fragilities.

22. For the reasons stated above, we reiterate our decision of dismissing these civil appeals against the judgment and order passed by the NGT holding that the e-auction notice dated 13.02.2023 is illegal and contrary to law.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[MANOJ MISRA]

**NEW DELHI;
MAY 08, 2025**



HIGH COURT OF UTTARAKHAND AT NAINITAL
HON'BLE THE CHIEF JUSTICE MR. G. NARENDAR
AND
HON'BLE SRI JUSTICE SUBHASH UPADHYAY
11TH SEPTEMBER, 2025
WRIT PETITION (M/S) NO. 830 OF 2023

Uttaranchal Stone Crusher Petitioner.

Versus

State of Uttarakhand & another Respondents.

Counsel for the Petitioner	:	None.
Counsel for the State	:	Mr. B.S. Parihar, learned Additional Chief Standing Counsel.
Counsel for the Respondent No.2	:	Mr. Aditya Pratap Singh, learned counsel.

JUDGMENT :(per Mr. G. Narendar, C.J.)

Case is called. There is no representation on behalf of the petitioner.

2. Even on previous dates of hearing, there has been no representation on behalf of the petitioner.

3. Accordingly, the writ petition is dismissed for default.

G. NARENDAR, C.J.

SUBHASH UPADHYAY, J.

Dated: 11th September, 2025
NISHANT

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ANNEXURE R-9

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

**ORIGINAL APPLICATION NO. 37 OF 2015
(M.A. NO. 291, 293 & 294 OF 2015)**

AND

**ORIGINAL APPLICATION NO. 213 OF 2014
(MA 755 of 2014 & M.A. No. 177 of 2015)**

IN THE MATTER OF:

S.P. Muthuraman
S/o. Ponnusamy,
No. 204, Railway Feeder Road,
Sankar Nagar Post – 627 357
Tirunelveli Distict.

.....Applicant

Versus

1. Union of India
Rep. by the Secretary to Government,
Ministry of Environment and Forests,
Government of India, Paryavaran Bhavan,
New Delhi - 110003
2. The State of Tamil Nadu
Rep. by the Secretary to Government,
Ministry of Environment and Forests,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 003

.....Respondents

AND

IN THE MATTER OF:

Manoj Mishra
Convener, Yamuna Jiye Abhiyaan,
178-F, Pocket-4,
Mayur Vihar, Phase-I,
Delhi-110 091.

.....Applicant

Versus

Union of India
Through the Secretary,
Ministry of Environment, Forest & Climate Change,
Indira Paryavaran Bhawan,
Jor Bagh Road,
New Delhi- 110 003.

.....Respondent

ORIGINAL APPLICATION NO. 37 OF 2015

Counsel for Applicant:

Mr. T. Mohan and Mr. A. Yogeshwaran, Advocate.

Counsel for Respondents:

Mr. Vivek Chib, Mr. Asif Ahmed, Ms. Ruchira Goel, Mr. Kushal Gupta, Mr. Joby Varghese and Mr. Ankit Prakash, Advocates for Respondent No. 1

Mr. M. Yogesh Kanna and Ms. J. Janani, Advocates for Respondent No. 2.

Mr. Ashwani Kumar, Sr. Advocate, with M/s. R. Mohan and Mr. V. Balaji

Mr. K.S. Mahadevan and Mr. Krishna Kumar, Advocate

Mr. R. Chandrachud, Advocate

Mr. Ashwani Kumar, Sr. Advocate with M/s. R. Mohan Parasawarn, Mr. Varun Sharma and Mr. Srikantha Srinivas

Mr. Amit S. Chadha, Sr. Advocate, Mr. R. Chandrachud, Advocate

Mr. Shyamal Anand, Mr. R. Jawahar Lal and Mr. Sarvanna Kumar, Advocates for Respondent No. 3 & 5.

Original Application No. 213 of 2015

Counsel for Applicant:

Mr. Rahul Choudhary and Ms. Neha Kurian, Advocates.

Counsel for Respondents:

Mr. Vivek Chib, Mr. Asif Ahmed, Ms. Ruchira Goel, Mr. Kushal Gupta, Mr. Joby Varghese and Mr. Ankit Prakash, Advocates for Respondent No. 1

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

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

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Prof. A.R. Yousuf (Expert Member)

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

Reserved on: 29th April, 2015

Pronounced on: 7th July, 2015

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By this common judgment, we shall dispose of the Original Applications No. 213 of 2014 and 135 of 2014 (upon transfer from SZ Bench, numbered as Original Application No. 37 of 2015) as well as Miscellaneous Applications No. 291, 293, 294 of 2015 in Original Application No. 37 of 2015, Miscellaneous Applications No. 755 of 2014 & M.A. No. 177 of 2015 in Original Applications No. 213 of 2014 and the claims of all the seven interveners/Respondents, as common question of law on somewhat similar facts arise for determination of the Tribunal in all these cases. We may briefly notice the facts of each Original Application giving rise to their filing.

2. In Original Application No. 213 of 2014, the Applicant claims that he is a former member of the Indian Forest Service and is the convener of the “*Yamuna Jiye Abhiyaan*”. The Organization is working for promotion of nature conservation as a strategy for establishment of a peaceful world.

3. According to the Applicant, the State is under a constitutional duty in terms of Article 51A of the Constitution of India, to protect and improve the natural environment, including forests, lakes, rivers and wildlife. Respondent No. 1 has issued a Notification dated 14th September, 2006 titled the Environment Clearance Regulations of 2006 (for short ‘Notification of 2006’), under the

powers conferred upon it by sub-Section (1) and clause (v) of sub-Section (2) of Section 3 of the Environmental Protection Act, 1986 (for short 'Act of 1986'). As per the provisions of the Notification of 2006, the project or activities falling under Category 'A' of the Schedule require prior permission from the Central Government while project and activities falling under Category 'B' require prior permission from the State Environment Impact Assessment Authority (for short 'SEIAA'). These permissions are to be obtained before any construction work or preparation of the land by the project management except for securing the land is started on project or activity. Respondent No.1 issued the Office Memorandum dated 16th November, 2010 for consideration of proposals involving violation of the Act of 1986 and the Notification of 2006. On 12th December, 2012, the Ministry of Environment, Forest and Climate Change (for short 'MoEF') issued another Office Memorandum, superseding the Office Memorandum of 16th November, 2010. In terms of this Office Memorandum, it was stated that as soon as any case of violation with respect to the Notification of 2006 is brought to the notice of the MoEF, it will proceed to verify the veracity of the complaint through the regional offices and upon such verification the explanation of Project Proponent will be asked for. If the Ministry is satisfied that it is a case of violation, then before proceeding any further, the authorities would require the Project Proponent to submit its environment related policy, plan of action and a written commitment to ensure that violation will not be repeated within 60 days in terms of the Office Memorandum dated

12th December, 2012 and would delist the project in the meanwhile. Other detailed consequences were also provided in the Office Memorandum dated 12th December, 2012. The Office Memorandum dated 12th December, 2012 was further amended by the Office Memorandum dated 27th June, 2013, which *inter alia*, also provided as under:

"It is felt that in addition to these guidelines circulated vide aforesaid Office Memorandum dated 12.12.2012, in case of violation cases, the Project Proponent needs to be restrained, through appropriate directions under Section 5 of the Environment (Protection) Act, 1986 from carrying out any construction or operation activity without the required clearance or beyond the level/capacity stated in the existing clearance, as the case may be, till it procures the requisite EC/CRZ Clearance for the same."

4. According to the Applicant all the three Office Memoranda dated 16th November, 2010, 12th December, 2012 and 27th June, 2013 have been placed on record for the first time by the MoEF along with its reply filed in Appeal No. 98 of 2013. Thus, the Applicant has acquired the knowledge of these circulars only during the hearing of the said Appeal. The Applicant challenges the legality and correctness of these circulars on various grounds, including, that these Office Memoranda are contrary to and in contradiction with the provisions of the Notification of 2006; the Notification of 2006 having been issued under the provisions of Section 3 of Act of 1986, cannot be diluted, rendered ineffective or infructuous by issuance of these Office Memoranda. The Notification of 2006 requires that not only the new projects falling under category 'A' and 'B' listed in the Schedule to the Notification of 2006, but even the expansion and modernisation of such existing projects or

activities would require prior Environmental Clearance from the competent authority. The Notification of 2006 further contemplates that prior Environmental Clearance would be necessary even when there is any change in the product mix in an existing manufacturing unit beyond the specified range. It is the case of the Applicant that Para 7 of the Notification of 2006 requires mandatory compliance to the process prescribed for grant of Environmental Clearance. There are four stages i.e. Screening, Scoping, Public Consultation and Appraisal prescribed under Para 7 of the Notification of 2006. This process has to be followed in terms of the Notification of 2006 before a prior Environmental Clearance can be granted to the listed projects. The Applicant alleges that impugned Office Memoranda provide for considering the project of any Applicant where construction has been done already and does not specify the compliance of these four stages prescribed under Para 7 of the Notification of 2006. Therefore, the very purpose of the provisions of Act of 1986 and the Notification of 2006 stands frustrated by these Office Memoranda. If the construction has already commenced and/or even completed, compliance to the provisions of these laws would be impossible. It is the case of the Applicant that the Notification of 2006 has been issued in furtherance to exercise of subordinate delegated legislation for satisfying and complying with the provisions of Section 3 of the Act of 1986 which mandates that 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. The law requires the Project Proponent to take prior Environmental Clearance while these Office Memoranda state exactly to the contrary, thus, encouraging people to flout the law in force on the one hand and cause environmental damage and degradation on the other.

5. In Original Application No. 37 of 2015 (Application 135 of 2014, SZ Bench), the Applicant has impugned the Office Memoranda dated 12th December, 2012 and 27th June, 2013. While raising the challenge on similar grounds as of the Applicant in Original Application No. 213 of 2014, he has further stated that the impugned Office Memoranda are against India's international obligation such as Stockholm Conference, 1972 and Rio De Janeiro Declaration 1992 and has also violated the mandate of Article 51 of the Constitution. It is submitted that environmental management or planning is the study of unintended consequences of a project. Its purpose is to identify, examine, assess and evaluate the likely and probable impacts of a proposed project on the environment and, thereby, to work out remedial action plans to minimize these adverse impacts on the environment. All this is required to be done at a stage before the commencement of the project. The law does not visualise such examination post-commencement and upon completion of the project, in relation to the covered projects and activities. According to the Applicant, the aim and purpose of Environmental Impact Assessment (for short 'EIA') is to inform the process of decision-making by identifying the potentially significant

environmental effects and risks of development proposals and to promote sustainable development by ensuring that development proposals do not undermine critical resource and ecological functions or the well being, lifestyle and livelihood of the communities and people who depend on them. The importance of conducting an exhaustive EIA before any project is granted Environmental Clearance has been acknowledged internationally. The United Nations Environment Programme's (UNEP) Charter states that EIA should be ensured to minimize adverse effects on nature and nature assessments should be included in the fundamental elements of all planning and should be publicly disclosed and deliberated. The EIA Directive (85/337/EEC) of the European Union which is in force since 1985, requires a defined EIA to be implemented by member nations prior to official authorization for projects with potential significant environmental impacts. The very purpose of conducting an EIA before a project is granted clearance is to ensure that no development takes place without sufficient assessment of the risks and damages that would be caused to the environment due to the project's construction and development. The authorization should follow such study and imposition of conditions rather than the converse. The application for seeking Environmental Clearance has to be made in Form 1 or the Supplementary Form 1A, as the case may be. The requisites required under Form 1 have to be supplied prior to the date of commencement of the project except to the extent of arranging land. The State Level Expert Appraisal Committee (for short 'SEAC') has

to assess the project as on that date and stage, then alone it has to recommend whether such project should or should not be granted such Environmental Clearance. According to the Applicant, the impugned Office Memoranda have stated that the projects which have attained substantial physical progress relating to the construction at the site shall be considered by the Expert Committee for the grant of prospective Environmental Clearance, though no Environmental Clearance was obtained prior to commencement of development, as mandated by law. Thus, the impugned Office Memoranda are contrary to law.

The impugned Office Memoranda in question provide that violations could come to the notice of the Ministry at various stages of processing of the proposals and provide for grant of Environmental Clearance even to those projects. Under these Office Memoranda, if a Project Proponent commits breach of the conditions or has already commenced or completed the construction without obtaining required Environmental Clearance for the project, then the concerned State Government is required to initiate credible action on these violations by invoking powers under Section 15 and 19 of the Act of 1986. This is an entirely unworkable system and is even contrary to the federal structure of the Constitution. If this approach and procedure is allowed to be followed then any builder/Project Proponent would complete his project causing irreversible damage to the environment and will then seek post-facto Environmental Clearance from the authorities making it a *fait accompli* situation. In that event, even the most

illegal and irregular projects, which are completely violating the Environmental norms, may have to be legalised and legitimized, which would be contrary to law, would even defeat the potential penal consequences prescribed under the Act of 1986 and thus, would be unable to prevent damage to environment and ecology.

Both the Applicants have relied upon the judgment of the Supreme Court in the cases of *Lafarge Umiam Mining Pvt. Ltd. v. Union of India (UOI) and Ors.*, (2011) 7 SCC 338 and *M.C. Mehta v. Union of India (UOI) and Ors.*, (2004) 12 SCC 118, to contend that the circulars issued by the MoEF cannot nullify a statutory Notification. In the case of *M.C. Mehta* (supra), the MoEF had issued a circular dated 14th May, 2002, thereby providing an opportunity to people to seek clearance in relation to projects which were already operational but in violation of the Notification of 2006. The Supreme Court observed that it showed total non-sensitivity of the MoEF towards the principle of Sustainable Development and the object behind the issuance of the Notification of 2006. The Supreme Court in the case of *M. C. Mehta v. Union of India*, (1987) 4 SCC 463, held that life, public health and ecology have priority over unemployment and loss of revenue. Clearly, the grant of ex post facto Environmental Clearance has not met the approval of Supreme Court legally. According to the Applicants, the circulars are violative of the spirit behind Articles 48A and 51A(g) of the Constitution of India. Under Article 21 of the Constitution, right to a decent and clean environment is a Fundamental Right and thus,

its protection by all, including the State, is a Constitutional obligation.

Before we revert to the case advanced on behalf of the respective Respondents, it is essential for us to notice that a number of applications were filed for impleadment by various Project Proponents who had taken advantage of these impugned Office Memoranda or were in the process of seeking advantage thereof. MA Nos. 232, 281, 282, 166, 97 and 110, all of 2015, were filed for impleadment by different builders. These applications came to be allowed vide order dated 12th February, 2015 and 1st April, 2015 respectively. Vide these orders, the following Respondents were directed to be impleaded as contesting Respondents:

Mr. Y. Pondurai (Respondent No. 3)

M/s Ruby Manoharan Property Developers Pvt. Ltd.
(Respondent No. 4)

M/s Jones Foundations Pvt. Ltd. (Respondent No. 5)

M/s SSM Builders and Promoters (Respondent No. 6)

M/s SPR and RG Construction Pvt. Ltd. (Respondent No. 7)

M/s Dugar Housing Ltd. (Respondent No. 8)

6. M/s SAS Realtors Pvt. Ltd. has also filed an application M.A. No. 291 of 2015 for impleadment and directions. The said application was heard when the Original Applications were being heard on merits. The Applicant was permitted to address the Tribunal on the merit and otherwise of his impleadment application, as well as on the Original Applications. Since we had permitted the Applicant to participate in the proceeding and

address argument, this application stood allowed and consequently, M.A. No. 291 of 2015 for impleadment of M/s SAS Realtors Pvt. Ltd. as Respondent No. 9 is also allowed.

7. MAs 293 and 294 of 2015 were filed by M/s Dugar Housing Ltd. and M/s SPR and RG Construction Ltd. respectively, for producing additional documents on record which were permitted and the documents are on the file of the Tribunal. Consequently, both these Applications No. 293 and 294 of 2015 stand allowed.

Still another set of application was filed, being M.A. No. 167, 168, 169 and 172 of 2015 by different builders for impleadment and directions. During the course of hearing, none appeared on their behalf to argue and pursue these applications and resultantly vide order dated 1st April, 2015, these applications were dismissed. However, the Applicants were granted liberty to raise their grievances before the Tribunal or if they had their independent cause of action, by taking recourse to independent remedy in accordance with law.

8. M.A. 755 of 2014 has been filed in Original Application No. 213 of 2014 praying for stay of operation of these Office Memoranda. Since we are dealing with the Original Applications finally by this Judgment, M.A. No. 755 of 2014 does not survive for consideration and is accordingly disposed of. M.A. 177 of 2015 had been filed on behalf of the MoEF for waiver of cost of Rs. 20,000 which was imposed vide order of the Registrar dated 16th February, 2015, for not filing a counter affidavit. Since the arguments have already been concluded and all parties have addressed their

submissions, we do not consider it necessary to direct the payment of the cost imposed by the above order in the interest of justice. Resultantly, this application is allowed. The cost of Rs. 20,000 by order dated 16th February, 2015 is waived. The application is disposed of.

9. The Project Proponents upon their applications were directed to be impleaded as Respondents in the main application. The Applicants as well as these newly added Respondents submitted affidavits, documents and other details in regard to the projects in question. The Applicant in the main application in relation to **M/s Y. Pondurai (Respondent No. 3)**, submitted that it is a construction project extending to 28,262.81 sq. mtrs. to which the planning permission was issued on 31st December, 2013. The construction was started even prior thereto on receipt of the recommendation from the Government. The application to SEIAA was filed on 21st February, 2014. On 28th February, 2014, SEIAA informed the Project Proponent that no activity should be carried on prior to grant of Environmental Clearance. SEIAA on 11th March, 2014 asked for photographs of the site to consider the application. On 21st March, 2014, the photographs of the project and an apology along with undertaking were submitted by the Project Proponent to the SEIAA. SEIAA on 1st April, 2014 wrote to Additional Secretary for initiation of prosecution against the said Respondent. The Applicant heavily relies upon this letter of 1st April, 2014 placed on record vide which, the Member Secretary of the SEIAA, Tamil Nadu had written to the Additional Chief Secretary to the Government,

stating that there were repeated breaches on the part of the Project Proponent and that action needs to be taken. The relevant part of the said letter reads as under:

“I inform that as per the EIA Notification 2006, all new projects or activities or expansion and modernization of those existing projects or activities listed in the schedule to the said Notification with capacity beyond the threshold limits prescribed there under, to obtain prior Environmental Clearance under the provision thereof.

The Proponent vide letter dated 21.03.14 has forwarded the expressing regret over the commencing of construction without obtaining EC and also expressed assurance to not to repeat such violations in future. The Authority after careful consideration decided to address the Additional Chief Secretary, E&F Department, Government of Tamil Nadu to take action against the violation of EIA Notification, 2006 under provision of Environment (Protection) Act 1986.

In the light of the above and as per the clause 5(ii) of O.M. of MoEF, GOI, New Delhi dt: 12.12.2012 (copy is enclosed), it is requested to initiate action against Thiry Y. Pondurai, No. 129, Usman Road, T.Nagar, Chennai – 600 017., by invoking powers under Section 19 of the Environment (Protection) Act 1986 for having started the construction work without obtaining requisite Prior Environmental Clearance. It is requested that the action taken in this regard may be informed to the Ministry of Environment & Forests, Government of India and to this office along with supporting documents to enable us to take further action in the matter.”

10. On 22nd April, 2014, the Principal Secretary, FAC wrote to the Principal Secretary, SEIAA, bringing to his notice the Notification issued by the Ministry dated 28th February, 2014 which delegated powers vested under Section 5 of the Act of 1986, to all the State and Union Territory Environment Impact Assessment Authorities, under whose jurisdiction the project was located, to issue show cause notice for the violations committed. On 28th May, 2014, SEIAA wrote to the Principal Secretary that in case of violation of

EIA Notification, 2006, prior to issuance of Environmental Clearance, a show cause notice should be issued and action has to be taken by the State Government. On 5th June, 2014, the Principal Secretary wrote to the Tamil Nadu Pollution Control Board (for short 'TNPCB') requesting them to take legal action in accordance with the Notification of 2006. This resulted in the issuance of show cause notice to Respondent No. 3 on 12th July, 2014 by the TNPCB, reply to which was submitted by the Project Proponent on 23rd July, 2014.

11. On 26th November, 2014, SEIAA informed the Project Proponent that there was substantial progress in the construction of its project which was noticed even during the scrutiny of the application of Respondent No. 3. An affidavit was filed before the Tribunal by the TNPCB in April, 2015 on the basis of inspection conducted by a team on 2nd April, 2015, stating that the civil construction work in all blocks had been completed, however, outer and interior works were being carried on. On 4th April, 2015, the Project Proponent responded to the TNPCB that the structural work was completed long back and the same was started as soon as the principal approval from the Government Housing and Urban Development Department and the planning permit from the Chennai Metropolitan Development Authority (for short 'CMDA') were obtained. According to the Applicant, while referring to the report submitted by SEIAA and other documents on record, it is clear that the total project cost is Rs. 148.25 Crores. It is a project for development of commercial complex consisting of Main Block - 2

basements + ground floor + 10; Service Block – basement + ground floor + 2 floors and MLCP Block – 2 basements + ground floor + 4 floors. According to SEIAA, construction work for the project was under progress at the time of submission of the apology letter and the undertaking. In inspection of 14th April, 2015, it was noticed that civil work of all the blocks were completed.

12. Vide letter dated 26th November, 2014, the Project Proponent had been informed not to carry on any construction activity. Photographs on record taken on 21st March, 2014 had shown digging or excavation of earth and some construction activity at that level. None of the blocks had been completed at that time. While the photographs taken on 14th April, 2015 show that some of the blocks have been completed and even finished internally and exteriorly. The Applicant has also pointed out that in the application for impleadment, it is averred by the Project Proponent that he had made application to SEIAA on 21st February, 2014 for Environmental Clearance, after obtaining planning permission. In the meeting dated 11th March, 2014, SEIAA had asked him to furnish additional documents to which he replied on 21st March, 2014, but in the meanwhile the Project Proponent had commenced construction activity investing huge sums of money. However, in his letter dated 4th April, 2015, a different stand was taken and it was stated that the project was completed long back and was carried out as soon as approval was granted by the Government and after granting of permission and the planning permit being issued by the CMDA. From this, it is clear that the Project Proponent had raised

construction much prior to the submission of the application for the Environmental Clearance on 21st February, 2014. In the application, he falsely declared that he was planning to start the construction activity. He continued with the construction, even after filing the letter of apology and undertaking and despite show cause notice dated 12th July, 2014 continued it till 2nd April, 2015 when the premises were inspected by the SEIAA and TNPCB. In the submission of the Applicant, the entire project of Respondent No. 3 has therefore, been constructed illegally, in an unauthorized manner and by making misrepresentations to the concerned authorities.

Stand of Respondent No. 3 (Mr. Y. Pondurai):

13. The stand of this Respondent is that after obtaining the planning permission, it had applied to SEIAA on 21st February, 2014 seeking the Environmental Clearance for the Project. The Project Proponent was required to file additional documents which he had filed on 21st March, 2014. Construction had been started by the Project Proponent on receipt of the recommendation from the Government and after the Planning Permission had been issued. We may notice here that the Applicant however, submitted while referring to the letter of the Project Proponent dated 4th April, 2015 that even this submission of the Project Proponent is factually incorrect. In the said letter, it has been stated that the project work was structurally completed long back and the same was carried forward as soon as principal letter of approval from the Government, Housing and Urban Development Department was

issued in the year 2013. The construction activity thus, had started even before filing the application before SEIAA for grant of Environmental Clearance.

According to the Project Proponent, the construction was carried out under a *bona fide* belief. The Project Proponent also claimed that it had obtained permission from the Airport Authority on 2nd November, 2012. The condition No. 2 of the letter dated 31st May, 2013 is relied by the Project Proponent to say that Environmental Clearance was to be furnished before issue of the Completion Certificate. Thus, there is no fault of the Project Proponent in raising the construction without Environmental Clearance. According to this Respondent, the main application is not maintainable either on law or on facts. Plea of limitation was also taken by this Respondent but without referring as to how the application is barred by time.

14. In relation to **M/s SPR and RG Construction Pvt. Ltd. (Respondent No. 7)**, the Applicant has averred that planning permit from the CMDA was granted on 20th July, 2012 in which combined basement 1 & 2 + ground floor + 14 floors of block 1 to 9 residential building with 950 dwelling units was permitted. Permissions from various other authorities during the period from 25th February, 2011 to 28th April, 2011 have also been filed on record, but there is variance in the Survey Nos. given in Annexure R8 and R9 and R10, R11, R12, R13. The Project Proponent claims to have filed application to SEIAA on 28th January, 2011, which fact is not admitted by SEIAA. The Project Proponent then moved fresh

application on 12th June, 2013 dated 10th June, 2013 to SEIAA for grant of Environmental Clearance. The Project Proponent had been seeking extra time from SEIAA and in regard to this, reference is made to the letters dated 20th February, 2013, 25th April, 2013 and 21st March, 2013 from SEIAA, reference of which have also been placed on record and it does not refer to the application of the Project Proponent dated 28th January, 2011. SEIAA on 12th June, 2013 acknowledged this application and passed an order that no activity should be undertaken unless Environmental Clearance was granted. On 1st July, 2013, the Project Proponent submitted photographs with the letter of apology, pursuant to the Board meeting of Project Proponent held on 17th June, 2013, assuring non-repetition of violation. Photographs which have been placed on record show that the construction was at the very initial stages i.e. excavation work had been done and pillars were being raised. Further details were asked for by the SEIAA vide its letter dated 22nd August, 2013 clearly mentioning that if the additional particulars were not submitted by 10th September, 2013, the project would be closed without notice. The Project Proponent did not provide the requisite information within the stipulated time. On 13th September, 2013, the Project Proponent submitted some documents with the promise to provide rest of them at a subsequent date. The SEAC on 30th September, 2013 prescribed the TOR which was issued by SEIAA on 7th October, 2013. The TNPCB conducted an inspection on 10th December, 2013 and noticed that the construction activity was being carried on. Later, a compliance

report of the TOR was submitted which mentions about the collection of primary data from August, 2013 to October, 2013 which is prior to even issuance of the data of the TOR. Thereafter, an EIA report was submitted on 28th April, 2014. On 22nd January, 2015, the Project Proponent wrote to the TNPCB, referring to the inspection and denying continuation of construction in violation of the undertaking provided, though a case being C.C. No. 56 of 2014 had been filed against this Respondent which was pending before the Judicial Magistrate, Ambattur. SEIAA on 19th May, 2014 wrote to the Project Proponent to furnish additional details. According to the Applicants, the construction was going on even at that stage. Thereafter, SEAC decided to recommend proposal to SEIAA to issue Environmental Clearance but only after obtaining and considering the information stated in the recommendations. It included even that the landscape area and green area was not to be less than 15 per cent of the total area. On 20th June, 2014, SEIAA asked for further documents from the Project Proponent. The Project Proponent had written a letter to SEIAA vide its letter dated 23rd July, 2014. This letter according to the Applicant is a departure from the CMDA's planning permit since the Project Proponent was sanctioned 9 blocks, while this letter talks of 10 blocks. SEIAA again on 10th November, 2014 required the Project Proponent not to carry out any construction of the project. The 26th November, 2014 letter of the CMDA refers to a new PPA made by the Project Proponent and states that the planning permission application would be returned in the absence of a revised plan incorporating

EIA Clearance for the revised proposal. On 30th January, 2015, the Project Proponent resubmitted revised PPA without EIA and asked for further three weeks time to submit the latest developments for Clearance. The Project Proponent appointed new Consultant on 11th February, 2015 and vide its letter dated 19th February, 2015, CMDA asked for a structural stability certificate.

Pursuant to Tribunal's orders, an inspection was carried out by the Tamil Nadu Pollution Control Board on 2nd April, 2015, based on which an affidavit was filed before the Tribunal, stating that the construction is almost complete in all the blocks and that outer and inner works were going on and construction was going on even on 2nd April, 2015. On 4th April, 2015, the Project Proponent submitted a reply to the show cause notice served by District Environmental Engineer, Tamil Nadu Pollution Control Board, Ambattur, where it was stated that construction had been stopped. From the current photographs placed on record, it is clear that the construction work is at its completion stage in complete contrast to the photographs submitted at the time of the filing of the documents by the Project Proponent. Stop work notice was also issued by the Tamil Nadu Pollution Control Board on 2nd April, 2015 to which the Project Proponent responded on 3rd April, 2015 by stating that they have stopped the construction activity upon the receipt of the stop work notice. According to the Applicant, this Project Proponent had all through violated its letter of apology and undertaking given to SEIAA. It carried on construction illegally and in an unauthorized manner. It even revised its plan and raised

further construction in relation to additional block for which there was no construction permission and other permissions from the authorities. Even till date, the Environmental Clearance has not been granted to this project and the project has caused serious and adverse environmental and ecological impacts.

Stand of Respondent No. 7 (M/s SPR and RG Construction Pvt. Ltd.)

15. Respondent No. 7, M/s SPR and RG Construction Pvt. Ltd. has taken a stand that they are engaged in construction of residential complexes. They intend to construct residential apartments at different Survey Nos. 137/1, 138/1, 148/5A and 148/7A Karambakkam Village, Ambattur Taluk, Thiruvallur District, TN, under the name and style of “Osian Chlorophyll”. This Respondent submitted its application to SEIAA on 28th January, 2011 for grant of Environmental Clearance for the project. This project was to have the construction of floors as already indicated with a total project area of 35786.05 sq meters with a built up area of 166479.79 sq meters at a total cost of project of Rs. 251.01 crores as proposed. SEIAA had asked for additional particulars and the Project Proponent was advised to give a presentation before the SEAC which was done by the Project Proponent on 30th September, 2013. The said Expert Appraisal Committee recommended the project for grant of Environmental Clearance subject to furnishing of certain details/approvals. The Respondent claims to have complied with those requirements. According to the Project Proponent, the term of the presiding officer of SEIAA had expired around 2nd March, 2011 and remained so till 4th March, 2012 and

no action was taken on the application submitted by the Project Proponent. While simultaneously pursuing the application with SEIAA, the Project Proponent also took NOCs from different authorities like Airport Authority of India, Chennai, Traffic Police, Chennai Water Supply and Sewage Board and planning permit from CMDA on 28th January, 2013. Because of the non-availability of the Members of SEIAA, the Project Proponents like other builders, started construction after seeking the planning permit. The planning permission was granted subject to the condition that the Project Proponents would obtain Environmental Clearance prior to seeking completion certificate for construction. The Applicant started construction under a *bona fide* belief. It is not disputed by this Respondent that the construction raised by it was objected to by the authorities, but taking into account the circumstances and in view of the circulars, Respondent continued with its construction. An undertaking cum apology was also furnished under the format given by the SEIAA on 26th September, 2013. Appraisal Committee on 17th June, 2014 recommended the project with some observation which the Project Proponents was willing to comply. The said Respondent upon enquiry and vide letter dated 10th November, 2014 came to know that since operation of the had been stayed by the National Green Tribunal, SEIAA had de-listed their application subject to the orders of the Tribunal.

16. It is the specific plea of the Respondent that he had applied for Environmental Clearance which had neither been accepted nor rejected within 45 days despite recommendation by the Expert

Appraisal Committee, thus, there would be deemed sanction in favour of the Project Proponent under the Notification of 2006.

17. The authorities i.e. SEIAA, Tamil Nadu and Tamil Nadu Pollution Control Board have taken up the stand that the construction without prior Environmental Clearance was not permissible. The Tamil Nadu Pollution Control Board vide their letter dated 14th February, 2014 had informed the SEIAA that cases had been registered against violators i.e. Project Proponents. The inspection was conducted and stop work notice was issued on 2nd April, 2015 55 complaints have been filed against the violators including the Respondent - Project Proponents. However, in some cases, the proceedings have been stayed by the High Court of Madras. The unauthorized construction by the Project Proponent was brought to notice as back on 15th July, 2013 and despite orders, the construction was continued which was stopped only upon inspection as on 4th April, 2015. Even on 24th December, 2013, the Project Proponent was served with a notice that no construction should be carried out without grant of Environmental Clearance. The construction work in all the 10 blocks had been completed however some interior work was still to be carried out. The Board of Directors of the Project Proponent had furnished a resolution on 12th July, 2013 along with the letter of apology and assurance that no construction would be carried out. However, this was not adhered to. According to SEIAA, tenure of the State Level Environmental Assessment Authority was notified on 4th April, 2012

and after the completion of 3 years of tenure, the same has ended on 3rd April, 2015. Its reconstitution is awaited.

18. In relation to **M/s Dugar Housing Ltd. (Respondent No. 8)**, according to the Applicant on 28th January, 2013, building permit for the construction of combined basement floor + combined stilt floor + first floor to third floor + two towers with fourth floor to 10th floor residential cum commercial building with 285 dwelling units, community hall, gymnasiums, swimming pool and office space at survey no. 779/2A, 2B, 2C, 2D, 2E & 2F of Korattur Village, Ambattur, Chennai was issued in favour of the said Respondent. This permission states that the Project Proponent had also furnished an undertaking to abide by the terms and conditions put by various authorities specified therein and the Project Proponent was to submit necessary applications to the authorities. However, in para 7, it has been stated specifically that this approval is not final and that the Project Proponent has to approach Commissioner of Corporation, Chennai for issuance of Building Permit under the Local Body Act. On 8th May, 2013, a building license from Corporation of Chennai was applied for and was granted on the same date. However, the averment of the Project Proponent that he had applied for building license on 28th January, 2013 is factually not correct. Thereafter, application for Environmental Clearance was moved to SEIAA for construction of 56,153.22 sq mtr in a total plot area of 11,789 sq mtrs. It is also pointed out by the Applicant that there is serious variance in the documents placed on record. In the letter dated 17th June, 2011 addressed by Fire and Rescue

Services Department to the Project Proponent, it has been stated that plot area in the proposal is 12,006.92 sq mtr and the proposed built up area is 41,327.80 sq mtrs. Vide this letter, the Department had given 'No Objection' to accord planning permit to the proposal, but subject to the satisfaction of the conditions specified in the report. The compliance report was to be submitted before actual Occupancy Certificate is issued and the Department was to conduct re-inspection. In response to the letter and application for Environmental Clearance dated 4th June, 2013 by the Project Proponent, SEIAA had responded vide letter dated 7th June, 2013, acknowledging the receipt of the application and clearly informing the Project Proponent that as per the Notification of 2006 along with amendments therein notified by the MoEF, no activity should be taken in any part of India unless prior Environmental Clearance is granted in accordance with the objective of the National Environmental Policy. This letter specifically requires the Project Proponent not to commence any construction activity other than clearing the site, fencing the site and putting up the temporary structure for accommodation of labour etc. On 21st June, 2013, SEIAA asked the Project Proponent to furnish additional documents including approved building site plan, photographs of the building site and a commitment letter that no activity shall be carried out before obtaining the Environmental Clearance from the competent authority.

19. According to the Applicant, no additional documents or particulars were furnished by the Project Proponent till 20th July,

2013, the last date given by the SEIAA to close their application in event of default in furnishing documents or particulars, without further notice. However, some documents were submitted by the Project Proponent on 30th July, 2013. Various letters including letter dated 21st June, 2013, 8th August, 2013 and 10th September, 2013 were written by the SEIAA to Project Proponent seeking further information. Finally, vide its letter dated 24th September, 2013, SEIAA informed the Project Proponent that SEAC meeting would be held on 30th September, 2013. In the meeting held on that day, SEAC recommended the project for grant of Environmental Clearance, subject to conditions. According to the Applicant, the documents requisitioned were not placed before SEAC as the extract of minutes of meeting of SEAC makes no reference to construction in violation of Notification of 2006 and belies the submission of alleged letter dated 26th September, 2013, which claims to have enclosed Board resolution dated 12th August, 2013. The Tamil Nadu Pollution Control Board conducted inspection of the site on 20th May, 2014 and found that the ground level work had already started which resulted in issuance of a show cause notice dated 21st May, 2014. This inspection report contradicts the resolution dated 12th August, 2013 that has been placed by the Project Proponent on record and therefore, there were clear violations of the Notification of 2006. In the show cause notice, it had been specifically noticed that the construction of the work had been carried out without obtaining Environmental Clearance. The reply to this show cause notice was submitted by Project Proponent

vide their letter dated 16th June, 2014, wherein it was nowhere denied that the construction work was carried on without obtaining Environmental Clearance; in fact, the stand taken was that other clearances except Environmental Clearance have been issued in favour of the Project Proponent. According to the Project Proponent, the project construction was started because there was huge investment involving client's money and the construction has to be taken up on time to deliver the property as committed or else it could lead to huge losses to the developer and unwarranted hassles to the end user. It was averred that after the inspection of the site, the work has been suspended.

20. Upon inspection by the Tamil Nadu Pollution Control Board, it was noticed that the unit had completed construction work of 5 blocks and interior work is under process. It is not clear that when permission was granted for building 2 blocks, how come 5 blocks were constructed. This inspection was conducted on 2nd April, 2015 and stop work notice was issued by the Board on the same day. An inspection had also been conducted on 14th April, 2015. The photographs submitted to SEIAA on 26th September, 2013 and the photographs taken on 14th April, 2015 clearly show that there are environmental violations by the Project Proponent. The entire construction has been raised without grant of Environmental Clearance and even without compliance with other laws, thus, at this stage affecting the environment and ecology of that area. Though, the Project Proponent never applied for the Environmental Clearance on the basis of the revised project but the Tamil Nadu

Pollution Control Board during the course of inspection *inter alia* noticed the existence of revised plan of construction and the non-compliance to the conditions contained in the orders of various authorities.

21. In the latest affidavit of the Tamil Nadu Pollution Control Board that has been placed on record before the Tribunal on 8th April, 2015, it was observed that the unit has almost completed the civil construction work and despite issuance of show cause notice dated 21st May, 2014 and stop work notice issued by Tamil Nadu Pollution Control Board, the Project Proponent carried on with the construction work.

Stand of Respondent No. 8 (M/s Dugar Housing Ltd.)

22. The above factual position is hardly disputed by this Respondent. However, the stand taken by the Respondent is that there were vacancy in SEIAA from 2nd March, 2011 to 4th March, 2012 and therefore, they could not have sought Environmental Clearance. The construction was commenced with a view to avoid delay of the project. Though, there was objection from some of the authorities, the construction activity continued in the interest of the developer and the prospective purchasers. It is not disputed by this Project Proponent that resolution dated 12th August, 2013 was submitted to SEIAA. Finally this Respondent has raised the plea of deemed clearance. According to him, he had submitted an application for Environmental Clearance on 7th June, 2013 and it has not been given or denied till date, therefore, it would be deemed to have been granted to him as per Para 8 of Notification of 2006.

Further, it is averred that in the meeting of the SEAC on 30th September, 2013, the project was not granted Environmental Clearance but recommended to SEIAA for grant of Environmental Clearance, therefore, the permission would be deemed to have been granted. It is also the plea of this Respondent that he had obtained No Objection Certificates from the Air Port Authority, Traffic Police, Fire and Rescue Services, Metro Water Supply and Sewerage Board during the year 2011-2012. He had also obtained planning permit from Chennai Metropolitan Development Authority dated 28th January, 2013 and building permission from Corporation of Chennai dated 28th January, 2013. Since the process was taking time, the construction had been started. The Project Proponent had also tendered apology to SEIAA in compliance of the letters dated 12th December, 2012 and 27th June, 2013.

In response to the above contentions raised by the Project Proponent and some of the official Respondents, it has been stated by the Applicant that the plea of vacancies in SEIAA is irrelevant as the application for Environmental Clearance was moved on 7th June, 2013 and thereafter, there was no vacancy in SEIAA, thus, no prejudice is caused to the Project Proponent on that count. The plea of *bona fide* taken by the Project Proponent is of no consequences because upon violation of the law, they cannot take up the plea of *bona fide*, as they intentionally carried on the construction despite objections from the authorities, show cause notice, stop work notice and even their own undertaking to the authorities not to raise any construction. Now the Project Proponent has completed the

construction and therefore, the misrepresentations made by it to the authorities, including the variation in the plot and construction area, would vitiate the permissions that had been granted to the Project Proponent. Since the application for obtaining the Environmental Clearance is still pending for consideration of the authorities and the Project Proponent had been asked to submit documents, the Project Proponent cannot claim any benefit under the garb of 'deeming fiction'. This principle is not applicable to the case of Respondent No. 8 either on facts and/or on law. The meeting of SEIAA held on 30th September, 2013 had clearly noticed the unauthorized construction that they began in violation of the Notification of 2006 and resolution of the Project Proponent dated 12th August, 2013, which fact is undisputable. The plea of 'deeming fiction' and *bona fide* construction can therefore, hardly be taken by this Project Proponent. SEIAA had while requiring the Project Proponent to comply with the Notification of 2006, clearly mandated on 7th June, 2013 that no construction should be carried out. This has been violated by the Respondent No. 8 frequently. The different figures of plot size and construction area having been submitted by the said Respondent to various authorities, shows that he has not approached the authorities with clean hands and *bonafidely*.

23. According to the Applicant, this project of **M/s Ruby Manoharan (Respondent No. 4)** relates to the construction of basement floor + stilt pt + 1st to 15th Floor residential building with 206 Dus (ground floor pt & 1st Floor pt departmental store and 12th floor swimming pool) on Survey No. 64/2, Vengaivasal Village at

Tamabaram, Velachery Main Road, Vengaivasal, Chennai. It was a project of total built up area of 22,130.944 sq meters on plot of 6,173.40 sq meters. The Project Proponent had moved an application to CMDA for his planning permit, in response to which the Authority on 24th July, 2012 wrote to the Project Proponent to pay development charges and submit other documents. The CMDA on 4th January, 2013 granted planning permit to the project. It needs to be noticed that in the letter dated 24th July, 2012, detailed conditions for compliance were stated which also included a condition that the Project Proponent was to furnish an undertaking that Environmental Clearance would be taken before the said authority could issue the planning permit. After submission of its plan, it appears that the Project Proponent started construction immediately after the issuance of the letter dated 24th July, 2012.

24. On 11th January, 2013, the Project Proponent submitted an application seeking Environmental Clearance. To this application, the authorities (Member Secretary, SEIAA) responded instantaneously and informed the Project Proponent about the necessity to comply with the requirements of the Notification of 2006 and directed the Project Proponent not to raise any construction without obtaining prior Environmental Clearance. The relevant extract of the letter written by SEIAA to the Project Proponent can be usefully reproduced here:

“It shall be noticed that construction activity towards the project implementation without obtaining prior Environmental Clearance is a cognizable offence under Section 19 of Environment (Protection) Act, 1986 and is also liable to punishment for contravention of the

provision of the said Act and the Rules or orders and directions, under Section 15, 16 or 17 of the said Act.

In the above circumstances, it is hereby instructed that the Proponent shall not commence any activity, other than clearing the site, fencing the site and putting up temporary structure for accommodation of labour, along with basic facilities like toilets and water supply, made as a temporary arrangement.”

25. On 15th May, 2013, SEIAA wrote to the Project Proponent requiring them to file additional documents and submit the requisite technical details for grant of Environmental Clearance. These details, required to be furnished by 3rd June, 2013, were not submitted, thereby resulting in issuance of reminder by SEIAA to Project Proponent on 8th July, 2013. This letter was responded to by the Project Proponent on 17th July, 2013, wherein they clearly stated that they shall initiate the activity on the site only after obtaining Environmental Clearance. In this letter, the built up area was stated to be 35,017 sq meters as against 22,139 sq. meters as stated in the letter of the Project Proponent itself dated 11th January, 2013.

26. The Project Proponent was again informed by SEIAA vide its letter on 22nd July, 2013 that he should not carry out any construction activity at the site other than clearing the site, fencing the site and raising temporary structure for accommodation of labour. On 27th August, 2013, the Project Proponent informed the SEIAA that they had submitted the documents and circulated the same to the members of SEAC. Conceptual Plan was submitted by the Project Proponent to SEIAA on 29th August, 2013, in which discrepancies were pointed out by the SEIAA and it asked the Project Proponent to provide reasons for change in the built up area

vide its letter dated 4th September, 2013. It was also pointed out by SEIAA in this letter that the project is located at a distance of 50 mtrs. from Nanmangalam Reserve Forest and thus Project Proponent was asked to furnish No Objection Certificate (for short 'NOC') from the District Forest Officer (for short 'DFO'). The Project Proponent vide their letter dated 13th September, 2013 responded to the letter dated 4th September, 2013 furnishing the 'NOC' from DFO while stating that this 'NOC' from DFO was not necessary, it being a 'B' category project and in relation to the discrepancy in the built up area, it was stated that the difference in area is the consolidation of the Non-FSI and Free of FSI areas, which are otherwise not mentioned in CMDA approved plan. SEIAA again vide its letter dated 24th September, 2013, directed the Project Proponent to furnish the NOC from the DFO on account of the fact that the project was located at a distance of 50 meters from Nanmangalam Reserve Forest. In response, the Project Proponent vide its letter dated 25th September, 2013 stated that the development is categorised as General Building Construction Project and is not covered under the Notification of 2006.

27. The matter was placed in the 44th meeting of SEAC on 30th September, 2013 asking the Project Proponent to furnish additional documents including NOC from DFO and an undertaking as required and the above was communicated by the SEIAA to the Project Proponent vide its letter dated 7th October, 2013. The Project Proponent thereupon vide their letter dated 21st February, 2014 informed SEIAA that the required resolution from the Board of

Directors has been passed during the meeting held on 24th January, 2014 that they would not commit violation of the Notification of 2006 and also that such violations shall not be repeated. Having noticed various violations and non-compliance by the Project Proponent, SEIAA vide its letter dated 11th March, 2014 wrote to the Additional Chief Secretary to the Government that action should be taken against this Respondent in terms of Section 19 of the Act of 1986. This letter was responded to by the Government on 22nd April, 2014, asking SEIAA to take necessary steps. The Tamil Nadu Pollution Control Board filed a complaint against this Respondent before the Court of Judicial Magistrate, Court II, Chengalpattu on 17th July, 2014. The Project Proponent filed an affidavit on 22nd July, 2014 stating that they have stopped the construction activity at site as per commitment in the Board Resolution dated 24th January, 2014 and shall carry on construction only upon securing the Environmental Clearance. On 3rd September, 2014, the Project Proponent requested SEIAA to dispose of its application notwithstanding the order passed by this Tribunal dated 21st May, 2014.

In the meanwhile, Tamil Nadu Pollution Control Board issued a show cause notice to the Project Proponent. The premises were also inspected on 2nd April, 2015 and it was noticed that the construction had been carried on in the past but was found to be stopped at the time of inspection. From the photographs on record which were filed by the Project Proponent before SEIAA on 6th March, 2014 and the photographs taken during the course of

inspection on 15th April, 2015, it is clear that the Project Proponent has violated its own undertaking, orders and directions of SEIAA, as well as other laws in force. Therefore, the Applicant has submitted that the project of Respondent No. 4 has seriously affected the environment and ecology of area and the entire construction is unauthorised and illegal.

Stand of the Respondent (M/s Ruby Manoharan)

28. The stand of the Respondent Project Proponent is that he had obtained the Planning Permit on 4th January, 2013. The Project Proponent had also obtained Airport Authority clearance with regard to height of the building from Director General of Civil Aviation on 17th October, 2011. He also claims to have obtained clearance from the Fire Department. Before the issuance of planning permit by the CMDA, the proposal was approved by the Government Housing and Urban Development Department of the State of Tamil Nadu vide their letter dated 19th June, 2012. Vide their letter dated 24th July, 2012, the CMDA asked the Project Proponent to pay the development charges for land and building, security deposits as well as infrastructure and amenity charges. As per the terms and conditions of this letter, the Project Proponent was called upon to comply with various directions and it was stated that if the directions were not complied with, the sanction was required to be revoked. Even according to the Project Proponent in an affidavit, it has been admitted that they were required to furnish an undertaking to produce 'NOC' for EIA Clearance before obtaining the completion certificate. The Project Proponent started the construction after receipt of the Planning Permit which was valid till

3rd January, 2016. After obtaining the Planning Permit, it applied for grant of Environmental Clearance to SEIAA on 11th January, 2013. After submission of the said application, the Project Proponent was called upon to submit certain documents and provide more particulars. The application of the Project Proponent was pending when interim order was passed by the Tribunal staying the operation of the impugned. Before the SEIAA, the Project Proponent had filed an apology letter on 21st February, 2014. The Project Proponent filed an application before the Southern Bench of National Green Tribunal seeking for direction to SEIAA for considering its application and disposing it expeditiously. Keeping in view the fact that the interim orders of stay have been passed by the Principal Bench at New Delhi, the Project Proponent also filed an application for impleadment, praying that the interim orders passed by the Tribunal on 15th December, 2014 in M.A. 809 of 2014 in Original Application No. 135 of 2014 be vacated.

29. SEIAA and Tamil Nadu Pollution Control Board have taken clear stand that the Project Proponent had carried the construction activity without obtaining Environmental Clearance. The apology filed by the Project Proponent had clearly stated that he will not carry out any construction without obtaining Environmental Clearance and such violation will not be repeated. SEIAA had requested the Government of Tamil Nadu to take action under Section 15 and 19 of the Act of 1986 as per the guidelines of the MoEF against the Project Proponent. According to SEIAA, in view of the interim order passed by the National Green Tribunal, the

application for grant of Environmental Clearance was not processed. According to SEIAA, it had acted in furtherance to the issued by MoEF dated 12th December, 2012 and 27th June, 2013 to consider the application submitted by the Project Proponent. But this application has been de-listed from the pending list of projects, as they are awaiting orders of the National Green Tribunal. The Project Proponent had been informed by various letters including that of 19th November, 2014, not to proceed with the project construction. The site was inspected on 15th April, 2014 and it was noticed that the civil structural work for all the blocks were completed. In reliance thereto, SEIAA has submitted certain photographs.

30. According to the Tami Nadu Pollution Control Board, they had conducted the inspection on 2nd April, 2015 and they noticed that no construction work was going on at the time of inspection. They have also taken photographs in reliance thereto. They were also informed by the Project Proponent on 2nd April, 2015 that all the construction work had been stopped w.e.f 4th April, 2014.

31. According to the Applicant, the project of **M/s Jones Foundation (P) Ltd (Respondent No. 5)** was for construction of Group Development residential project constituting six blocks, stilt + 7 floors out of which 329 are dwelling units, a clubhouse and a ground floor plus one residential building in S. Nos. 170/1A1F2, 1B, 2B, 1C1, 1C2, 2C1, 2C2, 172, 173/1A1, 1A2, 1B1, 1B2, 1C, 1D, 1E&2; at Pallikaranai Village, Tambaram Taluk, Kancheepuram District, Tamil Nadu. The total project area is 20,895.02 sq meters

with built up area of 35,848.88 sq meters with a project cost of Rs. 140 crores. The Project Proponent filed an application seeking planning permission from the CMDA on 19th May, 2010. This remained pending and various correspondences were exchanged between the parties. The planning permission according to the Project Proponent was issued on 3rd August, 2012. In terms of this letter of the CMDA, Project Proponent was required to deposit various charges like development and plot regularisation etc. The Project Proponent was to construct strictly in accordance with the sanctioned plan and no deviation was to be made. Further, it was stipulated that even the building would not be occupied without issuance of the completion certificate by the said authority. Rain water conservation measures as notified by the CMDA were expected to be adhered to strictly. Undertaking was required to be furnished for NOC from the IAF and EIA clearance before the issue of the Completion Certificate. In the event of non-compliance of the conditions, the sanction was liable to be revoked. The Project Proponent started the construction immediately thereafter and carried on with the same. The application for grant of Environmental Clearance was submitted on 3rd February, 2014 which was responded to by SEIAA vide its letter dated 5th February, 2014, directing the Project Proponent not to raise any construction, other than cleaning the site, fencing the site and putting up temporary structure for accommodation of labour. It will be useful to refer to the relevant part of the said letter:

“Your attention is drawn to the EIA Notification dated 14th September, 2006 along with amendments thereon,

notified by the Ministry of Environment and Forests, Government of India, wherein it has Imposed certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the Schedule to the notification, being undertaken in any part of India, unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy.

The Government of India, Ministry of Environment and Forests in various circulars have repeatedly emphasized that any activity started or being executed before obtaining an Environmental Clearance from the Competent Regulatory Authority i.e. State Level Environment Impact Assessment Authority shall be construed as a violation, as per the provision of the Environment (Protection) Act, 1986. The Ministry has also delegated required powers and instructed the concerned State Government to take legal action against such proponent who has started project activity without a prior Environmental Clearance for violation, by invoking powers under Section 19 of Environment (Protection) Act, 1986.

It shall be noticed that activity towards the project implementation without obtaining prior Environmental Clearance is a cognizable offence under section 19 of Environment (Protection) Act, 1986 and is also liable to punishment for contravention of the provision of the said Act and the Rules or Orders and directions, under section 15, 16 or 17 of the said Act. In the above circumstances, it is hereby instructed that the Proponent shall not commence any activity, other than cleaning the site, fencing the site and putting up temporary structure for accommodation of labour, along with basic facilities like toilets and water supply, made as a temporary arrangement.

The receipt of this communication should be acknowledged immediately.”

32. Vide their letter dated 10th February, 2014, the SEIAA asked the Project Proponent to submit additional documents as well as the photographs of the construction and a resolution/ undertaking of the Project Proponent. In compliance to these directions, on 27th February, 2014, the Project Proponent submitted an affidavit along with photographs showing status of the site and also other

documents. SEIAA vide their letter dated 4th March, 2014, informed the Project Proponent that construction had commenced and this was in clear breach of the Notification of 2006 and they were asked to furnish a letter of commitment and expression of apology for the same and then alone the proposal would be considered any further. On 10th March, 2014, the Project Proponent submitted an apology and requested that issuance of Environmental Clearance may be considered. The letter of commitment and expression tendered by the Project Proponent read as under:

“LETTER OF COMMITMENT AND EXPRESSION OF APOLOGY

We understand the violations on the part of making substantial construction in our project at Survey No.s- 170/1C2, 170/1A1F2, 170/2C2, 170/2B, 172, 170/1B, 170/2C2, 170/1C1, 173/1D, 173/1A1, 1A2, 173/1B1, 1B2, 173/1E, 2, 173/1C of Pallikarnai Village, Tambaram Taluk, Kanchipuram District, Tamil Nadu in West Anna Nagar, (Near Chettinadu Enclave), Door No: 190 Zone-14 Corporation of Chennai, which is a Multi-storeyed Residential Apartment, with (6-Blocks – Stilt + 7 Floors and a Club House) for residential purpose with 329 dwelling units by M/s Jones Foundations Private Limited without obtaining prior Environmental Clearance under EIA notification 2006.

The subject was taken up in a meeting held by the Board of Directors of M/s. Jones Foundations Private Limited on 24/02/2014 for consideration of the environment related policy / of action and resolved to ensure that such violations will not be repeated in future.

We here by express our apology for the violations carried out by construction of the project without obtaining prior Environmental Clearance under EIA Notification 2006 and request SEIAA, Tamil Nadu to consider the issuance of the Environmental Clearance for the said project.”

33. The Tamil Nadu Pollution Control Board conducted an inspection and issued a show cause notice on 16th July, 2014, clearly evidencing that the construction work was continuing even

as on 15th July, 2014. In the show cause notice, the Project Proponent was required to answer as to why the prosecution should not be initiated against him by filing a complaint as per the powers conferred under Section 19 (a) of the Act of 1986 and as to why recommendation should not be made to the MoEF, Government of India/Government of Tamil Nadu, for the issuance of directions under Section 5 of the Act of 1986 to suspend the construction activity till such time Environmental Clearance is obtained. Reply to this show cause notice was submitted by the Project Proponent on 26th July, 2014, in which it was said that they have already submitted the application in Form I and IA along with a conceptual plan to SEIAA, Tamil Nadu and that they were waiting for grant of Environmental Clearance to the Project. In this letter, it was stated that they have stopped all construction activities pertaining to the project after the show cause notice and that construction would be started only after grant of Environmental Clearance. The Tamil Nadu Pollution Control Board during inspection noticed that the main civil construction work for the residential complex was almost completed and found works such as interior finishing and site cleaning work were going on. The inspection report submitted on 2nd April, 2015 resulted in a stop work notice being issued to the Project Proponent by the Tamil Nadu Pollution Control Board. The photographs submitted by the Project Proponent to SEIAA on 5th January, 2014 and the photographs taken by SEIAA on 15th April, 2015 along with the report of SEIAA, clearly show that the construction work is in violation of the law and is continued illegally

during all this time and this has caused irreparable loss and damage to environment and ecology. The SEIAA vide its letter dated 18th November, 2014 had informed the Project Proponent that his project stands de-listed for grant of Environmental Clearance and would be considered only after further orders of the Tribunal.

The Project Proponent had relied upon the office order dated 21st January, 2010 issued by the Member Secretary, Chennai Metropolitan Development Authority approving the norms and procedures evolved in terms of the guidance of the Monitoring Committee to contend that they had taken permissions from the concerned authorities to raise constructions with reference to this office order dated 21st January, 2010. The office order related to issuance of completion certificate on the basis of these revised guidelines. The office order provided that the insistence for compliance report from other agencies, including CMDA, Tamil Nadu Pollution Control Board, Revenue Department and ELCOT was proposed to be dispensed with. The Project Proponent also claimed that he had obtained other statutory clearances for the purposes of construction and construction had been carried out on the basis of the approved drawings. The Project Proponent conceded in his Application M.A. No. 110 of 2015 that he had commenced and had almost completed the construction activity by investing huge sums of money and has employed large number of labourers as on 3rd February, 2014 when he applied for obtaining the Environmental Clearance. The Project Proponent submits that he was under *bona fide* impression that Environmental Clearance

would be given since all particulars have been complied with. Rest of the facts afore-referred are not disputed. The Respondent stated that the main application of the Applicant was not maintainable and the same should be dismissed.

34. According to the Applicant, **M/s SSM Builders and Promoters (Respondent No. 6)** is a registered partnership firm engaged in the business as civil engineering contractors, lay out promoters, flat promoters, real-estate and housing/commercial project developers. In November, 2012, the Project Proponent submitted a plan for approval to the CMDA for the project 'SSM Housing Complex at Perungalthur, Chennai'. The project was envisaged in an area of 49.28 acres. The proposed housing complex contemplated 59 blocks, out of which 6 blocks were for LIG housing with GF + 3 floors and balance 53 blocks with stilt plus 4 floors comprising of a total 2952 flats. There are six commercial blocks and one club house. The total built up area of the project comes to 37.84 lakhs sq ft. The estimated project cost involved was Rs. 792.56 crores. The application for planning permission was filed with the CMDA on 2nd November, 2012 and revision of this application was sought on 11th December, 2012, 27th December, 2012 and 7th February, 2013. On 11th March, 2013, necessary fee for process was demanded by CMDA from the Project Proponent. On 5th August, 2013, the Planning Permission was granted to the Project Proponent in relation to the project in question. Project Proponent had submitted the application for grant of Environmental Clearance on 24th July, 2013. According to the Applicant, the Project Proponent claims that

he had collected samples for making available for baseline data from July to September, 2013 and that it had commenced construction by 13th August, 2013. However, the Applicant has submitted that the Project Proponent had erroneously classified the project as a category 'B2' project under clause 8(b) of the Schedule to the Notification of 2006, while in Column (2) of Form 1, the Project was categorised as 8(a) under the Schedule of Notification of 2006. It is also averred by the Applicant that the samples have been collected much subsequent to the application for grant of Environmental Clearance and are even pre-dated to the TOR. Furthermore, as they were not collected by an accredited consultant they cannot be used for EIA report. On 1st August, 2013, SEIAA asked for additional documents and particulars so as to proceed with the case. These documents are stated to have been submitted on 20th August, 2013. SEIAA vide its letter dated 19th September, 2013 stated that the ToRs as well as the clarifications should also be furnished in the EIA report. On the basis of the said EIA Report, the Project Proponent was required to take further necessary actions for obtaining Environmental Clearance. The Project Proponent on 14th February, 2014 submitted a Rapid EIA report. On 24th February, 2014, the partners of the Project Proponent passed a Board Resolution expressly apologizing for violations of the Notification of 2006 by commencing construction work without grant of Environmental Clearance and undertook not to commit further violation. In fact, on 19th March, 2014, 'letter of commitment and expression of apology' was submitted to SEIAA. The Tamil Nadu

Pollution Control Board on 11th July, 2014 conducted an inspection of the project. On the basis of this inspection, the Tamil Nadu Pollution Control Board issued a notice dated 15th July, 2014 referring to the whole background, the breaches and violation committed by this Project Proponent and the fact that during inspection on 11th July, 2014, it was found that the residential complex project was under progress without obtaining Environmental Clearance which was violative of Notification of 2006 and documents submitted by the Project Proponent. The Project Proponent thus, was required to show cause within 15 days as to why prosecution should not be launched by filing a complaint as contemplated under Section 19 of the Act of 1986 and also why recommendation should not be made to the MoEF for issuance of direction under section 5 of Act of 1986 stopping operation of the project till such Environmental Clearance is obtained. Reply to this show cause notice was submitted by Project Proponent on 22nd July, 2014. It was stated therein that in response to the issuance of the TOR, the Project Proponent had submitted rapid Environmental Impact Assessment report on 14th February, 2014 and were awaiting Environmental Clearance. It was further stated that they have stopped all construction activity pertaining to the said project and no construction would be carried out without obtaining the Environmental Clearance. On 25th November, 2014, SEIAA issued a letter to the Project Proponent stating that their application stands de-listed and would be processed only after further orders of the National Green Tribunal.

35. Under the orders of the Tribunal, the Tamil Nadu Pollution Control Board had also conducted an inspection of the premises of Respondent No. 6 on 2nd April, 2015. Photographs were also taken by SEIAA on 14th April, 2015. Photographs submitted by the Project Proponent on 26th March, 2014 and the photographs taken on 14th April, 2015 by SEIAA clearly show that there has been frequent violation of the laws in force, Notification of 2006 and even the undertaking of apology given by the Project Proponent itself.

36. On 2nd April, 2015, the inspecting team of Tamil Nadu Pollution Control Board found that the work had been stopped and the photographs taken had supported such observations made by the inspecting team.

Stand of M/s SSM Builders and Promoters (Respondent No. 6)

37. The Project Proponent has taken a stand that it was under a *bona fide* impression that he could commence construction on making an application for Environmental Clearance to SEIAA and once the Planning Permit had been granted by the CMDA. According to Respondent No. 6, he had paid the processing fee of Rs. 5 Lakhs on 27th July, 2013 and after receiving the letter from the CMDA on 5th August, 2013, it had started construction. Submission of documents including rapid Environmental Impact Assessment and issuance of TOR was a genuine basis for the Project Proponent to start construction. Relying upon the dated 12th December, 2012, it is stated that the 'letter of commitment and expression of apology' was submitted on 19th March, 2014. According to the Project Proponent, green space had been left

between the buildings so that there is reduced heat gain. The buildings are designed to maximize the use of solar power, rain water harvesting system have been made and STP's installed to recycle water. According to the Project Proponent, out of 2952 flats and 135 shops, 1566 flats and 82 shops have already been sold and undivided share in the land has been conveyed to the buyers. Thus, third party interests have been created. According to the Project Proponent he would be gravely prejudiced by non-processing of the Environmental Clearance application and has submitted that dated 12th December, 2012 as amended on 27th June, 2013, is in consonance with the Notification of 2006 and the Project Proponent is entitled to the benefit of the process as envisaged under the impugned Office Memoranda. According to the Project Proponent, the main application should thus be dismissed.

38. **S.A.S Pvt. Ltd. (Respondent No. 9)** had filed its application through its authorised signatory which was allowed. The application for intervention/impleadment was filed in furtherance of the interim order dated 21st May, 2014 passed by the Southern Zone Bench at Chennai. Thereafter, vide order dated 15th December, 2014, the operation of the impugned orders dated 12th December, 2012 and 27th June, 2013 was stayed by the Principal Bench.

39. According to the Applicant, the project of this Respondent at Village Saligramam, Chennai was for development of residential complex consisting of construction of 2 block with combined lower and upper basements and Block 1 – ground plus 17 floors, block 2

– basement plus ground floor plus 2 floors – Service, Gym and swimming Pool providing 166 residential units. The total project area is 6,985 sq meters with built up area of the project is 28,330.95 sq meters. The estimated cost of the project was 90 crores. According to the Applicant, the planning permission from the CMDA was obtained by the Project Proponent on 30th March, 2012, in furtherance to which building license was obtained by the Project Proponent from Corporation of Chennai on 23rd May, 2012. Thereafter, the Project Proponent commenced the construction without even applying for Environmental Clearance. The Project Proponent applied to SEIAA for obtaining Environmental Clearance on 4th July, 2012. No acknowledgement thereof had been placed on record by the Project Proponent. From the letter of the SEIAA dated 13th March, 2013, it is clear that the application with documents was of 13th March, 2013 itself. In terms of this letter, a bank draft towards the processing fee that was given by the Project Proponent itself, was dated 13th February, 2013. In this very letter, SEIAA had informed the Project Proponent that it shall not commence any construction other than cleaning the site or fencing the site. It was specifically re-emphasized that any construction activity started or being executed before obtaining Environmental Clearance from the competent authority would be in violation of the Act and the Notification. Vide letter dated 19th March, 2013, the Project Proponent was asked to furnish additional documents and additional fee on or before 15th April, 2013 failing which the application would be recorded as closed. The Applicant has stated

that till that date, no clarifications were filed nor the fee submitted. On 25th June, 2013, the Project Proponent passed a Board Resolution expressing apology and submitting an undertaking not to repeat any violation and not to raise any constructions. In this letter of commitment and expression of apology, the Project Proponent prayed for consideration of the issue relating to Environmental Clearance. However, on 18th November, 2014, SEIAA informed the Project Proponent that the project had been de-listed. During the inspection on 14th April, 2015, photographs had been taken which if compared with the photographs submitted by the Project Proponent on 6th May, 2013 reveal that there was clear violation of the law, Notification of 2006 as well as the undertaking given by the Project Proponent.

40. According to the authorities including Tamil Nadu Pollution Control Board and the SEIAA, they came to know of unauthorized construction by the Project Proponent on 13th May, 2013. On 21st May, 2013, Project Proponent had submitted certain photographs taken at the project site. SEIAA while following the guidelines issued by the MoEF had asked the Project Proponent to furnish certain documents. The Project Proponent submitted their Board Resolution dated 25th June, 2013 which was received by the SEIAA on 2nd August, 2013. Thereafter, Member Secretary, SEIAA vide letter dated 8th August, 2013 requested the State Government to take action for violation of the Notification of 2006. Vide letter dated 10th September, 2013, the State Government requested the Tamil Nadu Pollution Control Board to take legal action against the

Project Proponent in terms of Section 19 of the Act of 1986 for having commenced the construction without obtaining prior Environmental Clearance. Thereafter, the Tamil Nadu Pollution Control Board vide its letter dated 3rd June, 2014 informed the Member Secretary, SEIAA, Tamil Nadu that District Environmental Engineer, Chennai has filed a Criminal Complaint in the Judicial Magistrate Court at Saidapet against Respondent No. 9 on 26th May, 2014. It is averred by the authorities that upon compliance with the requirements pointed out by the authorities, the application for Environmental Clearance of the Project Proponent was placed before SEIAA in its 45th Meeting held on 29th – 30th October, 2013. According to SEIAA, the project site was inspected on 14th April, 2015 in the presence of Project Proponent's representative (Site Engineer). It was noticed that civil structural works (core and shell) of all 2 blocks were completed, though at the time of inspection, no work had been carried on. Photographs were taken during the inspection and have been submitted before the Tribunal. The Project Proponent was informed vide letter dated 18th November, 2014 not to proceed with the project construction work, which had not been adhered to. The photographs furnished by the Project Proponent at time of submission of the expression of apology on 6th May, 2013, show that the construction work was structurally in progress but without any walls or without even completion of pillars of any floor. However, photographs taken on 14th April, 2015 show that the building was majorly finished from outside and

inside, which was clearly in violation of the law and the undertaking furnished by the Project Proponent.

Stand of Respondent No. 9 (SAS Realtors Pvt. Ltd.)

41. The stand of the Project Proponent is that he had obtained various approvals from the local authorities since 2011 along with Planning Permission from the CMDA on 30th March, 2012 and Planning Permit from the Chennai Corporation on 23rd May, 2012. The Project Proponent commenced construction activity in compliance with these approvals to meet the timelines promised to its clients for timely delivery of the residential apartments. The authorities thereafter informed the Project Proponent that he is required to obtain Environmental Clearance. The Project Proponent had submitted the application for Environmental Clearance to the SEIAA on 4th July, 2012 but because of the change in the fees payable, the Project Proponent filed a fresh application on 18th February, 2013. In compliance to the Office Memorandum dated 12th December, 2012, it submitted a 'letter of commitment and an expression of apology' on 25th June, 2013, for having commenced construction activity before the receipt of the Environmental Clearance. Thereafter, it was informed to the Project Proponent by the authorities that its application was not processed in view of the stay orders of the Tribunal and that further action would be taken in accordance with further orders of the Tribunal.

42. Further, according to the Project Proponent, action of SEIAA in refusing the grant of Environmental Clearance is violative of legitimate expectation of the Project Proponent, after they have

complied with all the requirements of the dated 12th December, 2012. Since SEIAA failed to comply with the timeline of maximum 105 days provided under Para 8 of the Notification of 2006, the deemed approval would operate in favour of the Project Proponent when there is no rejection of the application from the authorities. According to the Project Proponent the action of SEIAA in delisting its project is violative of Article 14 of the Constitution of India. It is also the submission of the Project Proponent that they have taken all steps in furtherance to dated 12th December, 2012 and therefore, they are entitled to grant of Environmental Clearance and SEIAA has erroneously linked it to the orders of stay passed by the Tribunal. A feeble attempt has been made on behalf of this Respondent to point out that the Notification of 2006 does not apply to residential building projects and it extends only to location of 'industries' or on carrying on of processes and operations. Furthermore, that the Notification of 2006 goes beyond the purview of Rule 5(3) of the Environment (Protection) Rules, 1986 and hence it is *ultra vires*. According to the Project Proponent their application for EC was considered by the SEIAA in its 45th meeting held on 29th – 30th October, 2013 and whatever requirements were to be complied with by the Project Proponent had been complied with. The interim orders of stay on the impugned Office Memoranda by the Tribunal were only in relation to category 'A' projects which require Environmental Impact Assessment, public consultations and Consent to Establish. The project in question is not covered under this category and therefore, the view taken by the Official

Respondents was not correct. The Project Proponent had so claimed even before the authorities.

43. The Project Proponent in its application had submitted that they would challenge the validity and correctness of the Notification of 2006 but no such steps were taken by the Applicant till the conclusion of the arguments.

44. Upon analysis of the case advanced on behalf of the respective parties and as is evident from the pleadings and records before us, we may concisely note the arguments advanced. It is contended on behalf of the Applicant that the Office Memorandum dated 12th December, 2012 and as amended by Office Memorandum dated 27th June, 2013 which provides grant of ex-post facto Environmental Clearance in terms of the Notification of 2006 and the CRZ Notification of 2011 are contrary to these Notifications, themselves. These Office Memoranda at best are administrative orders and therefore, cannot amend or modify the Notifications. It is further the contention of the Applicant that these Office Memoranda are in derogation not only to the Notification of 2006 and the CRZ Notification of 2011 but even of India's International obligations. The Office Memoranda are neither problem solving nor are they compliant with law. These Office Memoranda are not executive orders issued under the authority of Article 73 of the Constitution of India, as these Orders have neither been authenticated by the required authority nor have they complied with the procedure for exercise of executive power under that Article. In fact, they amend the statutory Notification of 2006. The Office Memoranda, in fact,

destroy the very object of the Act of 1986, Notification of 2006 and they have the effect of not only going beyond scope of the Notification of 2006 but even are clearly in derogation to the procedure prescribed under it. The language of the impugned Office Memoranda suggests that they have not been issued in exercise of the powers vested in the Ministry under Section 5 of the Act of 1986 and they are not issued as per the prescribed procedure. They also do not supply the gaps, if any, in the Notification of 2006.

45. According to the Applicants, impugned Office Memoranda are arbitrary and they do not provide for any guidelines. They have an inbuilt element of discrimination and they vest unguided and unfettered discretion with the concerned authority.

Contra to these contentions, the submission on behalf of the Respondents (private Respondents) is that the Office Memoranda have been issued by the MoEF in exercise of its executive powers under Article 73 of the Constitution of India. The source of power of the Union of India to issue such Memorandum is relatively under Article 73 of the Constitution of India, as the executive power of the Union extends to matters on which Parliament is competent to legislate under Article 246 of the Constitution. Furthermore, the impugned Office Memoranda do not have the effect of supplanting or even diluting the mandate of the Notification of 2006. On the contrary, they are in consonance with and in furtherance of the Notification of 2006 and supplement it. The requirement of prior Environmental Clearance is not diluted by these Office Memoranda

since they do not permit commencement of project prior to grant of Environmental Clearance. It is further the contention of the Project Proponents that the situations which are not specifically contemplated under the Notification of 2006 are dealt with by the Office Memoranda. In other words, the Office Memoranda supply the gaps in the Notification of 2006 and further the cause of the Notification. The Office Memoranda do not pose any fetters on the powers conferred on the State or Central Government under the Act of 1986 or the Notification of 2006. They, in fact, direct enforcement of Section 15 and 19 of the Act of 1986 to prosecute the violators.

46. The Project Proponents - Respondents have also contended that they have acted in furtherance to the Office Memoranda, followed the requisite procedure and have invested huge amounts and as such the Tribunal should permit the grant of Environmental Clearance to these projects and dismiss the application of the Applicants.

47. Some of the Respondents have taken up the plea of deeming fiction as contained in Para 8 (iii) of the Notification of 2006 to contend that the Environmental Clearance would be deemed to have been granted to them as their applications were not disposed off within the specified time. Some of the Respondents have also contended that the Notification of 2006 is not applicable to their projects which are for building residential complexes.

Still, some of the Respondents have further contended that the Notification of 2006 is invalid and is liable to be set aside on the

ground of discrimination, vagueness etc. Respondent no. 9 having raised this plea in its application, had reserved its right to challenge the validity and correctness of Notification 2006, however, till the matter was reserved for judgment, neither any such effort was made by such Respondent nor actual application was filed challenging the Notification of 2006. Thus, we do not propose to go into the challenge to the Notification of 2006 in these petitions of the Respondents. Respondent no. 9 has even relied upon the said Notification of 2006 to contend that the Office Memoranda are valid, issued by the Competent Authority in exercise of its powers and are supplementing the Notification of 2006. In these circumstances it is neither necessary nor required by the Tribunal to examine the correctness or otherwise of Notification of 2006.

48. According to the MoEF, the Office Memoranda have been issued in exercise of the powers conferred upon the Ministry and are hence, executive instructions. According to the Ministry, they supplement the Notification of 2006.

49. The State of Tamil Nadu and Tamil Nadu Pollution Control Board have not taken any specific stand in their replies in relation to the validity of Office Memoranda but have stated that the other private Respondents being violators, they have taken action against them as per the directives of the MoEF in the impugned Office Memoranda. The private Respondents have violated the conditions of the Notification of 2006 and they have taken action against them under Section 19 and 25 of the Act of 1986. SEIAA has taken up the stand that because of violations of the Office Memoranda, they

have taken action against the private Respondents (Project Proponents) and have de-listed their projects from the grant of Environmental Clearance. During the course of inspection these authorities have taken photographs and submitted inspection reports to the Tribunal. It is stated that tenure of SEIAA had ended on 3rd April, 2015 and is under process of being re-constituted.

50. As evidenced from the facts averred and the stand taken by respective parties, the entire controversy revolves around the validity, enforcement and consequences of the impugned Office Memoranda afore-referred. To put it precisely, the stand of the MoEF and the private Respondents 3 to 9 is that the Office Memoranda dated 12th December, 2012 and 27th June, 2013 have been issued by the Ministry in exercise of its Executive Power under Article 73 of the Constitution of India. These Office Memoranda are having the force of law and are merely explanatory or supplementary to the Notification of 2006. These Office Memoranda provide and facilitate grant of Environmental Clearance through the same process as contemplated under Notification of 2006 to the projects which have already commenced construction without obtaining prior Environmental Clearance. It is contended that Office Memoranda further the cause of the Notification of 2006 and the provisions of law. The Office Memoranda are neither violative nor are in contradiction to the Act of 1986, the Rules framed thereunder, or the Notification of 2006.

51. Some of the private Respondents have also contended that the Office Memoranda have been issued in conformity with Section 3

and 5 of the Act of 1986, that issuance of such Memoranda is aided by the 'doctrine of implied or necessary powers' and that they are also entitled to the grant of Environmental Clearance as a result of 'deeming fiction' under Para 8 of the Notification of 2006.

Further, the contention of the private Respondents in particular is that they had started the projects after taking clearance as well as different permissions from various authorities and in accordance with law. At some stage of the construction, they had also filed applications for obtaining Environmental Clearance from the concerned authorities. The Terms of Reference of the building permission from CMDA even prescribed that Environmental Clearance should be taken before grant of Completion Certificate. The constructions carried out by them, though without obtaining Environmental Clearance, were for *bona fide* reasons and keeping in view the fact that not only the Project Proponents but even third parties had heavily invested in these projects. For the above reasons, they claimed to be entitled to the benefit of the Office Memoranda and consequently for protection to their construction projects.

On the contrary, the submission of the Applicants is that the impugned Office Memoranda issued by the Ministry are merely administrative orders and are in violation of the provisions of the Act of 1986, the Rules framed thereunder and in particular, the Notification of 2006. The Office Memoranda not only dilute the provisions of the Notification of 2006 but completely upset the scheme of environmental protection as contemplated under the

environmental laws. On their plain reading, they are *ultra vires* the Notification of 2006 and the Ministry had no jurisdiction to issue such Office Memoranda. These Office Memoranda are not supplementing but are supplanting the Notification of 2006. Such exercise of powers is impermissible in law. Further, the contention of the Applicants is that while some of the private Respondents did not even apply for Environmental Clearance and went on to raise the construction of their respective projects being fully aware and being put to notice that they were not entitled to carry on such construction work, the other Project Proponents completely ignored and / or violated their legal obligations and applied for grant of Environmental Clearance at a stage when their respective projects were reaching structural completion. In law, none of the private Respondents could have undertaken any activity, much less construction activity, of their projects, except the preparation of the site etc, prior to grant of Environmental Clearance. All these Respondents have violated the law and raised constructions illegally and in an unauthorised manner. It is the case of the Applicant that the plea of *bona fide* belief in raising construction is a sham. Not only the private Respondents started construction but even violated their own undertaking given to the SEIAA by continuing with the construction, in fact, with a greater vigour to complete their projects and render all environmental restrictions and laws otiose. The plea of investment by third parties is equally unfounded and *mala fide*. They have invested amounts and even mislead the public at large for making investments being fully aware of the fact that the entire

construction is illegal and unauthorised. These constructions have resulted in serious adverse environmental impacts and are prejudicial to the ecology and biodiversity of the area in question.

52. Applicants have seriously contended that neither a deeming fiction nor the doctrine of necessity applies to the facts and circumstances of the case. There was no compliance to the provisions of Section 3 and 5 of the Act of 1986 and thus, these cannot be directions issued under the stated provisions. In fact, that is not even the case of MoEF, the issuing authority. Thus, the application should be allowed and the Respondents should be held liable for violation of law, raising unauthorised and illegal construction and degrading and damaging the environment and ecology, in addition to the principal prayer that the Office Memoranda be quashed.

53. In order to analytically examine the correctness and merit of the rival contentions raised, it would be appropriate for us to formulate the issues that fall for consideration of the Tribunal. Precisely, they can be stated as under:

1. Whether the Office Memoranda dated 12th December, 2012 and 27th June, 2013 have been issued by the MoEF in exercise of its statutory, executive or administrative power and the effect thereof?
2. Are the above Office Memoranda *ultra vires*, violative and in any manner in derogation of or destructive to the Notification of 2006, provisions of the Act of 1986 or Rules framed thereunder?

Do the impugned Office Memoranda supplement or supplant the Notification of 2006? If so, the consequences thereof.

3. Whether this Tribunal has no jurisdiction to quash both the impugned Office Memoranda?
4. Are the private Respondents entitled to claim any benefit on the strength of deeming provisions as contained in Para 8 (iii) of the Notification of 2006 and if so, to what effect?
5. Whether the provisions of Notification of 2006 requiring Environmental Clearance prior to commencement of construction are mandatory or directory and consequences thereof?
6. What is the status of structures raised by and the conduct of the private Respondents and its effect in law (statutory provisions relating to environment)?
7. What are the environmental impacts of the projects in question upon environment, ecology and biodiversity?
8. What relief, if any, any of the parties to the present proceedings are entitled to?
9. What directions, if any, need to be issued by the Tribunal in the peculiar facts and circumstances of the present case?

DISCUSSION ON ISSUES

Discussion on Issue Nos. 1 and 2.

- 1. Whether the Office Memoranda dated 12th December, 2012 and 27th June, 2013 have been issued by the MoEF in exercise of its statutory, executive or administrative power and the effect thereof?**

2. Are the above Office Memoranda *ultra vires*, violative and in any manner in derogation of or destructive to the Notification of 2006, provisions of the Act of 1986 or Rules framed thereunder?

Do the impugned Office Memoranda supplement or supplant the Notification of 2006? If so, the consequences thereof.

54. The decision on these issues would in fact be a linchpin of the entire judgment. If the Office Memoranda dated 12th December, 2012 and 27th June, 2013 are held to be valid and issued in exercise of the Executive Powers of the MoEF, then different consequences in law and on facts would follow. While a completely different set of consequences would ensue if a contrary view is taken.

55. According to the MoEF, these Office Memoranda are issued in exercise of its Executive Power. Some private Respondents supported this stand while others contend that these are the directions issued by the Ministry in terms of Section 3 and 5 of the Act of 1986. However, the MoEF and private Respondents commonly contend that these Office Memoranda are supplemental to and are intended to further the cause of the Notification of 2006.

In opposition to this, the Applicants contend that these Office Memoranda have been issued in exercise of the Administrative Power of the MoEF. They are *ultra vires* and violative of the Notification of 2006. They supplant the Notification of 2006 and defeat the very purpose of obtaining prior Environmental Clearance

for commencement of the projects of a like nature, as contemplated under the Notification of 2006.

56. Now, we may notice the historical background to the issuance of these impugned Office Memoranda. The Indian Parliament enacted the Act of 1986 to provide for the protection and improvement of the environment and for matters connected therewith. This law is enacted in furtherance to the decisions taken at the United Nations Conference on Human Environment held at Stockholm in June, 1972, to which India was a party. The object of the Act was to protect and improve environment and for prevention of hazards to human beings, other living creatures, plants and property. The term 'environment' in terms of Section 2(a) was defined to include water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. In exercise of the powers conferred by Sections 6 and 25 of the Act of 1986, the Central Government made the Environment (Protection) Rules, 1986 (for short 'Rules of 1986'). Further, in exercise of the powers vested in the Central Government under Sub Section 1 and Clause (v) of Sub-section (2) of Section 3 of the Act of 1986, read with clause (d) of sub-rule (3) of Rule 5 of the Rules of 1986, the Central Government issued the Environment Impact Assessment Notification dated 27th January, 1994. This Notification requires any person who desire to undertake any new projects in any part of India or the expansion or modernisation of any existing industry or project listed in Schedule I to make an application to

the MoEF in the proforma specified in Schedule II of the said Notification. Schedule I provides the list of the projects that requires Environmental Clearance from the Central Government. Under entry 18, all tourism projects between 200 metres and 500 metres of High Water Line and at locations with an elevation of more than 1000 metres with investment of more than Rs.5 crores required Environmental Clearance. Similarly, under entry No. 21, Highway Projects except projects relating to improvement work including widening and strengthening of roads with marginal land acquisition along the existing alignments, provided it does not pass through ecologically sensitive areas such as National Parks, Sanctuaries, Tiger Reserves, Reserve Forests also required Environmental Clearance. Except these two entries, the construction projects of any other nature were not included in any entry of this Schedule. The Notification of 1994 in contradistinction to the Notification of 2006 had not specifically used the word 'prior Environmental Clearance'. The Notification of 1994 was issued by the Ministry after inviting objection from the public within 60 days from the date of publication of the Notification. Taking notice of lacunas, shortfalls and other practical aspects and difficulties while keeping in mind the interest of environment, the MoEF again issued a draft Notification dated 15th September, 2005 inviting objection and suggestions from all the persons likely to be affected by this draft Notification within a period of 60 days. The significance of this Notification was that the Union Cabinet had approved the National Environmental Policy on 18th May, 2006 proposing restrictions and

prohibitions to be imposed on new projects and activities and even on expansion or modernisation of existing projects or activities with reference to their potential environmental impacts which stated that the project and activity should not be undertaken unless prior Environmental Clearance has been granted in accordance with the objectives of the policy. After examining the objections and suggestions received, the Central Government on 14th September, 2006 issued a final Notification referred herein as the Notification of 2006 (supra). Clause 2 of this Notification required obtaining of prior Environmental Clearance from the concerned regulatory authority depending upon the nature of the project. Clause 2 of the said Notification reads as under:

“Requirements of prior Environmental Clearance

(EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category ‘A’ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category ‘B’ in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this notification;
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.”

57. Clause 4 of the Notification of 2006 contemplates that all projects and activities be broadly categorized into two categories -

Category 'A' and Category 'B', based on the spatial extent of potential impacts on human health and natural and manmade resources. Clause 4(iii) prescribes that all the projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities would require prior Environmental Clearance from SEIAA and prior Environmental Clearance is required even if there is a change in product mix except in the expansion carved out therein. Upon submission of the application for Environmental Clearance by the Project Proponent, the Expert Appraisal Committee is to follow four steps procedure i.e. Screening, Scoping, Public Consultation and Appraisal of the application. Environmental Clearance is to be applied for in the prescribed Form 1 under Appendix 1 and Form 1A in accordance with Appendix II to the Notification of 2006. Such application is to be filed for grant of prior Environmental Clearance before commencing any construction activity or preparation of land at the site by the Project Proponent in terms of Clause 6 of the Notification of 2006. It has to be noticed here that Form 1 and 1A require a lot of information to be supplied in relation to the project, land area and activity that is proposed to be commenced by the Project Proponent. Such information *inter alia* includes details of alternative site examination and whether the project requires Clearance under different laws including Forest (Conservation) Act, 1980, Wild Life (Protection) Act, 1972, Coastal Regulation Zone Notification, 2011, if any forest land is involved.

58. It also *inter alia* requires the information with regard to permanent or temporary change in the land use, land cover or topography, including increase in intensity of land use, pre-construction investigations like bore house, soil testing. Underground works, including mining or tunnelling, reclamation works, impoundment, daming, culverting, realignment and other changes to the hydrology of the watercourses or the aquifers, loss of native species or genetic diversity, details of vulnerable groups of people which could be affected by the Project, municipal details of municipal waste, sewage sludge, densely populated or build up areas, environmental sensitivity, information with regard to a risk of accidents during construction or operation of the projects which could affect human health and risk of contamination of land and water from releases of pollutants into ground water or coastal areas are also required to be furnished. The Notification of 2006 further spells out how the Screening, Scoping, Public Consultation and Appraisal are to be carried out by the authorities concerned. Further, the Terms of Reference (for short 'ToR') that are to be prepared on the basis of the information furnished in Form 1 and 1-A would become the very basis for consideration of the project of the Project Proponent. The Notification of 2006 states that ToR are to be conveyed to the Project Proponent by the Expert Appraisal Committee or the SEAC as the case may be, upon which an EIA report is to be submitted after holding public consultation. The nominated agency has to submit its report to the regulatory authority stating whether owing to the local situation and dealing

with the objections raised, in its opinion, the project should be recommended for Environmental Clearance or not. The agency has to further appraise whether the project site is proper or not. This entire process is required to be completed prior to grant of Environmental Clearance. Para 8 of the Notification of 2006 deals with the grant or rejection of 'prior Environmental Clearance'. Authorities are required to deal with the applications for grant of prior Environmental Clearance expeditiously and in any case within the time stipulated under the sub-clauses of Para 8. In terms of Para 8(iii), if the decision of the regulatory authority is not communicated to the Applicant within the period specified in sub-clauses (i) or (ii) of Para 8, the Applicant may proceed as if the Environment Clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee, as the case may be. Therefore, the Project Proponent under the Notification of 2006 can commence its construction or activity only after the grant of Environmental Clearance. This Clearance is to be for a specific period, i.e. the validity period. The projects are supposed to be monitored by the authorities even post Environmental Clearance. This is the scheme and requirements of the Notification of 2006 that superseded the Notification of 1994.

59. On 16th November, 2010, the MoEF for the first time issued an Office Memorandum. Since the impugned Office Memoranda, including this Office Memorandum, have a significant bearing on

the matters in issue before us, it will be appropriate to reproduce this Memorandum at this stage:

No. J-11013/41/2006-IA.II(I)

**Government of India
Ministry of Environment & Forests**

Paryavaran Bhavan,
C.G.O Complex, Lodi Road,
New Delhi – 110003
Telefax: 24362434

Dated the 16th November, 2010

Office Memorandum

- Sub:** **1. Consideration of proposals involving violation of the Environment (Protection) Act, 1986 or Environment Impact Assessment (EIA) Notification, 2006 / the CRZ Notification, 1991, there under - Regarding.**
- 2. Corporate Environment Policy - Regarding.**

The Environment Impact Assessment (EIA) Notification, 2006 requires all new projects or activities and or expansion and modernization of those existing projects or activities listed in the schedule to the said Notification with capacity beyond the threshold limits prescribed there under, to obtain prior environmental clearance under the provisions thereof.

2. Instances have come to the notice of the Ministry of Environment & Forests where substantial physical progress relating to construction of the project has been made at site and significant investments have been made for setting up of new projects as also for the expansion components of various existing projects such as thermal power plants, integrated steel plants, mining projects etc. without obtaining a requisite prior environmental clearance as is mandated under the EIA Notification, 2006.

3. As per the existing practice being followed in the Ministry for considering such violation cases as and when these are submitted for environmental clearance, while environmental clearance is granted to deserving projects prospectively, based on their merit, in accordance with the recommendation of the Expert Appraisal Committees, simultaneously the concerned State Governments, under the powers delegate to them under the Environment (Protection) Act, 1986 are requested to initiate action against such units for the period these units have operated in violation of the said Act as per the procedure laid down.

4. The matter has been considered in the Ministry and it has been decided to follow the following procedure henceforth to deal with such cases of violations:

- (i) All such cases of violation which are submitted to the Ministry of Environment & Forests / SEIAAs for environmental clearance would be referred to the respective Expert Appraisal Committee (EAC) / SEACs for their consideration based on merit of the proposal. After the EAC / SEAC have made its recommendations on the project, the proposal will be processed on file for obtaining the approval of the Competent Authority.
- (ii) After the Competent Authority has approved the proposal for grant of environmental clearance, MoEF / SEIAA will send a communication to the Project Proponent informing that although the proposal has been approved by the Competent Authority, formal environmental clearance will be issued to the project only after the matter relating to the violations have been put up to the Board of Directors of the Company or to the Managing Committee / CEO of the Society, Trust, partnership / individually owned concern for consideration of its environment related policy / plan of action as also a written commitment in the form of a formal resolution to be submitted to MoEF / SEIAA to ensure that violations of the Environment (Protection) Act etc. will not be repeated. For the purpose, a time limit of 90 days will be given to the Project Proponent. In the mean time, the project will be delisted. In the eventuality of not having any response from the Project Proponent within the prescribed limit of 90 days, it will be presumed that it is no longer interested in pursuing the project further and the project file will be closed, where after the procedure for obtaining environmental clearance will have to be initiated de-novo by such Project Proponents.
- (iii) The respective State Government will be informed of the violation case for their initiating legal action against the Company as per the procedure prescribed.
- (iv) The details of the Project Proponents and a copy of the commitment etc. mentioned at para 4(ii) above will be put on the website of MoEF / SEIAA for information of all / stakeholders.

This issues with the approval of the Competent Authority.

60. In para 2 of the above Office Memorandum, it was noticed that instances have come up to the MoEF where substantial physical progress relating to construction of the project has been made at site and significant investments have been made for setting up of new projects and also for the expansion of the components of various existing projects without obtaining mandated prior Environmental Clearance. Though, this Office Memorandum specifically notices that the Notification of 2006 mandates prior Environmental Clearance, however, the decision was taken that henceforth, all such cases of violation which are submitted to the Ministry would be referred to the EAC/SEAC and depending upon their recommendations, the proposals would be finally dealt with; provided other requirements of the Office Memorandum were satisfied. This Office Memorandum came to be superseded by another Office Memorandum of 12th December, 2012. Again, it was noticed in this Office Memorandum that all projects and activities beyond the threshold limits prescribed thereunder are required to obtain prior Environmental Clearance under the provisions of the Notification of 2006 or Notification of 2011 relating to Coastal Zone Regulation. Again, it noticed that the projects have been started without compliance to these requirements and in some cases, the applications have been pending before the Ministry/the authorities concerned, in terms of the Office Memorandum of 16th November, 2010. The Office Memorandum dated 12th December, 2012 reads as under:

“No. J-11013/41/2006-IAII(I)
Government of India

Ministry of Environment & Forests

Paryavaran Bhavan,
C.G.O Complex, Lodi Road,
New Delhi – 110003
E-mail: pb.rastogi@nic.in
Telefax: 011-24362434

Dated 12th December, 2012

OFFICE MEMORANDUM

Subject: Consideration of proposals for TORs/ Environment Clearance/ CRZ Clearance involving violation of the Environment (Protection) Act, 1986/ Environment Impact Assessment (EIA) Notification, 2006/Coastal Regulation Zone (CRZ) Notification, 2011 - reg.

1. The Environment Impact Assessment Notification (EIA), 2006 and its amendments thereafter require all new projects or activities and / or expansion and modernization of existing projects or activities listed in the schedule to the said Notification with capacity beyond threshold limits prescribed thereunder, to obtain prior Environment Clearance under the provisions thereof. Similarly, CRZ Notification, 2011 imposes certain restrictions on the setting up and expansion of industries, operations or processes and the like in the CRZ.

2. Instances have come to the notice of this Ministry where without obtaining the required clearance under the aforesaid Environment Impact Assessment Notification, 2006 and / or CRZ Notification, 2011, the construction / physical operation activities relating to the projects have been started at the sites. Such activities amount to violations under the Environment (Protection) Act, 1986 / EIA Notification, 2006 CRZ Notification, 2011 (henceforth referred to as violations).

3. The cases for granting Environment Clearance / CRZ Clearance for such projects are at present being dealt with in terms of OM of even number dated 16.11.2010. Now, it has been decided in that in supersession of this OM, the procedure henceforth stated in this OM will be followed while dealing with such cases.

4. The violations could come to the notice of the Ministry at various stages of processing of the proposals, i.e.:

- i. Processing the case in the Ministry before referring the same to the Expert Appraisal

Committee (EAC) for TOR / Environment Clearance / CRZ Clearance;

- ii. During the deliberations in the EAC meeting and recorded as such in the minutes of the meeting; and;
- iii. Processing the case in the Ministry after the receipt of recommendations of the EAC but before granting TOR / Environment Clearance CRZ Clearance.

5. As soon as any case of violation comes/is brought to the notice of the Ministry EAC, the Ministry EAC will proceed to verify the veracity of the complaint through the concerned Regional Office of MoEF/State Government/CZMA. Of course, such a verification will not be required in case the Project Proponent does not contest the allegation of violation. Once the Ministry EAC is satisfied that it is a violation case, before proceeding any further in the matter, the following will need to be ensured in the matter:

- i. The matter relating to the violation will need to be put up by the Project Proponent to the Board of Directors of its Company or to the Managing Committee/CEO of the Society, Trust, partnership /individually owned concern for consideration of its environment related policy/plan of action as also a written commitment in the form of a formal resolution to be submitted to MoEF to ensure that violations will not be repeated. For this purpose, a time limit of 60 days will be given to the Project Proponent. In the meantime, the project will be delisted. In the eventuality of not having any response from the Project Proponent within the prescribed limit of 60 days, it will be presumed that it is no longer interested in pursuing the project further and the project file will be closed, whereafter the procedure will have to be initiated de novo by such Project Proponents.
- ii. The State Government concerned will need to initiate credible action on the violation by invoking powers under Section 19 of the Environment (Protection) Act, 1986 for taking necessary legal action under Section 15 of the Act for the period for which the violation has taken place and evidence provided to MoEF of the credible action taken.
- iii. The details of the Project Proponent and a copy of the commitment, etc., mentioned at (i) above will be put on the website of MoEF for information of all stakeholders.

6. Once action as per para 5 above has been taken, the concerned case will be dealt with and processed as per the prescribed procedure for dealing with cases for

grant of TORs / Environment Clearance CRZ Clearance and appropriate recommendation made by the EAC/decision taken by the Ministry as per the merit of the case.

7. It may be clarified that the consideration of proposals for giving TORs Environment clearance/CRZ clearance for violation cases will not be a matter of right for the Project Proponent. In cases of serious violations, the Ministry reserves the right to outrightly reject such proposals and not consider the same at all.

8. The aforesaid procedure, as stated in para 4 to 7 above will apply *mutatis mutandis* to the cases handled at the State level by the State Environment Impact Assessment Authorities (SEIAAs)/State Level Expert Appraisal Committees (SEACs).

9. This issues with the approval of the competent authority.”

This Office Memorandum deals with situations where violations have been committed by the Project Proponent and they have come to the notice of the MoEF at various stages of construction. It requires the Ministry to verify veracity of the complaint through the concerned regional office and once the Ministry is satisfied that it is a case of violation, then before proceeding any further, the steps contemplated under para 5 to 7 of this Office Memorandum would be taken. The two significant features of this Office Memorandum are that the Project Proponent is to file an undertaking to ensure that violations are not repeated and secondly it will not be a matter of right to the Project Proponent to claim Environmental Clearance and the MoEF can outrightly reject the proposal if it found the violations to be serious. Lastly, that the procedure under para 4 to 7, would apply *mutatis mutandis* to the cases handled by SEIAAs or SEACs. This was considered to be in conformity with the Notification of 2006.

61. Still another Office Memorandum was issued on 27th June, 2013 inserting sub-para 4 in para 5 of the Office Memorandum dated 12th December, 2012 which reads as under:

“3. In view of the above, it has been decided to insert the following as sub-para (iv) below sub-para (iii) of para 5 of the aforesaid OM dated 12.12.2012:

"(iv) Directions under Section 5 of the Environment (Protection) Act 1986 will be issued by MoEF to the Project Proponent in respect of the violations and compliance of Project Proponent obtained to such directions especially with regard to:

(a) In case the project is at construction stage and the violation is on account of carrying out construction without valid EC/CRZ Clearance or in contravention of the conditions stated in the EC/CRZ Clearance, the construction activities will need to be suspended at the existing level till EC/CRZ Clearance is obtained or the required amendment to EC/CRZ Clearance is obtained.

(b) In case the project is in operation and the violation is on account of enhanced production beyond the capacity stated in the EC/CRZ Clearance, the production will need to be restricted to the capacity stated in the EC/CRZ Clearance till EC/CRZ Clearance is obtained for enhanced capacity. In case of operation without a valid EC/CRZ Clearance, the production will need to stop till the required EC/CRZ Clearance is obtained.

(c) In case the violation is on account of carrying out modernization of existing project and/or change in product-mix in an existing manufacturing unit, the status quo as existing prior to such modernization and/or change in product-mix will be maintained till the required EC/CRZ Clearance is obtained for the modernization and/or change in product-mix.

In case of any violation to aforesaid directions, legal action as per the provisions of the Environment (Protection) Act, 1986 will be taken against the Project Proponent and the case of TOR/EC/CRZ Clearance summarily rejected.

This issues with the approval of the competent authority.”

62. Under the terms of Office Memorandum dated 12th December, 2012, the Ministry took upon itself the obligation for issuing

directions under Section 5 of the Act of 1986 in each case, but subject to requirements of the impugned Office Memorandum. It may be noticed that such statutory power is specifically vested in the MoEF and the Office Memorandum could confer upon it no wider powers than the statutorily provided powers.

63. In this background thus, now we have to deal with the question as to in exercise of which power, executive, administrative and / or statutory, the impugned Office Memoranda have been issued by the MoEF?

64. Since the Office Memorandum of 16th November, 2010 stood superseded by the Office Memorandum of 12th December, 2012 which was further amended by the Office Memorandum of 27th June, 2013, the challenge in the present application, is thus, confined to later two Office Memoranda only. A bare reading of the above Office Memoranda clearly shows that the provisions of law under which the said two Office Memoranda have been issued are conspicuous by its very absence in the Office Memoranda. Of course, according to the stand taken by the MoEF, they have been in the exercise of its executive powers. As already noticed, this stand is partially supported by the private Respondents (Project Proponents) who have further added that these Office Memoranda are within the ambit of directions as contemplated under Section 3 and 5 of the Act of 1986. Refuting such contentions, the Applicant has submitted that it is an exercise of administrative power *simplicitor*.

65. There are three organs of the Government: the Legislature, the Executive and the Judiciary. Legislature enacts the laws, judiciary interprets the law and declares what the law is and the executive administers the law. In the present case, we are really not concerned with the scope of legislative and judicial powers. We have to only deal with the ambit and scope of executive or administrative powers exercisable by the Executive, under which the Office Memoranda have been issued. The Executive performs validated functions viz. to investigate, to prosecute, to prepare and to adopt schemes, issues and cancel licences. The Executive can also perform some delegated, legislative functions in relation to making rules, regulations, bylaws and fixation of prices etc. It may still exercise quasi-judicial powers to resolve disputes or fix penalties etc. Such functions have become the chief weapons in its administrative armoury. Functions performed by the Executive authorities can be classified into two different heads but the distinction among these is a very fine one. To state it with precision is very difficult. This distinction gets even finer when it comes to executive and administrative functions *simpliciter*. Even in the same proceedings, it is difficult that one act may be executive while other act or series thereof may be purely administrative yet such classification is essential for varied reasons. When the executive authority exercises quasi-judicial functions, it must follow the principle of natural justice. While this requirement need not be satisfied in the case of executive functions, though, different requirements like publication, laying on the table of the house may

have to be complied with. In case of a pure administrative action, even this would not be necessary. Administrative function can be delegated and administrative decision can be challenged as being unreasonable. Thus, it is proper to determine under what type of function an action is taken by the authorities and in furtherance to exercise of what power. There could be circumstances where even a single function may be partly legislative, partly executive, partly judicial and even partly administrative. This difficulty in construing what kind of function it is, can be overcome by analysing the function and determining its character in each case. For instance, the function of the Wage Board may be held to be legislative if future rule of conduct is to be prescribed. It may be held to be judicial if the dispute is as to the relative rights of the parties as they rest on past or present circumstances. But, if there are neither present rights asserted, nor a future rule of conduct prescribed, but merely a fact ascertained, necessary for the practical effectuation of admitted rights, it can be said to be an administrative act (*Australian Boot Trade Employees' Federation v. Whybrow & Co.*, (1910) 10 CLR 266 (317), *Express Newspaper (P) Ltd. v. Union of India*, AIR 1958 SC 578 (6IO)).

66. The legislature enacts the legislation and that which the administration applies is administrative. Another way to look at it is by putting emphasis on the extent and applicability of law. Whereas legislative power is power to make rule for the subjects in general and for their prospective application, administrative power is applicable to such law to specific cases and to particular situations.

Administration again would normally indicate as to how the power should be exercised. Smith in 'Judicial Review of Administrative Action', (1980), states with elaboration the legal consequences that flow from the fundamental distinction between legislative and administrative actions:

1. "If an order is legislative in character, it has to be published in a certain manner, but it is not necessary if it is of an administrative nature.
2. If an order is legislative in character, the court will not issue a writ of certiorari to quash it, but if an order is an administrative order and the authority was required to act judicially, the court can quash it by issuing writ of certiorari.
3. Generally, subordinate legislation cannot be held invalid for unreasonableness, unless its unreasonableness is evidence of malafide or otherwise shows the abuse of power. But in case of unreasonable administrative order, the aggrieved party is entitled to a legal remedy.
4. Only in most exceptional circumstances can legislative power be sub delegated but administrative powers can be sub-delegated
5. Duty to give reasons applies to administrative orders but not to legislative orders."

67. The Supreme Court in the case of *Union of India (UOI) and Anr. v. Cynamide India Ltd. and Anr. etc.*, (1987) 2 SCC 720, summed up this fine distinction between legislative and administrative functions while observing that it was 'difficult in theory and impossible in practice', still, held that a legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases and an administrative act is the making and issuance of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy'; while questioning that it was a broad distinction, not necessarily always true. Sometimes administration and administrative

adjudication may also be of general application and legislation of particular application only.

68. In the case of *Rai Sahib Ram Jawaya Kapur and Ors. v. The State of Punjab*, AIR 1955 SC, 549, the Court observed that it may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily, the executive power connotes the residue of governmental functions that remains after legislative and judicial functions are taken away. Referring to various judgments, Justice C.K. Thakkar in his book 'Administrative Law', 2nd Edition, 2012, refers to the ingredients of administrative functions as follows:

1. "An administrative order is generally based on governmental policy or expediency.
2. In administrative decisions, there is no legal obligation to adopt a judicial approach to the questions to be decided, and decisions are usually subjective rather than objective.
3. An administrative authority is not bound by the rules of evidence and procedure unless the relevant statute specifically imposes such an obligation.
4. An administrative authority can take a decision in exercise of a statutory power or even in the absence of a statutory provision, provided such a decision or act does not contravene provision of law.
5. Administrative functions may be delegated and sub-delegated unless there is a specific bar or prohibition in the statute.
6. While taking a decision, an administrative authority may not only consider the evidence adduced by the parties to the dispute, but may also use its discretion.
7. An administrative authority is not always bound by the principles of natural justice unless the statute casts such duty on the authority, either expressly or by necessary implication or if it is required to act judicially.
8. An administrative order may be held to be invalid on ground of unreasonableness.
9. An administrative action will not become a quasi-judicial action merely because it has to be

performed after forming an opinion as to the existence of an objective fact.

10. The prerogative writ of certiorari and prohibition are not always available against administrative actions.”

69. In the case of *Automotive Tyre Manufacturers Association v. The Designated Authority and Ors.*, (2011) 2 SCC 258, the Supreme Court elucidated the factors for determining whether the function was administrative, quasi-judicial or otherwise. These factors are: the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Besides this, it is a generally accepted principle of functioning of administrative authorities that guidelines should be provided for the rust exercise thereof and to prevent abuse of power and to ensure that it does not become a “new despotism”. Various judgments of the Supreme Court, after enunciating the principles that control the application of these concepts, illustratively stated the cases of administrative function. For instances an order of preventive detention, an order setting up a Commission of enquiry, an order making or refusing to make a reference under the Industrial Dispute Act, 1947, an order granting or refusing sanction to prosecute public servant, an order of externment, power to issue licence or permit or even withdrawal from prosecution. Having examined the dimensions of the administrative actions of the State, now we will revert to the executive powers of the State. Subject to the provisions of the Constitution, the executive power of the Union

extends to all matters in respect to which the Parliament has power to make laws, while the executive powers of the State extends to all matters in respect to which the State Legislature has power to make laws. This executive power of the Union or of the State, broadly speaking, is co-extensive and co-terminus with its respective legislative power (*G.V. Ramanaiah vs. The Superintendent of Central Jail, Rajahmundry and Ors.*, (1974) 3SCC 531). Ordinarily, the executive power connotes the residue of Governmental functions that remain after legislative and judicial functions are taken away. The executive functions comprises both determination of policy as well as carrying it into execution (Wharton's Law Lexicon, 15th Edition, 2009). Since the governmental functions have increased, it is essential and inevitable for the Government to issue administrative instructions for the determination of policy and its uniform application. It is also a settled principle that these administrative instructions or regulations which have no statutory force, do not give rise to any legal right and can hardly be enforced in a Court of law against the administration. This is also not an absolute rule and is subject to certain exceptions. Administrative instructions in some cases confer a justifiable right in favour of an aggrieved party. The Executive power of the State is again of a very wide magnitude. In performance of the executive functions, public authorities issue orders which are not far from having a legislative colour and make decisions affecting the personal and proprietary rights of individuals which are quasi-judicial in character. In addition to these quasi-judicial and quasi-legislative functions, the

executive has also been empowered by statute to exercise functions which are legislative and judicial in character, and in certain instances, powers are exercised which appear to partake at the same moment legislative, executive and judicial characteristics. The Supreme Court in the case of *Jayantilal Amritlal v. F.N.Rana*, AIR 1964 SC 648, held that even this generic executive power of the State emanates from the provisions under our Constitution. Chapter I of Part V of the Constitution refers itself to the Executive of the Union of India. Article 53(1) of the Constitution states that executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. Article 73 mandates that subject to the provisions of the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. In terms of Article 77, all executive action of the Government of India shall be expressed to be taken in the name of the President. Further, Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in Rules. Once an order or instrument is authenticated in the prescribed manner, then it shall not be called in question on the ground that it is not an order or instrument made or executed by the President. The executive power of the State on the one hand is co-extensive with the respective legislative

power, while, it can supplement the statute on the other hand. The executive power would take within its ambit the power of subordinate or delegated legislation. For instance, under an Act, the Central Government is empowered to frame regulations for effective implementation of an Act. This power can be exercised to supplement the provisions of the Act, i.e., the principle legislation or even for filling the gaps which appear in the main statute. However, the executive instructions or powers cannot be used beyond the power conferred by the main statute. The exercise of an executive power must have a source in law and should serve the ends of the principle Act. The executive power, where it is exercised generally with reference to Article 53 of the Constitution of India, must adhere to the constitutionally prescribed procedure.

70. Having dealt with the distinction between Legislative, Executive and Administrative Functions, generally, now, we would proceed to examine the specific contentions with reference to the impugned Office Memoranda.

71. First of all, we would deal with the contention whether the impugned Office Memoranda can be said to be issued under Section 5 of the Act of 1986? This question has to be answered in the negative for varied reasons. Firstly, it is not the case of the MoEF which has issued these Office Memoranda that they have been issued in exercise of the statutory powers vested in them under the provisions of Section 5 of the Act of 1986. Normally it is possible for a Court or a Tribunal to attach certain weightage to the author of the documentation in this regard. However, that cannot be the sole

consideration in answering such a question. The Tribunal has to analyse the order or document on its own merit. It is true that Section 3 empowers the Central Government to take measures to protect and improve the quality of the environment and that such measures can be in respect of all or any of the matters stated under Clause (i) to (xiv) of Sub-section (2) of Section 3 of the Act of 1986. However, none of the matters stated therein cover the impugned Office Memoranda in question. Furthermore, these Office Memoranda cannot be said to form the measures taken for protecting or improving the quality of the environment. Similarly, Section 5 of the Act of 1986 empowers the Central Government to issue directions to any person, officer or any authority. Such directions could be issued in exercise of its powers, performance of its functions of the Central Government notwithstanding anything contained in any other law but subject to the provisions of this Act of 1986. These directions include the power to direct the closure, prohibition or regulation of any industry, operation or process. It can also direct stoppage or regulation of the supply of electricity or water or any other service. Under Rule 4 of the Rules of 1986, it is required that these directions shall be in writing, shall specify the nature of action to be taken and the time within which it shall be complied with etc. In terms of Sub-rule 3(a) of Rule 4, a notice of not less than 15 days is required to be served upon the person to whom the directions is proposed to be issued, clearly notifying such direction to him and giving him an opportunity to file objections, if any. In terms of Sub-Rule 3(b) and 4, it is required of the authority

which proposes to issue direction for the stoppage or regulation of industrial operation or process or disconnect amenities like water and electricity etc. to issue notice to the occupier to file objections and upon receipt of such objections to decide the same within 45 days thereof. Thus, right of hearing and compliance to principle of natural justice is mandatory except in terms of proviso to Sub-Rule 3(b) and Rule 5 wherein compliance to the principle of natural justice and hearing can be dispensed with by the Central Government, where it is of the opinion that there is likelihood of grave injury to the environment and it is not expedient to provide an opportunity to file objections against the proposed direction. The directions passed under Section 5 have to be in strict compliance to the procedure laid down under the Rules of 1986 and by considering all relevant factors as stated therein. It is nobody's case, not even that of the private Respondents, that such compliance to the Rules has been made by the MoEF. The measures and the directions as contemplated under the Act of 1986 can only be taken after following the prescribed procedure and for the purposes as contemplated in law. From the record, it is clear that neither of these ingredients are satisfied in the cases in hand. Nobody intended to invoke these provisions and none complied with the requirements of law. A bare reading of the impugned Office Memoranda clearly shows that they are beyond the purview and scope of either Section 3 or Section 5 of the Act of 1986. Some of the Respondents have even taken the argument that if the Office Memoranda are treated to be directions or measures issued under

Section 5 of the Act of 1986, then an appeal would lie before the Tribunal in terms of Section 16(g) of the NGT Act, 2010 and which would in any case be barred by time as of today. Since we are of the considered view that these Office Memoranda have not been issued by the Ministry in exercise of its powers under Section 3 or 5 of the Act of 1986, the question of limitation as contemplated under Section 16 of the NGT Act would not at all arise. These Office Memoranda apparently do not show or make reference to the power in exercise of which they have been issued. They specifically mention the statutory requirement in terms of the Notification of 2006 to obtain *prior Environmental Clearance* before the commencement of any project or activity (emphasis supplied). What seems to have provoked the authorities to issue these Office Memoranda from time to time are the instances which have been brought to the notice of the Ministry, where, without obtaining required Clearances under the Notification of 2006, construction and/or physical operation/activities of the project had been started at the sites which amount to violation of the Act of 1986 and the Notification of 2006. These violations have come to the notice of the Ministry at different stages. These Office Memoranda presumably are intended to provide solution to this problem and save the proposed projects if they comply with the procedure prescribed under the Law. Rules of 1986 have been framed by the Central Government in exercise of its powers vested under Sections 6 and 25 of the Act of 1986 with a primary intention of carrying out purpose of the Act of 1986. The Notification of 2006 has been

issued under the provisions of the Act of 1986 and the Rules of 1986, again with the object of imposing certain restrictions and prohibitions on new projects or activities or expansion or modernisation of existing projects or activities for protecting the environment. Thus, it is evident that the Notification of 2006 is in the nature of a subordinate, delegated legislation and is a statutory document having the force of law and is enacted to serve the ends of the provisions of a Parliamentary enactment i.e. the Act of 1986. The Office Memoranda do not refer to the source of their power under the provisions of any Act, Rules, or Notification. They even do not satisfy the basic ingredients of an order or instrument having been issued in compliance to the prescribed procedure under Articles 53, 73 and / or 77 of the Constitution. They have neither been issued nor authenticated by a person authorized by the President of India and in any case, they have not even been issued in the name of the President of India. The contention raised on behalf of MoEF and some of the private Respondents that the issuance of impugned Office Memoranda is in exercise of the executive power, is therefore, not tenable. No documents have been placed on record to show that the ingredients of issuance of an executive order or exercise of executive power by the Union are satisfied in the present case.

72. It needs to be noticed at this stage that reference has also been made to Article 73 of the Constitution of India to contend that these Office Memoranda squarely fall within the executive power of the Union of India. This contention merits rejection. Even on the

bare reading of Article 73 of the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive powers of the Union is co-extensive and co-terminus with legislative powers of the Parliament. In other words, exercise of executive power should have a direct reference to law under which it is being exercised. Certainly, it does not imply that the executive power of the State / Union cannot be exercised where the legislature has not enacted any law or that such power would be restricted only to that field, as held by the Supreme Court in the case of *Ram Jawaya Kapur* (supra). It is a settled principle of Constitutional jurisprudence that the entries in the Lists are merely fields of legislation. They identify the fields where the Union and the State Legislature or either of them would have the power to enact laws, individually or concurrently. Thus, every power exercisable by the Union or the State under the Constitution should be identifiable to the fields specified in the respective Lists or to any other law framed by the Competent Legislature.

73. We have already noticed that within the dimensions of the executive power, compliance to the constitutionally provided procedure would be a *sine qua non*, for it to have the force of law. In the case of *Gulf Goans Hotels Company Ltd. v. Union of India (UOI)*, (2014) 10 SCC 673, where the Supreme Court was dealing with the cases of demolition of properties in furtherance to the orders of demolition by the State authorities, it was held that a government policy to acquire the “force of law”, need to confirm to a certain form

possessed by other laws in force and encapsulate a mandate and disclose a specific purpose. In terms of Article 77, all executive action of the Government of India shall be expressed to be taken in the name of the President, as this Article provides the form in which the Executive must make and authenticate its orders and decision. The burden of showing compliance with this requirement would be on the Government and it is also essential that what is claimed to be a law must be notified or made public in order to bind the citizens. It may be noticed that this compliance in a given case could be substantial compliance as opposed to strict or absolute compliance. In fact, in the case of *State of Uttaranchal and Anr. v. Sunil Kumar Vaish and Ors.*, (2011) 8 SCC 670, the Supreme Court even held that unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the Rules, the same cannot be treated as an order on behalf of the Government. Similar approach was also adopted in the case of *Shanti Sports Club and Anr. v. Union of India and Ors.*, AIR 2010 SC 433. The Supreme Court had earlier also taken the similar view in the case of *Harla v. The State of Rajasthan*, AIR 1951 SC 467,

“We hold that, in the absence of some specific law or custom to the contrary, a mere resolution of a Council of Ministers in the Jaipur State without further publication or promulgation would not be sufficient to make a law operative”.

On the one hand, the impugned Office Memoranda do not specify the above essential ingredients for exercise of executive power. Thus, these Office Memoranda do not have any force of law

to be treated as integral part of the Notification of 2006. While on the other hand, they lack purpose, are not supplementary to or even furthering the cause of the Notification of 2006. This aspect we shall discuss in detail shortly.

74. We have deliberated at some length above what is an administrative action and its illustrations. That which the legislature enacts is 'legislative' and that which the administration applies is 'administrative'. Thus, an Act of Parliament is 'legislative' but an order of deportation based on such Act is 'administrative'. An administrative power is applicable to specific cases and particular situations. The executive functions comprise both, determination of policy as well as carrying it into execution. The other relevant considerations being, nature of power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. If we apply these tests in context of the orders already held to be administrative orders (supra) then, it would appear that the impugned Office Memoranda in substance are administrative orders. The impugned Office Memoranda have been issued under the umbrella of framing policy or taking policy decisions by the State. It is contended that these Office Memoranda are intended to implement the Notification of 2006. In exercise of its power under the Office Memoranda, Ministry has to take decisions in regard to examining each case and refer the same to the regulatory authority keeping in mind the stage at which the

applications for grant of Environmental Clearance are moved. These Office Memoranda provide benefit to the class of the project or activity owners who have started construction in violation of the law i.e., without obtaining prior Environmental Clearance. They do not deal with any subject in general but are applicable to specific case and particular situations. Decisions of the authorities in furtherance to these Office Memoranda are bound to be subjective in contradistinction to being objective decisions.

75. The impugned Office Memoranda by and large satisfy the tests and ingredients of an administrative order. They admittedly have not been issued in exercise of subordinate or delegated legislation. Indisputably, they have also not been issued under Sections 3 and 5 of the Act of the 1986. Apparently, they are not in compliance with the Constitutional requirements and other ingredients of exercise of executive power *simplicitor*. The obvious result thereto would be that these Office Memoranda have been issued by the Ministry in exercise of its administrative power and have to be construed as administrative orders alone.

76. Having held that the Office Memoranda are orders issued by the Ministry in exercise of its administrative powers *simplicitor*, we would now proceed to examine the legality and correctness of these administrative orders. We may clarify that for discussion on this issue, it would not be of much relevance whether these Office Memoranda have been issued by the authorities in exercise of their administrative or executive powers.

77. The Office Memorandum dated 12th December, 2012 and as amended by Office Memorandum dated 27th June, 2013 as already noticed have been issued as consequences of certain instances brought to the notice of the Ministry, that projects and activities have been started at site without obtaining prior Environmental Clearance. These Office Memoranda intend to provide the procedure which has to be followed while dealing with such cases. In these Memoranda it is specifically noticed that obtaining prior Environmental Clearance before commencement of a project or activities is mandatory and that the Applicants have violated the law and these violations have come to the notice of the Ministry at various stages of processing the proposals. They further contemplate that these applications have to be proceeded in accordance with the procedure prescribed under these Office Memoranda. The stages referred to in the impugned Office Memoranda are: processing the case in the Ministry before referring to the Expert Appraisal Committee for ToR/Environmental Clearance/CRZ Clearance; during deliberations in the EAC meeting and during processing the case in the Ministry after receipt of the recommendations of the EAC, but before granting ToR/Environmental Clearance / CRZ Clearance. The authorities are expected to verify the veracity of the complaint unless Project Proponent does not contest the allegations of violations. Before proceeding any further in the matter, the Project Proponent is required to submit a written commitment in the form of a resolution to ensure that violations will not be repeated. For this purpose, 60

days time limit has been given to the Project Proponent. The project would be de-listed in the meantime and in the event of default, it will be presumed that the Project Proponent is no longer interested in pursuing the project further and the project file will be closed. The State Government will then be required to initiate credible action under Section 19 of the Act of 1986 for taking legal action under Section 15 of the Act of 1986 in relation to the violations. Upon completion of such action, the concerned case will be dealt and proceeded with as per the prescribed procedure in dealing with the cases of ToR / Environmental Clearance / CRZ Clearance and appropriate recommendations to be made by EAC and decision to be taken by the Ministry on merits of the case. A kind of proviso is added to the Office Memorandum of 12th December, 2012 that in case of serious violations, the Ministry reserves the right to outrightly reject such proposal and not consider the same at all. The procedure prescribed under the Office Memorandum of 12th December, 2012 is to apply to cases pending before the SEIAAs and SEACs as well. Office Memorandum dated 27th June, 2013 terms the procedure under the Office Memorandum of 12th December, 2012 as 'guidelines' wherein it was provided that in cases of violation, the Project Proponent needs to be restrained, through appropriate directions under Section 5 of the Act of 1986 from carrying out any construction or operation activity without obtaining required Clearance. Vide the Office Memorandum of 27th June, 2013, sub para (iv) below sub para (iii) of para 5 of Office Memorandum dated 12th December, 2012, was inserted whereby

the MoEF took on to itself the responsibility of issuing directions under Section 5 of the Act of 1986 for suspending the construction work if the project is operational, till grant of Clearance and if there is violation then, to take action as per the provisions of the Act of 1986. First and foremost, what these Office Memoranda seek to do is to condone the violations of law. These Office Memoranda deal only with the violators of law who have started the construction of their projects without obtaining prior Environmental Clearance, thus, in complete violation to the provisions of Act of 1986 and the Notification of 2006. The Office Memoranda which are stated to be guidelines as per their contents thus, have the effect of rendering an offence under law otiose, which is impermissible.

78. The Notification of 2006, under Para 2 mandates that certain project or activities which are listed in the Schedule shall require *prior Environmental Clearance* (emphasis supplied) from the concerned regulatory authorities, irrespective of whether they fall under Category 'A' or category 'B', as the case may be. Furthermore, Para 6 requires that *application seeking prior Environmental Clearance shall be made by the Project Proponent*, before commencing any construction activity or preparation of the land at the site by the Applicant (emphasis supplied). The Notification of 2006, a statutory document having the force of law has used the words '*prior Environmental Clearance*' 34 times and in addition thereto the expression 'prior' has been used six times to emphasise the need for obtaining Environmental Clearance prior to the commencement of any project activity. In other words, the

Notification mandates the requirement of 'prior Environmental Clearance' without exception. However the entire mandate of prior Environmental Clearance has not only been diluted but completely rendered infructuous or ineffective by issuance of these impugned Office Memoranda. Therefore, the Office Memoranda stated to be 'guidelines', are potently destructive of the Notification of 2006. The Notification of 2006 requires application for prior Environmental Clearance to be submitted in Form 1 and supplementary Form 1A, if applicable, under Appendix I and II respectively. These forms require information, details and scientific analysis in relation to the project and site, prior to commencement of any activity of the project or even preparation of land. We have in some detail above, noticed the requirements which are impossible of compliance once the project has been completed or substantial construction activity has been undertaken at the site in question. The impugned Office Memoranda do not even take note of this aspect and suffer from the infirmity of non-application of mind. Furthermore, the impugned Office Memoranda also offend the doctrine of "*Expressio unius est exclusion alterius*". Since the law provides performance of acts in a particular manner, the impugned Office Memoranda under the garb of 'guidelines', cannot be permitted to alter the same completely; being prejudicial to the principal law.

79. The impugned Office Memoranda do not even advert themselves to how the interest of the environment would be protected in cases where the projects have substantially progressed. It does not even refer as to how detrimental effects on environment

would be taken care of, if the Project Proponent is permitted to file an application and claim Environmental Clearance after the project is at a very advanced stage of completion.

80. The impugned orders have been titled as 'Office Memorandum' and content of the orders captioned as 'guidelines' but in fact, are Office Memoranda which directly vary the substantive law in force. This has been adopted by the Ministry as a via-media to bypass the statutory requirements of law or for truncating the prescribed process of environmental protection, in terms of Notification of 2006. These Office Memoranda not only substantially amend or alter its application but even frustrate the requirements of the existing law. The impugned Office Memoranda vest in the authorities an unguided and unfettered discretion, both in regard to processing of application and in condonation of violation already committed by the Project Proponent. It is a very pertinent defect in terms of administrative law jurisprudence. An unguided and unreasonable discretion is bound to result in arbitrary exercise of powers. The MoEF being the controlling Ministry, all the expert bodies under it would be duty bound to carry out its directives even if it is unreasonable and unjustifiable. The expression 'serious violations', which will entitle the Ministry to outrightly reject an application, has neither been defined nor explained in the Office Memoranda. It is left in the absolute discretion of the Ministry as to which cases would be permitted as cases of serious violations and exclude others. The foundation of these Office Memoranda being that projects which are already under way and even have

substantially progressed, can file an application for grant of Environmental Clearance, which has to be considered in accordance with these Office Memoranda, is an approach which is completely prohibited in terms of the Notification of 2006. The reservation of such unguided and absolute right by the Ministry in itself would necessarily have an element of discrimination and arbitrariness. The Office Memoranda do not spell out any rational or proper differential criteria for condonation or otherwise of the violations stated to have been committed by the Project Proponent.

81. The MoEF has issued three Office Memoranda dated 16th November, 2010, 12th December, 2012 and 27th June, 2013. All these Office Memoranda have the same feature, that is, instances of project commencement and their construction without obtaining Environmental Clearance, have been brought to the notice of the Ministry. There is no reason, much less a plausible justification recorded in any of these Office Memoranda, as to why such violations have been continued year after year. If the intention was to make it a one-time settlement, to serve the economic and public interest, then MoEF ought not to have issued any further extension to the Office Memorandum of 2010. Repetitive condonation of violation of law would only aim at encouraging violators to flout the law repeatedly. At this stage, we may also deal with the submission made on behalf of the Respondents that issuance of these Office Memoranda was justifiable on the basis of the doctrine of necessity or implied power. This submission is entirely ill-founded. Firstly, we fail to understand as to why the Ministry should take a step for

condoning violation of law which was not within its jurisdiction and secondly why should it prescribe a methodology contrary to law. Doctrine of necessity does not operate on the axis of illegality and violations. Even if the doctrine of necessity could have any application on the facts of the present case then, the necessity could be at best a onetime scheme rather than providing a regulatory and parallel mechanism in violation of the law in force, which would negate the substantive provisions of the law in fact. It is a settled canon of law that Government cannot issue directions which would encourage violation of law on the one hand and frustrate the object of law on the other. Mandatory principle of proper governance and even the law is that the authorities must enforce the law and ensure that the public respects the law. This is the fundamental essence of the Rule of Law. Even on this count, the Office Memoranda would amount to improper use of power, whether administrative or executive.

82. Upon proper analysis of the language of these Office Memoranda and the law (referred herein after), these Office Memoranda whether they be issued as administrative orders or issued in exercise of executive power, are not clarificatory or supplementary to the Notification of 2006. On the contrary, under no uncertain terms, they are supplanting the Notification of 2006 and are in complete derogation to the laws in force.

83. The Office Memoranda have been issued without proper application of mind, where casualty is the Notification of 2006 and the environment. The authorities have not even ventured to

examine that these Office Memoranda which allegedly take recourse to the Notification of 2006 are incapable of complying with the procedure of Screening, Scoping, Public Consultation and Appraisal even substantially. For instance, site selection itself is a part of this process and if the construction has already been completed substantially or otherwise, this criteria and other relevant considerations would be rendered irrelevant. Similarly the purpose of public hearing is to hear objections of the public at large in relation to all facets of the proposed project including site selection, its impact on environment, on their way of life and what directions are required to be issued to protect the environment and adjacent inhabitation or agricultural activities if any before any activity of the project is undertaken. All these requirements would be rendered otiose and irrelevant. Thus, even if the two most important aspects of the Notification of 2006 would not be complied with still the Office Memoranda would contemplate issuance of Environmental Clearance to these projects. This brings to the surface that the Ministry has not exercised its jurisdiction, even if vested in it, in accordance with law. The above are the few patent and serious infirmities in the Office Memoranda. An attempt is made to save them and their legality under the shelter of exercise of executive power. Certainly, the executive power of the Government is very wide. We have already dealt with the executive power by the State at some length above. Even if these instructions or orders are deemed to have been issued in exercise of executive power, even then, they have to be supplemental to and not to supplant, the law.

84. In the case of *Union of India (UOI) v. K.P. Joseph and Ors.*, AIR 1978 SC 303, dealing with the question whether Respondent No. 1 in that case was entitled to the benefit of ex-military personnel on re-employment, in view of the administrative instructions that had been issued in absence of rules framed under Article 309 of the Constitution, the Supreme Court while confirming the judgment of the High Court of Mysore held as under:

“9. Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in *Sant Ram Sharma v. State of Rajasthan and Anr.* (1968) IILLJ 830 SC that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service.”

85. The Supreme Court had also taken a similar view in the case of *Sant Ram Sharma v. State of Rajasthan and Anr.*, AIR 1967 SC 1910, where the Court clearly held that Government cannot amend or supersede statutory rules by administrative instructions, but, if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. Similarly, in the case of *M. Srinivasa Prasad and Ors. v. The Comptroller and Auditor General of India and Ors.*, (2007)10 SCC 246, the Supreme Court held that if the statutory rules in force are absent or are silent on a particular aspect, then, executive orders can fill up such lacunas. The administrative instructions would normally have no force of law

and would relate to matters procedural in nature, without affecting substantive rights or obligations.

86. The executive instructions too cannot go beyond the executive power, which can also not be beyond the statutory provisions under which they are exercised. Furthermore, such instructions should not be vague or uncertain and must provide proper guidelines. By executive instructions, the authority issuing them cannot open new heads. The executive instructions within these confines should be issued only when there are no statutory provisions on the subject. They would also be issued to supplement statutory provisions, to ensure their proper application. In the case of *Indra Sawhney etc. v. Union of India and others, etc.*, (1992) 3 SCC 217, Supreme Court mandated that such propositions are unexceptionable and executive instructions which go contrary to statutory provisions or the rules under Article 309 or any other statutory rules, shall not be operative to the extent they are contrary to the statutory provisions or rules. In the case of *M.C. Mehta v. Union of India (UOI) and Ors.*, (*Supra*), not only that the Court reiterated these principles but even questioned MoEF's intent to legalise the commencement or continuance of mining activity without compliance to the stipulations of the Notification of 2006. However, it was observed that in any case, a statutory notification cannot be notified by issuance of circular. Such actions demonstrate non-sensitivity of MoEF to the principles of sustainable development and the object behind the issuance of the notification.

These principles would be equally applicable to the exercise of administrative power either by issuance of guidelines or Office Memoranda. A Bench of this Tribunal while dealing somewhat similar situation in the case of *Himmat Singh Shekhawat v. State of Rajasthan and Ors.*, 2015 All (I) NGT Reporter (1) (Delhi) 44 held as under:

“58. This power to issue guidelines is not a general power but is a specific power with inbuilt limitations. The limitations are that, such guidelines would alone be for the purposes of categorizing upon scrutiny of applications, projects that would fall under Category ‘B1’ and ‘B2’ respectively with specific exclusion of the projects specified under Item 8(b) of the Schedule. Restrictive power to issue guidelines, is further illustrated, by the fact that Clause 2 of the Notification of 2006 does not contemplate any such categorization except projects falling under Category ‘A’ and ‘B’ only. The purpose appears to be that the power of State Level Appraisal Committees to bifurcate projects into ‘B1’ and ‘B2’ categories respectively should not be unguided and unchecked. Prescription of such guidelines could be done by issuance of appropriate Office Memorandum or orders as the power to issue such guidelines has been vested in MoEF under the statutory provisions. But the greater part of such Office Order or Office Memorandum should be such that it would not vary the content or be contrary to the statutory provisions which are in place by virtue of enacting such provisions either by primarily legislative or delegated legislative power.

59. It is a settled principle that legislature can only delegate to an outside body subordinate or ancillary legislative power for carrying out a policy of the act. The body to whom such power is delegated is required to act strictly within the framework of such delegated powers. Such power is incidental to the exercise of all powers in as much as it is necessary to delegate for the proper discharge of all the public duties. It is because the body constituted should act in the manner indicated in law and should exercise its discretion by following the procedure therein itself or by such delegation as is permissible. Unlike the situation the judges are not allowed to surrender their judgments to others. The legislature and executive can delegate powers within the framework of law. It is an axiom of Constitutional law that representative legislative bodies

are given the legislative powers because the representative Government vested in the persons chosen to exercise the power of voting taxes and enacting laws which is the most important and sacred trust known to civil Government. The Delegation has its own restrictions. For instance, the legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. A memorandum which is nothing but administrative order or instruction cannot amend or supersede the Statutory Rules adding something therein which would specifically alter the content and character of the Notification itself. It has been consistently reiterated with approval by the Hon'ble Supreme Court that administrative practice/ administrative order cannot supersede or override the statutory rule of Notification and it is stated to be a well settled proposition of law.

The delegated power is primarily for carrying out the purposes of the Act and this power could hardly be exercised to bring into existence a substantive right or obligation or disabilities not contemplated by the provisions of the Act or the primary Notification. A Constitution Bench of the Hon'ble Supreme Court in the case of *Sant Ram v. State of Rajasthan* AIR 1965 SC 1910, while dealing with the scope of executive instructions held that instructions can be issued only to supplement the statutory rules and not to supplant it. Such instructions should be subservient to the statutory provisions. They would have a binding effect provided the same has been issued to fill up the gaps between the statutory provisions and are not inconsistent with the said provisions. (Reference in regard to the above can be made In Re: *The Delhi Laws Act*, 1912 AIR 1951 SC 332, *P.D. Aggarwal and Ors. v. State of U.P. and Ors.*, (1987) 3 SCC 622, *Ram Sharma v. State of Rajasthan and Anr.*, (1968) 1 ILLJ 830 SC, *Mahender Lal Jaine v. State of Uttar Pradesh*, (1963) Supp. 1 SCR 912, *Naga People's Movement of Human Rights v. Union of India*, AIR 1998 SC 431).

60. In the case before the Tribunal, specific challenge has been raised to the Office Memorandum dated 24th December, 2013 on the ground that it violates the above stated principles, in as much as by an Office Memorandum, guidelines for 'B1', 'B2' categories cannot be provided and thus, it runs contra to the statutory provisions. We may also notice here that vide this memorandum, besides providing guidelines for categorization of 'B1', 'B2' projects under Clause (iii) of paragraph 2, MoEF has taken a decision that river sand mining project with mine lease area of less than 5 hectares may not be considered for grant of

Environmental Clearance and river sand mining projects with mining lease areas of equal or more than 5 hectares but less than 25 hectares will be categorized 'B2', that too subject to the restrictions stated in that Office Memorandum. Though, the Applicants have primarily raised a challenge in regard to the former only, but bare reading of the Notification has brought before us the question in regard to the latter as well. Dealing with the former challenge afore-noticed, it is clear that Clause 7 of the Notification of 2006 provides for further categorization of projects falling under Category 'B' into 'B1' and 'B2'. Though Clause 2 of the said Notification does not contemplate any classification other than 'A' and 'B', but, there is no challenge raised before us to the Notification of 2006 and we see no reason to go into that aspect. The Notification of 2006 *ex facie* permits classification of Category 'B' projects and that discretion has been vested in State Level Expert Appraisal Committee, which, upon scrutiny of the applications has to take the decision. This discretion vested in the Committee is ought to be controlled by the issuance of guidelines by MoEF. MoEF had issued two guidelines, one on 24th June, 2013 and the other on 24th December, 2013 in relation to further classification and criteria which is to be adopted in that regard. Since the Office Memorandum dated 24th June, 2013, only relates to brick earth and ordinary earth and as per that Office Memorandum, such projects where the excavation area was less than 5 hectares were to be categorized as 'B2' projects, subject to the guidelines stated therein they were to be screened in accordance with the Notification of 2006. Under Paragraph 4(b) of this Memorandum, restrictions were laid down prohibiting any excavation of brick earth or ordinary earth within one km of national parks and wild life sanctuaries as well as it intended to elaborate the cluster situation. If the periphery of one borrow area is less than 500 m from the periphery of another borrow area and the total borrow area equals or exceeds 5 hectares, the activity shall become Category 'B1' project in terms of the Notification of 2006 and such activity will be permitted only if the Environmental Clearance has been obtained in respect of the cluster. If we examine these two Office Memoranda in the light of the well settled legal principles that we have referred above, partially both these Office Memoranda cannot stand scrutiny of law. As far as guidelines or instructions in relation to classification of projects falling under Category 'B' into 'B1' and 'B2' is concerned, the exercise of such power would be saved on the strength of Clause 7(1) of the Notification of 2006 because it is an Office

Memorandum which provides guidelines for exercise of discretion by the State Level Expert Committee for such categorization. Thus, it is an exercise of executive power contemplated under the Notification of 2006. Hence the contention of the Applicant on that behalf cannot be accepted and deserves to be rejected. However, in so far as the Office Memorandum dated 24th June, 2013 placing a prohibition under paragraph 4(b) (i) is concerned, it apparently is beyond the scope of such guidelines. Prohibition of carrying on of mining activity or excavation activity which is otherwise permitted by the Notification of 2006 cannot be done by an Office Order, because it would apparently run contra to the provisions of Notification of 2006. In other words, such restriction is not only beyond the scope of the power vested in MoEF but in fact imposition of absolute restriction in exercise of delegated power is not permissible. Similarly, the Office Memorandum dated 24th December, 2013 in so far as it declares that river sand mining of a lease area of less than 5 hectares would not be considered for grant of Environmental Clearance is again violative of the above settled principles. No such restriction has been placed under the Notification of 2006 or under the provisions of the Act and the Rules of 1986. The executive therefore, cannot take away the right which is impermissible under the principle of subordinate legislation. Of course, part of the same Paragraph 2(iii), in so far as it categorizes 'B2' projects, covering the mine lease area equal to or more than 5 hectares but less than 25 hectares is concerned, the same cannot be faulted in view of the fact that it only provides a criteria or a guiding factor for determining the categorization of projects. It neither vests any substantive right, nor any obligation in relation to any matter that is not squarely or effectively covered under the Notification. This only furthers the cause of fair classification of projects, which is the primary purpose of the Notification. For these reasons, we quash paragraph 4(b)(i) of the Office Memorandum dated 24th June 2013 and part of paragraph 2(iii) in so far as it prohibits grant of Environmental Clearance to the mine area of less than 5 hectares as being violative of the Notification of 2006 and the Rules of 1986. The MoEF has no jurisdiction in exercise of its executive power to issue such prohibitions, impose restrictions and/or create substantive rights and obligations. It *ex facie* is not only in excess of powers conferred upon them, but, is also in violation of the Notification of 2006. As already noticed, this Notification has been issued by MoEF in exercise of powers conferred upon it under Clause 5 of sub section 2 of section 3 of the Act of 1986 read with

sub rule 4 of rule 5 of the Rules of 1986. Vide this Notification, the Central Government substituted item no. 1(a) and entries relating thereto. A Clause stating that the projects relating to non-coal mine lease and where the mining area was less than 50 hectares equal or more than 5 hectares was to be treated as Category 'B' projects, in addition to that, the minor mineral lease projects, where the mine lease area was less than 50 hectares, were also to be treated as Category 'B' projects, also, the general conditions with provisos were also substituted. It is significant to note here that the Notification of 2006 had been amended by the Central Government by issuing a Notification dated 1st December, 2009 in exercise of its delegated legislative powers. While issuing this Notification, the Central Government had followed the procedure prescribed under Sub Rule 2 and 3 of Rule 5 of Rules of 1986. It had invited objections from the public and considered those objections as is evident from the very recital of the Notification where it recorded "and where as all objection and suggestions received in response to above mentioned draft Notification have been duly considered by the Central Government....." and then it published the final Notification. Vide the Notification dated 1st December, 2009, the Central Government had substituted item no. 1(a) and the entries relating thereto of the Schedule to the Notification of 2006 besides making other amendments as well in different entries. However, while making further amendments vide Notification dated 9th September, 2013, the Central Government did not follow the prescribed procedure under Rule 5. On the contrary it substantially altered, and in fact substituted, as well as made additions of a substantial nature in Clause 4 and Clause 5 of the Notification of 2006, where, for the first time, it added minor mineral mine leases of less than 50 hectares, and also added 'general conditions to apply except for the projects where the area was less than 5 hectares in relation to minor mineral lease' and provisos thereto. The period for applying for renewal of mine lease of one year was changed to two years under the Notification dated 9th September, 2013."

87. There could be a case of executive instructions being derogatory to the principal statute or a statutory notification, still there could be cases of executive instructions being *ultra vires* or violative of the statutory notification and still further there could be cases of conflict between the two. In either of them, the Court have

not tilted in favour of sustaining such executive instructions. In the case of *D.D.A. and Ors. v. Joginder S. Monga and Ors.*, (2004) 2 SCC 297, the Supreme Court held that only in a case where a conflict arises between a statute and an executive instruction, indisputably, the former will prevail over the latter. Executive instructions can supplement a statute, but they cannot run contrary to statutory provisions or whittle down their effect. In other words, executive instruction which is in conflict of and which whittles down the effect of the main Act would be liable to be struck down. When an executive instruction is beyond the power of the authority issuing the same, it would be *ultra vires* and whenever the instruction is found to be beyond the inherent jurisdiction, it would be wholly void. The delegatee can act only within the scope of delegation. The limitations are all with regard to the substance, procedure and form.

88. Another contention raised on behalf of the Respondent while relying upon the judgment of Supreme Court in the case of *Vineet Narain and Ors. v. Union of India (UOI) and Anr.*, (1998)1 SCC 226 and other cases, is that executive instructions are enforceable if they do not change the essentials of law. This contention cannot be accepted for reasons that are recorded in this part of the Judgment. By whatever nomenclature it is addressed, whether as executive instructions, policy decision or merely Office Memoranda issued in exercise of administrative power, their infirmities and lacunas of law would not alter. Favour of constitutionality is to be construed for such executive instructions. It is also the contention that these

instructions do not dilute the effect of law but make it more rigorous. Furthermore, it being a policy decision of the MoEF, the Tribunal should not interfere in it. We are also unable to appreciate as to how these Office Memoranda fill up the gaps in the Notification of 2006. An instrument which provides for disobedience of law and indiscriminately condones the violations of the substantive law in force, it cannot be termed as an instrument made to fill up the gaps. It would be an administrative order contrary to the statutory provisions. In fact, issuance of such kind of orders received judicial causticism and was deprecated by the Supreme Court in the case of *M.C. Mehta* (supra).

89. The impugned Office Memoranda are not only in conflict with the Notification of 2006, but in fact run contra thereto. What is not only intended but in fact is prohibited to be done, is being permitted by the impugned Office Memoranda. They have been issued without reference to any power or source of law and are neither pronounced nor authenticated in the name of the prescribed executive authority. Besides this, we have already noticed in great detail the various infirmities and defects from which these Office Memoranda suffer in fact and in law. This being the position of law in relation to issuance of executive instructions in exercise of executive power or delegated legislation, these Office Memoranda having been issued in exercise of administrative power, in any case, cannot withstand the legal scrutiny and resultantly, would be liable to be quashed.

Discussion on Issue No. 3:**3. Whether this Tribunal has no jurisdiction to quash both the impugned Office Memoranda?**

90. Except the intervener Applicants namely M/s SPR and RG Constructions and M/s Dugar, none of the Respondents have raised any objection to the jurisdiction of the Tribunal and competence of the Tribunal to deal with impugned Office Memoranda in accordance with law. According to these Project Proponents, this Tribunal has no power or jurisdiction to quash the Office Memoranda; they having been issued in exercise of the Executive Power of the Union and forming a part of a policy decision. In support of their contention, they relied upon the judgment of the Supreme Court in the case of *Madras Bar Association v. Union of India*, (2014) 10 SCC 1 and *Union of India (UOI) v. R. Gandhi, President, Madras Bar Association*, (2010) 11 SCC 1. On the other hand, the Applicants have primarily contended in the main application that the impugned Office Memoranda are administrative orders and would be subject to merit review by the Tribunal and such a situation would not alter even if it was in exercise of Executive Power of the Union/State. This Tribunal has been vested with Original, Appellate and Special jurisdiction in regard to directing payment of compensation for damage to and for restitution and restoration of the environment. The legislature in its wisdom worded the provisions relating to the jurisdiction of the Tribunal (Sections 14 to 17 of the Act of 2010) very widely, and with a clear intent to provide this Tribunal with jurisdiction of a very wide magnitude. Upon reading the various provisions of the Act of

2010 cumulatively and in light of the underlying scheme of the Act of 2010, including the definition of 'environment' in terms of Section 2(c) of the Act of 2010, it is quite clear that this Tribunal is having all the trappings of a Court and is conferred with the twin powers of judicial as well as merit review. There is no provision in the Act of 2010 which curtails the jurisdiction of the Tribunal to examine the validity and correctness of a delegated legislation and/or administrative or executive order passed by the Government including any of its instrumentalities or authorities. The fundamental principle for invoking the jurisdiction of this Tribunal is that, the question raised should be a substantial question relating to environment and should arise out of the implementation of the enactments specified in Schedule I of the Act of 2010. It could even relate to enforcement of any legal right relating to environment with regard to these enactments. Delegated or subordinate legislation, executive orders and/or administrative orders in so far as they relate to the implementation of the Scheduled Acts would be open to challenge before the Tribunal and hardly any argument can be raised that the documents like Office Memoranda would not be subject to judicial scrutiny before the Tribunal.

In fact, such an argument that this Tribunal would not have jurisdiction to examine legality and correctness of such Office Memorandum is without substance and in fact should not detain us any further, in view of the judgment of the five Member Bench of this Tribunal in the case of *Wilfred J. and Anr. v. Ministry of Environment & Forests and Ors.*, 2014 ALL (I) NGT REPORTER (2)

(DELHI) 137, where this Tribunal was concerned with a question whether this Tribunal being a creation of a statute is not vested with the powers of judicial review, so as to examine the constitutional validity/vires of such instruments as it would be tantamount to enlarging the jurisdiction of this Tribunal. We may notice that the Tribunal deliberated on the issue at some length and also did a comparative study of the various Acts like Central Administrative Tribunal (CAT), TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL (TDSAT), Armed Forces Tribunal on the one hand and Act of 2010 on other hand. After referring to various judgments on the subject, Tribunal following the principles laid down by the Constitutional Bench of the Supreme Court in *L. Chandra Kumar v. Union of India and others*, (1997) 3 SCC 261 held as under:

“85. The Courts and Tribunals that are engaged in judicial functions dispensing justice to the public at large are expected to have powers which are necessary to perform its basic functions. As already noticed, unless there is a specific exclusion, such normal powers stated to be inherent in its functioning. The Supreme Court in the case of *Grindlays Bank Ltd vs Central Government Industrial Tribunal And Ors.* AIR 1981 SC 606 while dealing with the powers of the Tribunal in relation to setting aside *ex parte* award in absence of any such power and the award which has become enforceable as a result of its being published rejecting the contention that the Tribunal had become *functus officio*, Court held as under:

“We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice

between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.”

86. From the above, it is clear that ancillary or incidentally powers which are necessary to discharge its functions effectively for the purpose of doing justice between the parties should be considered to be endowed. If the power of judicial review in its limited scope is not expected to be endowed upon the Tribunal then majority of the cases wherein Orders, Circulars, Notifications issued in exercise of subordinate legislation are challenged could not be fully and completely decided by the Tribunal, though they exclusively fall in the domain of the Tribunal.

87. Another very important aspect that cannot be overlooked by the Tribunal is that Article 226 of the Constitution of India is a discretionary jurisdiction to be exercised by the High Courts. It does not give an absolute right to a person. For variety of reasons, the High Court may decline to entertain a petition in exercise of its powers under Article 226 of the Constitution, while the NGT Act gives a statutory right to an Applicant, aggrieved person or any person to approach the Tribunal in all matters relating to Acts specified in Schedule I of the NGT Act. It is not a discretionary jurisdiction like under Article 226 of the Constitution of India.

88. On a comparative analysis of various provisions of the different Acts afore-stated, it is evident that power, jurisdiction, judicial independence, exclusion of jurisdiction and other determinative factors prescribed under the NGT Act are of wide connotation and are free of restrictions. Sections 14, 15 and 16 read co-jointly give three different jurisdictions to the Tribunal over all disputes and appeals relating to various fields of environment. The jurisdiction is exercisable in relation to the matters arising from any or all of the Scheduled Acts. Examined objectively, the provisions of the NGT Act are more akin to the provisions of the CAT Act, in contradistinction to the provisions of the TDSAT. The various features and aspects of the NGT Act that we have discussed above would bring the case before the Tribunal within the ambit of *L. Chandra Kumar* case (supra), as opposed to the case being covered by *BSNL* case (supra). We have already dealt above, in some

elaboration, the aspect as to how the cases relied upon by the Respondents do not apply to the facts of the present case, keeping in view the provisions and the legislative scheme of the referred Acts and various judicial pronouncements. At the cost of repetition, we may record here that the language of the various provisions of the NGT Act by necessary implication gives power of judicial review to the Tribunal. There is no specific or even by necessary implication exclusion of such power indicated in any of the provisions. Furthermore, in the scheme of various environmental acts and if the object and purpose of such acts are to be achieved then the power of judicial review would have to be read into the provisions of the NGT Act. If the notifications issued under any of the Scheduled Acts, by virtue of the powers vested by subordinate or delegated legislation, are *ultra vires* the Act itself or are unconstitutional as they violate Articles 14 or 19 of the Constitution of India, then it has to be construed that the Tribunal is vested with the power of examining such notifications so as to completely and comprehensively decide the disputes, applications, appeals before it. Of course, the powers of the High Courts and the Supreme Court under Articles 226 and 32 of the Constitution of India have not been excluded under the provisions of the NGT Act, thus ensuring that the Tribunal performs supplemental functions and does not supplant the Higher Courts.

89. The Supreme Court in the case of *K.S. Venkatraman and Co. v. State of Madras*, (1966) 2 SCR 229, has stated the proposition that an authority or Tribunal constituted under an Act cannot, unless expressly so authorised, question the validity of the Act or any provisions thereof under which it is constituted. This is a sound principle and has been followed consistently. To put it in other words, a Tribunal or an authority constituted under an Act can even examine the validity of the provisions of the Act which created it, provided it is so expressly authorized by the Act itself. This Tribunal is not travelling into that realm of law, but is concerned with the validity of the notifications issued under the Acts other than the Act that created the National Green Tribunal. For this proposition, we have referred to various judgments above.

95. Reverting to the present case the CRZ Notification dated 19th February, 1991, which has been amended on 3rd of October, 2001, was issued in exercise of the powers conferred under Section 3(1) and Section (2) (v) of the Act of 1986 and Rule 5(3) (d) of the Rules of 1986, in declaring coastal stretches as coastal

regulation zone and for regulating activities in the coastal regulation zone. The legislature has delegated legislative power to the Central Government to take all measures as it deems necessary or expedient for the purposes of protecting and improving quality of the environment and preventing controlling and abating environmental pollution. This is a very wide power, which has been vested in the Central Government by delegated legislation under these provisions. In the exercise of its powers and with the object of satisfying the stated purpose, the Notification of 2011 has been issued under the power of delegated/subordinate legislation. Thus, there cannot be any doubt that the Notification of 2011 in the case before us, is a piece of delegated legislation and its legality, correctness or otherwise can be questioned only on the limited grounds afore-stated.

96. To bring out this distinction illustratively and more clearly, we may refer to the power of the MoEF (Central Government) to issue Environmental Clearance in terms of the provisions of the Act of 1986 read with the Regulations of 2006. The order granting or refusing Environmental Clearance to a Project Proponent, is not an act of subordinate or delegated legislation but clearly is an executive act. The Central Government in exercise of its executive powers, passes an order whether or not a given project should be granted Environmental Clearance for commencing its operation. In passing such orders, the Central Government does not act in furtherance to the powers vested in it by virtue of delegated legislation. It is merely an executive act relatable to the statutory powers vested in the Central Government. The CRZ Notification issued by the Central Government is therefore an act of delegated legislation while passing of an order of Environmental Clearance is an executive order. This view finds support from the judgment of the Delhi High Court in the case of *Utkarsh Mandal vs. Union of India*, Writ Petition (civil) no. 9340/2009 which held that “grant of environmental clearance is an executive order which involves application of mind by the executive.”

91. It is to be noticed at this stage that a Civil Appeal had been preferred before the Supreme Court of India against this Judgment in Civil Appeal No. 7884-7885 of 2014 titled as *Vizhinjam International Seaport Ltd v. Wilfred J. and Ors.* Hon’ble Supreme Court vide its order dated 21st January, 2015, stayed all further

proceedings before the Tribunal in that case but specifically allowed Tribunal to continue its exercise of such powers. Order of the Hon'ble Supreme Court is reproduced below:

“Counter affidavit, if any, be filed by the Respondents within four weeks' time. Rejoinder affidavit, if any, in two weeks' time thereafter.

In the meantime, both the sides are permitted to file additional affidavit(s).

All further proceedings, qua the appellant(s) are stayed in Appeal Nos. 17 of 2014, 88 of 2014, 14 of 2014 and Original Application No. 74 of 2014 till further orders.

We clarify that the National Green Tribunal shall continue to exercise its powers in terms of Sections 14, 16 and 18 of the National Green Tribunal Act, 2010 in other cases.”

92. We may also refer to another larger Bench Judgment of the Tribunal in the case of *Himmat Singh Shekhawat v. State of Rajasthan and Ors.* (supra), where the Tribunal was dealing with a case challenging the validity of the Office Memoranda dated 9th September, 2013 and 24th December, 2013 issued by MoEF and other similar Office Memoranda issued the State of Rajasthan as well as other states as being violative of the provisions of the Act of 1986 and being in teeth of the Judgment of the Supreme Court in the case of *Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629.

As stated above, the Tribunal had quashed the Notifications which were in violation to the Notification of 2006 and in teeth of the Judgment of the Supreme Court. It was held that the Notification of 2006 being a statutory law cannot be diluted, varied and frustrated in the name of supplying of gaps and/or framing the policy in interest of a group of people.

The Notification or orders whether issued by the principle or delegated authority, the principle that delegated legislation cannot be beyond the principle legislation equally applies to both. As discussed above, the body to whom the power is delegated is required to act strictly within the framework of such delegated powers. It is incidental to the exercise of all powers in as much as it is necessary to delegate for the proper discharge of all the public duties. It is because the body constituted should act in the manner indicated in law and should exercise its discretion by following the procedure therein itself, it has to be ensured by the delegate authority that it exercises such power for carrying out the purpose and object of the Act and does not interfere with or offend the substantive provisions of the Act. The discipline and protocol prescribed in a statutory instrument ought not to be altered much less defeated.

93. In light of the above stated principles, now we would revert to the judgments of the Supreme Court relied upon by the Respondent nos. 7 and 8. Firstly, we are unable to comprehend as to how the said Respondents can derive any advantage from the two cited judgments. In the first case of *Union of India (UOI) v. R. Gandhi, President, Madras Bar Association* (supra) (2010 case), the Supreme Court was concerned with the constitutional validity of the provisions of the Company's Act, 1956. The Supreme Court stated that the legislature is presumed not to legislate contrary to the rule of law and therefore knows that where disputes are to be adjudicated by a judicial body other than Courts, its standard

should approximately be the same as to what is expected of the main stream judiciary. Rule of law is possible only where there is an independent and impartial judiciary to render justice. Further, the Supreme Court while declining to declare the Act and constitution of the National Company Law Tribunal as unconstitutional in Para 120 directed the defects in parts 1B and 1C of the Act relating to appointment and functioning of the Tribunal to be corrected / amended and then be made operational. The Supreme Court affirmed the view of the High Court that the constitution of the two Tribunals and vesting in them the powers of judicial review was not unconstitutional. However, it was subject to the observations made by the Supreme Court in paragraph 120 of the judgment.

Coming to the second case of *Madras Bar Association v. Union of India (UOI) and Ors.* (supra) (2014 case), where the Supreme Court was concerned with the question whether provisions of the National Tax Tribunal (NTT) Act, 2005 were *ultra vires* to provisions of Constitution including the 'doctrine of separation of power'. The Supreme Court held that since Sections 5, 6, 7, 8 and 13 of the NTT Act have already been held as illegal and unconstitutional, therefore the remaining provisions of the Act are automatically rendered otiose to the extent indicated in paras 136 and 137 of the Judgment. The Hon'ble Apex Court made the following conclusions:

"134. (i) Parliament has the power to enact legislation, and to vest adjudicatory functions, earlier vested in the High Court, with an alternative court/tribunal. Exercise of such power by the Parliament would not per se violate the "basic structure" of the Constitution.

135. (ii) Recognized constitutional conventions pertaining to the Westminster model, do not debar the legislating authority from enacting legislation to vest

adjudicatory functions, earlier vested in a superior court, with an alternative court/tribunal. Exercise of such power by the Parliament would per se not violate any constitutional convention.

136. (iii) The "basic structure" of the Constitution will stand violated, if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure, that the newly created court/tribunal, conforms with the salient characteristics and standards, of the court sought to be substituted.

137. (iv) Constitutional conventions, pertaining to constitutions styled on the Westminster model, will also stand breached, if while enacting legislation, pertaining to transfer of judicial power, conventions and salient characteristics of the court sought to be replaced, are not incorporated in the court/tribunal sought to be created.

138. (v) The prayer made in Writ Petition (C) No. 621 of 2007 is declined. Company Secretaries are held ineligible, for representing a party to an appeal before the NTT.

139. (vi) Examined on the touchstone of conclusions (iii) and (iv) above, Sections 5, 6, 7, 8 and 13 of the NTT Act (to the extent indicated hereinabove), are held to be unconstitutional. Since the aforesaid provisions, constitute the edifice of the NTT Act, and without these provisions the remaining provisions are rendered ineffective and inconsequential, the entire enactment is declared unconstitutional."

From the above dictum of the Supreme Court, it is clear that the Parliament has power to enact legislations and to vest adjudicatory functions in the Tribunals which were earlier vested in the High Court. *Per se*, this would not be violative of the basic structure of the Constitution, once the framers of law take care and ensure that the statutorily created courts/tribunals conform to the salient characteristics and standards of the courts under the mainstream justice dispensation system, i.e. judiciary. If they are breached, it would generate the results of violation of doctrine of basic structure of the Constitution.

94. Before the Tribunal, no contention of this dimension has been raised. As already stated, the Tribunal has been created by a statute with all requisite safeguards and has been vested with complete adjudicatory powers as required under the mainstream justice delivery system in our country. The impugned Office Memoranda have been issued in exercise of administrative power which is presumably exercised in furtherance to the powers vested in the Ministry under the Act of 1986 and /or Notification of 2006. These Office Memoranda have been issued for the purposes of 'implementation of Acts mentioned in the Schedule' (emphasis supplied). Thus, we see no reason for accepting the contention that this Tribunal has no jurisdiction to examine the legality or correctness of these Office Memoranda. Furthermore, except these two Respondents, none of the other parties to the *lis* has even touched upon this objection.

Discussion on Issue No. 4

4. Are the private Respondents entitled to claim any benefit on the strength of deeming provisions as contained in Para 8 (iii) of the Notification of 2006 and if so, to what effect?

95. The submission on behalf of Respondent no. 7, 8 and 9 that they would be deemed to have been granted Environmental Clearance in relation to their projects on the strength of Para 8, of the Notification of 2006, can be bifurcated into two distinct classes. The first being with reference to the projects of Respondent no. 7 and 8 where the contention is that they had applied for obtaining Environmental Clearance for their project and the same had been recommended by the SEAC in its meeting dated 17th June, 2014

and 30th September, 2013 respectively. Despite such recommendation being in their favour, the SEIAA did not grant or refuse Environmental Clearance within 45 days of such recommendation as per Para 8(i) of the Notification of 2006. Therefore, as per Respondent 7 and 8 since the period of 45 days has lapsed, therefore, they would be entitled to the 'deemed sanction' of Environmental Clearance in terms of Para 8 of the Notification of 2006, the regulatory authority having failed to take any final view on the Project Proponent's application. It is their case that the 'deemed sanction' would follow in terms of Para 8(iii) and the view expressed by the SEAC would be deemed to have been accepted by the regulatory authority and therefore, the Applicant is entitled to be conveyed the said order in terms thereof.

The second class of contention would be with reference to the contention of Respondent no. 9 that it had applied for obtaining Environmental Clearance for its project in the year 2012, which application was re-filed in the year 2013. The SEIAA had failed to act within the time limit provided in Clause 8 (i) of the Notification of 2006, i.e. 105 days. This failure on the part of the SEIAA would result in grant of Environmental Clearance in favour of the Project Proponent on the principle of 'deeming fiction'. It is the case of Respondent no. 9 that SEIAA had only responded after two years by communicating that the operation of the impugned Office Memoranda has been stayed by the National Green Tribunal and therefore their application for Environmental Clearance has been delisted till further order by the Tribunal.

96. Contrary to the above, the Applicant contends that there is nothing in Para 8 of the Notification of 2006, which is remotely suggestive of any deeming fiction. It is a provision that merely prescribes a period within which certain acts are required to be done without specifying any consequences thereof. Furthermore, none of the Respondents have filed applications with all the relevant documents as required under law. They have not even filed their applications for Environmental Clearance complete in all respects. They have played a fraud with law and in any case misrepresented facts before SEIAA. Even after filing the application for Environmental Clearance, they have violated their undertakings to SEIAA and carried on with the constructions of their projects. This firstly would disentitle them from claiming any relief on the premise of 'deeming fiction' contained under Para 8 of the Notification of 2006, and in any case their acts and deeds would vitiate their entire application for grant of Environmental Clearance. The effect of 'deeming fiction' would thus never accrue in their favour. Once the provisions of the Notification of 2006 are not strictly complied with, the question of invoking 'deeming fiction' in terms of Para 8 of the Notification of 2006 would not even arise as these Project Proponents have not complied with the basic ingredients of these provisions.

97. We must make a note of the fact that none of the other parties, including the MoEF or SEIAA had raised the plea of 'deeming fiction' either in their oral or written submissions. Before adverting to the discussion on merits of these contentions, it will be

appropriate to refer to Para 8 of the Notification of 2006 which reads as under:

“8. Grant or Rejection of Prior Environmental Clearance (EC):

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the Applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the Applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the Applicant by the regulatory authority concerned within the next thirty days.

(iii) In the event that the decision of the regulatory authority is not communicated to the Applicant within the period specified in sub-paragraphs (i) or (ii) above, as applicable, the Applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in

terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.”

98. First and foremost we have to examine what is a deeming fiction, when it operates and what are its ingredients? The expressions ‘deemed’ and ‘deeming fiction’ have been described in P RAMANATHA AIYAR’S Law Lexicon 3rd edition, 2012 as follows:

“Deemed: The word ‘deemed’ is used to impose an artificial construction of a word or phrase in a statute that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is impossible. *St. Aubyn (L.M.) v. A.G.*, 1952 AC 15

Deeming fiction: A supposition of law that a thing is true without inquiring whether it be so or not, that it may have the effect of truth so far as it is consistent with justice.

The word "deemed" is used in various senses. Sometimes, it means "generally regarded". At other time, it signifies 'taken prima facie to be', while in other case, it means, 'taken conclusively'. Its various meanings are, - 'to deem' is 'to hold in belief, estimation or opinion'; to judge; adjudge; decide; considered to be; to have or to be of an opinion; to esteem; to suppose, to think, decide or believe on considerations.”

99. Deeming fiction in a provision of a statute is indicative of the intention of the framers of law that they expect compliance to the requirements of the provision in a prescribed time frame. In some cases, it may prescribe proper consequences of default while in others it may be just require compliance *simplicitor*. When such words are used in a statute, they would provide the meaning for some matters or things and the way in which it is to be adopted. Furthermore, every provision of a statute is brought into by

legislature with a particular object in mind; no word used by the legislature is therefore futile. Normally, such words should be interpreted with the aid of examining the whole scheme of an enactment, like the Notification of 2006 in the present case. Therefore, impact of the expression used under paragraph 8 should be examined and interpreted in light of the entire scheme of the Notification of 2006. The concept of ‘deeming fiction’ should be understood and interpreted by applying the principle of strict construction. Every requirement preceding the stage from which ‘deeming fiction’ operates must be specified in all respects and the principle of substantial compliance would have no application for determining the controversy in issue. A Bench of this Tribunal in the case of *M/s Laxmi Suiting v. State of Rajasthan and Ors.*, 2014 ALL (I) NGT REPORTER (2) DELHI 1, while dealing with the essentials and ingredients of ‘deeming fiction’ contained in Section 25(7) of the Water (Prevention and Control of Pollution) Act, 1974 (for short ‘Water Act’) held as under:

“33. A deeming provision creates a legal fiction. When a statute enacts that something shall be deemed to have been done, which in fact and in truth has not been done, the court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried out to its logical conclusion and to that end, it would be proper and even necessary to assume all those facts on which alone the fiction can operate. In other words, the facts and requirements of the fiction must be satisfied. It has, in fact, also been held by some courts that the word ‘deemed’ when used in a statute establishes a conclusive or rebuttal presumption, depending upon the context.

34. Another legal principle of construing the legal fiction is that the law cannot be extended beyond its purpose.

The Supreme Court, in the case of *Bengal Immunity Co. Ltd. v. State of Bihar* (AIR 1955 SC 661) stated that the legal fictions are created only for some definite purpose. A legal fiction is to be limited to that purpose for which it was created and should not be extended beyond that legitimate field. This approach was reiterated by the Supreme Court of India in the case of *Union of India v. Sampat Raj Dugar* (AIR 1992 SC 1417), wherein while dealing with Clause 5(3)(ii) of the Import (Control) Order, held that fiction created was for the proper implementation of the Import and Export (Control) Act, 1947 and to hold the licensee responsible for anything and everything that happens from the time of import till the goods are cleared through Customs and it was also held that the fiction cannot be employed to attribute ownership of imported goods to the importer in a case where he abandons them i.e. in a situation where the importer does not pay or receive the documents of title. Reference can also be made to the case of *Rajkumar Khurana v. State of NCT of Delhi* [(2009) 6 SCC 72].

35. Section 25(7) is intended to provide for the deemed fiction only where the law is complied with. The obvious reason for providing the deeming fiction under Section 25 of the Water Act is to ensure that the Board does not unduly withhold the application of an industry or a unit which has acted in accordance with the law and has moved the application for establishment/operation complete in all respects to the Board. The intention of the framers of law is to balance the relationship between the industry and the Board. It is not intended to give any undue or unlawful advantage to either of the two. The Board must not be able to frustrate the establishment of a project merely by delaying its decision on the application. It is also not intended to give any right to the industry to start its operation without obtaining consent of the Board or even making an application for that purpose. On the principle aforesaid, it will not be permissible to stretch the provisions of Section 25 of the Water Act to give protection to the class of persons who are polluters and are even covered under the specified category contemplated under Section 25(5) supra.

36. In view of the above discussion, we are of the considered view that the Applicants are not entitled to the benefit or advantage of the deeming fiction of law contemplated under Section 25(7) of the Water Act *inter alia* but specifically for the following reasons:

- (i) The Applicants did not submit applications, as contemplated under Section 25(2) of the Water Act, complete in all respects to the Board.”

In the above backdrop, let us now examine as to what is the object and essential features contained in Para 8 of the Notification of 2006. The Notification of 2006 has been issued by the Ministry in exercise of the statutory powers vested in it under Section 3 of the Act of 1986 and Rule 5 of the Rules of 1986. The Notification has been issued for the purposes of effectively ensuring environmental protection and for implementing the provisions contained in the Principal Act. The purpose is to ensure that the project and the activities as stated in the Schedule to the Notification of 2006 only and only commence construction after the Project Proponent has obtained the Environmental Clearance and that is why Para 2 of the Notification of 2006 requires prior Environmental Clearance from the regulatory authority. The whole scheme of the Notification of 2006 does not postulate any relaxation of this mandatory requirement. Thus, there is unquestionable and undisputable legal obligation upon the Project Proponent to seek prior Environmental Clearance before the commencement of any activity in relation to the project in question. Such obligation is to be complied with as per Form 1 or supplementary Form 1A, as the case may be, to be submitted to the concerned regulatory authority. Form 1 has various columns which would be incapable of being filled and it will be impracticable, if not impossible, for an applicant to furnish the requisite data supported by appropriate analysis, as contemplated in the various columns of Form 1. Still further, the requirement on

the part of the Project Proponent would be to have a complete EIA report on the basis of ToR which again is relatable to the application (Form 1) submitted by the Project Proponent. The authorities are neither required under any law nor under any memorandum of practice to conduct any inspection to verify the contents of the application or the physical situation existing on the site. The averments in the application are normally taken to be correct. It is evident from the record before us that Project Proponents have violated the law and because of their intentional violation and illegal acts of the private Respondents, compliance to the provisions of Notification of the 2006, has been rendered impracticable. The provisions of Para 8(i) to 8(iii) would come into play only when an Applicant complies with his statutory obligations and satisfies the essential requirements of this provision strictly. Indisputably these private Respondents have not done so. Until and unless a complete, comprehensive application in accordance with Form 1 and supplementary Form 1A as per Appendix I and II of the Notification of 2006 respectively, complete in all respects, is submitted, nothing contained in these provisions would come into play much less than it would enable the Project Proponents to claim any advantage or benefit on the plea of deemed fiction.

100. There is a definite process required to be followed, i.e., Screening, Scoping and Appraisal, in addition to Public Consultation, which would lead to passing of an order granting or refusing Environmental Clearance in terms of the Notification of 2006, in cases where SEAC has recommended grant or refusal of

Environmental Clearance. The matter then has to be placed before the regulatory authority, i.e. SEIAA, which is empowered to alter such recommendation of SEAC, agree with the same or take completely contra view. However, where it proposes to disagree with the recommendations of SEAC, the SEAC would be required to give its views within 60 days from the date when the file was returned to it by SEIAA for reconsideration and intimation would also be given to the Project Proponent before it takes the final view. It is only when the requirements of Para 8(i) and (ii) have been complied with that any 'deeming fiction' in terms of Para 8(iii) can come into play. After the view of SEAC is considered by the regulatory authority, then it would convey its decision within next 30 days to the Project Proponent. It is only if the decision of the regulatory authority is not intimated that the Project Proponent may proceed as if the Environmental Clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the EAC or the SEAC as the case may be. The word 'deemed' has to be construed differently with reference to the provisions of the Act where it is so used. When a statute enacts that something shall be deemed to have been done, which in fact and in reality was not done, the court is entitled and in fact bound to ascertain for what purposes and between what persons such statutory fiction is to be resorted to and full effect must then be given to the statutory fiction and it should be carried to its logical conclusion. It has been time and again emphasized in various judgments of various courts, including that of the Supreme Court, that the Court has to

ascertain the purpose of the legal fiction, as the term ‘deemed’ has been used for manifold purposes (Refer: *The State of Bombay v. Pandurang Vinayak Chaphalkar and Ors.*, AIR 1953 SC 244 and *B.B. Chibber v. Anand Lok Cooperative GRP Housing Society Ltd.*, AIR 2001 Delhi 348). These Principles were also reiterated by the Supreme Court in the case of *Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd.*, (2012) 5 SCC 661, where the Court held as under:

“29. In *The Bengal Immunity Company Ltd. v. State of Bihar and Ors.* MANU/SC/0083/1955: AIR 1955 SC 661, the majority in the Constitution Bench have opined that legal fictions are created only for some definite purpose.”

101. ‘Deeming fiction’ as an established concept of law, has to be construed strictly and completely according to the facts and circumstances of a case. The dimension of its application would depend upon the language of the provisions where ‘deeming fiction’ is contained, its purpose and the object sought to be achieved under those provisions and the attendant circumstances of a particular case. It is neither possible nor permissible to prescribe a strait-jacket formula for applicability of this fiction in law. Upon a bare reading of Para 8(i) of the Notification 2006, it is evident that it does not contain any ‘deeming fiction’. On the contrary, it only prescribes a time period within which the application for grant of Environmental Clearance should be decided and order is to be communicated to the Project Proponent. This clause does not provide for any consequences if the said decision was not taken within the prescribed time.

102. Para 8 (i) provides that the regulatory authority has to convey its decision to the Applicant within 45 days of the receipt of the recommendation of the EAC or SEAC, as the case may be, or convey its decision within 105 days of the receipt of the final Environment Impact Assessment report. In case where Environment Impact Assessment is not required, then, within 105 days of the receipt of the *complete application with requisite document* (emphasis supplied). Para 8 (ii) further provides that the regulatory authority shall normally accept the recommendation of the EAC or SEAC but wherever it decides to disagree with such recommendations, regulatory authority shall request reconsideration by the EAC or SEAC as the case may be, within 45 days of the receipt of the recommendations made to it, along with reason for its disagreement. Such intimation of decision is also to be conveyed to the Applicant.

103. EAC or SEAC as the case may be, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of 60 days. Whereupon, the regulatory authority, after considering the view as furnished by the EAC or SEAC as the case may be, should take its decision, which shall be final and which would be conveyed to the Applicant within the next 30 days. In other words this entire exercise has to be completed within 135 days. Both these Paras i.e. 8(i) and 8(ii) do not provide for any consequences of default. It is Para 8(iii) of the Notification of 2006, which provides for a kind of deeming fiction. In terms of this Para, if the decision of the regulatory authority is not

communicated to the Applicant within the period specified in Para 8 (i) & (ii), the Applicant may proceed as if the Environmental Clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the EAC or SEAC as the case may be. For the provision of Para 8(iii) to become effective the following conditions are required to be satisfied:-

- (1) The application submitted by the Applicant to the SEIAA or the MoEF as the case may be, should be complete in all respects along with requisite documents.
- (2) All the requisite proceedings contemplated under the Notification of 2006 must be completed, i.e. preparation of Terms of Reference (ToR) and submission of final EIA report.
- (3) There should be unambiguous recommendation by the SEAC or EAC, for granting or refusing to grant the Environmental Clearance. After submission of the final EIA report (wherever required) and upon completing the procedure prescribed under Clause 8(ii), the matter should remain pending and the Applicant uninformed of the order, for the period of 105 days or 135 days, as the case may be.

104. It is only thereafter that the deeming fiction contained in Para 8(iii) can operate, but even then the clear mandate of the Legislature is that the Environmental Clearance to a Project should not be deemed to have been granted to the Project Proponent. It will only be the recommendation of the EAC or SEAC that would

enable the Applicant to proceed with his project in terms of the said recommendations. The limited operation of the deeming fiction under Para 8, is only the final recommendation of the EAC or the SEAC, as the case may be, that would operate by fiction of law as the order of the regulatory authority. It is because of the default on the part of the regulatory authority to pass the final order that results in invoking the principle of 'deeming fiction' as contemplated under Para 8(iii) of the Notification of 2006.

105. The Project Proponent has to mandatorily comply with the requirements of Para 8(i) and 8(ii) strictly. The principle of substantial compliance and/or inability on the part of the Applicant to file an application, complete in all respects, would not be a relevant consideration for invoking deeming fiction under Para 8 (iii) of the 2006 Notification. Like in economics, other things must remain the same for application of any principle of economics. Similarly, filling up details of Form-A completely and accurately is as essential before consideration of an application for grant of Environmental Clearance.

106. Now, let us examine whether any of the three Project Proponents, claiming advantage of the principle of 'deeming fiction' have satisfied the above stated requirements of law or not. It must be noticed here that any Applicant who seeks benefit under the law of deeming fiction has to satisfy the twin requirements of firstly doing the acts/activities which are lawful and secondly, he must comply with requirements of the provisions *stricto sensu*. In the present case all the three Project Proponents i.e. Respondent nos. 7,

8 & 9 have commenced construction activity of their Projects without even submitting the application for grant of Environmental Clearance. The Project Proponents have obviously not submitted an application complete in all respects and with requisite documents. We have already noticed that there are large numbers of columns in Form 1 and supplementary Form 1A under the Notification of 2006, which these Project Proponents have not and in fact could not have filled appropriately in the corresponding forms to be accompanied with the application for Environmental Clearance. These columns require them to submit data and analysis reports, which it was not possible for them to provide, having already raised huge constructions. Furthermore, all the three Project Proponents were sent different letters from SEIAA, asking them for additional documents and information in respect of their projects which their respective applications lacked. In this regard reference could be made to letters dated 22nd August, 2013, 28th April, 2014, 20th June, 2014, 19th May, 2014 and 17th June, 2014 to SPR & RG, letters dated 21st June, 2013, 08th August, 2013 and 10th September, 2013 to M/s Dugar Housing and letter dated 21st May, 2013 to SAS Realtors Ltd. In the letters addressed by SEIAA to these Project Proponents acknowledging receipt of their application for Environmental Clearance, it had clearly indicated that this does not vest any right in the Project Proponent and they should not start or carry on any construction activity until and unless Environmental Clearance was granted to them. The Project Proponents were permitted only to clear the site and raise

temporary structures for accommodation of labour along with basic facilities, as temporary arrangements. The Project Proponents violated the requirements of law and the undertaking given by them to SEIAA at the time of submission of application for Environmental Clearance. The Notification of 2006 contemplates prior Environmental Clearance to any structure or project activity. The Project Proponents having violated the law cannot be permitted to take advantage of their own wrong under the shelter of 'deeming fiction'. The conduct of these Project Proponents and serious violation of law committed by them *inter alia* disables them from claiming the benefit of 'deeming fiction' under Para 8 of the Notification of 2006 in the facts and circumstances of the case. Furthermore, it is not the case of anybody before us that SEAC had recommended the grant of Environmental Clearance to Project Proponents unconditionally. The recommendation was conditional and it was not grant of Environmental Clearance in fact and in substance. The Project Proponent was to first satisfy the regulatory authority that it had fulfilled the conditions that had been imposed in the recommendation of the concerned authority. In other words, it was not a case of clear recommendation for grant of Environmental Clearance which could have become operative upon expiry of the prescribed period. In the case of M/s. SPR & RG Construction Private Limited (Respondent No. 7) the SEAC in its meeting on 30th September, 2013 decided to recommend proposal only for grant of standard ToR and to conduct EIA study in addition to compliance to the conditions which were to be incorporated in

the ToR. One out of them related to NOC from Chief Controller of Explosives, adequacy feasibility and functionality of STP to be verified by the Tamil Nadu Pollution Control Board.

However, in its meeting on 17th June, 2014, the proposal of Respondent no. 7 was recommended for issue of Environmental Clearance, but only after considering the conditions imposed on the project. These conditions were as follows:-

1. "Project land area excluding landscape area not less than 15% shall be earmarked for green belt development.
2. The adequacy and feasibility of the STP proposed for the project shall be verified by Tamil Nadu Pollution Control Board as per the ToR condition.
3. Design of the rain water harvesting facility shall be done based on soil lithology study and the same shall be consulted with any Academic Institution.
4. Plan of solid waste management including disposal, in tie-up with local NGO shall be furnished.
5. Revised Budget Allocation (0.5% of the project outlay) & detailed work plan for the CSR Activities shall be furnished in an AFFIDAVIT Form."

107. There is nothing on record to show and is not even the case of the Project Proponent that the above conditions have been complied with and the Authorities referred herein further confirm non-compliance thereto. Thus, there was no unambiguous and unequivocal grant of Environmental Clearance recommendation to the Regulatory Authority by the SEAC.

From the above discussion it is clear that none of the Project Proponents satisfied the basic essentials or requirements of Para 8 of the Notification of 2006. Non-compliance to law, intentional violation of law and further, the illegal conduct of the Project

Proponent would disentitle them from getting any relief under Para 8 of the Notification of 2006.

Discussion on Issue No. 5

5. Whether the provisions of Notification of 2006 are mandatory or directory and consequences thereof?

108. Years back, Lord Campbell in *Liverpool Borough Bank v. Turner*, (1861) 30 LJ Ch 379 said, “no universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be considered”. These observations have stood the tests of time and even today the process of judicial interpretation has not favoured the enunciation of any universal rule or strait jacket formula. This question has to be decided with reference to the intent of the Legislature, and not the language in which the intention is clothed. In some cases, the courts have also taken the view that such intent can be derived from the nature and design of the statute and the consequences which would flow from construing it in the one way or the other. It will depend upon the findings of the court on these aspects that would finally determine whether the provision is mandatory or directory. The use of the words ‘as nearly as may be’ in contrast to the words ‘at least’ will *prima facie* indicate a directory requirement, negative words indicate a mandatory requirement, ‘may’ indicate a directory requirement and ‘shall’ a mandatory requirement. Illustratively it could be explained by taking an example of a set of service rules

which provide that adverse remarks shall be communicated to the civil servant concerned, ordinarily within seven months. The object of communicating the adverse remarks is to give an opportunity to the civil servant to improve his performance to make up the deficiency noticed in his work and to give him an opportunity to represent against the remarks, in case he disputes them, to the reviewing authority. In light of this object and having regard to the part adverse remarks play in the service career, the rules on a proper construction will require: (i) communication of the remarks to the civil servant concerned; (ii) communication within a reasonable time; and (iii) communication ordinarily within seven months. The first two requirements will be construed as mandatory and non-compliance of either of them will make the remarks as also any adverse action on their basis, invalid. The third requirement will be treated as directory and its non-compliance alone will not make the remarks invalid if the first two requirements are satisfied [Refer: Principles of Statutory Interpretation by Justice G.P. Singh, 13th Edition (2012)].

In either of these requirements, discretion or discretionary power hardly has a role to play. Even if a provision is being construed as directory, it has to be remembered that it leaves the donee of the powers, free to use or not to use it, at his discretion. A mandatory provision eliminates the element of discretion. A mandatory provision requires complete compliance. Non-compliance or disobedience thereto may render action invalid or nullity. In contradistinction thereto failure to obey directory

provision or its disobedience would not render the action a nullity. Another way to examine this distinction is that even non-compliance is capable of being waived and consequences thereof. The Hon'ble Supreme Court in the case of *State of U.P. v. Baburam Upadhyay*, AIR 1961 SC 751, culled out the criteria for deciding *inter alia* whether a statutory provision is to be taken as mandatory or directory. They are:-

- (a) "the nature and the design of the statute, and
- (b) the consequences which follow from construing it the one way or the other,
- (c) the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions,
- (d) the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and,
- (e) above all, whether the object of the legislation will be defeated or furthered."

109. However, subsequently, the Hon'ble Supreme Court in the case of *May George v. Special Tahsildar*, (2010) 13 SCC 98, expanded these principles and added the following:

- (a) While determining whether a provision is mandatory or directory, somewhat on similar lines as afore-noticed, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve;
- (b) To find out the intent of the legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such provision;
- (c) Whether the provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;
- (d) As a factor to determine legislative intent, the court may also consider, *inter alia*, the nature and design of the statute and the consequences which would flow from construing it, one way or the other;

(e) It is also permissible to examine the impact of other provisions in the same statute and the consequences of non-compliance of such provisions;

(f) Physiology of the provisions is not by itself a determinative factor. The use of the words 'shall' or 'may', respectively would ordinarily indicate imperative or directory character, but not always.

(g) The test to be applied is whether non-compliance with the provision would render the entire proceedings invalid or not.

(h) The Court has to give due weight age to whether the interpretation intended to be given by the Court would further the purpose of law or if this purpose could be defeated by terming it mandatory or otherwise.

110. Sutherland *Statutory Construction*, Rev. Third Edn., 1943 (pg 640), mentions that “no statutory provisions are intended by the legislature to be disregarded”. Therefore, each word in a statute has a referral meaning and it must be given its true interpretation and import.

111. In terms of interpretation of statutes, question whether a particular provision is mandatory or directory and the distinction between the two arises when a statute uses a language which imposes a duty and where a breach of that requirement renders an action void. In general parlance, in case of mandatory provisions, the act done in breach of the duty imposed is void, while in case of directory provision act done does not become void (although some other consequences may follow). [*Rani Drigraj Kuer v. Raja Amar Krishna Narain Singh*, AIR 1960 SC 444].

112. In an often quoted passage LORD CAMPBELL said, “no universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by

carefully attending to the whole scope of the statute to be considered [Craies on Statute Law, 5th edition, at p. 242 and quoted in *Liverpool Borough Bank v. Turner*, (1861) 30 LJ Ch 379].

This view came to be approved by the Supreme Court in the case of *State of UP v. Manbodhan Lal Shrivastava*, AIR 1957 SC 912, wherein the court quoted Crawford on 'Statutory Construction' - art. 261 at p. 516, "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other...."

Maxwell on Interpretation of Statutes quotes Lord Penzance in the case of *Howard v. Bodington*, (1877) 2 P.D. 203 (211) – "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look into the subject matter; consider the importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

113. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory whereas if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of the

enactment, the same will be construed as directory [Delhi Airtech Services Pvt. Ltd. and Anr. v. State of U.P. and Anr. (2011) 9 SCC 354].

114. In Re: Presidential Poll case [AIR 1974 SC 1682], the Seven Judge Bench of the Hon'ble Supreme Court observed:

“13. In determining the question whether a provision is mandatory or directory, the subject matter, the importance of the provision, the relation of that provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory. It is the duty of the courts to get at the real intention of the legislature by carefully attending the whole scope of the provision to be construed. The key to the opening of every law is the reason and spirit of the law, it is the *animus impotentia*, the intention of the law maker expressed in the law itself, taken as a whole.”

115. In the case of welfare statutes, the general rule of interpretation is that provisions should get that interpretation which would achieve the object of the enactment. Such statutes are to receive liberal construction but the same could not to be extended beyond the statutory scheme [*Ponni Sugars and Chemicals Ltd. v. Cauvery Sugar and Chemicals Ltd*, 2001 (2) MLJ 832; *Maruti Udyog Ltd. v. Ram Lal*, 2005 (2) SCC 638; *National Insurance Company Ltd. v. Arumugham*, 2006 (2) MLJ 564]. It is also a settled law that interpretation of a statute depends upon the text and the context thereof and the object with which the statute was made [*Pratap Singh v. State of Jharkhand*, (2005) 3 SCC 551].

116. In light of the above stated principles, now, we may examine the provisions of the Act of 1986 and the Notification of 2006. The Act of 1986 has been enacted for the protection and improvement of environment and the prevention of hazard to human beings, other

living creatures, plants and property. In light of the fact that the Article 21 of the Constitution of India includes the right to decent and clean environment, any of the provisions of the Act of 1986, in relation thereof, are a mandate of the Legislature. They do not provide discretion to a person to obey or not to obey the law and does not in any way permit dilution of the prescribed standards which are required to be adhered to by the person, who wishes to carry on any project or activity of any nature in the notified areas. The Notification of 2006 has been enacted to carry on the object and purpose of Act of 1986 effectively. The Notification as already noticed, applies not only to new projects but also to projects which propose to expand or even modernize the existing projects and are required to strictly comply with the environment standards prescribed under the Act of 1986 and the notification of 2006. We have also noticed above that the expression 'prior' appears as many as 40 times in the Notification of 2006. The expression 'shall' appears in all the relevant clauses where the Project Proponent is required to make the application and follow the prescribed procedure to obtain the Environmental Clearance prior to the commencement of any constructions work or preparation of land, except for securing the land.

117. The Notification of 2006 not only mandates an Applicant or Project Proponent to strictly comply with the provisions, but even requires the authorities to perform their prescribed functions and thus comply with the provisions within the time stipulated under those paragraphs of the Notification of 2006. It furthermore

provides the consequences of non-compliance by the authorities within the period statutorily prescribed. In terms of Para 3, it is not only the consequences of failure to comply on the part of the authorities that are prescribed, but it even specifies the rights that accrue to the Project Proponent. These private rights are definite in character and are of serious consequences. The required compliance has been stated with exactitude in the Notification of 2006, which provides a schedule stating category-wise those projects which require an Environmental Clearance and even the Form which a Project Proponent is required to furnish with complete details at the time of applying for Environmental Clearance.

118. If the application is not in Form 1 and does not provide complete details and documentation in support thereof in terms of the Schedule to the Notification of 2006, the authorities have the right to decline to entertain such an application.

119. Sections 3 and 5 of the Act of 1986 empowers the Central Government to take measures to protect and improve the environment and to issue directions of very wide magnitude, including directions in relation to closure, prohibition or regulation of any industry, operation or process. It can in all event also direct disconnection of electricity or water supply of such industry or operation or process. In exercise of its powers under Sections 6 and 25 of the 1986 Act, the Central Government has framed the Rules of 1986. The Notification of 2006 has been issued in terms of Rule 3(2) of the Act of 1986 as well as Rule 5(3) of the Rules of 1986. In

other words, these later enactments are integral part of the Act of 1986, their character being statutory and language of these provisions makes it obligatory upon every Project Proponent to obtain Environmental Clearance and comply with other environmental laws without default. Section 15 of the Act of 1986 provides penalty for contravention of the provisions of the Act of 1986, the Rules, orders and the directions passed thereunder. Interestingly, Section 15 of the Act of 1986 makes both non-compliance and contravention of the provisions of these enactments punishable. In other words, every default or violation and even non-compliance of the provisions has been made punishable. This necessarily implies the mandatory character of these provisions and statutory obligation on the part of the Project Proponent to comply with them.

120. We are unable to find any merit in the contention raised on behalf of the Project Proponent that the provisions of the Notification of 2006 are procedural. In our considered opinion, the provisions of this enactment are substantive and mandatory. These provisions do not admit of any substantial non-compliance or vest discretion with the authorities in relation to procedure prescribed under the Notification. They are couched in a language that is purely mandatory in character and is founded on the Precautionary Principle which is one of the statutory principles to be applied by the Tribunal in terms of Section 20 of the Act of 2010. If compliance is not made to the provisions of these enactments, it will totally frustrate the Precautionary Principle and thus the precautionary

principle can adversely impact the environment, protection of which is the sole object of the Act of 1986.

Thus, in view of the above discussion, it is clear that the requirements of the Notification of 2006 are mandatory in character. Their default or non-compliance is liable to be punished. The intention of the Legislature is to protect the environment for which words of specific nature like 'prior' and 'shall' have been used. The impact of non-compliance of these provisions would be of serious consequence, not only on environment but upon the society at large. All these enactments are unambiguous and framed in no uncertain terms and this conveys that projects commenced without obtaining Environmental Clearance would invite the penalty postulated under the Act of 1986.

Thus, we have no hesitation in holding that the provisions of Notification 2006 are mandatory and not procedural *simpliciter*.

Discussion on Issue No. 6

6. What is the status of structures raised by and conduct of the private Respondents and its effect upon the statutory provisions relating to environment?

121. The Applicants have contended that all the Project Proponents, (private Respondents) have violated the law and their acts before the statutory authorities and even before the Tribunal are full of falsehood i.e. *falsus in uno, falsus in omnibus*. It is their case that the private Respondents under the garb of a *bona fide* belief that Environmental Clearance is to be obtained before obtaining the Completion Certificate, have in fact, camouflaged compliance to the entire requirements of environmental laws. They, in fact, have

frustrated the very object and purpose of the Act of 1986, Rules of 1986 and the Notification of 2006. These Respondents, because of their illegal and unauthorised actions and activities undoubtedly and in fact undisputedly, have commenced construction activities and even completed substantial section of their projects, even prior to submitting their application seeking Environmental Clearance to SEIAA. What was required was that all these private Respondents must have first obtained Environmental Clearance prior to commencement of any construction activity at the site in question. As already noticed, the Notification of 2006 contemplates submission of various analysis data at a stage prior to commencement of any construction or activity of the project for which application is moved. When, these Respondents submitted applications for grant of Environmental Clearance, the competent authorities while acknowledging the receipt thereof had clearly commanded them not to continue with any construction activity unless the Environmental Clearance was granted. They had also called upon them to submit an undertaking to the respective authorities that they would not carry on any construction activity, which in fact they did. Despite, the above instructions, they continued the construction activity in an illegal and unauthorised way. The continuance of construction activity which was commenced thereto was itself illegal, constructed in totally unauthorised manner and was in complete violation of law. They failed to comply with the law at the threshold and violated the rules, the directions issued by the authorities at subsequent stages and

their own undertakings. Consequently, they have not only rendered themselves liable for the penal action as contemplated under Section 15 of the Act of 1986 but even the constructions raised by them are in total violation of the laws in force. Now, we may look at the stages of construction and the apparent violation by different Project Proponents and their present status. In the case of Mr. Y. Pondurai (Respondent No.3), the construction of the project started without even applying for grant of Environmental Clearance. The Project Proponent started the work of construction in full swing merely after getting the approval from the Government Housing and Urban Development Department of the State of Tamil Nadu in the year 2013. This Project Proponent submitted an application to SEIAA only on 21st February, 2014 and in the meanwhile continued with construction of the project despite a clear direction from the authorities as well as his own undertaking that he would not carry out any construction till the grant of Environmental Clearance. A Letter of Apology was also submitted by the Project Proponent on 21st March, 2014 and even then the Project Proponent continued with construction and raised substantial construction. A Show Cause Notice was issued to the Project Proponent by the TNPCB on 12th July, 2014 for carrying out construction work without obtaining Environmental Clearance. Again on 26th November, 2014, SEIAA informed Project Proponent not to continue the construction until Environment Clearance is obtained. Despite this, upon inspection of the site by TNPCB on 2nd April, 2015, it was noticed that construction work of 9 floors was over and interior works is

under progress. For its repeated violation, TNPCB issued a Stop Work Notice to Project Proponent on 4th April, 2015 as construction activities were continuing without obtaining EC. The Project Proponent had again assured the authorities that he was not carrying on any construction activity. However, when on 14th April, 2015, SEIAA inspected the work site, it was noticed that civil works of all blocks was completed and no work was being carried out at the time of inspection. This project is a commercial complex consisting construction of a main block – 2 basement + Ground floor + 10 floors; Service Block – Basement – Ground Floor + 2 floors and MLCP Block – 2 basement + Ground Floor + 4 Floors. On careful analysis of above two inspection reports it becomes clear that one floor was constructed by Project Proponent even after 2nd April, 2015, i.e. even after furnishing the above undertaking and issuance of Stop Work Notice. The photographs that were filed by the Project Proponent at the time of submission of applications itself show that the construction work was not completed and it was only in progress, in fact, large construction work remained to be completed. However, when the site in question was inspected by officers of TNPCB and SEIAA on 2nd April, 2015, it came to notice that not only the entire construction work had been completed but even the finishing work of the building has also been completed. Furthermore, comparing the photographs taken on both these different occasions clearly demonstrate that the Project Proponent has raised the construction by violating the law, his own undertaking, apology letter and direction of the authorities

concerned and have even completed the entire construction of the project. This construction is clearly illegal and unauthorised in the eyes of law. Cases of all the other Respondents are also on the similar lines. We have discussed them in detail in paragraphs 14 to 43 of the Judgment. As such, there is no need for repeating those facts.

122. What we need to notice here is that the compliance to the laws in force, submission of applications for grant of Environmental Clearance complete in all respects with necessary documents are the conditions precedent of consideration of such application by the competent authorities. It is imperative that the activity for which the Environmental Clearance is sought must be an activity started completely in consonance with law. Even the approval of the drawings and principal approval of the construction of the project from CMDA was subject to compliance with the laws in force. We do not agree to the argument propounded by the Project Proponents that the grant of principal approval *ipso facto* had the effect of granting other permissions to start construction without complying with other laws and permissions from the other authorities, particularly in face of the fact that a clause of this principal approval required the Project Proponent to obtain Environmental Clearance. All these Project Proponents are deemed to be in knowledge of the laws relating to construction of such projects i.e. Act of 1986, Rules of 1986 and Notification of 2006. The Project Proponents are persons in the business of building projects, having huge means and perspicacity. They cannot be even expected to take

up the plea that they were not aware of the provisions of environmental laws. It is in fact unfortunate that these Project Proponents have not only violated the laws and their own undertaking but in that process even made other innocent people invest their money into the project, being fully aware that the construction raised is completely illegal and unauthorised. The Constructions have been raised in complete and flagrant violation of law. This renders them liable to be prosecuted against in terms of Section 15 of the Act of 1986. The authorities have taken action against some of them, but that does not in any way by necessary implication or otherwise have the effect of regularising the construction that has been raised illegally, in an unauthorised manner and in violation of the principles of law. We must notice that these constructions are bound to have adverse effect on environment, ecology and biodiversity in the areas where they are located. Some of the environmental degradation and deterioration would be irreversible while other would be correctable to some extent either by demolition or by taking curative measures which we will hereafter discuss. Their illegal acts and unacceptable conduct has even rendered compliance to the provisions of the Notification of 2006 impracticable if not impossible.

123. Another plea advanced on behalf of the Applicants before the Tribunal is that the Office Memoranda are clearly in derogation and not in support of the substantive law, the attempt to condone violation would lead to compounding of offences and permitting what provisions of Notification of 2006 and Act of 1986 restricts.

The legislature in its wisdom has statutorily introduced the Precautionary Principle in terms of section 20 of the NGT Act, effect of which would stand wiped out in substance by these Office Memoranda. The contention of the Applicants is that the Office Memoranda are neither remedial nor solution to a problem. It is not one time settlement for the category of the persons who might have under some bonafide impression or mistake commenced the activity of the project without obtaining environmental clearance. Office Memoranda in their operation and effect are continuous and do not propose to cover a given situation. The Office Memoranda were issued right from the year 2010 and were amended from time to time, lastly in 2013. The Office Memorandum of 27th June, 2013 *ex facie* is a law in itself as it operates as the procedure for all future times giving substantive rights to parties and runs contra to the statutory provision and procedure established under substantive law. On the plain reading of the Notification of 2006, it is manifestly clear that it is the procedure prescribed therein besides being mandatory in character is also *sui-generis*. Once the law prescribes things to be done in a particular way then they must be done in that way alone or not at all. In *Barium Chemicals Ltd. v. Company Law Board*, AIR 1967 SC 295, the Hon'ble Supreme Court held "As a general rule, if the, statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited."

124. From such matters or procedure to be performed differently the law must specifically contemplate that it is impermissible to draw such inferences by implication. Nothing has been brought to our notice neither in the Act of 1986, Rules of 1986 and the Notification of 2006 which in express terms or even by necessary implications permits the mandated provisions to be waived and in any case in the manner that would not prejudicially effect the environment and ecology.

125. On behalf of some of the Project Proponents, another argument is advanced to contend that the various authorities understood or interpreted the law to suggest that obtaining of Environmental Clearance prior commencement of project activity was not a condition precedent. The planning permission granted to the Project Proponents also contemplated that Environmental Clearance should be obtained by these Respondents prior to issuance of completion certificate. These Office Memoranda are therefore by themselves and on interpretation of law with the aid of doctrine of *contemporanea expositio* would operate in favour of the Project Proponents for continuing default, if any, on their part. The Project Proponents have relied upon the judgment of the Hon'ble Supreme Court in *K.P. Vargheese v Income Tax Officer & Ors., Ernakulam* 1981 4 SCC 173 in support of their contentions.

126. We are unable to find any merit in these submissions. The doctrine means that a construction which has been long adopted and publically acted upon will not be lightly disturbed by the courts.

127. The rationale behind the same is that judges who lived at/or about that time when the statutes were made, were best able to judge intentions of the makers at that time but where the wording of the statutes are plain, then its *contemporanea* interpretation cannot override the plain meaning of the words used in the statutes. The Courts do not apply this doctrine where the statute is comparatively modern. The Doctrine historically is founded on the principles that have been evolved by interpretation of ancient statutes or other documents that it has received from the *contemporanea* authority. The meaning publically given by the *contemporanea* or local usage is presumed to be true one even where the language has terminological or popularly a different meaning. It is obvious that the language of the statues must be understood in the sense in which it was understood when it was passed. (Ref: Interpretation of Statutes by P.M. Bakshi, 2013 Reprint edition and Maxwell on Interpretation of Statues 2013, 19th Impression)

128. *Contemporanea expositio* as a rule for interpretation, cannot aid where there is no question of interpretation or giving a meaning to the language of a provision is concerned. It cannot be called in aid where an Office Memorandum creates a new procedure or parallel law in conflict with the substantive law. This Doctrine applies only to the construction of ambiguous language in the other statutes where one thing to take recourse to the practice and meaning given to the provisions generally and/or very particularly by the temporary authorities. In the case of *K.P. Verghese v. Income*

Tax Officer, Ernakulam (supra), the Hon'ble Supreme Court held that "it will settle that meaning prescribed by the authorities showing the notification is good guide to *Contemporian expositio* of the position of law." For application of this doctrine the meaning of statute has to be in doubt. If the language of the provisions admit of no ambiguity or doubt, the question of resorting to this doctrine would hardly arise. In our considered view, the Notification of 2006, does not admit of any ambiguity or doubt. We have already in some elaboration dealt with the provisions of the notification of 2006 that clearly contemplates obtaining of prior Environmental Clearance before commencement of any activity of the project. The Office Memoranda have the effect of wiping out the 40-times used expression, 'prior Environmental Clearance' in the Notification of 2006 and the very purpose of this Notification to protect the environment. The contention of the Project Proponents that impugned Orders are clarificatory in providing what the Notification of 2006 lacks or does not provide for and that the intention behind the issuance of Office Memoranda, is to remove the ambiguity or to provide resolution to the difficulties faced in implementing the Notification of 2006, does not have any merit, as even the stand of all the authorities i.e. MoEF, SEIAA and Pollution Control Board is that prior grant of Environmental Clearance before commencement of the project activity is mandated by the Notification. Particularly, author of the Office Memoranda in its affidavit has averred '*it is true that neither the act nor the EIA Notification, 2006 grant any relaxation on the requirements of the obtaining of prior Environmental*

Clearance before any construction work is commenced or any project scheduled therein.....'. This is also completely substantiated by the opening language of the impugned Office Memoranda where it is said that it was obligatory upon the Project Proponents to obtain prior Environmental Clearance. SEIAA had categorically proscribed the Project Proponents from carrying on any construction activity till Environmental Clearance was granted and had asked them not to repeat the violation. This being the stand of the authorities, the impugned Office Memoranda do not clarify any linguistic or interpreted doubt in the notification 2006 and Act of 1986 but establish a new procedure contrary to the substantive law. It is abundantly clear that principle of *contemporanea expositio* cannot be said to have universal application, each case must be considered on its own facts and executive instruction is entitled to respect but it is not beyond the pale of judicial review. One of the examples cited more often than not is that rules made under the statutes are legitimate aid to the construction of statutes as *contemporanea expositio*. Such Office Memoranda which create a substantive right and obligation by themselves which patently are contrary to the substantive law cannot even be otherwise legitimized with the aid of this doctrine. The fundamental principle of construction is that rules made or directions issued under the statutes must be treated as exactly as if they were in the Act and are of the same effect as it contained in the Act, they cannot be contrary to the fundamental provisions of a statutory notification. Another settled norm is that maxim and precedents are not to be applied mechanically and they

are of assistance only in so far as they furnish guidance by compendiously summing up principles based on the rules of common sense and logic (Ref: *Rohit Pulp and Paper Mills Ltd. v. Collector of Central Excise, Baroda*, AIR 1991 SC 754).

In our considered opinion the Project Proponents cannot derive any benefit or advance its case with reference to doctrine of *contemporanea expositio*.

129. Equally, without merit is the other limb of the contention raised on behalf of the Project Proponents. The authorities issuing the planning permission to the Project Proponents had required the Project Proponents to obtain environmental clearance prior to the grant of completion certificate by the said authority. With reference to this term, the contention is that the Project Proponents were under a *bonafide* belief that they could start the construction without obtaining the Environmental Clearance which they were expected to obtain prior to grant of completion certificate only. This submission is fallacious at the face of it. Every person is expected to know the law. Ignorance of law cannot be a plea. The Project Proponents are not persons who can be presumed to be in ignorant of law, they are into this business for years and the Notification of 2006 came into the existence in the year 2006. All the projects in question commenced in the year 2010 and subsequent thereto. The mandatory character of the notification of 2006 obliged the Project Proponents of any project or activity to obtain prior Environmental Clearance before starting construction. They not only failed to do so but even started huge construction and moved the applications for

grant of Environmental Clearance at much subsequent stage. The terms and conditions of the planning permissions required the Project Proponents to comply with all the requirements of law including obtaining of Environmental Clearance for their respective projects. The terms and conditions of the planning permission clearly postulated that they would not even be granted completion certificate if they had not obtained the Environmental Clearance. Reading of the clause of the planning permission by the Project Proponents to take advantage of it is blatantly contrary to the very purpose of the said condition. The terms and conditions of the planning permissions are firstly to be read together, and secondly no document of this nature can be read to construe that it intends to cause waiver of any other requirement of law. All laws are to operate in their respective fields for obtaining the object of rule of law and not in favour of avoidance or dis-obedience to other laws in force. Therefore, we find no merit even in this submission of the Project Proponents.

Discussion on Issue No. 7:

7. The environmental impacts of the projects in question upon environment, ecology and biodiversity.

130. We have already held that comprehensive and definite compliance to the provisions of the Notification of 2006 have been made redundant by the unauthorised actions of the private Respondents as well as by the impugned Office Memoranda issued by the MoEF. Collection of certain data, scientific analysis, pre-construction environmental impacts of the project and other information which are pre-requisite for the submission of the

application in Form 1 or supplementary Form I-A of the Appendix II under the Notification of 2006, can neither be collected nor be provided as the projects have already come up substantially or otherwise have completed construction work extensively. Not only the environmental impacts of the projects cannot be examined fairly but even the matters like site selection and public hearing cannot be deliberated upon, thus frustrating the very object of public hearing. The provisions of the Act of 1986, Rules of 1986 and the Notification of 2006 are statutory documents having the force of law. Providing a mechanism in exercise of administrative or executive power in complete deviation or disregard to the law in force, would be contrary to the basic rule of law. Besides it being in derogation to the environmental jurisprudence, it would also have adverse impacts upon environment and ecology of the area. There is greater need for compliance to the statutory provisions. Such compliance would be essential in the interest of the environment. Therefore, we have to examine the various aspects of such non-compliance law and if there can be any tolerance to the breach of the statutory provisions. If so, its extent and impacts on matters of technical and environmental significance that would flow from such breaches or defaults. Let us now examine the requirements of law with reference to environment.

131. In recent past, building construction activities in our country have been carried out without much attention to environmental issues and this has caused tremendous pressure on various finite natural resources. The green cover, water bodies and ground water

resources have been forced to give way to the rapid construction activities. Modern buildings generally have high levels of energy consumption because of requirements of air-conditioning and lighting in addition to water consumption. In this scenario, it is necessary to critically assess the utilization of natural resources in these activities.

132. An application seeking prior Environmental Clearance for building construction project is required to be made in the prescribed Form 1 and supplementary Form 1A, after the identification of prospective site for the project to which the application relates, before commencing any construction activity or preparation of land, at the site by the Applicant. The Applicant is required to submit along with the application, in addition to Form 1 and the supplementary Form 1A, a copy of the conceptual plan of the project.

133. Apart from profile of the Project Proponent, name and contact address, implementing organization, organizational chart, project consultants etc., are to be mentioned clearly. After providing details of land (plot/ survey numbers, village, tehsil, district, state and area of the land), goal and objectives of the proposed project, significance of the project both at local and regional level, relevance of the project in light of the existing developmental plans of the region are required to be mentioned. Background information and overall scenario of the proposed activity in the Indian context, procedures adopted for selection, criteria for selection of the site for the proposed activity, such as environmental, socio-economic,

minimization of impacts, ecological sensitivity, impact of existing activities on the proposed activity, etc. is required to be spelt out. Resources and manpower requirements have to be detailed apart from time frame for project initiation, implementation and completion in following manner:

- Total site area
- Total built up area (provide area details) and total activity area
- Source of water and consumption
- Source of power and requirement
- Connectivity to the city centre, utilities and transportation networks community facilities
- Parking requirements
- Type of building material to be used
- Environmental liability of the site
- Existing structure / type of material – demolition debris, etc.

134. A map of the study area showing 500 meters from the boundary of the project area, delineating the major topographical features such as land use, drainage, location of habitats, major constructions including roads, railways, pipelines, and industries, if any in the area is required to be enclosed. A map covering aerial distance of 15 km from the boundary of the proposed project area delineating environmentally sensitive areas as specified in Form I of the Notification of 2006 is also to be annexed. In the same map, the details of environmentally sensitive areas present within a radial distance of 1 km from the project boundary are to be specifically

shown. Land use map of the study area is also required to be furnished.

135. Based on the examination of the relevant details, project specific Terms of Reference (TOR) are provided for the EIA studies. While awarding TOR for EIA studies, the points that are of concern include:

- a. Likely alterations to the existing land use of the area;
- b. Impact on the geomorphology vis-à-vis land disturbance resulting in soil erosion, subsidence & instability of the area;
- c. Impact on the natural drainage systems, including wetlands;
- d. Impact of the land use changes occurring due to the proposed project on the runoff characteristics vis-à-vis flooding or water logging of the area
- e. Impacts of the proposed project on the ground water vis-à-vis pollution of land & aquifers;
- f. Likely threats to the biodiversity, especially vegetation pattern and displacement of terrestrial and aquatic fauna;
- g. Impact on the atmospheric concentration of gases and generation of dust, smoke, odorous fumes or other hazardous gases;
- h. Likely impact on the transport system in the area, including the parking space for vehicles;
- i. Impact on the noise levels and vibrations in the area;

j. Likely impact on the social structure of local communities, and likely disturbance to sacred sites or other cultural values.

136. It may be kept in mind that, prior to the grant of EC, concept of sustainable development and precautionary principles were the leading factors governing the environmental jurisprudence. The application of these Principles assumes that the impacts of any development on the environment and human health are difficult to predict with certainty, therefore, prudence requires that before embarking on the development project, we explore the possible alternatives to the project. Needless to say that exploring alternatives also includes exploring all the harmful actions which the project may cause, including such damages which may be completely irreversible. Equally important component of these Principles is, to place the burden of proof on the Project Proponents to highlight that the impact of the activity on the environment and the health of the people would be minimal and/or all precautionary measures have been adopted. While exploring alternatives with regard to siting the project and the technology of the project, exploring alternatives also includes “not taking up of the project as one of the alternatives”.

137. The very purpose of awarding project specific TOR for EIA studies is that it is expected that the report furnishes balanced and credible information for environmental safeguard apart from other essential environmental studies and most importantly contains the

appropriate environmental management plan/s along with budgetary provisions that form integral part of the project cost.

138. This EIA report is subjected to appraisal by the Experts, prior to the grant of Environmental Clearance depending upon the nature and location specificity of the project. TOR assists the EIA consultant, prior to execution of project, to prepare an effective and user friendly report with relevant project specific data, which are easily implementable.

139. A typical EIA report, as per Environmental Impact Assessment Guidance Manual for Building, Construction, Townships and Area Development Project of MoEF, 2010, includes:

1. Description of the project site, geology, topography, climate, transport and connectivity, demographic aspects, socio, cultural and economic aspects, villages, settlements are also to be given. Historical data on climate conditions such as wind pattern, history of cyclones, storm surges, earth quake etc., is also looked into. Detailed layout plan of proposed project development, communication facilities, access/approach roads, landscape, sewage disposal facilities, and waste disposal etc. is also given. Layout plan for proposed development of built up areas with covered construction such as DG Set rooms, Administrative buildings, Utilities such as Main and Stand-by Power, Water supply installations etc. is furnished. Most importantly, requirement of natural resources and their sources are to be detailed out.

2. The environmental impacts of construction and operation are established during the early phases of site selection and planning. Planning, site selection and design form an important stage in the development of these projects and will determine their environmental impact(s). Environmental data to be considered in relation to such development pertaining to (a) land (b) ground water, surface water (c) air (d) biological environment (e) noise (f) socio economic environment. The first feature which influences the development of a new project is the existing land use pattern of the neighbourhood of the project, whether the proposed development conforms to the development for that area or not. Study of land use pattern, habitation, cropping pattern, forest cover, environmentally sensitive places etc., provides the first insight to the likely impacts of the project. Geographical latitude and microclimatic factors such as solar access and wind loads also have major impact.
3. Identification of Project activities, including construction phase, which may affect surface water or groundwater have a direct relation to the estimated water intake requirements and identification of the source of water to be used. Description of water availability and sourcing plays a critical role in impact assessment. Baseline water quality from all sources such as ground water or municipal supply or surface water helps in proper assessment.

4. Climatological data, air and noise level pollution similarly plays an important role in assessing the likely environmental impacts and requires anti-pollution measures to be adopted.
5. Baseline information on the flora and fauna of the study area along with a description of the existing terrestrial, wetland and aquatic vegetation determines the environmental sensitivity and the need for environmental protection measures.
6. Details of solid wastes from construction sector can be categorized into two phases i.e. during construction & during operation. Details of the construction or demolition waste, i.e., massive and inert waste; Municipal waste, i.e., biodegradable and recyclable waste and hazardous & e-waste provide steps that are required to be adopted for its management.
7. Main anticipated impacts from building construction, which need to be addressed, are
 - Impact on the natural drainage system and soil erosion.
 - Loss of productive soil and impact on natural drainage pattern.
 - Study of the problem of landslides and assessment of soil erosion potential
 - Impact on air and noise quality during the construction and operation phase - the existing surrounding features of the study area and impact on them from various sources such as machinery, transportation, etc.

- Impact of construction and operational phases on the surface and ground water on account of the building construction
- Waste water generation its treatment and utilization
- Impact of project during construction and operational phases on the biological environment
- Predicted impact on the communities
- Impact of the project during construction and operational phases for generation of waste
- Energy requirements and infrastructure requirements needed for the activity
- Steps to be taken to integrate the needs of other stakeholders into the location and design of access infrastructure, to reduce and manage overall environmental impacts

8. Another important consideration pertains to requirements of building construction material and technologies to be used. Any project with proper TOR and EIA report would provide details of:

- Types of materials used in each component part of the building and landscape (envelope, superstructure, openings, roads and surrounding landscape)
- Plans and sections of buildings showing use of new technologies and nonconventional methods
- Plans and sections of building using new construction techniques

9. Similarly, it will also deal with energy conservation aspects in terms of:

- Use of alternate renewable resources such as solar / wind power etc.
- Options considered for supplying the power required for the Project and the environmental implications, including opportunities to increase the energy efficiency of the Project
- Details of U & R values
- Details of the renewable energy systems (sizing and design), building costs and integration

140. It is reported that approximately 50 percent of the energy use in buildings is devoted for producing an artificial indoor climate through heating, cooling, ventilation, and lighting. Water conservation and efficiency programs have begun to lead to substantial decrease in the use of water within buildings. Studies have shown that water-efficient appliances and fixtures can reduce consumption by up to 30 percent or more. As demand of water increases with urban growth, the economic impact of water conservation and efficiency will increase proportionately. Water efficiency not only can lead to substantial water savings, but it can also reduce the requirement for expansion of water treatment facilities. The building industry is slowly beginning to recycle its waste but there is a need to achieve significant waste reductions through more reuse of building material and adaptation, as opposed to demolition. Conventional buildings often fail to consider

the interrelationship among building site, design elements, energy and resource constraints, building systems, and building function. Green buildings, through an integrated design approach, take into consideration the effect these factors have on one another. Climate and building orientation, design factors such as day lighting opportunities, and building envelope and system choices, as well as economic guidelines and occupant activities, are all factors that need to be considered in an integrated approach. Application of new building concepts can yield for savings during the construction process. Measures that are relatively easy to implement can result in savings to natural resources in the following areas:

- Lower energy costs, by monitoring usage, installing energy-efficient lamps and fixtures, and using occupancy sensors to control lighting fixtures;
- Lower water costs, by monitoring consumption and reusing storm water and/or construction waste-water where possible;
- Lower site-clearing costs, by minimizing site disruption and movement of earth and installation of artificial systems;
- Lower landfill dumping fees and associated hauling charges, through reuse and recycling of construction and demolition debris;
- Lower materials costs, with more careful purchase and reuse of resources and materials;
- Possible earnings from sale of reusable items removed during building demolition.

141. Therefore, any project with proper filling of Form I would be awarded TOR specific to the project and thereby would have EIA report that deals with environmental concerns specific to the project prior to its execution along with the necessary management plan/s and budgetary provisions.

142. In view of the above, if the project execution is carried out at any stage prior to grant of EC, it would be detrimental to the environment as at the very outset even primary baseline information for filling up Form 1 and Form 1A would not be available for providing project specific TOR for the EIA studies and thus the EIA study would become irrelevant thereby making the appraisal of EIA report only a formality. In the whole process, even imposition of general and specific conditions in EC pertaining to construction phase of the project would be irrelevant. It is extremely important to note here that the major impacts of any building construction project (alteration to topography, water drawl, air pollution, etc.) are during the construction stage or are directly relatable to the construction of the project itself (provision of parking space, fire safety, rain water harvesting and recycling, storm water, construction methodology, enhancing energy efficiency, etc.). Lastly and most importantly, if the project layout plan requires certain changes in the layout plan on account of likely environmental concerns (such as fire safety, day lighting, seismic hazards, water conservation measures, number of basements, etc.), it would be practically impossible to do so.

143. The above discussion clearly demonstrates the intent of the framers of the law that the compliances under the Notification of 2006 will hardly have an application post-construction or after completion of projects or activities. The prescribed parameters, the documentation and data to be provided along with Form 1, in no uncertain terms oblige the Applicant not to commence any activity unless it has obtained the Environmental Clearance. The post-grant of Environmental Clearance will neither be in the interest of the environment nor would it serve the purpose of the Act of 1986 and/or the Notification of 2006. The primary data required to be submitted relates to pre-project situation and circumstances. Of course, it will also depend upon the nature of the project activity or development activity that the Project Proponent proposes to establish. The impact of building construction and the resultant concretization, particularly basement construction on the groundwater levels and flow directions can be a matter of serious concern. The manner in which the basements are being constructed, its impact on the groundwater table, in what manner how much groundwater is proposed to be extracted, would also be a relevant consideration. EIA Report prepared *ex-post-facto*, i.e. on completion of the project, would suffer from lack of due diligence and would foreclose the options for exploring alternatives. This will go against the fundamentals of the Precautionary Principle and Sustainable Development. Similarly, it will be very tedious and very difficult, if not impossible, to appropriately consider various components of the biodiversity at the site and alternative steps that

should be taken by the Project Proponent to protect any rare, endangered and threatened species at the site in question. In absence of such assessment, the opportunity of protecting the local ecology gets defeated and hence the goals of sustainable development. The cumulative effect of the above discussion would be that the illegal and indiscriminate development activity that has been carried out by the Project Proponents is bound to have serious impacts on environment, ecology and biodiversity and a very comprehensive and stringent study would be required to dilute or mitigate adverse environmental impacts of the projects in question.

Issue Nos. 8 and 9

8. What relief, if any, are any of the parties to the present proceedings entitled to?

9. What directions, if any, need to be issued by this Tribunal in the peculiar facts and circumstances of the present case?

144. In this main application, as well as in the applications filed on behalf of the Project Proponents/Respondents, we are concerned with the rival reliefs claimed by the respective parties. On the one hand, the Applicants pray for setting aside of the impugned Office Memoranda, issuance of directions to the Respondents to initiate prosecution and even to pass such other orders and directions as would be necessary for the facts and circumstances of the case. While on the other hand, the Project Proponents/Respondents pray for saving of the impugned Office Memoranda passed and constructions raised by them, as well as that delisting of their application by SEIAA was not called for and that SEIAA be directed

to consider their application on merits. It is also the contention of the Project Proponents that the relief claimed by them that they being mostly residential complexes are category 'B' projects and hence they are not required to obtain the Environmental Clearance. In view of the above discussion, we have answered the issues in favour of the Applicant and against the Respondents and having held that the Office Memoranda dated 12th December, 2012 and 27th June, 2013 are liable to be quashed, the Project Proponents through their own conduct, raising illegal and unauthorized constructions, without obtaining prior Environmental Clearance and having specifically violated the provisions of the Notification of 2006 and the directions issued to them by the authorities, are not entitled to any relief claimed by them.

145. After discussing the above mentioned issues we feel that still there are two questions remaining to be dealt with by the Tribunal. First, whether the Notification of 2006 applies to the residential complexes in terms of Schedule-I to the Notification of 2006. Secondly, the construction of the projects having been completed, where 3rd party interest have already been created, what are the appropriate directions that should be issued by the Tribunal in the interest of environment and ecology and for restoration and restitution of the same within the ambit and scope of Section 15 of the NGT Act, 2010.

146. The contention of some of the Project Proponents is that their projects are residential projects and therefore the Notification of 2006 is not applicable to them, thus, it is not necessary for them to

obtain Environmental Clearance. Some of them, particularly Respondent No. 9, has contended that these are category 'B' projects and therefore, no public consultation or EIA report is required. Therefore, their projects need to be cleared. The Applicants are developing multi-storey residential building. It is the case of this Project Proponent that the project does not fall within the ambit of Entry 8(a) and 8(b) of the Schedule of Notification of 2006. It only applies to industrial or commercial buildings. Furthermore, there is no valid basis for laying down the threshold limitation of 20,000 sq. mts in the Schedule. The reliance is placed upon the judgment of the Delhi High Court in the case of *Delhi Pollution Control Committee v. Splendor Landbase Ltd.*, LPA 895 of 2010 decided on 23rd January, 2012. While dealing with these contentions of private Respondents, we have already noticed that there is no specific challenge raised by these Respondents to the Notification of 2006. No such challenge was raised even during the course of the arguments. On the contrary, they have relied upon the impugned Memoranda issued in furtherance to the Notification of 2006.

147. The Notification of 2006 has a mandatory character and its requirements have to be satisfied in consonance with the provisions made therein. Prior Environmental Clearance from the regulatory authority is the condition precedent before any construction work or preparation of land by the Project Proponent is carried out except for securing the land. The project and activities as already stated above have been categorized into two categories; category 'A' and

category 'B'. All the projects and activities which have been specified in the Schedule to the Notification of 2006 required Environmental Clearance. In these cases, we are concerned with Entry 8(a) and 8(b) of the Schedule to the Notification that reads as follows:

(1)	(2)	(3)	(4)	(5)
"8"		Building or Construction projects or Area Development projects and Townships.		
8(a)	Building and Construction projects		>20000 sq.mtrs and < 1,50,000 sq. mtrs. of built up area	The term "built up area" for the purpose of this notification the built up or covered area on all floors put together, including its basement and other service areas, which are proposed in the building or construction projects. Note 1.- The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks. Note 2.- "General Conditions" shall not apply.
8(b)	Townships and Area Development Projects		Covering an area of > 50 ha and or built up area > 1,50,000 sq. mtrs.	A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category 'B1' Project. Note.- "General Conditions" shall not apply.

148. The entry has been intentionally termed very widely by the framers. Any Building and Construction Project which has the built up area or covered area of more than 20,000 sq meters or less than 1,50,000 sq. meters would fall under Item 8(a) and Township and Area Development projects covering an area of more than 50 hectares and / or built up areas of more than 1,50,000 sq. meters would fall under Item 8(b). Both of these would be Category 'B' projects. These projects would be dealt with for grant or refusal of Environmental Clearance as per the procedure prescribed under the Notification of 2006. If we examine the scheme of the Notification of 2006 and its relevant provisions, particularly, Paragraphs 2, 6, 7 and 8, it is clear that the expression 'project and activity' are of very wide magnitude and would cover all kind of projects and activities. The definition of environment under Section 2(a) of the Act of 1986 read with definition of the same term under Section 2(c) of the NGT Act would clearly show that the 'projects' or 'activities' are not synonymous terms. What may not be covered specifically under the term 'project' may squarely fall within the ambit of 'activity'. These expressions, having not been specifically made exclusive, would be treated to be more generic and would apply to all kinds of projects and activities. Entry 8(a) talks of building and construction project only with reference to area and extent of construction. They do not even remotely suggest that such building or construction projects should be carried out for an industrial or any allied activity. Whether the complex is being constructed exclusively for residential purpose and/or for mixed use, it will not alter the situation, if

otherwise, it meets the threshold requirement of the area of construction. There is no occasion before the Tribunal to give undue narrow construction to these expressions which have been intentionally worded very widely by the framers of law. On the Rule of 'Plain Construction', these terms would include residential buildings or projects and the Notification of 2006 would be applicable to all the projects in question. The reliance placed by the private Respondents upon the judgment of the Delhi High Court in the case of *Delhi Pollution Control Committee* (supra), in our considered opinion, is misplaced. In that case, Delhi High Court was concerned with Section 25 of the Water Act. It is not necessary for us to discuss the judgment of High Court in any greater detail, primarily for two reasons, firstly, judgment relates to the provisions of the Water Act, in particular Section 25, the provisions of which are not *pari materia* to the provisions of the Act of 1986 and the Notification of 2006. These provisions are completely different from each other and have different parameters to satisfy. Second and most importantly, the High Court itself in paragraph 25 of the Judgment noticed that the reasoning given by the Learned Single Judge to expand the scope of Section 25(a) of the Water Act object of which was different, i.e., control of water pollution, in its wider magnitude, '*ignores*' (emphasis supplied) that the Act of 1986 deals with this larger issue in the context of 'environment' which has been defined therein to include water, air, land and interrelationship which exists among them and human beings and other living creatures, plants, micro-organism and property. The

said Act of 1986 and Rules framed thereunder are wide enough to cover exploitation of water and the impact thereof on the environment. Then the Supreme Court proceeded to hold that the Water Act would not apply to building, housing and residential apartment units as they may not be discharging trade effluents covered under the provision of that Act.

149. It is also not necessary for us to deal with the applicability of the Water Act to such buildings, as that question does not arise before us, hence we leave the question open. However, we have no doubt in stating that the said judgment of the High Court is of no avail to the private Respondents in the present case.

150. A Bench of this Tribunal had the occasion to examine the scope of the Entries in the Schedule to the Notification of 2006 particularly, Entry 8(a), 8(b) and 7(f) in the case of *Vikrant Kumar Tongad v. Delhi Tourism and Transportation Corporation and Ors.*, 2015 ALL (I) NGT Reporter (1) (Delhi) 244, the Tribunal held as under:

“31. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment [*Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647].

32. The applicability of ‘Principle of Liberal Construction’ to socio-welfare legislation like the Act of 1986, thus, could be justified either with reference to the ‘doctrine of reasonable construction’ and/or even on ‘constructive intuition’. In the case of *Haat Supreme Wastech Pvt. Ltd. v. State of Haryana and Ors*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal,

while dealing with interpretation of the Regulations of 2006 along with the Schedule and while deciding whether the bio-medical waste disposal plants required Environmental Clearance or not, answered the question in affirmative, that, such plants are covered under Entry 7(d) and while answering so, applied the doctrine of 'reasonable construction' as well as 'constructive intuition'. Doctrine of 'reasonable construction' is intended to provide a balance between development and the environment. The Tribunal held that there was no occasion for the Tribunal to take the scope of Entry 7(d) as unduly restrictive or limited and it gave the entry a wide meaning. It was also held that the Environmental Clearance would help in ensuring a critical analysis of the suitability of the location of the bio-medical waste disposal plant and its surroundings and a more stringent observation of parameters and standards by the Project Proponent on the one hand and limiting its impact on public health on the other.

33. 'Development' with all its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes re-development. It could also be an activity, action, or alteration that changes underdeveloped property into developed property (Ref: Wharton's Law Lexicon, 15th Edn., 2012, Black's Law Dictionary 9th Edn., 2009). Reading of Clause 2 of the Regulations of 2006 and the Schedule attached thereto, particularly in light of the above principles, clearly demonstrates that an expression of very wide magnitude has been deliberately used by the framers. They are intended to cover all projects and activities, in so far as they squarely fall within the ambit and scope of the Clause. There does not appear to be any interest for the Tribunal to give it a narrower or a restricted meaning or interpretation. In the case of *Kehar Singh v. State of Haryana*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal had specifically held that there should exist a nexus between the act complained of and environment and that there could be departure from the rule of literal construction, so as to avoid the statute becoming meaningless or futile. In case of a social or beneficial legislation, the Tribunal should adopt a liberal or purposive construction as opposed to the rule of literal construction. The words used therein are required to be given a liberal and expanded meaning. The object and purpose of the Act of 1986 and the Schedule of Regulations of 2006 thereto was held to be of utmost relevance. In the case of present kind, if no checks and balances are provided and expert minds does not examine and assess the impacts

of such projects or activities relating to development, consequences can be very devastating, particularly environmentally. Normally, the damage done to environment and ecology is very difficult to be redeemed or remedied. Thus, a safer approach has to be adopted to subject such projects to examination by Expert Bodies, by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulations of 2006, causing irretrievable ecological and environmental damage.

34. There can hardly be any escape from the fact that Entries 8(a) and 8(b) are worded somewhat ambiguously. They lack certainty and definiteness. This was also noticed by the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary v. Union of India (UOI) & Ors.*, (2011) 1 SCC 744, where the Court felt the need that the Entries could be described with greater precision and clarity and the definition of 'built-up area' with facilities open to the sky needs to be freed from its present ambiguity and vagueness. Despite the above judgment of the Hon'ble Supreme Court, Entry 8(a) and 8(b) were neither amended nor altered to provide clarity or certainty. However, the expression 'built up area' under the head 'conditions if any' in column (5) of the Schedule to the Regulations of 2006, was amended vide Notification dated 4th April, 2011. *Dehors* the ambiguities in these Entries, an interpretation that would frustrate the object and implementation of the relevant laws, would not be permissible. 'Township and Area Development project' is an expression which would take within its ambit the projects which may be specific in relation to an activity or may be, they are general Area Development projects, which would include construction and allied activities. 'Area Development' project is distinct from 'Building and Construction' project, which by its very language, is specific and distinct. Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 have been a matter of adjudication and interpretation before the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary v. Union of India (UOI) & Ors.*, (supra). In that case, Hon'ble Supreme Court was concerned with the construction of a park in Noida near the Okhla Bird Sanctuary. The Hon'ble Supreme Court provided a distinction between a 'Township project' and 'Building and Construction project' and held that a 'Township project' was different, both quantitatively and qualitatively from a mere 'Building and Construction project'. Further, that an Area Development project may be connected with the Township Development

project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other *civic infrastructure*, or an area development project may be completely independent of any township development project as in the case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park. The Hon'ble Supreme Court principally held that a zoological or botanical park or a recreational park etc. would fall within the category of Entry 8(b) but, if it does not specify the threshold marker of minimum area, then it may have to be excluded from operation of the mandatory condition of seeking prior Environmental Clearance. The Court held as under:

“66. The illustration given by Mr. Bhushan may be correct to an extent. Constructions with built up area in excess of 1, 50,000 sq mtrs. would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. *To that limited extent* there may be a quantitative correlation between items 8(a) and 8(b). But it must be realized *that the converse of the illustration given by Mr. Bhushan may not be true*. For example, a project which is by its nature and character an “Area Development project” would not become a “Building and Construction project” simply because it falls short of the threshold mark under item 8 (b) but comes within the area specified in item 8 (a). The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated there under.

67. In light of the above discussion it is difficult to see the project in question as a “Building and Construction project”. Applying the test of ‘Dominant Purpose or Dominant Nature’ of the project or the “Common Parlance” test, *i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorized under item 8(b) of the schedule as a Township and Area Development project*. But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 hectares) is less than 50 hectares and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 square metres, *i.e., much below the threshold marker of 1,50,000 square metres.*”

35. Besides dealing with the scope and dimensions of Entries 8(a) and 8(b) of the Schedule afore-stated, the Hon'ble Supreme Court, while referring to the findings given by the CEC in its report, that the Project was located at a distance of 50 mtrs. from the Okhla Bird Sanctuary and that in all probability, the project site would have fallen in the Eco-Sensitive Zone had a timely decision in this regard being taken by the State Government/MoEF, permitted continuation of the project, and held as under:

“74. The report of the CEC succinctly sums up the situation. Though everyone, excepting the Project Proponents, views the construction of the project practically adjoining the bird sanctuary as a potential hazard to the sensitive and fragile ecological balance of the Sanctuary there is no law to stop it. This unhappy and anomalous situation has arisen simply because despite directions by this Court the authorities in the Central and the State Governments have so far not been able to evolve a principle to notify the buffer zones around Sanctuaries and National Parks to protect the sensitive and delicate ecological balance required for the sanctuaries. But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhla Bird Sanctuary. For, in the jurisprudence developed by this Court Environment is not merely a statutory issue. Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution”

36. The above dictum of the Supreme Court clearly laid down a fine distinction between Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 on one hand, while on the other hand held that mere absence of law cannot be a ground for degrading the environment, as environment is one of the facets of 'Right to Life' as envisaged under Article 21 of the Constitution of India.

37. Thus, this Tribunal has to examine the ambit and scope of Entry 8(b) while keeping in mind the Scheme and Object of the Act of 1986, the Rules of 1986, the Regulations of 2006 along with its Schedule and most importantly right to clean environment as an integral concept of our Constitutional Scheme. The project in question is construction of a 'Signature Bridge' over River Yamuna, connecting eastern and western ends of the city of Delhi and to ensure fast and smooth flow of traffic in that part of the city. This certainly is an Area

Development project falling within Entry 8(b) of Schedule to the Regulations of 2006. There is also no dispute that the total constructed area of the 'Signature Project' is 1,55,260 sq. mtrs., which is higher than the threshold marker of 1,50,000 sq. mtrs. This project cannot fall within Entry 7(f) of the Schedule to the Regulations of 2006, as it is neither a national nor a city highway and not even any part thereof.

38. Having held that the project in question is covered under Entry 8(b) of the Schedule to the Regulations of 2006, now we have to consider what relief can be granted to the Applicant in the facts and circumstances of the case. Admittedly, particularly according to the Project Proponent, various other departments have granted them clearances and/or have already issued No Objection Certificates for construction of the said project. MoEF vide its letter dated 14th March, 2007 had informed the Project Proponent that 'bridges' are not covered under the Regulations of 2006 and as such, no prior Environment Clearance was required for commencement of the project. It is in the backdrop of these circumstances that the construction of the project commenced in the year 2007. As of today, more than 80 per cent of the bridge has already been completed. Huge public funds have been spent on this project. It is intended to serve public purpose and is in public interest, namely free and fast flow of traffic between east and west Delhi. Apparently, we cannot attribute any fault or breach of legal duty to the Project Proponent (Respondent No. 1). We do not think it is a case where we should either direct stoppage of project work or direct demolition thereof."

151. These Entries thus need to be construed liberally and given a wider meaning. As already stated above, on their plain reading the projects of whatever nature they may be, but so far as they are covering an area of more than the threshold limit specified in these Entries, they would be covered under the Schedule for which it would be mandatory to obtain prior Environmental Clearance. The contention that the Notification of 2006 and the Schedule would not apply to such projects thus, cannot be accepted. The projects whether residential or multi-purpose would squarely fall within the ambit and scope of the Entries in the Schedule particularly when

neither the language of the Notification of 2006 nor the Entries anywhere suggests that the framers intended to exclude such building projects.

152. To obtain Environmental Clearance prior to commencement of any activity or project is the mandate of law. This language has to be given its proper and purposive meaning. It is undoubtedly mandatory. When the law mandates prior approval, it ought not to be averred as post activity approval or *ex-post facto* permission. In such cases, courts have to consider whether any remedial measures can be imposed or certain harsher directions are called for. The Supreme Court in the case of *A.P. Pollution Control Board vs. Prof. M.V. Nayudu (Retd.) and Ors.*, (2001) 2 SCC 62 was concerned with the interpretation of Section 25 of the Water Act which requires that no person shall, without the previous consent of the State Board, establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land etc. The Supreme Court held that it was a condition precedent not only for operating the unit but even for establishment of an industry. While considering the aspect that on the basis of material before it, it would not be a fit case for directing no objection from the Pollution Control Board and that even it was not possible to hold that the safeguards suggested by the appellant Board will be adequate, in the light of the Reports. The Supreme Court held that plea of principle of 'promissory estoppel' would not be applicable and grant

of permission by other authorities would not accrue to the benefit of the industry in relation to grant of NOC. It will be useful to refer to the relevant paragraphs of the judgment of the Supreme Court:

“54. On point a(ii), it referred to the definition of 'pollution' in Section 2(c) of the Water Act, Section 2(f) which defines 'sewage effluent' and Section 2(k) which defines 'trade effluent' and observed that the 'pollution potential' of the industry was to be assessed. After referring to the effluents -Commercial Castor oil, Bleaching earth, Activated carbon. Nickel catalyst, Hyflo supercel, Sulphuric Acid, Caustic Soda, Methanol, Calcium Oxide, Alum - in all 1463 MTs per month and noticed that the monthly requirement of Hydrogen was 76 500 NM. As the industry is coal based, large quantity coal is required. It would produce huge quantities of BSS, HCO, HSA, Methyl, Fatty acids, Epoxidise, Glyceren etc. Hydroxy Stearic Acid, methyl Hydroxy Stearic Acid and methanol are serious health hazardous. Items in part II list of Schedule I to the 'Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989' are the raw materials and RW2 (Dr. G.S. Siddhu) in his evidence agreed that these are hazardous (toxic) chemicals. The solid effluents generated every day are (i) spent bleaching earth 1250 Kgs, (ii) spent bleaching carbon 250 kgs, (iii) spent nickel catalyst '15 kgs. and (iv) sodium sulphate 3820 Kgs. (12-HSA) and 170 kgs. (from CME). Monthly turn out of effluents will be 400 MT. Every day 55 kgs. of nickel is consumed. Every day, 27,830 litres of water are to be used and normally the effluent will carry all these hazardous substances, including nickel. 'As it is, said that the water used could be reused for cultivation of lands in the premises of the industry, the toxic chemicals which get lodged in the surface layers of the soil will flow down in storm run offs or percolate into the ground water, to ultimately reach the water body of the two reservoirs. The NEAA further stated that Dr. Santappa in his evidence as RW-1 made admissions regarding gaseous effluents-fly ash, SO₂ CO₂ Oxides of Nitrogen, Oxides of Sulphur and suspended particulate matter. The solid and liquid effluents could reach the lakes through seepage. The factory cannot be located in the catchment area because run-offs due to rain will carry hazardous material along surface and through seepage. The NEAA adverted to the 'Drainage Basic Analysis' by the Central Ground Water Board, to the effect that the Basin "has moderate run-off and moderately high permeability of the terrain. As such the amount of infiltration is considerably high". The

said Report shows that rainfall in 796 mm (heaviest being 1326 mm) and there is every likelihood of the solids being "transported down along the gradient". The said Report of Central Ground Water Board, referred to "dolerite dykes" in the vicinity and the possibility of flow even more. Having regard to the location of the dyke and the speed and angle, the polluted water could reach Himayat Sagar which is hardly 2 m bgl. since the dam height is 1763.50 feet. Satellite maps of NSRA were also examined and relied for this purpose. Among the substances stored are nickel, sulphuric acid, HCA, which are well-known 'hazardous' substances.

57. The NEAA, then took up issue (b) as to the likelihood of the industry affecting the sensitive catchment area. It referred to the Expert Committee Report of the HMWSSB and its recommendations which led to the issuance of the GO 192 dated 31.3.94 and GO 111 dated 8.3.96. The NEAA concluded that the "establishment of any chemical industry, carries with it, the imminent dangers of the chemicals or chemical effluents polluting the water of Himayat Sagar and Osman Sagar".

62. In the light of the above exhaust he scientific Reports of the National Environmental Appellate Authority, New Delhi the Department of Chemical Technology, Bombay University and the National Geophysical Research Institute, Hyderabad - it cannot be said that the two lakes will not be endangered. The package of the IICT - which did not deal with the elimination of effluent effects, the opinion of Dr. Santappa, the view of Director of Industries, and the view of the Government of Andhra Pradesh must be held to be base on insufficient data and not scientifically accurate.

63. It is no doubt stated by the 7th Respondent that it is prepared to adopt the safety measures suggested by the appellant Board on 1.7.97 and also those suggested by Dr. Bhowmick, by trying to see that during storage of raw materials and after release of the hazardous liquids, they are put in containers and removed.

64. In respect of these drinking water reservoirs which cater to the needs of about 70 or 80 lakhs population, we cannot rely upon a bare assurance that care will be taken in the storage of serious hazardous materials. Nor can we rely on an assurance that these hazardous substances would be effectively removed without spillage. It is, in our view, not humanly possible for any department to keep track whether the pollutants are not spilled over. This is exactly where the 'precautionary principle' comes into play. The chance of an accident, within such close proximity of the reservoirs cannot be ruled out, as pointed out in the

Reports. Thus, we are led to the inference that there is a very great risk that these highly hazardous material could seep into the earth and reach the tanks, after passing through the dolerite dykes, as pointed by the National Geophysical Research Institute, Our inference from facts and the reports is that of a reasonable person, as pointed out in the main judgment in A.P. Pollution Board v. Prof. M.V. Nayudu.

65. On the basis of the scientific material now obtained by this Court from three highly reputed sources, this is certainly not a fit case for directing grant of NOC by the Pollution Control Board. It is not also possible to hold that the safeguards suggested by the appellant Board - pursuant to the direction of the Government dated 3.7.97, will be adequate, in the light of the Reports. We therefore hold that in the facts of this case, the Board could not be directed to suggest safeguards and there is every likelihood that safeguards could fail either due to accident, as stated in the report, or due to human error. We, therefore, hold on point 3 against the 7th Respondent-industry.

66. This point deals with the principle of promissory estoppel applied by the appellate authority, on the ground that once building permission and permission for change of land use were granted, the appellant Board could not refuse NOC, The learned Additional Solicitor General, Sri R.N. Trivedi referred to the amendment to Section 25(1) in this connection.

67. Under Section 25(1) of the Water (Prevention and Control of Pollution) Act, 1974 as it original stood, Sub-section (1) thereof read as follows:

Section 25(1): Subject to the provisions of this section, no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well or begin to make any new discharge of sewage or trade effluent into a stream or well”.

By Central Act 53/1988, the sub-section was amended and reads as follows:

Section 25(1): Subject to the provisions of this section, no person shall, without the previous consent of the State Board - (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage) or (b) bring into use any new or altered outlet for the discharge of

sewage, or (c) bring to make any new discharge or sewage”

After the amendment, the prohibition now extends even to 'establishment' of the industry of taking of steps for that process and therefore before consent of the Pollution Board is obtained, neither can the industry be established nor any steps can be taken to establish it.

68. The learned Additional Solicitor General of India, Sri Trivedi is right in contending that the 7th Respondent industry ought not to have taken steps to obtain approval of plans by the Gram Panchayat, nor for conversion of land use by the Collector, nor should it have proceeded with civil work in a installation of machinery. The action of the industry being contrary to the provisions of the Act, no equities can be claimed.

69. The learned Appellate Authority erred in thinking that because of the approval of plan by the Panchayat, or conversion of land use by the Collector or grant of letter of intent by the Central Government, a case for applying principle of "promissory estoppel" applied to the facts of this case. There could be no estoppel against the statute. The industry could not therefore seek an NOC after violating the policy decision of the Government. Point 4 is decided against the 7th Respondent accordingly.”

153. Wherever anyone violates the law and flouts the directions issued by the regulatory authority and other concerned authorities, commences construction without even applying for Environmental Clearance and completes the project or activity extensively, two fold consequences would follow. First, that it would render itself liable for imposition of penalties for contravention of the Act, Rules, Orders and directions in terms of Section 15 of the Act of 1986. The other, for issuance of directions in regard to the demolition or grant of consent subject to such conditions as may be considered appropriate by the authorities or the Tribunal. Tribunal exercising its appellate power and Original jurisdiction in terms of Section 14 and 16 of the Act of 2010, has the powers of merit and judicial review and is competent to issue such directions as it may deem

necessary in terms of the said provisions including Section 18 of the NGT Act, 2010. The Court and Tribunals, particularly, in such cases of *fait accompli* have adopted a more practical approach which would permit the remaining work of the project to be completed while providing stringent safeguards in the interest of the environment as well as issuing orders which would vest the Project Proponent with civil consequences. In the case of *Sterlite Industries (India) Ltd. v. Union of India (UOI) and Ors.*, (2013) 4 SCC 575, Supreme Court held that the appellant company was liable to pay compensation of Rs. 100 crores for polluting the environment and operating its industry without renewal of consent by the Board. In this case, industry had obtained consent to operate from the Board prior and subsequent to the period when it operated without consent of the Board. After passing of the judgment of the Supreme Court in this very case, the Tribunal directed the industry to take precautionary measures as well as directed the Pollution Control Board to impose more stringent conditions while permitting the industry to operate (*M/s Sterlite Industries (India) Ltd. v. Tamil Nadu Pollution Control Board*, 2013 ALL (I) NGT REPORTER (DELHI) 368).

154. Further, in the case of *Sarang Yadvadkar and Ors v. The Commissioner, Pune Municipal Corporation and Ors.*, 2013 ALL (I) NGT REPORTER (DELHI) 299, the Tribunal had passed remedial and prohibitory directions in the project underway. The Corporation was constructing elevated road in the floodplain. Major part of the project had already been constructed. The Tribunal directed partial demolition of the raised structure and further directed the

Corporation to construct the bridge on pillar so that there was no obstruction to the free flow of water and the course of the river was not adversely affected. This order of the Tribunal was challenged before the Supreme Court in Civil Appeal No. 3445 of 2015 and was dismissed by the Supreme Court vide its orders dated 12th February, 2015.

155. In somewhat similar situations like the one in hand, the Tribunal in the case of *Forward Foundation v. State of Karnataka and Ors.*, Original Application No. 222 of 2014 decided on 7th May, 2015, where the Project Proponents had raised the construction on the wet lands and the Rajakaluves (storm water drains), affecting the same, without obtaining prior Environmental Clearance. The Tribunal while appointing a special Committee referred to it various questions relating to environment and ecology and prohibited the Project Proponents from creating any third-party interests. The Tribunal further imposed 5 per cent of the project cost as environmental compensation on Project Proponent for degrading and damaging the environment and ecology of the area in question and had required the Committee to submit a report to the Tribunal. The Project Proponent in this case, had preferred a statutory appeal before the Supreme Court and *inter alia* took up the plea that they were not heard on merits and imposition of penalties was not proper. The Supreme Court vide its order dated 20th May, 2015 passed in the case of *Core Mind Software and Services Pvt. Ltd. v. Forward Foundation and Ors.*, Civil Appeal No. 4829/2015, granted liberty to them without setting aside the judgment and various

directions issued by the Tribunal and also to approach the Tribunal for recalling of Order and in the meanwhile stayed the direction pertaining to payment of compensation. The order of the Supreme Court reads as under:

“O R D E R

One of the main contentions raised by the appellants in these appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs.117.35 crores against original Respondent no.9 (the appellant in C.A.No.4832 of 2015) and Rs.22.5 crores against Original Respondent No.10 (the appellant in C.A. No. 4829/2015) is imposed.

On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment can also be raised.

The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty.

Mr. Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties.”

156. The Applicants filed an application before the Tribunal upon which notice was issued, whereby the Tribunal while continuing the

stay on the condition of payment of compensation, directed the Committee to file its report before the next date of hearing in terms of the judgment.

157. From the above judgments of the Supreme Court and the Tribunal, it is clear that in cases of the present kind, it would not be advisable to direct complete demolition of such properties. The Project Proponents claim to have invested huge amounts in raising these projects where it had obtained permission from other authorities and most importantly interest of 3rd party have been created in these properties. The Tribunal has to take a balanced approach while applying the principle of sustainable development and precautionary principle. Even in the case of *A.P. Pollution Control Board* (supra), the Supreme Court, laid great emphasis on the precautionary principle on the premise that it is always not possible to judge the environmental damage.

158. The Precautionary Principle may lose its material relevancy where the projects have been completed and even irreversible damage to the environment and ecology has been caused. The situation may be different when invoking this principle in cases of partially completed projects, it would become necessary to take remedial steps for protection of environment without any further delay. At this stage, it may still be possible to take steps while any further delay would render it absolutely impracticable. Precautionary Principle is a proactive method of dealing with the likely environmental damage. The purpose always should be to avert major environmental problem before the most serious

consequences and side effects would become obvious. To put it simply, Precautionary Principle is a tool for making better health and environmental decisions. It aims to prevent at the outset rather than manage it after the fact. In some cases, this principle may have to be applied with greater rigor particularly when the faults or acts of omission, commission are attributable to the Project Proponent.

The ambit and scope of the directions that can be issued under the Act of 1986 can be of very wide magnitude including power to direct closure, prohibition or regulation of any industry, operation or process and stoppage or regulation of supply of electricity or water or any other services of such projects. The principle of sustainable development by necessary implication requires due compliance to the doctrine of balancing and precautionary principle.

159. In appropriate cases, the Courts and Tribunals have to issue directions in light of the facts and circumstances of the case. The powers of the higher judiciary under Article 226 and 32 of the Constitution are very wide and distinct. The Tribunal has limited powers but there is no legislative or other impediment in exercise of power for issuance of appropriate directions by the Tribunal in the interest of justice. Most of the environmental legislations couched the authorities with power to formulate program and planning as well as to issue directions for protecting the environment and preventing its degradation. These directions would be case centric and not general in nature. Reference can be made to judgment of

the Supreme Court in the case of *M.C. Mehta and another vs. Union of India and others*, JT 1987 (1)SC 1, *Vineet Narain and Ors. vs. Union of India (UOI) and Anr.*, JT 1997 (10)SC 247 and *University of Kerala vs. Council, Principals', Colleges, Kerala and Ors.*, JT 2009 (14)SC 283.

160. In light of the above, even if the structures of the Project Proponents are to be protected and no harsh directions are passed in that behalf, still the Tribunal would be required to pass appropriate directions to prevent further damage to the environment on the one hand and control the already caused degradation and destruction of the environment and ecology by these projects on the other hand. Furthermore, they cannot escape the liability of having flouted the law by raising substantial construction without obtaining prior Environmental Clearance as well as by flouting the directions issued by the authorities from time to time. The penalties can be imposed for such disobedience or non-compliance. The authorities have already initiated action against three of the Project Proponents and have taken proceedings in the Court of competent jurisdiction under Act of 1986. However, no action has been taken against other four Project Proponents as of now. Penalties can be imposed for violation in due course upon full trial. What requires immediate attention is the direction that Tribunal should pass for mitigating as well as preventing further harm. As far as further remedial measures, alterations, demolition or variation in the existing structure in the interest of environment and ecology which is required to be taken to preserve the

environment are to be suggested by the Committee that we propose to constitute. However, as far as damage that has already been caused to the environment and ecology by the illegal and unauthorized action of the Project Proponents, they are required to pay compensation for its restoration and restitution in terms of Section 15 of Act of 2010. Needless to notice here that in this case, the Project Proponents were heard at great length on facts and merits of the case.

161. We may specifically notice here that all the Project Proponents had filed contentions and documents in support of their respective case. They addressed the Tribunal at length on factual matrix of the case as well as on law. Various contentions and claims raised by the Project Proponents before the Tribunal have been deliberated in detail.

162. In all cases, SEIAA has passed an order directing delisting of applications for Environmental Clearance which is sought to be questioned by the Project Proponents. We do not find any fault on the part of SEIAA and other official Respondents in delisting the applications for obtaining Environmental Clearance. Just one reason is enough to de-list and to reject these applications which is, that they started construction of their respective projects without obtaining Environmental Clearance and in some cases without even applying for grant of Environmental Clearance. All of them violated the direction of SEIAA as well as their own undertaking and apology to SEIAA that they would not raise any construction till grant of Environmental Clearance. There is more than ample evidence on

record that such violations have been committed. Projects are squarely covered under the Notification of 2006 and, therefore, we find no infirmity in the order of SEIAA in delisting applications of Project Proponents for grant of Environmental Clearance.

163. In view of the above detailed discussion, we pass the following order and directions:

- 1) We hold and declare the Office Memoranda dated 12th December, 2012 and 27th June, 2013 as *ultra vires* the provisions of the Act of 1986 and the Notification of 2006. They suffer from the infirmity of lack of inherent jurisdiction and authority. Resultantly, we quash both these Office Memoranda.
- 2) Consequently, the above Office Memoranda are held to be ineffective and we prohibit the MoEF and the SEIAA in the entire country from giving effect to these Office Memoranda in any manner, whatsoever.
- 3) We hold and declare that the resolution/orders passed by the SEIAA, de-listing the applications of the Project Proponents, do not suffer from any legal infirmity. These orders are in conformity with the provisions of the Act of 1986 and the Notification of 2006 and do not call for interference.
- 4) We hereby constitute a Committee of the following Members:
 - a) Member Secretary of SEIAA, Tamil Nadu.

- b) Member Secretary, Tamil Nadu Pollution Control Board.
 - c) Professor from Department of Civil Engineering, Environmental Branch, IIT Bombay.
 - d) Representative not below the rank of Director from the Ministry of Environment and Forest (to be nominated in three days from the date of pronouncement of this judgment).
 - e) Representative of the Chennai Metropolitan Development Authority.
- 5) Member Secretary of the Tamil Nadu Pollution Control Board shall be the Nodal Officer of the Committee for compliance of the directions contained in this judgment.
- 6) The above Committee shall inspect all the projects in question and submit a comprehensive report to the Tribunal. This comprehensive report shall relate to the illegal and unauthorized acts and activities carried out by the Respondents. It shall deal with the ecological and environmental damage done by these projects. It would further deal with the installation of STP's and other anti-pollution devices by the Project Proponents, including the proposed point of discharge of sewage and any other untreated waste. The Expert Committee would also state in regard to the source of water during operation phase and otherwise, use of energy efficient devices, ecologically and environmentally sensitive areas and details of alteration of

and its effect on the natural topography, the natural drainage system etc. The Committee shall also examine the adequacy of rainwater harvesting system and parking area and if at all they have been provided. The report shall also deal with the mechanism provided for collection and disposal of municipal solid waste at the project site.

- 7) The Committee shall further report if the conditions stated in the planning permission and other permissions granted by various authorities have been strictly complied with or not.
- 8) The Committee shall also report to the Tribunal if the suggestions made by the SEIAA in its meetings adequately takes care of environment and ecology in relation to these projects.
- 9) What measures and steps, including demolition, if any, or raising of additional structures are required to be taken in the interest of environment and ecology?
- 10) All the Project Proponents shall pay environmental compensation of 5 per cent of their project value for restoration and restitution of the environment and ecology as well as towards their liability arising from impacts of the illegal and unauthorized constructions carried out by them. They shall deposit this amount at the first instance, which shall be subject to further adjustment. Liability of each of the Respondents is as follows:

Mr. Y. Pondurai.: Rs. 7.4125 crores.

M/s Ruby Manoharan Property Developers Pvt. Ltd.: Rs. 1.8495 crores.

M/s Jones Foundations Pvt. Ltd.: Rs. 7 crores.

M/s SSM Builders and Promoters: Rs. 36 crores.

M/s SPR and RG Construction Pvt. Ltd.: Rs. 12.5505 crores.

M/s Dugar Housing Ltd.: Rs. 6.8795 crores.

M/s SAS Realtors Pvt. Ltd.: Rs. 4.5 crores.

- 11) The compensation shall be payable to the Tamil Nadu Pollution Control Board within three weeks from the date of the pronouncement of this judgment. The amounts shall be kept in a separate account and shall be utilised by the Boards for the above stated purpose and subject to further orders of the Tribunal.
- 12) The above environmental compensation is being imposed on account of the intentional defaults and the conduct attributable only to the Project Proponents. We direct that the Project Proponents shall not pass on this compensation to the purchasers/prospective purchasers, as an element of sale.
- 13) After submission of the report by the Expert Committee, the Tribunal would pass further directions for consideration of the matter by SEIAA in accordance with law.
- 14) All the project proponents are hereby prohibited from raising any further constructions, creating third party interest and/or giving possession to the

purchasers/prospective purchasers without specific orders of the Tribunal, after submission of the report by the Expert Committee.

The report shall be submitted to the Registry of the Tribunal within a period of 45 days from the date of pronouncement of this judgment. Thereupon, the Registry would place the matter before this Tribunal for further appropriate orders and directions.

Liberty to the parties to move the Tribunal for any further directions and/or clarifications, if they so desire.

164. The above Appeal and Applications are accordingly disposed of. However, in the facts and circumstances of the case, we leave the parties to bear their own cost.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Dr. D.K. Agrawal
Expert Member

Prof. A.R. Yousuf
Expert Member

Mr. Bikram Singh Sajwan
Expert Member

New Delhi
7th July, 2015

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ANNEXURE R-10

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

.....

ORIGINAL APPLICATION NO. 34/2016

IN THE MATTER OF:

Naresh Zargar
S/o Late Sh. S.P. Zargar,
R/o 2235, Shaheed Gulab Singh Ward,
Indranagar, District Jabalpur, M.P.

.....Petitioner

Versus

1. State of Madhya Pradesh,
Through its Secretary,
Department of Mines and Minerals,
Vallabh Bhawan, Bhopal, M.P.
2. Directorate Geology of Mines,
(D.G.M.)
Bhopal, M.P.
3. M.P. State Mining Corporation,
Through its Managing Director,
Paryas Bhavan Bhopal, M.P.
4. Ministry of Environment & Forest,
Through its Secretary,
New Delhi.
5. State Environment Impact Assessment Authority,
SEIAA,
Bhopal.

.....Respondents

COUNSEL FOR APPLICANT :

Mr. Avi Singh and Mr. Harmeet Ruprah, Advocates.

COUNSEL FOR RESPONDENTS :

Mr. Ashok Bhasin, Sr. Advocate with Mr. V.K. Shukla, Advocate,
for Respondent No.1, 2 and 5.

Mr. Harsh Parashar, Advocate, for Respondent No.3

Mr. Divya Prakash Pande, Advocate, for Respondent No. 4.

Mr. Amit Singh, Advocate, in M.A. No. 122 of 2016.

REVIEW APPLICATION NO. 01 OF 2016**IN****ORIGINAL APPLICATION NO. 34/2016****IN THE MATTER OF:**

Ramakant Gautam

.....Applicant

Versus

State of M.P. & Ors.

....Respondents

and

M.P. State Environmental Impact Assessment Authority
Through its Member Secretary
Paryavarn Parisar,
E-5, Arera Colony,
Bhopal – 462016.

....Review Applicant

COUNSEL FOR REVIEW APPLICANT:

Mr. V. K. Shukla, Advocate.

AND

**M.A. NO. 24 OF 2016, M.A. NO. 48 OF 2016 AND M.A. NO. 49
OF 2016**

IN**ORIGINAL APPLICATION NO. 123/2014****IN THE MATTER OF:**

Himmat Singh Shekhawat

.....Applicant

Versus

State of Rajasthan and Ors.

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Arvind Soni, Advocate.

COUNSEL FOR RESPONDENTS:

Mr. Tushar Mehta, ASG, Mr. Shiv Mangal Sharma, AAG, Mr. Saurabh Rajpal and Mr. Adhiraj Rajawat, Advocates, for Respondent No.4.

Mr. Vikas Malhotra and Mr. M.P. Sahay, Advocates, for Respondent No.5.

Mr. Divya Prakash Pande, Advocate, for Respondent No. 4.

Mr. Amit Singh, Advocate, in M.A. No. 122 of 2016.

JUDGMENT**PRESENT:**

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Mr. Justice Jawad Rahim (Judicial Member)

Hon'ble Mr. Justice Sonam Phintso Wangdi (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Mr. B.S. Sajwan (Expert Member)

Reserved on: 18th February, 2016

Pronounced on: 04th May, 2016

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By this common judgment, we shall dispose of Original Application No. 34 of 2016 filed by Naresh Zargar under Section 14 read with Section 16 of the National Green Tribunal Act, 2010 (for short 'Act of 2010'), Review Application No. 1 of 2016 filed by Madhya Pradesh State Environment Impact Assessment Authority (for short "MPSEIAA") in Original Application No. 496/2015 which was filed by Ramakant Gautam, seeking extension of time for deciding applications pending before MPSEIAA in terms of the judgment of the Tribunal dated 10th December, 2015 and Miscellaneous Application No. 24 of 2016 filed by the State of Rajasthan and SEIAA, Rajasthan, praying that the time for

implementation of directions contained in the judgment of the Tribunal dated 13th January, 2015 be extended by a period of 12 months.

2. Miscellaneous Application No. 49 of 2016 in Original Application No. 123 of 2014 has been filed by Mr. Ramesh Meena and Ors praying that the State Environment Assessment Committee (for short "SEAC"), Rajasthan should be directed to deal with the applications filed by them for grant of Environmental Clearance (for short 'EC') and time for that purpose may be extended in the interest of justice.

3. On similar lines, Miscellaneous Application No. 48 of 2016 in Original Application No. 123 of 2014 has been filed on behalf of Mr. Suresh Kumar Agrawal and Ors. Therefore, all these original application, review application and miscellaneous applications, being based on a common premise, can be disposed of together by this judgment.

4. Illegal and unauthorized mining has been a matter of concern for all concerned stakeholders. Besides carrying on illegal and unauthorized mining, various mine lessees/miners had successfully frustrated the laws in force by bringing down the area of the mine lease to less than five hectares, even in adjoining areas with the object and purpose of escaping the requirement of obtaining EC in accordance with the provisions of the Environmental (Protection) Act, 1986 (for short 'Act of 1986') and Environment Clearance Regulations, 2006 (for short 'Notification of 2006'). Keeping in view

the large-scale avoidance of law and serious degradation of environment and ecology, the Supreme Court in the case of *Deepak Kumar v. State of Haryana* (2014) 4 SCC 629 mandated that all mine owners, even if carrying on mining operations below five hectares, would be liable to seek EC from the competent authority. The dictum of the Supreme Court was not followed by various States in its true spirit and substance. While some of the States did not enforce the directions, there are some other States which have issued Notifications/Government Orders to overreach the directions given by the Supreme Court in exercise of their executive powers. These directions/Office Memorandums were contrary to the orders of the Supreme Court and in fact, some of them were even set aside by the Tribunal.

5. Following the judgment of the Supreme Court in *Deepak Kumar's* case (supra), various cases, particularly in relation to the States of Haryana and Rajasthan were decided by the Tribunal where all concerned were mandated to comply with the judgment of the Supreme Court and it was also stated that even the existing units did not have any right to continue to pollute. The Tribunal dealt with all the issues raised before it in the case of *Himmat Singh Shekhawat v. State of Rajasthan* and passed a detailed judgment dated 13th January, 2015 in Original Application No. 123 of 2014.

6. In this Judgment the Tribunal held that the existing mining lease holders should have complied with the requirements of obtaining EC from the Competent Authority in accordance with law. They were provided reasonable time of 3 months to make

applications for obtaining the EC, which applications were directed to be disposed of within 6 months from 13th January, 2015.

7. These directions were passed even in relation to disposal of the applications of the private respondents or other persons seeking EC, expeditiously and not later than 3 months from the date of the Judgment. The authorities, including SEIAA, were directed to dispose of the applications for obtaining EC for mining purposes within the stipulated period in accordance with law and more particularly in light of the observations and directions stated in the Judgment.

8. Thereafter various Original Applications as well as Miscellaneous Applications were filed by different parties in different proceedings and even independent Original Applications were filed, which were dealt with by the Tribunal vide its different orders. It will be useful to refer to those orders which would have a bearing on the matter in issue before us now.

9. M.A. No. 680 of 2015 was filed in Original Application No. 123 of 2014 by State of Rajasthan seeking extension of time which was granted for a period of 6 months by way of last opportunity vide order dated 15th July, 2015. Review Application 18 of 2015 was also filed in Original Application No. 123 of 2014 by State of Madhya Pradesh seeking a review of the Judgment dated 13th January, 2015. Vide order dated 24th July, 2015 the Tribunal directed MPSEIAA to deal with all the applications and clear the entire backlog within 3 months from the date of the order. It was held that at

that time the mining units which had applied for obtaining EC could continue to operate. Obviously the intention was that all of them would be granted EC within 3 months.

10. M.A. 1065 of 2015, M.A. No. 1104 of 2015 and M.A. No. 1105 of 2015 were filed in Original Application No. 171 of 2013 titled as *National Green Tribunal Bar Association v. MoEF & Ors.* by State of Madhya Pradesh. Vide Judgment dated 10th December, 2015 three weeks time was granted to MPSEIAA by way of final opportunity. However, it was made clear that no further time would be given and all effective steps should be taken by the concerned authorities. On the same date, vide Judgment of the Tribunal in the case of *National Green Tribunal Bar Association v. MoEF & Ors.* being Original Application No. 364 of 2015 in relation to State of Karnataka, SEIAA was directed to dispose of the applications that were pending before it as on 1st September, 2015 by 31st December, 2015. It may be noticed that only 88 applications were stated to be pending at that time. It was also pointed out that applicants who had filed applications for grant of EC without providing complete particulars or documents, and as a result thereof their applications were pending before SEIAA, those applicants were directed to furnish information within 2 weeks from the date of the order.

11. Original Application No. 496 of 2015 titled as *Ramakant Gautam & Ors V. State of Madhya Pradesh & Ors* related to extension of time on behalf of MPSEIAA. This application was disposed of vide order dated 10th December, 2015 with the direction to MPSEIAA that all the applications pending before it should be

disposed of by 31st December, 2015. The applicants who have not furnished requisite documents were required to furnish them within two weeks from the date of the order. Upon furnishing the information, the applications were required to be disposed of by 31st December, 2015. It was further stated that if they failed to furnish the documents and their applications were not disposed of within the stipulated time they would be shut down as per the Judgment.

12. Now we will be comprehensively dealing with the various applications as already noticed in the opening part of this Judgment. From the bare reading of the above order, it is clear that the outer limit for disposal of the applications was 31st December, 2015. It was more particularly in relation to the applications that were pending as on 1st September, 2015. Some of the applicants as well as the authorities have taken undue advantage of the order passed by the Tribunal on 24th July, 2015 in the case of *M.P. State Mining Corporation Vs. Ministry of Environment & Forest & Ors. In Himmat Singh Shekhawat Vs. State of Rajasthan & Ors.* being Review Application No. 18 of 2015 and have continued to operate indefinitely even till date.

13. It is unfortunate that it is to be recorded that this order has been misconstrued by the authorities as well as by the applicants. The purpose of this order was not to grant indefinite period for operation of mines but within the outer limit, i.e., 31st December, 2015. Even as on date, the applications have not been disposed of and the mining activity is still going on. As already noticed, some applications are for extension of time while others are for

clarification that mining activity can be carried on even when the EC has not been granted. Strangely, the State of Madhya Pradesh on 14th December, 2015, on the basis of an opinion sought, issued a circular to all its collectors in relation to order dated 10th December, 2015 stating that applicants who have already moved an application for EC prior to 31st December, 2015, their applications would be considered immediately and till decisions the mine owners can operate their mines if their application is errorless.

14. This circular issued by the State of Madhya Pradesh dated 14th December, 2015 is contrary to laws in force and the order of the Tribunal. As already noticed, the intention of the Tribunal's order dated 24th July, 2015 was to give time not beyond 31st December, 2015 but it has been misconstrued by the State of Madhya Pradesh. In fact, this circular is primarily intended to overreach the laws in force and is contrary to the Judgment of the Supreme Court and of the Tribunal. There was no ambiguity in the Judgment of the Tribunal dated 13th January, 2015 that no mining activity including that of the existing units would be permitted to go on without taking the ECs. The circular is a clear attempt to overreach the Judgment and in fact act prejudicially to the environment and ecology in the State of Madhya Pradesh. The inbuilt infirmity in this Circular would be that on the one hand SIEAA and other Governmental authorities would not decide the applications pending before them for a long period, while on the other hand, the mining operators would continue mining under the protection of

this Circular. The obvious consequence would be that unregulated, unscientific and unauthorized mining would continue rampantly.

15. Let us look into the statistics given by the State of Madhya Pradesh vide their affidavit dated 19th February, 2016. According to this affidavit, as on 31st December, 2015, there were 1576 applications of minor minerals and 157 applications of major minerals for grant of EC pending with the MPSEIAA while as on 16th February, 2016, there were 1658 applications of minor minerals and 163 applications of major minerals pending for grant of EC before the said authority. It is nowhere stated in this affidavit as to how many applications have been disposed of or whether the applications have been granted or refused by the authorities concerned. This statement only shows increase in pendency of the applications with the authorities. Despite the fact that more than a year has passed, the authorities have taken no effective step to deal with these applications. All it has stated is that the applications are going to be decided. It is unfortunate that on the one hand the State and its authorities are not implementing the directions of the Tribunal as laid down vide Judgment dated 13th January, 2015 while on the other hand it is permitting the mining units to continue in an unauthorized and illegal manner which is seriously prejudicial to the environment and ecology.

16. The official and private respondents have violated the orders of the Supreme Court and the Tribunal which has caused damage and degradation of the environment. We would have normally invoked the "Polluter Pays Principle" but for the fact that there is no data

before the Tribunal. There is no information as to what is the extent and period of illegal mining or mining without obtaining the EC and what are its effects on environment. At the same time, we have to direct the concerned respondents to take proper steps without further delay and that they should not permit mining without ECs any further.

17. The Precautionary Principle casts a specific and statutory obligation upon the official respondents to enforce the orders and the law to prevent any further damage or degradation of the environment because of indiscriminate, unregulated and uncontrolled mining.

18. In light of our above discussion, we have no hesitation in quashing the circular dated 14th December, 2015 which we do hereby quash and direct the State of Madhya Pradesh and all other concerned States including Rajasthan not to issue such circulars and any other circular in variation and/or in derogation of the orders of the Tribunal.

19. It is stated in the Affidavit filed by the State of Madhya Pradesh on 18th February, 2016 that the Central Government vide its Notification dated 15th January, 2016 amended its earlier Notification dated 14th September, 2006 and constituted District Level Environment Impact Assessment Authority (for short 'DEIAA') and District Level Environment Appraisal Committee (for short 'DEAC') for matters falling under B2 category for mining of minor minerals. Vide the Notification dated 20th January, 2016 the

Central Government actually constituted the DEIAA and provided its structure and scope of implementation. The State Government in furtherance thereto issued a Notification dated 25th January, 2016 constituting the DEIAA. Copy of this Notification has been placed on record. On 8th February, 2016 Dy. Secretary, Urban Development and Environment has issued letters to all the Divisional Commissioners and Collectors in the State for constitution of DEIAA and DEAC. Such letters have also been issued to the regional heads. It is then stated that the applications are going to be decided expeditiously without any further delay. Ministry of Environment, Forests and Climate Change (for short 'MoEF') has also taken the similar stand and it is stated that they would be able to dispose of the applications now at the earliest.

20. All the above applications are primarily intended to seek extension of time either by way of review or clarification and/or on various other grounds. We find that all these applications are without any substance and merit. It is expected of every State Government, SEIAA and MoEF to ensure implementation of all the Directions contained in the Judgment of the Supreme Court and orders of the Tribunal without any further delay.

21. They have been delaying the disposal of the applications on one pretext or the other. This undue delay in disposal of applications seeking EC has twin adverse effects. On the one hand, it leads to illegal and unauthorized mining while on the other hand it causes irreparable damage to the environment and ecology of the area. In addition to this, there is revenue loss to the State which it

should be quite concerned with. We have been granting time again and again, and we have even granted them last and final opportunity but this has taken more than a year for the authorities to wake up and take proper and effective steps in the light of the Judgment of the Tribunal.

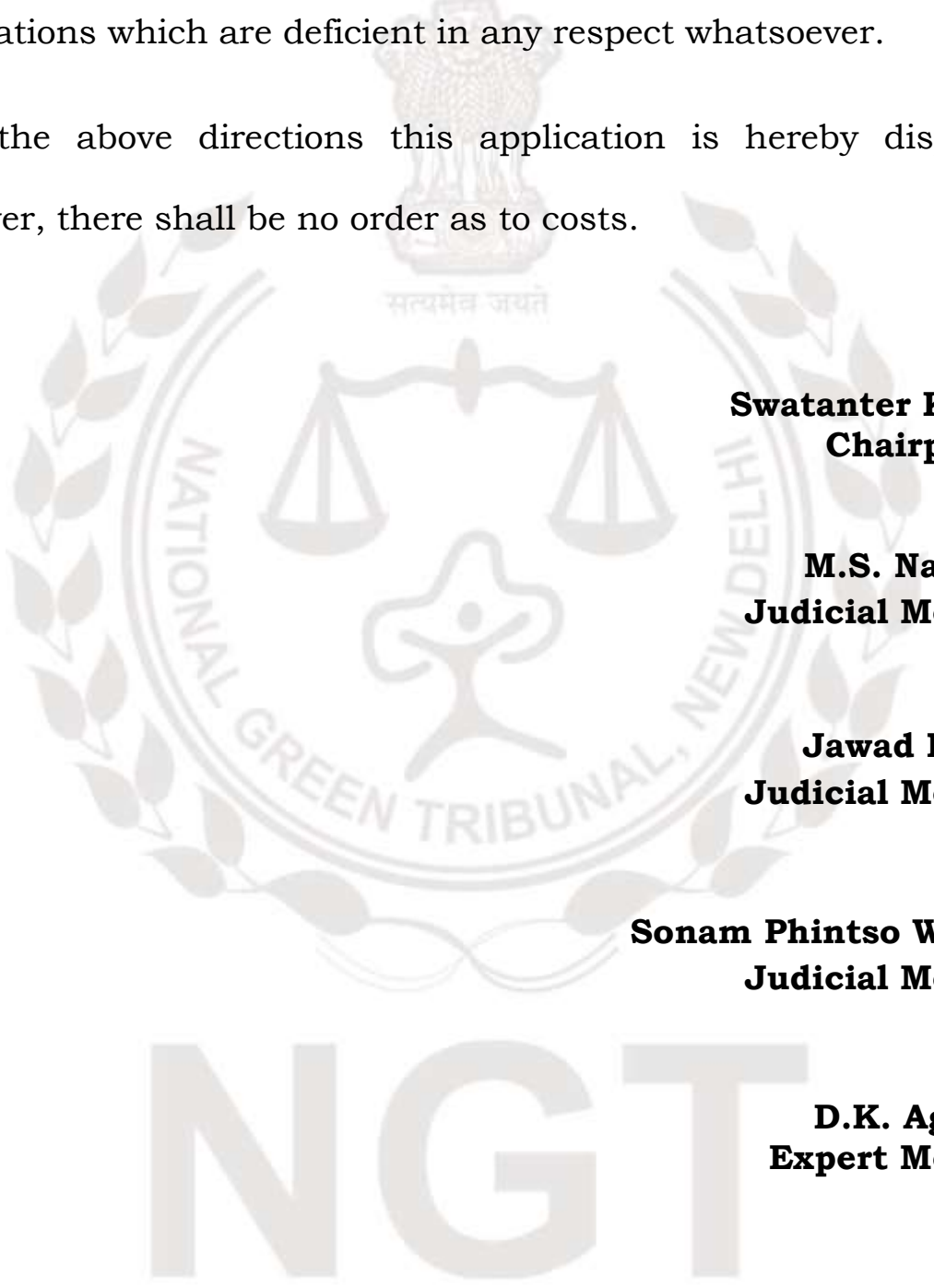
22. Therefore, we dispose of this application in relation to minor minerlas with the following directions:-

1. We hereby quash and direct the State of Madhya Pradesh and all other concerned States including Rajasthan not to issue such circulars and any other circular in variation and/or in derogation of the orders of the Tribunal.
2. All the district level authorities, DEIAA and DEAC, are directed to dispose of all the applications pending with them by 31st May, 2016 positively. We will not grant any extension of time for this purpose hereafter.
3. All the mines owners which of them have not submitted the applications as on 31st March, 2016 to SEIAA, DEIAA and DEAC, shall be shut down forthwith and will not be permitted to carry on any mining activity in any manner whatsoever.
4. The applications which are deficient and where the applicants have not submitted all requisite documents, such applicants are hereby granted last opportunity of 1 week (one week) to submit the documents. In the event they fail to submit such document and make applications complete and errorless in all respects then after the stated period of 1 week they shall also be liable to be shut

down without any further notice. If they comply with this direction, they would also be entitled to the advantage up to 31st May, 2016.

5. All the State Authorities are directed to upload on their respective websites, details of the applications pending before them as on 31st March, 2016. They will also separately classify the applications which are deficient in any respect whatsoever.

With the above directions this application is hereby disposed. However, there shall be no order as to costs.



Swatanter Kumar
Chairperson

M.S. Nambiar
Judicial Member

Jawad Rahim
Judicial Member

Sonam Phintso Wangdi
Judicial Member

D.K. Agrawal
Expert Member

B.S. Sajwan
Expert Member

New Delhi
4th May, 2016

1020
ANNEXURE R-11

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

.....

**ORIGINAL APPLICATION NO. 123 OF 2014
AND
M.A. NO. 419 of 2014**

IN THE MATTER OF:

Himmat Singh Shekhawat,
98, Rooprajat Township, Phase-II,
Pal Road, Jodhpur – 342008
Rajasthan



..... Applicant

Versus

1. State of Rajasthan
Through Principal Secretary, Mines Department,
Government of Rajasthan, Secretariat,
Jaipur – 302001,
Rajasthan.
2. Director, Mines & Geology Department
Khanij Bhawan,
Shashtri Circle, Udaipur - 313001,
Rajasthan
3. Union of India
Through the Secretary
Ministry of Environment and Forests
Government of India,
Paryavaran Bhawan, CGO Complex
Lodhi Road, New Delhi – 110003
4. Secretary, Forest Department
Government of Rajasthan,
Secretariat, Jaipur – 302001,
Rajasthan.
5. Larsen & Toubro Ltd.
4th Floor, SDC Monarch,
Plot no. D-236,
Amrapali Marg,
Jaipur – 302021
Rajasthan

Through Mr. Vivek Narayan Gokhale,
Project Director, Larsen and Tourbo Ltd.

6. M/s. Hi-Tech Rock Products & Aggregates Ltd.

(A Company incorporated under the Companies Act, 1956)

Having registered Office at
Mount Poonamallee Road,
Manapakkam, P.O. Box 979,
Chennai – 600089

Through Mr. K. Prasanna Kumar,
Manager (Mines)
Hi-Tech Rock Products & Aggregates Ltd.

7. Mr. Prahlad Rai
R/o Ward No. 10,
Behind DSP Office,
Ladnu Road,
Sujan Garh,
District Churu, Rajasthan
Through POA holder – Shri Rohitash.
8. Mr. Jagdish Kumar Jat
R/o 13, Ramdev Mandir Mohalla,
P.O. Salasar, Tehsil-Sujangarh,
District Churu,
Rajasthan 331507
Through POA holder – Shri Rohitash
9. Mr. Yogesh Kumar Nyariya
R/o Krishi Upaj Mandi,
Shrimadhopur,
District Sikar, Rajasthan
Through POA holder – Sh. Shahbuddin Quereshi
10. M Vinita Devi
R/o Karni Dharma Kanta,
H-Pratham,
23-Industrial Area,
Neemka Thana
District Sikar, Rajasthan
Through POA holder – Sh. Shahbuddin Quereshi
11. Ms. Kavita Jain
R/o Sadar Bazar, Rupangarh,
Tehsil-Kishangarh
District Ajmer, Rajasthan
Through POA Holer – Proprietor,
M/s. Maruti Mines & Minerals
Mr. Sarveshwar Agarwal &
Sh. Sanjay Kumar Jain
12. Ms. Sushila Jain
R/o Sadar Bazar, Rupangarh,
Tehsil – Kishangarh
District Ajmer, Rajasthan

Through POA Holder – Proprietor,
M/s. Maruti Mines & Minerals
Mr. Sarveshwar Agarwal &
Sh. Sanjay Kumar Jain

13. Mr. Virendra Dave
Bada Bas, Near Laxmi Temple,
Sojat City,
Dist, Pali, Rajasthan
Through POA Holder – Shri. Rajuram Gurjar
14. Mr. Sohanlal Gurjar
Gurjaro Ka Vas,
Village Kharchi

.....Respondents

AND

APPEAL NO. 23 OF 2014

AND

**M.As. NO. 469 OF 2014, 470 OF 2014, 471 OF 2014, 473 OF
2014, 479 OF 2014, 480 OF 2014, 488 OF 2014, 489 OF 2014,
512 OF 2014 AND 563 OF 2014**

IN

APPEAL NO. 23 OF 2014

IN THE MATTER OF:

Sunil Acharya
S/o Shri Chndra Shekhar Acharya,
245, Ramchandra, Matri Chhaya, Tajgiron Ki Bari,
Kalika Mata Road, Banswara
Rajasthan.

..... Applicant

Versus

1. Shri Sanjay Bakliwal
S/o Shri Manak Chandra Bakliwal,
Director, M/s. R.K. Grenny Marmo Pvt. Ltd.,
R/o Oswali Mohalla, Madanganj, Kishangarh,
District Ajmer, Rajasthan-305001
2. Shri Ashok Patni
S/o Shri Kanwarlal Patni,
Director, M/s. R.K. Premises Pvt. Ltd.,
R.K. House, Madanganj, Kishangarh,
District Ajmer, Rajasthan – 305001
3. Shri V.K. Gheeya
S/o Late Shri Kamal Prasad Gheeya,
Director, M/s. Patni Premises Pvt. Ltd.,
R/o 202, Mahalaxmi Apartment, Post Badgaon,
Bedla Road, Udaipur, Rajasthan-313001
Through the Chief Secretary,

Delhi Secretariat, I.P. Estate,
New Delhi - 110002

4. Shri Vinay Patni
S/o Shri Suresh Kumar Patni,
Director, M/s. Patni States Pvt. Ltd.
Through its Vice Chairman,
Vikas Bhawan,
New Delhi - 110002
5. Shri Suresh Patni
S/o Shri Kanwarlal Patni,
Director, M/s. Supreme Buildstates Pvt. Ltd.
R/o R.K. House, Madanganj, Kishangarh,
District Ajmer, Rajasthan-305001
6. Shri Parmanand Patidar
S/o Shri Prabhulal Patidar,
Director, M/s. Elegant Premises Pvt. Ltd.
R/o 20, Kanchan Deep, Bohra Ganesh Road,
Udaipur, Rajasthan-313001.
7. Shri Jaideep Shah
S/o M/s. R.K. Super Cement Product Pvt. Ltd.
R/o D-8, Lal Bahadur Nagar,
In front of Hotel Clark, J.L.N. Marg,
Jaipur, Rajasthan.
8. The Government of Rajasthan
Through the District Collector and the President,
District Level Forest Rights Committee,
Banswara, Rajasthan-327001.
9. The Assistant Engineer,
Mines and Geology Department,
Banwara - 327001.
10. The Dy. Forest Conservator,
Department of Forest,
Dahod Road,
Banswara - 327001
11. The Senior Assistant Inspector General of Forest,
Ministry of Forest Environment House,
C.G.O. Complex, Lodhi Road,
New Delhi.

.....Respondents

AND
ORIGINAL APPLICATION NO. 343/2013
AND
M.A. NO. 442 OF 2014 and M.A. NO. 1093 OF 2013
IN
ORIGINAL APPLICATION NO. 343 OF 2013

Shri Ranbir Singh
S/o Shri Swadesh Singh,
Proprietor M/s. New Shiva Stone Crusher,
Vill. & P.O. Kandwal, Tehsil Nurpur
And Distt. Kangra,
Himachal Pradesh.

..... Applicant

Versus

1. State of Himachal Pradesh
Through Secretary (Industries) to the Govt. of
Himachal Pradesh, Shimla-1.
2. Director Industries to the State of H.P.
Udyog Bhawan,
Shimla – 1
3. State Geologist to the State of H.P.
Udyog Bhawan,
Shimla –1
4. Mining Officer,
Solan Distt., Solan,
Himachal Pradesh
5. Mr. Parshant Joshi
5-A, Agar Nagar,
Ludhiana.

.....Respondents

AND

ORIGINAL APPLICATION No. 279(T_{HC}) of 2013

AND

M.A. NO. 1120 OF 2013

IN

ORIGINAL APPLICATION No. 279(T_{HC}) of 2013

1. Smt. Promila
W/o Shri Rajesh Kumar,
Proprietor M/s. Amarjeet Stone Crusher,
Vill. Sainsiwala, P.O. Barotiwala, Tehsil Baddi
And Distt. Solan,
Himachal Pradesh.
2. Shri Mohan Lal Mehta
S/o Shri Hira Nand Mehta,
Proprietor M/s. Vishwakarma Hard Stone Crusher,
Vill. Khali, P.O. Kumarhatti, Tehsil & Distt. Solan,
Himachal Pradesh.

3. Shri Sanjay Singh
S/o Shri Mohan Singh,
Proprietor M/s. Shiva Stone Crusher,
Vill. Kailar, P.O. Saproon, Tehsil & Distt. Solan,
Himachal Pradesh.

..... Applicants

Versus

4. State of Himachal Pradesh
Through Secretary (Industries) to the Govt. of
Himachal Pradesh, Shimla-1.
5. Director Industries to the State of H.P.
Udyog Bhawan,
Shimla – 1
6. State Geologist to the State of H.P.
Udyog Bhawan,
Shimla – 1
7. Mining Officer,
Solan Distt., Solan,
Himachal Pradesh

.....Respondents

AND

**M.A. NOs. 529 of 2014 & M.A. NO. 623 OF 2014
IN
Original Application No. 171 OF 2013**

IN THE MATTER OF:

National Green Tribunal Bar Association
Versus

..... Applicant

Ministry of Environment & Forests & Ors.

.....Respondents

AND IN THE MATTER OF:

Dr. Sarvabhoun Bagali,
Kachari Road, Opp. Head P.O.,
Indi, Dist. Bijapur, Karnataka-586209

..... Applicant

Versus

1. State of Karnataka
Department of Mines and Geology,
Through its Director,
No. 49, Khanija Bhavan,
Race Course Road, Bengaluru,
Karnataka – 560001

2. Department of Law, Justice & Human Rights,
Government of Karnataka,
Through its Principal Secretary,
Vidhana Soudha, Bangaluru-560001
3. Karnataka State Pollution Control Board
Through its Member Secretary,
'Parisara Bhavan', #49, IVth & Vth Floor,
Church Street, Bengaluru- 560001
4. Department of Industries and Commerce,
Govt. of Karnataka,
Through Secretary to the Government,
No. 49, South Block, Khanija Bhavana,
Race Course Road, Bengaluru- 560001
5. Karnataka State Environment Impact Assessment
Authority (SEIAA), Through its Chairman,
Department of Ecology & Environment,
Room No. 709, VII Floor, IV Gate,
M.S. Building, Bengaluru
6. Public Works Department,
Through its Principal Secretary,
Karnataka Government Secretariat,
III Floor, Vikasa Soudha, M.S. Building,
Dr. Ambedkar Road, Bengaluru- 560001
7. Executive Engineer,
Public Works Department,
Bangalore Rural Division,
PWDD Annexue Building, II Floor
K.R. Circle, Bengaluru,
Karnataka – 560001
8. Executive Engineer,
Public Works Department,
PWD Division, 23rd Sector,
Navanagar, Bagalkot,
Bagalkot Distt., Karnataka - 587103.
9. Executive Engineer,
Public Works Department,
PWD Division, Kote, Belgaum,
Belgaum Distt.,
Karnataka – 590016
10. Executive Engineer,
Public Works Department,
PWD Division, Kote, Bellary,
Bellary Distt.,

Karnataka – 583102

11. Executive Engineer,
Public Works Department,
PWD Division, Mangalpet,
Opp. to S.P. Office, Bidar, Bidar Distt.,
Karnataka – 585401
12. Executive Engineer,
Public Works Department,
PWD Division, Station Road,
Opp. to State Bank of India, Bijapur,
Bijapur Distt. Karnataka – 586101
13. Executive Engineer,
Public Works Department,
PWD Chamarajnagar Division,
Kote Road, Chamarajnagar,
Chamarajnagar Distt., Karnataka – 571313
14. Executive Engineer,
Public Works Department,
PWD Chikkaballapur Division,
Opp. to Govt. Hospital, Chikkaballapur,
Chikkaballapur Distt., Karnataka - 562101
15. Executive Engineer,
Public Works Department,
PWD Chikmagalore Division,
Near Azad Park, Belur Road, Chikmagalore,
Chikmagalore Distt., Karnataka – 577101
16. Executive Engineer,
Public Works Department,
PWD Chitradurga Division,
D.C. Circle, Chitradurga
Chitradurga Distt., Karnataka – 577501
17. Executive Engineer,
Public Works Department,
PWD Mangalore Division, Mini Soudha,
II Floor, Opp. Nehru Ground, Hampanakatte,
Mangalore, Dakshina Kannada Distt., Karnataka - 575001.
18. Chief Secretary,
Government of Mizoram
Civil Secretariat,
Block-C Aizwal-796001.
19. Chief Secretary,
Government of Nagaland
Secretariat,

4B Shubhash Road
Dehradun-248001.

30. Chief Secretary,
Government of West Bengal
Writers' Building,
Kolkata -700001.
31. Chief Secretary,
U.T. of Andaman & Nicobar Islands
Secretariat, Port Blair
Andaman – 744101
32. Adviser to Administrator
U.T. of Chandigarh
Secretariat, Sector 9
Chandigarh – 160001
33. Administrator
U.T. of Dadra & Nagar Haveli
Secretariat, Silvassa – 396230
34. Administrator
U.T. of Daman & Diu
Fort Area, Secretariat
Moti Daman – 396220
35. Administrator
U.T. of Lakshadweep
Secretariat, Kavaratti – 682555
36. State Level Environment Impact Assessment Authority
Directorate of Environment, State of Uttar Pradesh
Dr. Bhim Rao Ambedkar Paryavan Parisar,
Vineet Khand – I, Gomati Nagar
Lucknow, Uttar Pradesh PIN – 226010
37. Geological Survey of India
3rd Floor, A wing,
Shastri Bhawan, New Delhi 110001
38. Department of Geology & Mining
Through Director
State of Uttar Pradesh,
Khanij Bhawan 27/8,
Ram Mohan Rai Marg
Lucknow – 226001
39. Department of Irrigation
Through Engineer in Chief
State of Uttar Pradesh,

New Planning Bhawan Toilibag, 3rd Floor
Lucknow, PIN – 226001
Uttar Pradesh

40. Central Pollution Control Board
Through Member Secretary
Parivesh Bhawan, CBD-Cum Office Complex
East Arjun Nagar, Delhi – 110032
41. Uttar Pradesh State Pollution Control Board,
Through the Member Secretary
Picup Bhawan, 2nd Floor, B – block
Vibhuti Khand, Gomiti Nagar,
Lucknow – 226010
42. District Magistrate,
Gautam Budha Nagar,
Noida, Uttar Pradesh
PIN 201301
43. Superintendent of Police,
Gautam Budha Nagar,
Noida, Uttar Pradesh
PIN 201301
44. Ministry of Mining
Shastri Bhawan, New Delhi
45. Vishal Agarwal
S/o Lt. Sri Nahar Singh
R/o 12/10, Ashirwad Enclave
Ballupeer, Dehradun.
46. Vivek Kumar Aggarwal
47. Deepak Gupta
48. Jagannath Mane
49. Ministry of Environment and Forest.
50. Mohit, S/o Sh. Devendra,
Resident of Mandi, Mailganj
Tehsil Nagina, District.
51. Mrs. Muntur W/o P. Ismail
R/o Puliyamthodi House,
Vazhakkad Post
Malapurram, Dist.
Kerala.

52. Lasim C., S/o Basheer
R/o Kodi thodina House,
Payangadi Amsom,
Kondotty Post,
Malappuram Dist. Kerala
53. Dr. Sarvabhoun Bangali
Kacheri Road.
Opp. Head P.O.
Distt. Bijapur
Karnataka.
54. Ministry of Water Resources,
New Delhi
55. Santhakumar A, S/o U. Achuthan
Secretary, All Kerala Quarry Association,
Palakkad.
56. K.M. Koyamu, S/o Modi Kattathodi
Secretary, All Kerala Crusher Owner Association
State Committee, Malappuram, Kerala
57. Muneer, P.M. S/o Moidu
Paleri Town, P.O. Kulliyati
Kerala
58. A.K. Sasi
Athimattathil House
Palakkad, P.O.
Palakkad District
Kerala

Counsel for Applicants:

Mr. Anand Verma, Advocate in OA No.123/2014.
Mr. Pinaki Mishra, Sr. Advocate with Mr. Rohit Gupta and Mrs. Megha Mehta Agarwal, Adv. in M.A. No. 419/2014 in OA No.123/2014.
Mr. Raj Panjwani, Sr. Advocate with Mr. Aagney Sail, Advocate in M.A. No. 529/2014 in OA No.171/2013.
Mr. Rishi Malhotra and Mr. Deepak Kaushal, Advocates in OA No.343/2013 and OA No. 279(THC)/2013.
Mr. Parikshit Nayak, Advocate in Appeal No. 23/2014

Counsel for Respondents :

Mr. Parag P. Tripathi, Sr. Advocate along with Mrs. Megha Mehta Agarwal and Mr. Rohit Gupta, Advocates for Respondent No. 5 – 14 in OA No.123/2014
Mr. Vikas Malhotra along with Mr. P. Sahay, Advocates for MoEF in OA No.123/2014

Mr. Vikas Malhotra along with Mr. M.P. Sahay, Advocates for Respondent No. 1 in OA No.171/2013
 Mr. Bikas Kargupta, Advocate for State of West Bengal, Respondent No. 30 in OA No.171/2013
 Mr. Dev Raj Ashok, Advocate for State of Karnataka in OA No.171/2013
 Mr. Suryanaryana Singh, Addl, AG along with Ms. Kanupriya Tiwari, Advocates for Respondent No. 1 in OA No. 343/2013
 Mr. Vikas Malhotra along with Mr. M.P. Sahay, Advocates for MoEF and Applicant in M.A.No.442/2014
 Mr. A.R. Takkar, Ms. Gurinderjit, Mr. Ankur Sharma, Ms. Nilika Kumar and Mr. Soumil Garg, Advocates for Respondent No. 6 in OA No.343/2013
 Mr. Suryanaryana Singh along with Ms. Kanupriya Tiwari, Advocates for Respondent No. 1 in OA No. 279(T_{HC})/2013
 Mr. Vikas Malhotra along with Mr. M.P. Sahay, Advocates for MoEF in OA No. 279(T_{HC})/2013
 Mr. A.R. Takkar, Ms. Gurinderjit, Mr. Ankur Sharma, Ms. Nilika Kumar and Mr. Soumil Garg, Advocates for Respondent No. 6 in OA No. 279(T_{HC})/2013
 Mr. Krishanan Venugopal, Sr. Advocate and Mr. Sandip Jha, Advocate in M.A. No. 470-471/2014 in (Appeal No.23/2014(PH))
 Mr. Sanjeev, Advocate in M.A. No. 473/2014 in (Appeal No.23/2014(PH))
 Mr. Sunil Prakash Sharma, Advocate in M.A. No. 480/2014 in (Appeal No.23/2014(PH))
 Ms. Bhavna Sharma, Advocate in M.A. No. 488/2014 in (Appeal No.23/2014(PH))
 Mr. Vivek Chib along with Mr. Asif Ahmed, Advocates for MoEF (Respondent No. 11) in (Appeal No.23/2014(PH))

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Reserved on 16th October, 2014
Pronounced on 13th January, 2015

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The National Green Tribunal Bar Association filed Original Application No. 171 of 2013 under Sections 14 and 15 read with

Sections 18 (1) and 18 (2) of the National Green Tribunal Act, 2010 (for short 'the NGT Act') stating that rampant illegal sand mining in the Yamuna riverbed was going on in violation of law, without taking prior Environmental Clearance. This activity of sand mining has adversely affected the eco-system and overall ecology of the area. Various incidents of rampant illegal sand mining have been referred to in the petition. It is averred that, despite serious efforts made by some officers, still, the illegal activity was going on. Referring to a recent academic study on environment, which in fact, relates to sand mining, it has been stated that in-stream mining of sand and gravel can reduce water quality, as well as, degrade the channel bed and banks. Mining of these aggregates on the floodplain can affect water table and alter the land-use. The impacts of sand mining from a riverbed are stated to be Habitat and Aesthetic Beauty Degradation, Land use Change, River System Degradation, Floodplain Ponding, Riparian Zone Degradation. The applicant, while relying upon the judgment of the Hon'ble Supreme Court in *Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629, stated that the extraction of alluvial material from within or near a stream bed has a direct impact on the stream's physical habitat characteristics. The Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) observed as follows:-

"These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and

expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.”

In paragraph 29 of the same judgment, the Hon’ble Supreme Court, while emphasising upon the need for seeking Environmental Clearances in relation to mining activity, held as under:

“Leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF”

2. The applicant further submitted that, it is the duty of the said authorities and the State Environmental Impact Assessment Authority (for short, ‘SEIAA’) to ensure that the objective of Environmental Impact Assessment Notification, 2006 (for short, ‘Notification of 2006’) is upheld in letter and spirit and that indiscriminate and rampant mining in the riverbed is not permitted. Such authorities have failed to take or are intentionally not taking any effective steps to prevent this menace. The application was filed with the prayer that the Tribunal should direct the authorities to take appropriate legal action against all sand mining which was being carried on without seeking prior Environmental Clearance or wherever Environment Clearance has been granted, in violation of its conditions. Further, it is also prayed that respondent authorities should formulate proper scheme to prevent illegal mining.

3. It may be noticed here that the applicant has impleaded Ministry of Environment and Forest, Union of India (for short ‘MoEF’) and all

the State Governments, Central Pollution Control Board (for short, 'CPCB') and Pollution Control Board of the States particularly, Uttar Pradesh (for short, 'UPPCB') amongst other authorities of Union and the State Governments.

4. When this application (O.A. No. 171 of 2013) came up for hearing before the Tribunal on 5th August, 2013, the Tribunal passed a detailed order directing all concerned to prohibit illegal mining, particularly, on the riverbeds. While issuing notice to the respondents, the Tribunal passed the following directions:

"In the meantime, we restrain any person, company, authority to carry out any mining activity or removal of sand, from riverbeds anywhere in the country without obtaining Environmental Clearance from MoEF/SEIAA and license from the competent authorities.

All the Deputy Commissioners, Superintendent of Police and Mining Authorities of all the respective States are directed to ensure compliance of these directions."

5. On 14th August, 2013, when the case again came up for hearing, the Tribunal, issued certain directions and also required the States to submit a status report as to what steps had been taken by them in furtherance to the Judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra). The Tribunal also invited suggestions in relation to the formation of a Committee of experts which would help in implementation of the directions. The States were required to submit details in relation to illegal mining and how many cases of that kind were caught by the different wings/departments of the States. The States were also required to submit a comprehensive study as to what extent and in what manner mining activity can be permitted.

6. Against the order of the Tribunal dated 5th August, 2013, the State of Madhya Pradesh had preferred an appeal before the Hon'ble Supreme Court of India. In that appeal, it was stated that an application had been filed, being M.A. No. 685 of 2013, before the Tribunal, for modification of the order dated 5th August, 2013 praying that a District Level Committee shall be constituted to grant permission to carry on mining at the district level and that the Tribunal had not passed any final order in that regard. The Hon'ble Supreme Court vide its order dated 16th August, 2013, disposed of the appeal with the following directions:

“Considering the aforesaid submission made by Mr. Tankha instead of entertaining these appeals, we request the National Green Tribunal, Principal Bench, New Delhi to take up IA No. 685 of 2013 and pass orders thereon in accordance with law if possible within a week from today. The appeals stand disposed of in the above terms.”

In the meanwhile, M.A. No. 708 of 2013 had been filed by the Madhya Pradesh State Mining Corporation Limited for impleadment and for being heard in support of M.A. No. 685 of 2013 filed by the State of Madhya Pradesh. In Original Application No. 171 of 2013, vide its order dated 28th November, 2013, passed by the Tribunal, M.A. No. 708 of 2013 was allowed, while, M.A. No. 685 of 2013 came to be dismissed. We would be dealing with some of the findings recorded by the Tribunal in this judgment dated 28th November, 2013, shortly here in after.

7. Another Original Application No. 279 of 2013(Thc) was filed by Smt. Promila Devi and others praying that the order dated 30th August, 2013, passed by the Mining Officer, Solan, Himachal

Pradesh be quashed and set aside. In view of the order dated 5th August, 2013, passed by this Tribunal in Original Application No. 171 of 2013, the authority, vide order dated 30th August, 2013, restrained the applicants from carrying on any mining activity or removing sand from the riverbed without obtaining Environmental Clearance from MoEF/SEIAA. The applicants were, thus, directed to take the requisite clearance. It is the case of these applicants that they hold mining lease for the land in question and the area is less than 5 hectares. The lease had been granted to the applicant on 29th March, 2011, i.e., prior to *Deepak Kumar's* judgment (supra) and as such, the order of the Tribunal dated 5th August, 2013, was not applicable to their case. Therefore, the order passed by the Mining Officer, Solan, Himachal Pradesh was liable to be set aside and they should be permitted to carry on with their activity.

8. On similar lines, however, without challenging any specific orders passed by the State of Himachal Pradesh, another Applicant - Ranbir Singh filed an Original Application No. 343 of 2013, praying that since mining leases of the applicants are not covered under the order of the Tribunal dated 5th August, 2013, therefore, their mining activity should not be disrupted by the respondent authorities.

9. Original Application Nos. 279(T_{HC}) of 2013 and 343 of 2013 had been listed together for hearing. On 28th March, 2014, when these matters came up for hearing, the Tribunal stayed the

operation and effect of the Office Memorandum dated 24th December, 2013, issued by the MoEF.

10. One Himmat Singh Shekhawat has filed an Original Application No. 123 of 2014, submitting that, he was the holder of Letter of Intent issued by the State of Rajasthan for excavation of minor mineral, bajri/sand in an area admeasuring 2439 hectares located on the riverbed of Rivers Luni and Mitri. According to him, he fulfilled three conditions for the grant and execution of mining lease, i.e, submission of mining plan duly approved by the competent authority, Environmental Clearance granted by the MoEF and had also submitted an affidavit for financial assurance under Rule 37J of the Rajasthan Minor Mineral Concession Rules, 1986 (for short, Rajasthan Rules of 1986). These Rules came to be amended by way of Rajasthan Minor Mineral Concession (Amendment) Rules, 2012, published on 23rd May, 2012, (for short 'Rajasthan Rules of 2012'). The amended Rules provided that mining leases for mineral, 'bajri', shall be granted only by way of auction or tender. On 8th January, 2014, the State of Rajasthan issued guidelines as well as a notice on 6th May, 2014 for auction of minor minerals. The applicant was aggrieved from the procedure being adopted by the State Government. Thus, he filed this application before the Tribunal, praying that, the guidelines issued by the State of Rajasthan dated 8th January, 2014 and the Public Notice dated 6th May, 2014, by the State of Rajasthan, should be quashed and as an interim order, its operation should be stayed.

11. Another Applicant, Sunil Acharya, filed an Appeal No. 23 of 2014. He submitted that, he is an eminent citizen and a social activist of Banswara and is concerned with the environment. He was raising challenge to the orders passed by the Government of State of Rajasthan, granting approval on the basis of the applications filed by the non-applicants in regard to grant of mining leases ML No. 9/09 to 24/09 in relation to village Kothara, Tehsil and District Banswara. According to the appellant, the Additional Director, Mines vide his letter dated 22nd February, 2012, addressed to the Assistant Mining Engineer, Banswara had directed him to comply point wise with the terms and conditions specified in the letter dated 13th February, 2012, issued by the Government of India and to submit a report in this regard to the Head Chief Forest Conservator, Jaipur through the Divisional Forest Officer, Banswara and Chief Forest Conservator, Udaipur. The matter was further examined by the Assistant Mining Engineer, Mines and Geology Department. Thereafter, the District Collector, Banswara, vide his letter dated 29th February, 2012, issued a certificate with regard to diversion of 64 hectare of forest land in favour of 16 lease holders for mining of marble in the Banswara district of Rajasthan. It was also stated that the permission granted under the Forest (Conservation) Act, 1980 (for short 'Act of 1980') shall be subject to Environmental Clearance under the Environment (Protection) Act, 1986 (for short 'Act of 1986'). It is stated by the appellant that the non-applicants/respondents no. 1 to 7, in collusion with the

Respondent Nos. 9 and 10, and in violation of the Notification of 2006, made false representations in their applications that the area of mining was less than 5 hectares, i.e., 4 hectares and hence the Notification was not applicable to them. The Respondents No. 1 to 7 were granted different mining leases. The appellant served the notice under Section 80 of Code of Civil Procedure, 1908. The appellant, being aggrieved by the decisions taken by the authorities, vide their orders dated 22nd February, 2012, 23rd February, 2012 and 29th February, 2012, has filed an appeal challenging the correctness of these orders. In the appeal, it was even prayed that temporary injunction may be issued for staying the orders of the authorities dated 22nd February, 2012, 23rd February, 2012 and 29th February, 2012, prohibiting Respondents No. 1 to 7 from carrying on illegal mining operation during the pendency of the appeal.

12. After hearing the Counsel for the parties on 10th July, 2014, the Tribunal issued notice on the appeal and passed the following order:

“We have heard Mr. Parikshit Nayak, learned Counsel appearing for the Applicant.

The grievance of the Applicant is that permission is granted to the Respondent Nos. 1 to 7 for carrying out mining operations without obtaining Environment Clearance and it was pursuant to the decision of the Ministry of Environment & Forests. Though, by Office Memorandum dated 24.12.2013, it is provided that EC is not necessary, if the area of mining is less than 5 hectares, the Tribunal has already stayed operation of the said Office Memorandum dated 24.12.2013 by order dated 28.03.2014 in the case of “*Ranbir Singh Vs. State of H.P. & Ors. Application No. 343/2013*”.

In such circumstances, if Respondent Nos. 1 to 7 have not obtained the EC and is not having the necessary consent to operate, they are not entitled to carry on mining.

In such circumstances, Issue Notice to the Respondents by registered post/acknowledgment due and Dasti as well. Requisites be filed within three days from today.

In the meanwhile, Respondent Nos. 1 to 7 are restrained from carrying on mining operations, without obtaining EC and obtaining consent from the Rajasthan State Pollution Control Board.”

It may be noticed here that M.A. No. 469 of 2014 was filed by the Respondent No. 5 in Appeal no. 23 of 2014, wherein he prayed for vacation of the order dated 10th July, 2014, as their business was being adversely affected. Similarly, M.A. No. 470 of 2014, M.A. No. 473 of 2014, M.A. No. 479 of 2014, M.A. No. 480 of 2014, M.A. No. 488 of 2014 and M.A. No. 489 of 2014 were filed by other respondents in Appeal No. 23 of 2014 with the same prayer as made by the applicant in M.A. No. 469 of 2014.

13. In continuation to the proceedings pending before the Tribunal in all the above five matters, which were being heard together, MoEF placed on record, the Office Memorandum dated 24th December, 2013, with an explanatory affidavit. Having noticed certain ambiguities in it, the Tribunal on 28th August, 2014, recorded the statement of Dr. V.P. Upadhyay and Dr. P.B. Rastogi from MoEF. This clarification is of serious consequences as far as the matter in issue in the present case is concerned. Thus, it will be useful to refer to the order of the Tribunal passed in this case on 28th August, 2014, which reads as under:

“Dr. V.P. Upadhyay, Scientist – ‘F’ (Director) and Dr. P.B. Rastogi, Scientist – ‘F’ (Director) from the Ministry of Environment and Forests are present before the Tribunal.

It is submitted before us that Office Memorandum dated 24th December, 2013 issued by the MoEF intended to stop consideration/grant of Environment Clearance for any river bed mining where area in question is less than 5 hectares. There are certain ambiguities in the said Memorandum. These Officers submit that they are duly authorised by their Ministry to make statement before the Tribunal today.

Joint Statement of both these Officers is being recorded, being authorised representatives of the MoEF, which is also confirmed by the learned counsel appearing for the MoEF.

They make the following statement:-

Statement

1. The Office Memorandum dated 24th December, 2013 intends and it is now clarified and reiterated that no Environmental Clearance will be granted for extraction of Minor Minerals (sand mining) from any river bed/ water body where the area is less than 5 hectares.

2. In other words the mining activity of minor minerals (river sand mining) area of less than 5 hectares is not permitted.

3. The surface water level as referred in the Office Memorandum dated 24th December, 2013 would be the normal water level prevalent during the lean season.

4. The minor minerals mining activity in areas other than riverbed (sand mining) would be permitted, provided that Environmental Clearance for the same is taken in accordance with law.

To that extent the Office Memorandum dated 24th December, 2013 is explained and clarified and it will bind the MoEF in accordance with law.

The above statement made on behalf of MoEF has been taken on record.

Learned counsel appearing for the different parties wish to argue the matter.”

14. M.A. No. 442 of 2014, M.A. No. 469 of 2014, M.A. No. 470 of 2014, M.A. No. 473 of 2014, M.A. No. 479 of 2014, M.A. No. 480 of 2014, M.A. No. 488 of 2014 and M.A. No. 489 of 2014 have been filed by different applicants in the above mentioned cases praying for the vacation of the injunction granted or the directions passed

by the Tribunal vide its order dated 5th August, 2013, 28th March, 2014 and 10th July, 2014.

15. As already noticed, vide these orders, the Tribunal had restricted carrying on of any mining activity from the riverbeds anywhere in the country, without obtaining Environmental Clearance from MoEF/SEIAA and license from the competent authority. The Tribunal had also stayed the operation of the Office Memorandum issued by the MoEF on 24th December, 2013. Lastly, in the case relating to the State of Rajasthan, similar restraint order was passed and it was also directed that, without obtaining consent from the Rajasthan State Pollution Control Board, the mining activity cannot be permitted to be carried on.

Discussion on law in force in relation to mining of minor minerals

16. In order to properly consider various contentions that have been raised in the above Original Applications, Appeal as well as Miscellaneous Applications, it is necessary for us to examine the regime of law, relating to mining of brick earth, ordinary earth and all other minor minerals that has been in force.

17. Entry 54 of List 1 in Schedule VII to the Constitution of India, is an entry that enabled the Parliament of India to acquire power in respect of 'Regulation of mines and minerals development, to the extent to which such regulation and development, under the control of the Union, is declared by the Parliament by law to be expedient in the public interest'. On the other hand, Entry 23 of List 2 of the

same Schedule, read with Article 246(3) of the Constitution of India, confers legislative powers on the State Legislature in respect of 'Regulation of mines and mineral development', but, this power is subject to the provisions of List 1 with respect to the regulation and development under the control of the Union. The Indian Parliament, with the object to amend and consolidate the law relating to the regulation of labour and safety in mines enacted the Mines Act, 1952. Section 2(JJ) of the Mines Act, 1952 defines "minerals" to mean, all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation and includes mineral oils (which, in turn, include natural gas and petroleum). This Act, primarily provided for welfare of the labourers working in mines, inspection and surveying by inspectors, mining operation and management of mines. Mines Rescue Rules also came to be framed under Section 59 of the Act in the year 1984.

18. On 1st June, 1958, the law, to provide for the regulation of mines and development of minerals under the control of the Union came into effect and was promulgated as the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'Act of 1957'). This Act provides, *inter alia*, for general restrictions on undertaking prospecting and mining operations, the procedure for obtaining prospecting licences or mining leases in respect of the land in which the minerals vests in the Government, the rule making power for regulating the grant of prospecting licences and mining leases,

special powers of Central Government to undertake prospecting or mining operations in certain cases, and for development of minerals. This Act was amended by the Amendment Act of 1972 by adding Section 4A to the Act of 1957, which provided for premature termination of mining leases and the grant of fresh leases to Government Companies or Corporations owned or controlled by the Government. The word 'regulation' in Entry 54 would not include 'prohibition' and should not be confused with 'restrictions', occurring under Article 19(2) to (6) of the Constitution of India. The Entry was stated to be purposive and keeping in view, the object and purpose of the legislation, the Hon'ble Supreme Court said that the legislative power of regulation and development of mines must dictate the nature of law made in the exercise of that power because public interest demands that power [*K.C. Gajapati Narayan Deo and Ors. v. The State of Orissa*, (1954) 1 SCR 1].

19. With the passage of time and development of law, the Union of India, issued various Notifications and Circulars to impose restrictions and prohibitions on the expansion and modernization of any activity or new projects in respect of mining in major and minor minerals.

20. The Act of 1986 and Environment (Protection) Rules, 1986 (for short 'Rules of 1986') were enacted and came into force on 19th November, 1986. The object of this Act of 1986 is to provide for the protection and improvement of environment and for matters connected therewith. Under provisions of the Act and Rules of 1986,

MoEF issued various other Notifications regulating the mining of minor minerals, specifically stating the procedures that were required to be complied by persons intending to carry on such mining activity and for the authorities to regulate the same.

21. It appears that, prior to 1994, there was no specific regime in place in relation to mining activity being carried on in minerals. The Notification issued by MoEF on 27th January, 1994, in exercise of the powers vested in it under Sub-Rule 3 of Rule 5 of the Rules of 1986 and Sub Section (1) and Clause (v) of Sub-Section (2) of Section 3 of the Act of 1986, prescribed the requirement and procedure for seeking Environmental Clearance for the projects listed in Schedule I. Schedule I of this Notification did not deal with mining projects of minor minerals. On the contrary, the projects covered under S. No. 20 of Schedule I of this Notification were only “mining projects (major mineral) with leases more than 5 hectares”. This Notification provided as to how the applications have to be moved/considered and that the project should be site specific. It also provided for the constitution of Expert Committees and preparation of Environmental Impact Assessment Report which was to be evaluated and assessed by the Impact Assessment Agency. It is clear that there had been a vacuum in specific law for regulation of and effective control on the minor mineral mining activities. In exercise of its statutory powers afore-indicated, the Central Government on 14th September, 2006, issued a Notification, i.e., ‘Environmental Clearance Regulation, 2006’. In terms of this

Notification, the projects as stated in the Schedule to this Notification, required prior Environmental Clearance as per the procedure. The projects have been categorised into two kinds, i.e., Category ‘A’ and Category ‘B’ under Clause 2 of the Notification. Projects under Category ‘A’ were required to take prior Environmental Clearance by MoEF. For Category ‘B’ projects, Environmental Clearance was to be given by SEIAA. In the present case, we are considered with Entry 1(a) of the Schedule to the Notification of 2006 which was substituted vide Notification dated 1st December, 2009. This entry reads as under:

Project of Activity		Category with threshold limit		Conditions if any
		A	B	
1		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	(2)	(3)	(4)	(5)
¹⁸ [1(a)]	(i) Mining of minerals. (ii)Slurry pipe-lines (coal lignite and other ores) passing through national parks/sanctuaries/coral reefs, ecologically sensitive areas.	≥50 ha of mining lease area in respect of non-coal mine lease >150 ha of mining lease area in respire of coal mine lease Asbestos mining irrespective of mining area All projects	<50 ha ≥ 5 ha of mining lease area in respect of non-coal mine lease ≤150 ha ≥5 ha of mining lease area in respect of coal mine lease]	¹⁹ [General conditions shall apply Note: (i) Prior environmental clearance is as well as required at the stage of renewal of mine lease for which application should be made up to one year prior to date of renewal. (ii)Mineral prospecting is exempted.

22. From this Entry in the Schedule to the Notification of 2006, it is clear that projects in respect of non-coal mine leases, where the area is more than 50 hectares would require prior Environmental Clearance from MoEF, while the projects of less than 50 hectares and more than 5 hectares of mining area, would require prior Environmental Clearance from SEIAA. The procedure for taking prior Environmental Clearance under both these categories is more or less the same except that the agency which gives the clearance is different. Clause 7 of the Notification of 2006, specifies the stages through which such projects for grant of Environmental Clearance are required to be passed and processed. They include Screening, Scoping, Public Consultation and Appraisal, upon which, the Expert Appraisal Committee would make a recommendation to the MoEF/SEIAA as the case may be, which would then grant or refuse the Environmental Clearance to the project in question. Under the head 'Screening', this Clause 7 also provides for a further bifurcation of projects falling under category 'B' into 'B(1)' and 'B(2)'. The relevant part of Clause 7, dealing with this aspect, reads as under:

“Stage (1) - Screening:

In case of Category 'B' projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project . The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and

remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. For categorization of projects into B1 or B2 except item 8 (b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time."

23. In terms of the above, at the stage of 'Screening', the State Level Expert Appraisal Committee has to determine whether or not the project requires further environmental studies for preparation of an Environmental Impact Assessment report for its appraisal, prior to the grant of Environmental Clearance, depending upon the nature and location specificity of the project. The projects requiring an Environmental Impact Assessment report shall be termed as Category 'B1' and remaining projects shall be termed as Category 'B2', which will not require an Environment Impact Assessment report and for this categorisation, i.e., 'B1' and 'B2', the MoEF retained with itself, powers to issue guidelines from time to time. From the record before the Tribunal, it is evident that prior to the institution of these cases, no guidelines have been prepared or notified by the MoEF, in terms of Stage 1 of Clause 7 of the Notification of 2006. The Notification of 2006 came to be amended by Notification dated 1st December, 2009. It made some amendments in different clauses of the Notification of 2006 and deleted some portion appearing in column 5 of Entry 1(a) of the Schedule to the Notification of 2006. In substance, it made no change as far as minor mineral activity was concerned. Note (i) in column 5 stood omitted. Subsequent to the amendment of the Notification of 2006 in 2009, the judgment of the Hon'ble Supreme

Court came to be pronounced in IA No. 12-13 of 2011, in the case of *Deepak Kumar* (supra). In compliance to the direction of the Hon'ble Supreme Court in para 29 of the said judgment, MoEF issued an Office Memorandum dated 18th May, 2012, with an intent to implement the said direction of the Hon'ble Supreme Court. MoEF also noticed in the Office Memorandum, direction of the Hon'ble Supreme Court dated 16th April, 2012, wherein the applicants before the Hon'ble Supreme Court in the order dated 27th February, 2012, who were carrying on mining activity below 5 hectares were given liberty to approach MoEF for permission to carry on mining. These applications were to be disposed of by MoEF within 10 days from the date of the applications. The order of the Hon'ble Supreme Court dated 16th April, 2012, reads as under:

“All the same, liberty is granted to the applicants before us to approach the Ministry of Environment and Forests for permission to carry on mining below five hectares and in the event of which Ministry will dispose of all the applications within ten days from the date of receipt of the applications in accordance with law.”

24. In this Office Memorandum, it was decided by MoEF that all the mining projects for minor minerals, including their renewal, irrespective of the size of the lease would, henceforth, require prior Environmental Clearance. Wherever the area was less than 5 hectares, they would be treated as category 'B' projects in terms of Notification of 2006 and should be processed accordingly.

25. On 24th June, 2013, MoEF issued another Office Memorandum stating guidelines for consideration of proposals for grant of Environmental Clearance under the Notification of 2006 for

mining of 'brick earth' and 'ordinary earth' having lease area of less than 5 hectares. Referring to the judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) and its Office Memorandum dated 18th May, 2012, it further considered that the 'brick kiln' manufactures had stated that it was a small scale activity requiring that certain depth should be kept outside the purview of Environmental Clearance. Having considered various aspects, the recommendations of the Expert Committee, constituted by MoEF, were also examined and finally it was directed as follows:

“(a) The activities of borrowing / excavation of 'brick earth' and ordinary earth', upto an area of less than 5 ha, may be categorized under 'B2' Category subject to the following guidelines in terms of the provisions under '7.I Stage(1)-Screening' of EIA Notification, 2006:

(i) The activity associated with borrowing/excavation of 'brick earth' and 'ordinary earth' for purpose of brick manufacturing, construction of roads, embankments etc. shall not involve blasting.

(ii) The borrowing/excavation activity shall be restricted to a maximum depth of 2 m below general ground level at the site.

(iii) The borrowing/excavation activity shall be restricted to 2 m above the ground water table at the site.

(iv) The borrowing/excavation activity shall not alter the natural drainage pattern of the area.

(v) The borrowed/excavated pit shall be restored by the project proponent for useful purpose(s).

(vi) Appropriate fencing all around the borrowed/excavated pit shall be made to prevent any mishap.

(vii) Measures shall be taken to prevent dust emission by covering of borrowed/excavated earth during transportation.

(viii) Safeguards shall be adopted against health risks on account of breeding of vectors in the water bodies created due to borrowing/excavation of earth.

(ix) Workers / labourers shall be provided with facilities for drinking water and sanitation.

(x) A berm shall be left from the boundary of adjoining field having a width equal to at least half the depth of proposed excavation.

(xi) A minimum distance of 15 m from any civil structure shall be kept from the periphery of any excavation area.

(xii) The concerned SEIAA while considering granting environmental clearance for such activity for brick earth / ordinary earth will prescribe the guidelines as stated at (i) to (xi) above and specify that the clearance so granted shall be liable to be cancelled in case of any violation of above guidelines.

(b) Notwithstanding what has been stated at (a) above, the following will apply:-

(i) No borrowing of earth / excavation of 'brick earth' or 'ordinary earth' shall be permitted in case the area of borrowing/ excavation is within 1 km of boundary of national parks and wild life sanctuaries.

(ii) In case the area of borrowing / excavation is likely to result into a cluster situation i.e. if the periphery of one borrow area is less than 500 m from the periphery of another borrow area and the total borrow area equals or exceeds 5 ha, the activity shall become Category '8 I' Project under the EIA Notification, 2006. In such a case, mining operations in any of the borrow areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.

This issues with the approval of the Competent Authority.”

26. These directions which were specific only to 'brick earth' and 'ordinary earth' activities for areas less than 5 hectares, as decided to be categorised as 'B(2)' Category projects, subject to the restrictions stated in the memorandum, provided that if the cluster area exceeded 5 hectares, then it would become Category 'B(1)' and would not be treated as Category 'B(2)' projects. It is clear that this Office Memorandum was not dealing with the issues of sand mining or any other minor mineral activity except 'brick earth' and 'ordinary earth'. On 9th September, 2013, MoEF, in exercise of its powers under the Act and Rules of 1986, dispensed with the requirement of notice and amended the Notification of 2006. Entry 1(a) was further amended as follows:

(1)	(2)	(3)	(4)	(5)
1(a)	(i) Mining of minerals.	≥50 ha of mining lease Area in respect of non-coal mine lease. ≥150 ha of mining lease area in respect of coal mine lease Asbestos mining irrespective of mining area.	<50 ha of mining lease area in respect of minor minerals mine lease; and ≤ 50 ha ≥ 5 ha of mining lease area in respect of other non-coal mine lease. ≤ 150 ha > 5 ha of mining lease area in respect of coal mine lease.	General Conditions shall apply except for project or activity of less than 5 ha of mining lease area for minor minerals: Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded environmental clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha. Note: (i) Prior

				environmental clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal. Further, a period of two years with effect from the 4th April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after 4th November, 2011.

27. During the pendency of the present application and passing of certain orders by the Tribunal requiring the MoEF to clarify its stand in the light of *Deepak Kumar's* judgment (supra) of the Hon'ble Supreme Court, MoEF, on 24th December, 2013, issued another memorandum for consideration of proposals for grant of Environmental Clearance regarding categorisation of Category 'B' projects into Category 'B(1)' and 'B(2)'. Mining of minor minerals

had been separately dealt with in this Office Memorandum. This Office Memorandum stated that no river sand mining project with mining lease area of less than 5 hectares may be considered for grant of Environmental Clearance. Such area up to 25 hectares would be Categorised as 'B(2)' and such projects were to be considered, subject to the stipulations stated therein. This Office Memorandum had apparent ambiguities, which, as already noticed, were cleared by the statement of officers of the Ministry made before the Tribunal on 24th August, 2014, wherein it was stated that no Environmental Clearance would be granted for extraction of minor minerals from any riverbed and/or water body, where the area is less than 5 hectares. Sand mining, in area other than riverbeds, would be permitted, only if the Project Proponent takes Environmental Clearance.

28. Against the order dated 5th August, 2013, the State of Rajasthan and some others have preferred an appeal before the Hon'ble Supreme Court. These appeals came to be dismissed as 9703-9706 of 2013 titled, *Chief Secretary, Government of Rajasthan v National Green Tribunal Bar Association and Others*. While issuing notice, the Hon'ble Supreme Court had stayed the proceedings before this Tribunal in Original Application No. 171 of 2013. However, this order of the Hon'ble Supreme Court came to be varied by the Hon'ble Supreme Court vide its order dated 25th November, 2013, which varied the order of stay of all proceedings and passed specific orders in relation to 82 applicants who were holders of Letter of Intent. In relation to those

remaining, including other States, the Hon'ble Supreme Court directed that the matters may go on unless there was a specific stay granted by the Hon'ble Supreme Court in that particular case. The order of the Hon'ble Supreme Court dated 25th November, 2013, reads as under:

“Pursuant to orders passed by this Court on 11th November, 2013, the learned Solicitor General has submitted a status note on behalf of the Ministry of Environment and Forests on the applications for environmental clearance in respect of mining lease of bajri in the State of Rajasthan which is pending before the Ministry of Environment and Forests.

From the aforesaid status note it appears that the time period prescribed under Environmental Impact Assessment Notification 2006 for processing the applications of 82 letter of intent holders/project proponents received from the State of Rajasthan will expire some time in February, 2014. Obviously the mining activity with regard to the bajri lease in the State of Rajasthan cannot be totally kept in abeyance till February, 2014.

We, therefore, direct that till the end of February, 2014, the letter of intent holders who have submitted their applications to the Ministry of Environment and Forests for clearance (numbering 82 only) can carry on mining operations in accordance with the Notification dated 21st June, 2012 of the Mines (Act 2) Department, Government of Rajasthan issued under Rule 65A of the Rajasthan Mines and Mineral Concession Rules, 1986.

We make it clear that the orders that will be passed by the Ministry of Environment and Forests on the 82 applications will be in accordance with the Notification, Environmental Impact Assessment 2006 dated 14th September, 2006.

The State of Rajasthan will ensure that this interim order is not violated in any manner.

It has been mentioned by Mr. Raj Panjwani, learned counsel appearing for the National Green Tribunal Bar Association that besides the Rajasthan matters, other matters are pending before the Tribunal. We make it clear that the other matters may go on in the Tribunal if there are no specific orders of this Court staying the proceedings in the particular matter.”

29. It is in furtherance to the above order, that, proceedings before this Tribunal continued in relation to all other States, as well as, beyond those 82 applicants who were specifically covered by the above order of the Hon'ble Supreme Court.

Stand of the Respective States and Respondents

30. We may now notice the stand taken by the respective States before the Tribunal in the above case.

State of Rajasthan has taken a common stand in two of these cases (Appeal No. 23 of 2014 and Original Application No. 123 of 2014). It is stated on behalf of the State that, Respondent No. 1, Sanjay Bakliwal, in Appeal No. 23 was granted consent to establish and operate on 26th November, 2012. This respondent was granted lease for mining of minor minerals on 23rd November, 2012. In furtherance to the judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), all the States were directed to consider the recommendations of the Committee which were recorded in the judgment and were directed to frame their rules and their mining policy. Accordingly, the State of Rajasthan amended the State Rules w.e.f. 19th June, 2012 by incorporating Chapter IVA for scientific and eco-friendly mining. Under the amended Rules, the mining area allowed for mining of minor minerals is 1 hectare. Obtaining Environmental Clearance, for carrying on river sand mining activity, in an area of less than 5 hectares, was not required. Such requirement was introduced vide Notification dated 9th September, 2013. Lease holders carrying on the minor mineral activity were to apply for

Environmental Clearance at the time of renewal as per the Notification of 9th September, 2013. This Notification made prior grant of Environmental Clearance mandatory in relation to river sand mining and provided that Environmental Clearance will only be required at the stage of renewal of mining in the cases of existing lease.

31. State of Rajasthan, as noticed above, had amended its rules and particularly introduced Rules 37P, 37Q, 37R, 37S, reference to which would be necessary. Rule 37P provided for grant of short term permits for mining in an area of less than 5 hectares. Association of lessees could, through recognised persons, submit Environment Management Plan to the District Level Environmental Committee for approval. The association was to be formed within three months from declaration of cluster. Under this, various persons would become Members of the association and apply for cluster mining. Even a person falling within a cluster was deemed to be a member of the association. 37R provided for the composition of the District Level Environmental Committee. Environment Management Plan had to be approved by such Committee, which was required to be implemented in terms of Rule 37S. This was to provide environmental safeguards which were to be implemented by the holders of the short term permits and the association. According to Respondent No. 1, the lessee, he had complied with all these requirements and as per Government practise, clusters were formed by the State Government and Environment Management Plan was approved by the District Environmental Committee. However, Respondent No. 1 also submits that, during the

operation of the orders of the Tribunal, he had applied for obtaining Environmental Clearance. The Rajasthan State Pollution Control Board, vide its letter dated 31st October, 2013, also directed Respondent No. 1 that if they wished to increase the production after 9th September, 2013, they must obtain Environmental Clearance. It is the stand of the Respondents that ToR has been issued by SEIAA and public hearing has been done on 27th-28th August, 2014 and that they are awaiting grant of Environmental Clearance. According to Respondent No. 1, the Notification dated 9th September, 2013, is not applicable to the lease as it operates only prospectively.

32. According to State of Rajasthan, post Notification dated 9th September, 2013, issued by the MoEF, they have not granted any mining lease without Environmental Clearance. However, in the period between 27th February, 2012 and 9th September, 2013, i.e., the bridge period, mining leases for minor minerals were granted to all the private respondents as no Environmental Clearance was required for such activity. Directions contained in the case of *Deepak Kumar* (supra) were followed by requiring clusters to make Environment Management Plan in accordance with the Rules afore-referred. It is further submitted by the State of Rajasthan, that, after the operation of the Office Memorandum issued by MoEF dated 24th December, 2013, was stayed by this Tribunal, the State has not given effect to the Office Memorandum dated 24th June, 2013 also, which, has in fact, become one of the grievances of the private respondents in OA No. 123 of 2014.

33. As already stated, two applicants, namely, Smt. Promila Devi and Shri Ranbir Singh have filed independent petitions, *inter alia*, praying for quashing of the order dated 31st August, 2013, and threat to implement the same against the other by the Mining Officer, Solan, wherein, for not obtaining Environmental Clearance, the mining activity was ordered to be stopped. While in the latter, according to the applicant, he was granted mining lease of sand, stone and bajri which is found in mixed states in Khads and not in any manner on the river bed. The applicant has, therefore, prayed that in both the mines at Mohal Maira Doomal/Maira Batrah, in Tehsil Nurpur, District Kangra, Himachal Pradesh, Mining activity should not be stopped, with reference to the order of the Tribunal dated 5th August, 2013. The applicant prayed for vacation of the stay order. According to the applicant, they are not covered by the said order of the Tribunal and therefore, their mining activity should be permitted to be continued.

34. The stand of State of Himachal Pradesh in the case of Ranbir Singh is that the applicant had initially applied for mining of an area which was more than 5 hectares, but, later sought for reduction of the area to less than 5 hectares. Upon the reduced area, supplementary mining lease was executed on 8th December, 2013. However, after passing of the order of the Tribunal dated 5th August, 2013, the Mining Officer, Kangra has suspended the mining activity as it falls in the Khad/stream, i.e., river bed.

35. The applicant also submits that his mining activity is connected to a stone crusher and, as such, he would suffer serious losses. The matter pertaining to the applicant was also pending before the High Court of Himachal Pradesh in terms of the order of the Hon'ble Supreme Court, in the case of *Nanak Chand Dhiman & Ors. v. Chief Secretary to the Government of Himachal Pradesh, Shimla & ors.*, dated 25th July, 2013.

36. In the case of Smt. Promila Devi, it is stated that the Mining Officer, Solan, has suspended the mining activity of the applicant in compliance to the order of the Tribunal dated 5th August, 2013. According to the State, the area of petitioner no. 1 does not form part of the river bed, but, that of petitioner nos. 2 and 3 partly or wholly lies in the river bed. As such, since the order of the Tribunal was applicable only to petitioner Nos. 2 and 3, the order passed against petitioner no. 1 was withdrawn vide letter dated 11th October, 2013.

37. Under the River/Stream Bed Mining Policy/Guidelines for the State of Himachal Pradesh, 2004 (for short 'Policy of 2004'), it was mandatory for the holder of the mineral concession to prepare Working-cum-Environmental Management Plan. This plan was to be approved by the State Geologist, Himachal Pradesh and not by the MoEF/SEIAA. The MoEF had also issued a Circular on 2nd July, 2007 stating that Notification of 2006 shall not be applicable to those leases where neither the production has increased nor area is enhanced, till expiry of lease period.

38. According to the Himachal Pradesh Minor Minerals (Concession) Revised Rules, 1971 (for short 'Rules of 1971'), the State of Himachal Pradesh had reserved to itself, the power to grant mining lease for an area as it may deem fit. In terms of provisions of Rule-13 (1), for setting up of crusher and granting lease for river stream bed mining, an area of 10 hectares or above, was to be given priority and free sale of minor minerals lease up to 5 hectare shall be granted. That means, less than 5 hectare of mining lease could be granted. This Rule does not specifically contemplate issuance of Environmental Clearance.

39. According to the State, none of the petitioners have so far applied for Environmental Clearance, in accordance with the Notification of 2006. Against the order of the High Court of Himachal Pradesh dated 15th June, 2012, a Civil Appeal No. 6179/2013 titled '*Nanak Chand Dhiman & Ors. Vs. Chief Secretary of Government of Himachal Pradesh & Ors.*' was filed. The Hon'ble Supreme Court of India had set aside the orders of the High Court dated 15th June, 2012 and 14th September, 2012 and ordered that the appellant would file an appropriate application for impleadment before the High Court of Himachal Pradesh which will be considered afresh in accordance with law. It may be noticed that as per website of the Himachal Pradesh High Court, Civil Writ PIL No. 9 of 2011 and other applications have been finally disposed of by the High Court, vide its order dated 20th March, 2014.

The Hon'ble Supreme Court, while setting aside the order of Himachal Pradesh High Court, which had permitted one year period for the lease holders to obtain Environmental Clearance, though they were operating prior to 27th February, 2012 and the mining leases which were executed after 27th February, 2012, had directed stoppage of mining operations on the ground that the order was passed without granting opportunity of representation to the lessees who were having a valid lease. The State has taken the stand before the Hon'ble Supreme Court that it has already framed Rules in line with the recommendations of MoEF, placing incidents of getting Environmental Clearance from the authorities concerned. Where the leases were granted prior to 27th February, 2012, Environmental Clearance was not warranted as they were being appropriately regulated under the respective mining plans. The Hon'ble Supreme Court, without commenting upon the restrictive contentions, had set aside the High Court orders and granted liberty to the appellants to file appropriate applications before the High Court.

40. Following the directive of the Hon'ble Supreme Court in the case of *Deepak Kumar v. State of Haryana & Ors*, (supra), the State of Himachal Pradesh submits that they have not executed any fresh mining lease after 27th February, 2012. Vide Office Memorandum dated 18th May, 2012, MoEF, Government of India has brought all the mining leases irrespective of the area under the ambit of Notification of 2006. Except to the exceptions carved out in their Circular dated 2nd July, 2007, the mining activity and sanctioning

of mining lease in State of Himachal Pradesh is being granted in accordance with the Rules of 1971.

41. It has also been brought on record that the State of Himachal Pradesh, in furtherance to the directions issued by the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), has taken necessary steps and safeguards. According to the State, they had already initiated such steps as back as in the year 2004, while framing Policy of 2004. The State has carried-out necessary amendments in the Rules of 1971 vide Notification dated 10th June, 2004. It is even averred by the State that the order of the Hon'ble Supreme Court dated 27th February, 2012, is not applicable to the current mining leases as the direction would be considered only at the time of renewal, including, grant of Environmental Clearance. In terms of the Policy of 2004, and subject to the satisfaction of the conditions provided therein, mining activity is permitted.

42. Documents have been filed and it was also contended on behalf of the State of Himachal Pradesh that, after order of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), the Rules of 1971, as such, have not been amended, but, the State Government has framed the Himachal Pradesh Mineral Policy – 2013 (for short 'Policy of 2013') which has been notified on 24th August, 2013, wherein, subject to compliance of conditions, mining activities in the area of less than 5 hectares have been permitted. The river bed mining is permitted, subject to Environmental Clearance. Under this Policy, Sub-Divisional Level Committee has

been constituted, which has to provide recommendatory role for grant of Environmental Clearance. Other minor mineral activity is also allowed in the area of less than 5 hectares, subject to Environmental Clearance. The difficulties posed, which are stated to be peculiar in States like Himachal Pradesh, are that, larger mining areas of more than 5 hectare are hardly available, particularly in the river beds. It is also contended that 95% of the mining areas are privately owned and are less than 5 hectare. Removal of sand from the river bed that gets accumulated from the flow of river, also justifies the grant of mining permission in areas of less than 5 hectares, without obtaining Environmental Clearance for the same.

43. The stand of MoEF, even in these cases, is that the Ministry has already taken a decision on 2nd September, 2014 that no Environmental Clearance will be granted for extraction of minor minerals (sand mining) from any river bed where the area is less than 5 hectare in terms of its Office Memorandum dated 24th December, 2013. The minor minerals mining activity in areas other than river bed (sand mining) would be permitted, provided, Environmental Clearance is obtained in accordance with law.

44. One Dr. Sarvabhoun Bhagali has filed M.A. No. 529/2014 praying that, there is rampant illegal mining going on in the State of Karnataka, including mining in eco-sensitive areas. According the applicant, through video-conferencing dated 2nd January, 2014, the Director of Mines and Geology, had issued instructions that one

year period be given to take Environmental Clearance and during the transit period, mining activity could be continued. It is also stated that Rule 31-R(20) of the Karnataka Minor Mineral Concession (Amendment) Rules, 2013 (for short 'KMMC Rules of 2013') should be construed to declare that no mining activity, including existing leases, can be carried on without obtaining Environmental Clearance. The mine lessees, which have been shown as Respondents No. 7 to 35 have carried on illegal sand mining and they should be asked to furnish the details thereof and of the mining that they have done since 16th December, 2013. The amendments to Rule 31-R are contrary to law and are impermissible. The amendments permitting mining without Environmental Clearance and appointment of Regional Environment Management Committee are contrary to the judgment of the Hon'ble Supreme Court in *Deepak Kumar's* case (supra), as well as, the Notification of 2006 issued by MoEF.

45. The State of Karnataka has filed a detailed affidavit taking the stand that after the order of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), the Karnataka Minor Minerals Concession Rules, 1994 (for short 'Rules of 1994') have been amended vide Notification dated 16th December, 2013, which was duly published in the Gazette. The State of Karnataka claims to have adopted a unique mechanism of disbursing of sand since 2nd July, 2011 wherein Public Works Department (for short 'PWD') is given the responsibility of quarrying, storing and sale of sand from blocks

handed over by the concerned District Sand Monitoring Committee but no lease or licence is being issued. According to them, there is a direct control of the State PWD. The State of Karnataka is collecting 'Environmental Protection Fee' of Rs.84,000/- per hectare from all mining leases including minor minerals, except sand, murram and brick earth, since 2009. After amendment, a fee called the 'Environment Management Fee' of Rs.10 per cubic meter of sand sold is being collected. Mining in *patta* lands is prohibited throughout the State. According to the State of Karnataka, Notification dated 16th December, 2013, has been issued which constituted the Regional Environmental Committees. However, it is stated that they do not have much significance, as the applicant is to seek Environmental Clearance from SEIAA or MoEF, as the case may be. This was also clarified vide amendment dated 5th March, 2014. In the State of Karnataka, 375 persons have been granted permission by SEIAA for carrying on the mining activity. The Karnataka State Pollution Control Board is not issuing any consent to the sand, lime shell and building stone mining/quarrying activity (minor minerals). The Department of Mines and Geology has caught about 18354 cases of illegal mining, including illegal transportation and about 17587 cases have been compounded, as per the provisions of Section 23A of Act of 1957, by collecting compounding penalty of Rs.3495.74 lakhs in total. 702 cases are pending for disposal before jurisdictional courts. According to the State, huge mining activity is being carried on in the State.

Referring to the statistics, it has been stated that from March, 2012 to March 2013, total 6810709 MT of sand, 433431 cubic meter of Ornamental stone and 13023699 MT of building stone and 1790347 MT of other minor minerals like Laterite, Lime Kankar, Lime shell, Murram, Steatite, Ordinary Clay etc. were extracted in the State and royalty of Rs. 747.76 Crores has been realized for that year. According to the State, there are 527 mines of specified minor minerals. In the major part of these mines, the area involved under the lease is less than five hectares. In 202 cases, Environmental Clearance has been granted for specified minor minerals, including, four expansion projects. 169 number of Environmental Clearances were granted for non-specified minor mineral leases by SEIAA.

46. 116 applications are stated to be pending with SEIAA for grant of Environmental Clearance and no consents are being issued by the Karnataka State Pollution Control Board. As far as the contention in relation to the instructions issued through video conference is concerned, such a meeting was held and instructions were issued. However, referring to the amended Rules, it was stated that, in terms of Rule-31R (1C), the Taluk Sand Monitoring Committee is to conduct spot inspection of the sand blocks identified and the blocks to be newly identified and submit report to the District Committee. One year time was granted to obtain Environmental Clearance. During this period, mining was permitted. The minimum extent of permitted area for ordinary sand mining is fixed as 10 acres and all sand blocks less than 10 acres

are to be taken up under cluster method and separate quarrying plan and Environmental Clearance certificate has to be obtained for such blocks. The District Committee was empowered to reserve any blocks for the State or Central Government or other government projects.

47. The PWD was required to invite tenders for extracting the sand for transportation, stocking and loading. To extract sand in the Coastal Regulation Zone in the coastal districts, it is mandatory to obtain Environmental Clearance. The District Committee was further empowered under Rule 31R (1B)(x) to delegate authority to any lower level officer of member department to control illegal sand mining activity.

48. Referring to the Notification of MoEF dated 9th September, 2013, categorisation of the projects relating to the minor minerals with an area less than 50 hectares as 'B' Category was also introduced. Six months' time was granted to submit approved quarrying plan in terms of Rule-8(I) for all the existing mines and one year time was granted to obtain approval of Environmental Management Project in terms of Rule-8(Q). The State Administration has also not admitted allegations in relation to illegal mining being carried on without Environmental Clearance. The State Government has also stated that they are taking steps to curb incidents of illegal mining and more coercive steps would be taken in future.

49. According to the State, prior to *Deepak Kumar's* judgment (supra), mining in less than 5 hectare was allowed without Environmental Clearance. The Hon'ble Supreme Court had not dealt with the existing cases of mining in the areas of less than 5 hectares as on the date of passing of the order. Hence, according to the State, order in the case of *Deepak Kumar* (supra) has no application to the leases which existed prior to 27th February, 2012, and accordingly, Notifications issued by the MoEF dated 9th September, 2013 and 16th December, 2013, have no application to these cases. They have also relied upon the Circular issued by the MoEF on 2nd July, 2007, stating that, the mining projects, which did not require Environmental Clearance under Notification of 1994, could continue to operate without Environmental Clearance till the mining lease falls due for renewal. The existing mines had to take Environmental Clearance within one year, with effect from, 16th December, 2013. Even in terms of the Amended Rule-25(A), no quarrying lease is to be granted or renewed to quarry non-specified minor minerals to the extent, not less than that specified in Schedule-II(A). Under Schedule-II(A), mining of ordinary sand has to have a minimum of 10 acres of area. The schedule gives different areas for different kinds of mining. For instance, for brick and tile clays, the area could be 1 acre, while for marble or crystalline limestone as ornamental stone the area could be 2.20 acres and for limestone under title "Shahabad Stone" it could be 0.20 acre. For all such unspecified minerals, it could be 1 acre.

50. As already noticed, and according to the stand taken by the parties, and more particularly, by the respective states, first and foremost, we have to deal with the legal history of the legislations in relation to extraction of minor minerals.

51. The Act of 1986 was enacted by the Parliament to implement the decision taken at the United Nations Conference on 'Human Environment' at Stockholm in 1972. The preliminary object was to take appropriate steps for protection and improvement of human environment. Environment includes water, air and land and inter-relationship which exists among and between water, air, land and human being and the other living creatures, plants, micro-organism and property. Anything that directly or indirectly pollutes any or all these, are subject to steps and action that could be taken by the concerned authorities, in terms of these laws. Mining of minor minerals in our country is an activity which is carried on at a large scale. Unregulated and illegal mining has serious adverse impacts on the environment and ecology of the State concerned.

52. MoEF, for the first time, issued a notification in exercise of the powers vested in it under Clause-(a) of Sub-Rule-(3) of Rule-(5) of the Rules of 1986 on 27th January, 1994. The draft Notification was issued on 28th January, 1993, inviting objections. Upon considering the same, final notification, specifying the imposition, restrictions and prohibition on the expansion and modernisation of any activity or new projects which were being undertaken in any part of India, unless Environment Clearance has been accorded by

the Central Government or State Government as per notification, was issued. This notification contemplated that any person who desires to undertake any new project or an expansion or modernisation of the existing industry or project listed in Schedule-I, has to move an application for seeking Environmental Clearance from the MoEF. Schedule-I to this notification, covered mining, amongst others, under Clause-II(a). However, in terms of Schedule-I, the list of projects requiring the Environmental Clearance from the Central Government, covered only mining projects (major minerals) with leases more than 5 hectares which were included under serial no. 20. In other words, there was no regulatory regime in place, as far as Central Government was concerned, in relation to carrying on extraction of minor minerals. However, some of the States, under their respective Rules, did provide regulation of minor minerals.

53. Then, in the year 2006, MoEF notified the Environmental Clearance Regulations, 2006, in exercise of its powers under the same provisions. Schedule to this Notification spells-out the list of projects or activities which require prior Environmental Clearance. Minor minerals were classified into two different categories. (i) where the mining lease area of more than 50 hectares was categorised as category 'A' project, while mining of an area of less than 50 hectare but more than 5 hectare was categorised as Category 'B' projects. Category 'A' projects required Environmental

Clearance from the MoEF, while category 'B' projects could be granted Environmental Clearance by SEIAA.

54. To this notification, certain objections were raised, which came to be clarified vide Circular dated 2nd July, 2007, whereby MoEF clarified that, all mining projects which did not require Environmental Clearance under the EIA Notification-1994 would continue to operate without Environmental Clearance till the mining lease falls due for renewal, and if, there is no increase in the lease area or enhancement of production.

55. This came to be amended vide notification dated 1st December, 2009, wherein amongst others, the Schedule-I was also amended. This notification made a distinction between non-coal mining lease and coal mining lease. Equal or more than 50 hectare of mining lease are in relation to non-coal mining lease with which we are concerned, required clearance from MoEF while more than or equal to 5 hectare but less than 50 hectare non-coal mine required clearance from SEIAA.

56. Thereafter, on 9th September, 2013, a Notification was issued under the relevant provisions of the Act and the Rules of 1986. By this Notification, Clause 4 of the Notification of 2006 was amended, i.e., for mining in respect of minor mineral, where the lease area was less than or equal to 50 hectares and greater than or equal to 5 hectares. In respect of other non-coal mine lease, the projects were to be treated as Category 'B' Projects, thus requiring Environmental Clearance from SEIAA. This Notification had been issued while

dispensing with the requirements of Clause (a) of Sub Rule 3 of Rule 5 in the public interest. In other words, inviting of the objections and dealing with them, in accordance with law, was waived. On 24th December, 2013, vide Office Memorandum, the Category 'B' Projects were divided into categories of 'B1' and 'B2' and guidelines in that behalf were issued. It was stated that the Project categorized as 'B1' will require Environmental Impact Assessment Report for appraisal and were to undergo public consultation process (as applicable). Projects categorized as 'B2' will be appraised based on the application in Form-I accompanied with the Pre-feasibility Report. While referring to earlier Office Memorandums in relation to brick earth and ordinary earth which termed some of them as 'B2' Projects, it also referred to the cluster situation and finally provided that river sand mining project with mine lease area of less than 5 hectares may be considered for granting Environmental Clearance on cluster basis. The river sand mining project within mining lease area of equal to or more than 5 hectares but less than 25 hectares were to be considered as B2 projects and were to furnish the required documents, subject to the conditions stated in that memorandum. From the above narrated events relating to issuance of Notifications, Office Memorandums and Circulars etc., it is clear that MoEF had been dealing with the entire situation on ad-hoc basis. Under the Notification of 2006, Clause 2, the Scheduled projects are to be divided only into two categories being category A and category B respectively. It does not contemplate any further

classification. However, Clause 7 of Notification of 2006 which primarily provides for the stages through which the project has to be cleared for grant and/or refusal of Environmental Clearance under 'Screening' states that, in case of Category B projects or activities at the time of scrutiny of application seeking Environmental Clearance, the State Expert Appraisal Committee is called upon to determine whether or not the project or activity requires further environmental study for preparation of an Environmental Impact Assessment for its appraisal prior to grant of Environmental Clearance depending upon the nature, location specificity of the Project. The project requiring Environment Impact Assessment Report shall be termed B1 and remaining projects shall be Category B2 and will not require an Environmental Impact Assessment Report. The Ministry has been empowered to issue guidelines from time to time for categorization of projects into B1 and B2 except item 8(b) of the Schedule i.e. township and area development projects.

57. It needs to be noticed here that, vide Office Memorandum dated 24th June, 2013, it was declared that no borrowing of brick earth or ordinary earth shall be permitted in case the area of borrowing excavation is within 1 km from the boundary of national parks and wild life sanctuaries. Another exception to the grant of such permissions was that in case the area of borrowing/excavation is likely to result into a cluster situation i.e. if the periphery of one borrow area is less than 500 m from the

periphery of another borrow area and the total borrow area equals or exceeds 5 hectares, the activity shall become Category 'B 1' in terms of the Notification of 2006 and such operation will be permitted only if the Environmental Clearance has been obtained in respect of the cluster.

Finally the Central Government issued an Office Memorandum dated 24th December, 2013 stating it to be guidelines for consideration of proposals for grant of Environmental Clearance. Under this memorandum, they categorized 'B' category projects into two categories, i.e., 'B1' and 'B2' and thus, it amended the notification dated 9th September, 2013 to that extent. The Category 'B2' projects, in relation to Brick Earth/ordinary Earth, mining projects where lease area was less than 5 hectares were to be considered as per guidelines of 24th June, 2013 for granting Environmental Clearance. The river sand mining project with mining lease area of more than 5 hectares but less than 25 hectares were categorized as 'B2' projects subject to the conditions stated in that Office Memorandum.

58. This power to issue guidelines is not a general power but is a specific power with inbuilt limitations. The limitations are that, such guidelines would alone be for the purposes of categorizing upon scrutiny of applications, projects that would fall under Category 'B1' and 'B2' respectively with specific exclusion of the projects specified under Item 8(b) of the Schedule. Restrictive power to issue guidelines, is further illustrated, by the fact that Clause 2

of the Notification of 2006 does not contemplate any such categorization except projects falling under Category 'A' and 'B' only. The purpose appears to be that the power of State Level Appraisal Committees to bifurcate projects into 'B1' and 'B2' categories respectively should not be unguided and unchecked. Prescription of such guidelines could be done by issuance of appropriate Office Memorandum or orders as the power to issue such guidelines has been vested in MoEF under the statutory provisions. But the greater part of such Office Order or Office Memorandum should be such that it would not vary the content or be contrary to the statutory provisions which are in place by virtue of enacting such provisions either by primarily legislative or delegated legislative power.

59. It is a settled principle that legislature can only delegate to an outside body subordinate or ancillary legislative power for carrying out a policy of the act. The body to whom such power is delegated is required to act strictly within the framework of such delegated powers. Such power is incidental to the exercise of all powers in as much as it is necessary to delegate for the proper discharge of all the public duties. It is because the body constituted should act in the manner indicated in law and should exercise its discretion by following the procedure therein itself or by such delegation as is permissible. Unlike the situation the judges are not allowed to surrender their judgments to others. The legislature and executive can delegate powers within the framework of law. It is an axiom of Constitutional law that representative legislative bodies are given the legislative powers

because the representative Government vested in the persons chosen to exercise the power of voting taxes and enacting laws which is the most important and sacred trust known to civil Government. The Delegation has its own restrictions. For instance, the legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. A memorandum which is nothing but administrative order or instruction cannot amend or supersede the Statutory Rules adding something therein which would specifically alter the content and character of the Notification itself. It has been consistently reiterated with approval by the Hon'ble Supreme Court that administrative practice/ administrative order cannot supersede or override the statutory rule of Notification and it is stated to be a well settled proposition of law.

The delegated power is primarily for carrying out the purposes of the Act and this power could hardly be exercised to bring into existence a substantive right or obligation or disabilities not contemplated by the provisions of the Act or the primary Notification. A Constitution Bench of the Hon'ble Supreme Court in the case of *Sant Ram v. State of Rajasthan* AIR 1965 SC 1910, while dealing with the scope of executive instructions held that instructions can be issued only to supplement the statutory rules and not to supplant it. Such instructions should be subservient to the statutory provisions. They would have a binding effect provided the same has been issued to fill up the gaps between the statutory provisions and are not inconsistent with the said provisions. (Reference in regard to the above can be

made In Re: *The Delhi Laws Act*, 1912 AIR 1951 SC 332, *P.D. Aggarwal and Ors. v. State of U.P. and Ors.*, (1987) 3 SCC 622, *Ram Sharma v. State of Rajasthan and Anr.*, (1968) 1 ILLJ 830 SC, *Mahender Lal Jain v. State of Uttar Pradesh*, (1963) Supp. 1 SCR 912, *Naga People's Movement of Human Rights v. Union of India*, AIR 1998 SC 431).

60. In the case before the Tribunal, specific challenge has been raised to the Office Memorandum dated 24th December, 2013 on the ground that it violates the above stated principles, in as much as by an Office Memorandum, guidelines for 'B1', 'B2' categories cannot be provided and thus, it runs contra to the statutory provisions. We may also notice here that vide this memorandum, besides providing guidelines for categorization of 'B1', 'B2' projects under Clause (iii) of paragraph 2, MoEF has taken a decision that river sand mining project with mine lease area of less than 5 hectares may not be considered for grant of Environmental Clearance and river sand mining projects with mining lease areas of equal or more than 5 hectares but less than 25 hectares will be categorized 'B2', that too subject to the restrictions stated in that Office Memorandum. Though, the applicants have primarily raised a challenge in regard to the former only, but bare reading of the Notification has brought before us the question in regard to the latter as well. Dealing with the former challenge afore-noticed, it is clear that Clause 7 of the Notification of 2006 provides for further categorization of projects falling under Category 'B' into 'B1' and 'B2'. Though Clause 2 of the said Notification does not contemplate any classification other than 'A' and 'B', but, there is no challenge raised before us to the

Notification of 2006 and we see no reason to go into that aspect. The Notification of 2006 *ex facie* permits classification of Category 'B' projects and that discretion has been vested in State Level Expert Appraisal Committee, which, upon scrutiny of the applications has to take the decision. This discretion vested in the Committee is ought to be controlled by the issuance of guidelines by MoEF. MoEF had issued two guidelines, one on 24th June, 2013 and the other on 24th December, 2013 in relation to further classification and criteria which is to be adopted in that regard. Since the Office Memorandum dated 24th June, 2013, only relates to brick earth and ordinary earth and as per that Office Memorandum, such projects where the excavation area was less than 5 hectares were to be categorized as 'B2' projects, subject to the guidelines stated therein they were to be screened in accordance with the Notification of 2006. Under Paragraph 4(b) of this Memorandum, restrictions were laid down prohibiting any excavation of brick earth or ordinary earth within one km of national parks and wild life sanctuaries as well as it intended to elaborate the cluster situation. If the periphery of one borrow area is less than 500 m from the periphery of another borrow area and the total borrow area equals or exceeds 5 hectares, the activity shall become Category 'B1' project in terms of the Notification of 2006 and such activity will be permitted only if the Environmental Clearance has been obtained in respect of the cluster. If we examine these two Office Memorandums in the light of the well settled legal principles that we have referred above, partially both these Office Memorandums cannot stand scrutiny of law. As far

as guidelines or instructions in relation to classification of projects falling under Category 'B' into 'B1' and 'B2' is concerned, the exercise of such power would be saved on the strength of Clause 7(1) of the Notification of 2006 because it is an Office Memorandum which provides guidelines for exercise of discretion by the State Level Expert Committee for such categorization. Thus, it is an exercise of executive power contemplated under the Notification of 2006. Hence the contention of the applicant on that behalf cannot be accepted and deserves to be rejected. However, in so far as the Office Memorandum dated 24th June, 2013 placing a prohibition under paragraph 4(b) (i) is concerned, it apparently is beyond the scope of such guidelines. Prohibition of carrying on of mining activity or excavation activity which is otherwise permitted by the Notification of 2006 cannot be done by an Office Order, because it would apparently run contra to the provisions of Notification of 2006. In other words, such restriction is not only beyond the scope of the power vested in MoEF but in fact imposition of absolute restriction in exercise of delegated power is not permissible. Similarly, the Office Memorandum dated 24th December, 2013 in so far as it declares that river sand mining of a lease area of less than 5 hectares would not be considered for grant of Environmental Clearance is again violative of the above settled principles. No such restriction has been placed under the Notification of 2006 or under the provisions of the Act and the Rules of 1986. The executive therefore, cannot take away the right which is impermissible under the principle of subordinate legislation. Of course, part of the same Paragraph 2(iii),

in so far as it categorizes 'B2' projects, covering the mine lease area equal to or more than 5 hectares but less than 25 hectares is concerned, the same cannot be faulted in view of the fact that it only provides a criteria or a guiding factor for determining the categorization of projects. It neither vests any substantive right, nor any obligation in relation to any matter that is not squarely or effectively covered under the Notification. This only furthers the cause of fair classification of projects, which is the primary purpose of the Notification. For these reasons, we quash paragraph 4(b)(i) of the Office Memorandum dated 24th June 2013 and part of paragraph 2(iii) in so far as it prohibits grant of Environmental Clearance to the mine area of less than 5 hectares as being violative of the Notification of 2006 and the Rules of 1986. The MoEF has no jurisdiction in exercise of its executive power to issue such prohibitions, impose restrictions and/or create substantive rights and obligations. It *ex facie* is not only in excess of powers conferred upon them, but, is also in violation of the Notification of 2006. As already noticed, this Notification has been issued by MoEF in exercise of powers conferred upon it under Clause 5 of sub section 2 of section 3 of the Act of 1986 read with sub rule 4 of rule 5 of the Rules of 1986. Vide this Notification, the Central Government substituted item no. 1(a) and entries relating thereto. A Clause stating that the projects relating to non-coal mine lease and where the mining area was less than 50 hectares equal or more than 5 hectares was to be treated as Category 'B' projects, in addition to that, the minor mineral lease projects, where the mine lease area was less

than 50 hectares, were also to be treated as Category 'B' projects, also, the general conditions with provisos were also substituted. It is significant to note here that the Notification of 2006 had been amended by the Central Government by issuing a Notification dated 1st December, 2009 in exercise of its delegated legislative powers. While issuing this Notification, the Central Government had followed the procedure prescribed under Sub Rule 2 and 3 of Rule 5 of Rules of 1986. It had invited objections from the public and considered those objections as is evident from the very recital of the Notification where it recorded "and where as all objection and suggestions received in response to above mentioned draft Notification have been duly considered by the Central Government....." and then it published the final Notification. Vide the Notification dated 1st December, 2009, the Central Government had substituted item no. 1(a) and the entries relating thereto of the Schedule to the Notification of 2006 besides making other amendments as well in different entries. However, while making further amendments vide Notification dated 9th September, 2013, the Central Government did not follow the prescribed procedure under Rule 5. On the contrary it substantially altered, and in fact substituted, as well as made additions of a substantial nature in Clause 4 and Clause 5 of the Notification of 2006, where, for the first time, it added minor mineral mine leases of less than 50 hectares, and also added 'general conditions to apply except for the projects where the area was less than 5 hectares in relation to minor mineral lease' and provisos thereto. The period for applying for renewal of mine lease

of one year was changed to two years under the Notification dated 9th September, 2013.

61. It is significant to note here that Sub Rule 4 of Rule 5 empowers the Central Government to dispense with the prescribed procedure under Sub Rules 2 and 3 of Rule 5 in public interest. Firstly, the Notification is entirely silent as to what was the public interest which was required to be served by dispensation of the prescribed procedure. Secondly, no material has been placed before us to show what the grounds were for invoking the exception carved out under Sub Rule 4 of Rule 5. Such justification has to be, both in fact and in law. Justification in support thereof, has to be in contradistinction to imperfect justification. The justification should be objective and need based. Public interest is an expression of definite connotation. The Courts, including the Hon'ble Supreme Court of India, have examined this expression in different contexts and fields. However, the essence of the expression has remained unchanged. 'Public interest' has been explained in different contexts differently with reference to the peculiar facts and circumstances of a given case. Usefully reference can be made to the following:

“Stroud’s Judicial Dictionary, Vol. 4, Fourth Edn.: A matter of public or general interest does not mean that which is interesting or gratifying curiosity or a love of information or amusement but in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected. In the case of *Babu Ram Verma v. State of Uttar Pradesh through Commissioner and Secretary and others*, 1971 S.L.R. 649, the Allahabad High Court observed:

What is the meaning and scope of "Public interests"? Public interest in common parlance means an act beneficial to the general public. An action taken in public interest necessarily means an action taken for public purpose, public interest and public purpose are well-known terms, which have been used by the framers of our Constitution in Articles 19, 31 and 304(b). It is impossible to precisely define the expression 'public interest' or 'public purpose'. The requirements of public interest vary from case to case. In each case, all the facts and circumstances would require a close examination in order to determine whether the requirements of public interest or public purpose were satisfied.

In *Kalyani Stores v. State of Orissa*, 1966 SCR (1) 865, While discussing the reasonableness of the restriction and the requirement of public interest Shah J., speaking for the Court, made the following observations:-

"Reasonableness of the restriction would have to be adjudged in the light of the purpose for which the restriction is imposed, that is, "as may be required in the public interest". Without entering into an exhaustive categorization of what may be deemed required in the public interest", it may be said that restrictions which may validly be imposed under Article 304 are those which seek to protect public health, safety, morals and property within the territory."

In *Onkar Lal Bajaj and Ors. v. Union of India and Anr.*, (2003) 2 SCC 673, the Apex Court observed:

35. The expression 'public interest' or 'probity in governance' cannot be put in a strait-jacket. 'Public interest' takes into its fold several factors. There cannot be any hard and fast rule to determine what is public interest. The circumstance in each case would determine whether Government action was taken is in public interest or was taken to uphold probity in governance.

In the case of *Meerut Development Authority v. Association of Management Studies and Anr*, (2009) 6 SCC 171, the Supreme Court held as under:

67. The expression "public interest" if it is employed in a given statute is to be understood and interpreted in the light of the entire scheme,

purpose and object of the enactment but in the absence of the same it cannot be pressed into service to confer any right upon a person who otherwise does not possess any such right in law.”

From the above, it is clear that ‘Public Interest’ is an expression of general connotation which has to be interpreted in context of the facts of the case. However, in the present case, justifiable reasons had to be placed on record by MoEF to show that they have exercised their discretion in taking recourse to the exception in accordance with law.

62. It is noteworthy that the Notification dated 9th September, 2013 in its recital only records ‘after having dispensed with the requirements of the Notification under Clause (a) of sub rule 3 of the said rule 5 in public interest’. Sub Rule 4 of Rule 5 is an exception to the ‘rule of following the prescribed procedure’. The recourse to an exception of this kind cannot be made in a casual or routine manner. For instance, wherever recourse to emergency clause for acquisition of land is made and objections under Section 5(a) of the Land Acquisition Act are not invited. There, valid and proper reasons have to exist on record. In the case of *Gurinderpal singh and others v. State of Punjab*, Civil Appeal No. 10181 of 2013 (arising from SLP(C) No. 3916 of 2013), the Hon’ble Supreme Court while referring to the judgment of the Hon’ble Supreme Court in the case of *Radhy Shyam v. State of Uttar Pradesh* (2011) 5 SCC 553, reiterated that invocation of emergency clause has to be in cases of real urgency. Even an argument of an action taken in response to a public demand for invoking urgency provision was rejected.

This would clearly demonstrate that invocation of the exceptions have to be on existence of real demanding and exceptional grounds and circumstances. The purpose of the prescribed procedure is to give notice to all the concerned persons, who are likely to be affected by issuance of a restriction, to file objections. Such objections have to be considered by the authorities objectively so as to make the law framed in exercise of subordinate or delegated legislation effective in the public interest and to provide for due safeguards in regard to the imposition of restriction in the interest of environment. The purpose is to provide more comprehensive study and objective application of mind to avoid subjectivity in accordance with Rules/Notifications. Thus, avoidance of the prescribed procedure cannot be in a mechanical process, which is devoid of proper application of mind, reasons and grounds.

The Notification proceeded to make substantive amendments to law taking recourse to the provided exception. However, grounds, reasons and object of dispensing with the prescribed procedure are conspicuous by their absence in the Notification or any record before the Tribunal. Dispensation of prescribed procedure can only be on justifiable grounds and in public interest. Reference can also be made to the dictum of the Hon'ble Supreme Court in the case of *Ram Dhari Jindal Memorial Trust vs. Union of India (UOI) and Ors.* (2012) 11 SCC 370:

“The power of urgency by the Government under Section 17 for a public purpose like Residential Scheme cannot be invoked as a rule but has to be by way of exception. As noted above, no material is available on record that

justifies dispensation of enquiry under Section 5A of the Act. The High Court was clearly wrong in holding that there was sufficient urgency in invoking the provisions of Section 17 of the Act.”

Resultantly, we quash the Notification dated 9th September, 2013 in its entirety.

63. The MoEF through Dr. V.P. Upadhayay and Dr. P.B. Rastogi both scientists had made a submission on behalf of the MoEF on 28th August, 2014, before the Tribunal to explain an opinion to put the contents of the Office Memorandum dated 24th December, 2013 beyond ambiguity.

64. From those submissions, it is clear that no Environmental Clearance would be granted for extraction of minor minerals, sand mining from any riverbed where the area is less than 5 hectares. This will amount to total prohibition of carrying on of minor mineral activity of extraction of sand from riverbed anywhere in the country. Such prohibition, as we have already noticed, cannot be imposed in exercise of executive powers in face of the Notification of 2006 which places no such restriction. Furthermore, it will depend upon geographical and ecological situations in a given case. India is a diverse country with varied geographical, ecological and environmental limitations and situations. If such a direction is required to be imposed then it must be backed by proper data and objective application of mind. For instance, in the State of Himachal Pradesh which is symbolic of all hill States, may find it very difficult to find a mining area equal to or more than 5 hectares on the riverbed. It may be practically difficult to find an area where the area of sand mining is 5 hectares or more. It was

contended before us that if this restriction is to be imposed across the States, then it would be very difficult for the State of Himachal Pradesh to permit any sand mining on the riverbed in its entire State. For extraction of sand and other minor minerals, river/seasonal rivers are the main source in the State of Himachal Pradesh. This argument has to be considered with some merit. Again, neither the Office Memorandum dated 24th December, 2013 discusses any of these issues, nor it provides any data which was the foundation for issuing such Office Memorandum. Furthermore, no material in that regard is placed before the Tribunal. Therefore, we find that this restriction is without any basis and is incapable of being imposed through an Office Memorandum. The minor mineral mining activity, other than sand mining, on riverbed was permitted in the sense that for such activity even areas less than 5 hectares could be considered for grant of Environmental Clearance.

65. Now, we revert to the case advanced on behalf of the respective States in relation to the reliefs prayed by the applicant. According to the Applicant in Original Application No. 171/2013, rampant illegal mining is going on in different parts of the country particularly, the States involved in the present petition and there is clear violation of the orders passed by Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) and orders of the Tribunal. As already noticed most of the States have denied that there is any illegal or unauthorized mining which is being carried on, particularly, on the riverbeds. However, this contention of the State Governments does not appear to be absolutely

correct. Besides this, applicant made specific averments and even placed documents to show that illegal and unauthorized sand mining, particularly, in the riverbeds is being carried on in different locations where the area was less or even more than 5 hectares. Certain States have even filed affidavits, which we have referred above, wherein it was stated that large number of cases of illegal mining have been detected and State Governments have taken action against such persons, as well as, huge amount of revenue on account of royalty or otherwise has been recovered. There is apparently some dispute between the State of Himachal Pradesh and Punjab in regard to where and who is carrying on such illegal mining. According to one State, the activity is being carried on in the area of other State, exactly contra is the stand of the other State. Whatever be the correctness of these averments, fact of the matter remains that at the border of Himachal Pradesh and Punjab, illegal mining is going on, causing degradation of environment and ecology as well as loss of the revenue to the concerned State. In furtherance to the order of the Tribunal during the pendency of these applications, it was also noticed by the inspecting team that illegal mining was going on at the border of the two States.

66. According to the State of Himachal Pradesh, though they have not carried out any amendments to their State Rules after the pronouncement of the Judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), but they have issued Policy of 2013 which brings it in conformity with the recommendations of MoEF and directions of the Hon'ble Supreme Court in the case of *Deepak Kumar*

(supra). Under this scheme, the removal of over-accumulated sand from the riverbeds even in the area of 1 hectare is allowed. However, this direction was kept in abeyance because of the orders of the Tribunal. In other words, the State of Himachal Pradesh, under its policy, is permitting carrying on of minor mineral activity (sand mining) on the riverbed in areas of 1 hectare, which is obviously less than 5 hectares. As already noticed, an attempt was made on behalf of the State of Himachal Pradesh to justify this policy on the ground of necessity, but fact of the matter remains that this policy and the practice followed by the State of Himachal Pradesh is in direct conflict with the order of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) as well as the Office Memorandum issued by MoEF so far.

State of Himachal Pradesh, while granting lease in terms of Rule 14 of Rules of 1971, had also allowed grant of mining lease in relation to any area which is not compact and contiguous, for the reasons to be recorded in writing, in the interest of development of any mineral, if the State Government feels it to be necessary.

67. The State of Karnataka claims to have amended its Rules of 1994 after the passing of the Judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra). In terms of these Rules, minor minerals mining in area of less than 5 hectares has been permitted, by either cluster mining or mining in the minimum specified area, which is, 10 acres, i.e., less than 5 hectares. In regard to other minor mineral mining even in the areas less than 5 hectares but subject to grant of

Environmental Clearance. The holders of existing mining lease for sand mining, even in the areas less than 5 hectares, have been granted one year to take Environmental Clearance w.e.f. 16th December, 2013. Environment Management Plan is to be submitted which has to be approved by a regional authority which has now been given up by the States and consent/Environmental Clearance is to be granted by SEIAA/MoEF only. Reference can be made to the Rules:

“8Q. Environmental Management Plan for individual or clusters of leases / licenses / working permission/sand tender areas.-

Every holder of lease / license / working permission shall prepare an Environment Management Plan through recognized qualified person and submit to the Regional Environment Management Committee/State Environment Impact Assessment Authority/Ministry of Environment and Forest as the case may be for approval and the lessees / licensees / permission holders of a cluster shall submit a collective Environment Management Plan through cluster association within a period of three months of formation of cluster association.

Provided that the existing holder of lease/license/working permission having an area less than stipulated shall form the cluster association and submit collective EMP within one year from the commencement of these rules.

However in case of sand, the Environment Management Plan shall be prepared through recognized qualified person and submitted to the Regional Environment Management Committee/ SEIAA/MoEF as the case may be for approval by Deputy Director / Senior Geologist concerned.

Provided, that in respect of plans within its purview, the Regional Environment Management Committee may extend the above period up to a further period of six months by recording the reasons.”

Instructions issued by the State of Karnataka through its Video Conferencing are also not in conformity with law. They had permitted continuation of mining activity without obtaining Environmental Clearance for a period of one year from 16th December, 2013. That period of one year is now over. Thus, in any case, nothing would survive for consideration resulting from the said video conference. The obvious result would be whether, Environmental Clearance is required for persons carrying on mining activity in an area of less than 5 hectares, through cluster mining or otherwise?

68. State of Rajasthan has also amended its Rules after the judgment of the Hon'ble Supreme Court in *Deepak Kumar* (supra). Rajasthan Minor Mineral Concession Rules, 1986 were amended by Notification dated 3rd May, 2012. Under these Rules, there are three most noticeable aspects. First relates to permission for carrying on mining activity in an area of less than 5 hectares, that too without obtaining the Environmental Clearance from SEIAA/MoEF. It has created District Level Environmental Committees to whom application of Environmental Clearance is to be moved and which has to recommend grant/refusal of such clearances. It has permitted cluster-mining by stating that an Environmental Management Plan could be submitted for such cluster mining and permits could be given for an area of less than 5 hectares. The short-term permit holders of the lease in clusters were required to form an association and file applications along with the Environment Management Plan to the District Committee for approval in terms of Rule 37P. Under proviso to this Rule, the permit

holders of short-term permits within the boundary of the cluster after formation of the association will be deemed to be members of the association. All these three issues are not in conformity with the law in force and the judgment of the Hon'ble Supreme Court. Secondly, they also suffer from the infirmity of imposing obligations on a person who may not be desirous of becoming a member of the association within the cluster boundaries. In our considered view, the 'deeming fiction' contained in proviso to Rule 37Q would not stand the scrutiny of law. It is in fact impractical as well as unsustainable. This would encourage what the Hon'ble Supreme Court has specifically discourage in the case of *Deepak Kumar* (supra) that persons carrying on mining activity should not be permitted by creating smaller segments of the areas of the mining activity and then forming a cluster or even without forming the clusters carrying on the mining activity degrading the environment and ecology of the area. The Rules amended by the State of Rajasthan thus, are not in line with the dictum of the Hon'ble Supreme Court and even the Notifications issued by the MoEF including the Notification of 2006.

69. The Union Parliament is vested with the powers of making laws for regulation and development of mines and minerals so far they are expedient in public interest. Similarly, legislative power is vested in the State but it is subject to the provisions of List I. The Parliament having enacted the Act of 1957, the Rules for regulation that can be framed by the State Legislature under Section 15 of the said Act has to be compliant of the Parliamentary legislation. In other words, whatever

rules are to be framed by the State Government, they should be in conformity with the Act of 1957 as well as with the Act of 1986. In terms of Article 141 of the Constitution, the Judgment of the Hon'ble Supreme Court is the law of the land and is binding on all concerned. The State Government while framing Rules in exercise of powers of delegated legislation has to be conscious of the fact that such legislation is expected to be in conformity with the law of the land as declared by the Hon'ble Supreme Court. The said Rules thus, so framed have to be in conformity with all, the two enactments, i.e., the Act of 1957 and Act of 1986 and Judgment of the Hon'ble Supreme Court. The constitution of District Level Environmental Committee for the purpose of considering and approving the Environment Management Plan in terms of proviso to Rule 37(Q) is another provision that requires consideration. Under the Notification of 2006, the projects whether falling in category 'A', 'B', 'B1' or 'B2' have to be considered for the purposes of grant of Environmental Clearance and other related matters by MoEF/SEIAA. The District Level Committee is neither framed under the provisions of the Act or Rules of 1986 and for that matter, nor under the Notification of 2006. Once the law provides for a particular procedure to be done or undertaken in a particular manner and by a specified authority, then it can be done in that manner alone by that authority and not in any other way. Even in the case of *Deepak Kumar* (supra), the Hon'ble Supreme Court had permitted consideration of Environmental Clearance application only by SEIAA or MoEF. It was contended that such Committees were only

expected to recommend the cases to SEIAA and not to grant or refuse Environmental Clearances. Firstly, this submission is not supported by any of the Rule. The Rules 37P and 37Q clearly requires that an Environmental Management Plan for cluster would be approved by the Committee. In that context, the expression 'approval' cannot be granted, any other meaning except that a final 'decision' in that regard will be taken. Once approval is granted by the District Level Environmental Committee, it is impractical to imagine, how it would be able to decline Environmental Clearance. In other words, it is a machinery created by the Rules which is in derogation to the Principle legislation and the Notification of 2006.

70. At this stage, we may revert to the judgment of the Tribunal dated 28th November, 2013, in the case of *National Green Tribunal Bar Association* (supra). In this judgment, the Tribunal specifically rejected the contention of the State of Madhya Pradesh that in view of Rules 42 to 49 and 68 of the Madhya Pradesh Minor Mineral Rules, 1996, the State has given authority to the District Level Environmental Committees to grant lease or license in accordance with the Rules. Amendment of the Rules, by the State Governments, cannot be done so as to entirely wipe out the impact, effect and procedure prescribed in the Central law. The District Level Environmental Committees so constituted have to perform their functions under the Act of 1957 and the Rules framed therein. The Act does not empower the State authorities to grant Environmental Clearance. The Tribunal further held that the appropriate way to read and interpret these Sections

would be that such powers are to be exercised in relation to environment but primarily for the purposes of granting or refusing mining leases or licences. The consideration and grant of Environmental Clearance is statutorily regulated by the Notification of 2006 and the State Government would not be competent to alter or completely give a go-by to the said statutory procedure and methodology, the Environmental Clearance has to be granted in accordance with the Central law. Thus, the contentions raised in the present case on similar lines cannot be accepted by us as well.

71. The Hon'ble Supreme Court had permitted preparation of Mining Plan primarily with the object of providing for reclamation and rehabilitation of the mined out area. It was to deal with progressive mine closure plan and post mined land of use. The Judgment of the Hon'ble Supreme Court had also dealt with cluster mining approach for small size mines. The purpose of adopting cluster approach with reference to small mine leases was to take care of preparation of Environmental Management Plan in clusters of mines, where the mining activity was being carried out in smaller areas. The Hon'ble Supreme Court accepted the recommendation of MoEF in regard to the above. The Hon'ble Supreme Court specifically noticed, what was pointed by the CEC to examine, whether there has been an attempt to flout the Notification of 2006 by breaking of homogenous area into pieces of less than 5 hectares. The Hon'ble Supreme Court upon taking note of the recommendations of MoEF which were passed on technical, scientific and environmental grounds, had directed the State

Governments to implement the recommendations. They were directed to get the Mining Plan prepared as afore-noticed. Besides all these, the Hon'ble Supreme Court had directed that lease of minor minerals, including their renewal, for an area of less than 5 hectares is granted by the said Union Territories/State only after getting Environmental Clearance from the MoEF.

From the above discussion, it is clear that there is apparent contradiction between the Rules framed by the State under the shelter of the Judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) on the one hand and the Central Law and Notifications on the other. This has created uncertainty in fact and in law. To put it more plainly, the actions taken by the State Governments post the case of *Deepak Kumar* (supra) has created more problems than it ought to have solved by the Hon'ble Supreme Court in its judgment. Thus, the State Government and MoEF needs to examine the matter collectively, objectively and with an intent to bring uniformity in law. We would issue directions in this regard separately.

72. India is not only a diverse country in relation to culture, language and character, but, it is also materially distinct and different in relation to geography, ecology and environment. Narrow rivers in the mid of the hills, limited riverbed space, snowing peaks and high altitude on the one hand and on the other huge river and riverbed, wide field areas are the indicators of this diversity. It may be difficult to have a uniform policy or law in relation to activities, like mining, particularly minor minerals, which have a very serious impact on the

environment, ecology and river flow. There is a dire need to formulate the laws which may be State specific but do not degrade or damage the environment and ecology. Any damage to the environment and ecology may be happening in one State but its adverse impacts would be seen on the entire nation. Therefore, there is a need for an effective and protective Central Legislation which will not only protect the environment in a particular area but the entire Indian Territory.

73. Another incidental but material issue that would fall for consideration is that whether State Rule providing for mining activity to be carried on in an area of less than 5 hectares would cause environmental concerns, particularly when no Environmental Clearance is obtained for the same.

This has to be answered in the affirmative. Indiscriminate, uncontrolled and unregulated mining activity being carried on in any area, particularly the riverbed, is bound to have an adverse impact on ecology and environment. These adverse impacts can be seen in two different and distinct manners. Firstly, uncontrolled and unregulated mining on the riverbed would adversely affect ground water and if the mining is carried on in excess of the specified depth, then, it would affect the course of the river. Secondly, it would also be a concern in relation to floods and may result in failure of flood protective measures. Mining of minor minerals, including sand mining, not only on the riverbed, but, even on other sites, has to be carried out in a regulated manner and under the effective supervision of the regulatory bodies. The law has created a complete regulatory regime for carrying

on of mining activities and that mechanism should be adhered to as otherwise the obvious consequences thereof would be prejudicial to the environmental interests of the country.

74. Another argument that has been advanced on behalf of the States, as well as, some of the respondents is that the Notification published by MoEF dated 9th September, 2013, which makes it compulsory for the minor mineral mining lease holders of area of less than 5 hectares to seek Environmental Clearance is not retrospective and therefore, will not be applicable to the mine leases that were in force as on that date. Firstly, we have already quashed and declared the Notification dated 9th September, 2013 as ineffective and inoperative, having not been issued in consonance with the provisions of law. As such, this argument would hardly survive. Since this argument may have some bearing even in relation to the other Office Memorandums issued by MoEF or on other Notifications validly issued by MoEF such as the one dated 1st December, 2009 and Office Memorandum of 24th June, 2013 and 24th December, 2013, we will even proceed to discuss the merits of this submission.

75. The environmental laws are laws enacted for the benefit of public at large. They are socio-beneficial legislation enacted to protect the environment for the benefit of the public at large. It is in discharge of their Constitutional obligation that such laws have been enacted by the Parliament or by other authorities in furtherance to the power of delegated legislation vested in them. These legislations and directives are incapable of being compared to the legislations in the field of

taxation or criminal jurisprudence. These laws have been enacted to protect the Fundamental Rights of the citizens. Thus, the contention that the existing mine holders would not be required to comply with the requirements of environmental laws, cannot be accepted. To illustratively examine this aspect, we may take a hypothetical situation, not far from reality. An industrial unit which had been established and operationalized prior to 1974, 1981 and/or 1986, was granted permission under the laws in force and the unit owner had made heavy investments in making the unit operational. The Water (Prevention and Control of Pollution) Act came into force in 1974, Air (Prevention and Control of Pollution) Act in 1981 and Environment (Protection) Act in 1986. All these Acts deal with existing units as well as the units which are to be established in future. These laws granted time to the existing units to take all anti-pollution measures and obtain the consent of the respective Pollution Control Boards to continue its operations. Failure to do so, could invite penal action including, closure of industry under these Acts. The said Unit should not be permitted to contend that since it was an existing unit, it has earned a right to pollute the environment and cause environmental pollution, putting the life of the others at risk, on the ground that it was an existing unit and was operating in accordance with law. Such a contention, if raised, would have to be noticed only to be rejected. Similarly, these Notifications or Office Memorandums, having been issued under the environmental laws, would equally apply to the existing industries as well. The directions contained in these

Notifications and Office Memorandums which are otherwise valid, would equally operate to the existing mines as well as the newly undertaken mining activities. All that the law would require, is to give them some reasonable time to comply with the requirements of law, wherever a specific time is not provided under the Act or the Notification. Obviously, these laws *stricto sensu* are not retrospective, as they do not abolish or impair any vested rights under the existing laws. However, these laws impose a new obligation without taking away the vested right. In that sense and somewhat loosely, it can be interpreted as being retroactive in nature, as they do not take away the right of the person to carry on business or his industrial unit, but only impose a new obligation to take Environmental Clearance under the environmental laws. The activity is not prohibited, but, compliance to the environmental laws is made mandatory. Examined from that angle, in so far as we have held, the Notification dated 1st December, 2009, Office Memorandums dated 18th May, 2012, 24th June, 2013 and 24th December, 2013, except to the extent they have been quashed as above by us, are valid and would be enforceable against even the existing mining lease holders. They cannot be permitted to destroy the environment and ecology for their personal gains on the strength of the contention that they are existing units and these Notifications, Office Memorandums would not apply to them.

State of Karnataka has already given a one year time to the existing mine lease holders to comply with the requirements of obtaining Environmental Clearance. Similarly, the State of Rajasthan

and Himachal Pradesh should also direct the existing mine lease holders to take Environmental Clearance, irrespective of their area of mining. The Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) has clearly directed that the miners possessed of mining area of less than 5 hectares cannot operate without taking Environmental Clearance. This would unexceptionally apply to the new units, but, in our considered view, would also apply to the existing mine lease holders as well; except that they would have to be given time to comply with the requirements of law.

Sunil Acharya

76. We have already noticed above that Appeal No. 23/2014 has been filed by Mr. Sunil Acharya – Appellant, on the premise that there has been diversion of 64 hectare forest land for mining of marble near village Kothara, District Banswara. The District Collector vide letter dated 29th February, 2012 had issued a certificate with regard to such diversion in favour of 16 lease holders. The Government of India had directed the Assistant Engineer, Mining to comply with the certain conditions in compliance vide letter dated 13th February, 2012.

According to the applicant, indiscriminate mining of marble was carried on and, therefore, he prayed that the respondents should be directed to ensure that no mining work is done by respondent nos. 1 to 7 (in whose favour the mining lease has been granted). The private respondents, in fact, stated to have been given 4 hectares of mining area, each with an intent to circumvent the law and avoid seeking Environmental Clearance. According to the applicant, the entire

mining activity was being carried on illegally and in an unauthorised manner.

77. Each of the private respondents had filed independent M.As. like M.A. No. 469/2014 praying that the ex-parte stay granted by the Tribunal on 10th July, 2014 be vacated. It is admittedly a case where the forest land has been diverted for carrying on the marble mining activity. The private respondents have also claimed that they have been carrying on the mining operation since 29th November, 2012 till its closure on 14th July, 2014. Further, according to these private respondents, they have already applied on 24th March, 2014 for seeking Environmental Clearance in terms of the Notification dated 9th September, 2013.

These private respondents have the permission for diversion of the forest area for carrying on mining activity which is stated to have been granted by the competent authority and still these private respondents claimed to have applied for seeking Environmental Clearance despite the fact that the mining area is less than 5 hectares. If that be so, it is not necessary for us to examine the various controversies raised by the parties in these applications. Though, we have already dealt with the various legal issues that arise in these cases at length above.

78. Be that as it may, Appeal No. 23/2014 as well as M.A. No. 469/2014, M.A. No. 469 of 2014, 470 of 2014, 473 of 2014 479 of 2014, 480 of 2014 488 of 2014, 489 of 2014 can be disposed of merely by a direction to the concerned authorities to consider and dispose of

these applications for grant of Environmental Clearance expeditiously. The mining activity of all these respondents has been prohibited under the orders of the Tribunal, primarily on the ground that they have not received Environmental Clearance. If they have the permission for conversion of forest land and they obtained the Environmental Clearance for carrying on mining activity, in accordance with terms and conditions of the Notification of 2006 and other applicable Notification/Office Memorandums, then, they can obviously carry on their activity of marble mining in accordance with law. If applications are filed as cluster and the total extent of the cluster exceeds 5 hectares, the entire cluster will be taken as a unit for granting Environmental Clearance, subject to all the owners joining the cluster application.

79. Thus, we direct the respondent authorities, particularly SEIAA, to dispose of the applications of all these private respondents seeking Environmental Clearance as expeditiously as possible, in any case not later than three months from today. Thus, Appeal No. 23/2014 and M.A. No. 469/2014, M.A. No. M.A No. 488/2014, 489/2014, 479/2014, 480/2014, 473/2014, 470/2014, 471/2014, and 469/2014 stand disposed of with the above directions. We further direct that till the grant of Environmental Clearance they would not carry out any activity of marble mining

Himmat Singh

80. In Original Application No. 123/2014, the challenge has been raised to the guidelines issued by the Government of Rajasthan dated

8th January, 2014 and to the Office Memorandum issued by MoEF on 24th December, 2013. The challenge, as already referred by us above, is primarily based on the ground that attempt of both these documents is to permit illegal and unauthorised mining activity by directly auctioning and permitting mining in the areas less than 5 hectares or even between 5 to 25 hectares. Such action, being contrary to the very scheme under the Notification of 2006 and order of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), the Tribunal had granted an injunction for carrying of mining activities without obtaining proper mining lease, Environmental Clearance and other requisite permissions, in accordance with law.

81. In this application, M.A. No. 419/2014 was filed by various applicants, including the project proponent - Larsen and Toubro Ltd., praying therein that SEIAA be directed to consider the application for Environmental Clearance filed by the applicant in respect of the mining of minor minerals in areas which were owned/ were under the mining lease of the applicants. According to these applicants, they are only carrying on the activity of brick earth and ordinary earth excavation for the purposes of completing the project of construction of railway line of the portion of the Dedicated Freight Corridor from Rewari in Haryana to Iqbalgarh in Gujarat running along a length of 626 kms. on design build lumpsum price basis. The project involves formation in embankment/cuttings, bridges, structures, buildings, ballast on formation and track work, including testing and commissioning. The work comprises of railway track along a length of

626 kms, 110 major bridges, 1229 minor bridges and 20 stations. According to the applicants, they were not covered by the injunction order passed by the Tribunal, in as much as, the areas of lease mine holders were less than 5 hectares and in alternative, all of them had applied for taking Environmental Clearance as they are category 'B2' projects in terms of Office Memorandum dated 24th June, 2013. The challenge to the Office Memorandum dated 24th December, 2013 is also raised on the ground that though the Office Memorandum refers to the report of the Committee constituted by MoEF vide its Office Memorandum dated 30th January, 2013 but that Committee had not made any recommendations in regard to the criteria that should be adopted for categorisation of the projects as 'B1' and 'B2' respectively. Factually, it is correct that the report of the Committee in its recommendations has not made any recommendations in regard to the bifurcation of 'B' category projects into 'B1' and 'B2'. However, there is some discussion in the opening paragraphs of the report in that behalf. Once, Clause 7 of the Notification of 2006 empowers MoEF to issue guidelines on that behalf then such jurisdiction cannot be taken away on the ground that the Committee constituted by the Ministry did or did not make a particular recommendation. Of course, it is always more appropriate to issue Notifications/Office Memorandums which are based and are supported by scientific reason, but, that does not mean the absence thereof would vitiate office memorandums, which, otherwise have been issued in accordance with law and within the framework of the power vested in the MoEF. Therefore, we are

unable to accept the contention of the applicants that this Office Memorandum should be quashed or declared invalid in its entirety on that ground alone.

Therefore, in their application, the only prayer is that their application for grant of Environmental Clearance should be considered expeditiously to avoid any prejudice to the progress of the projects. In view of the limited prayer made in this application, it is not necessary for us to again deliberate much on this application.

82. We dispose of this application with a direction that SEIAA shall consider these applications filed for seeking Environmental Clearance, in accordance with law and observations made in this judgment, expeditiously and in any case within a period of three months from today.

83. In light of the above discussion and particularly keeping in view the persistent conflict between the State Regulations and the Central Notifications, it is imperative for us to issue directions specially to provide for an interim period, during which appropriate steps should be taken to comply with the Judgment of the Hon'ble Supreme Court and to issue Notifications which are necessary in that regard. Therefore, we pass the following order and directions:

- I. For the reasons afore recorded, we hold and declare that the Notification dated 9th September, 2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986 and

for absence of any justifiable reason for dispensation of such procedure.

II. We also hold and declare that the Office Memorandums dated 24th June, 2013 and 24th December, 2013 to the extent afore-indicated are invalid and inoperative being beyond the power of delegated legislation.

III. All the Office Memorandums and Notifications issued by MoEF i.e. 1st December, 2009, 18th May, 2012 and 24th June, 2013 and 24th December, 2013(except to the extent afore-stated) are operative and would apply to the lease mine holders irrespective of the fact that whether the area involved is more or less than 5 hectares.

IV. We further hold that the existing mining lease right holders would also have to comply with the requirement of obtaining Environmental Clearance from the competent authorities in accordance with law. However, all of them, if not already granted Environmental Clearance would be entitled to a reasonable period (say three months) to submit their applications for obtaining the same, which shall be disposed of expeditiously and in any case not later than six months from pronouncement of this judgment.

V. All the States and the Ministry of Environment and Forest shall ensure strict compliance to the directions issued by the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra). We direct Secretary, Ministry of Environment and Forest to hold a

meeting with the State of Rajasthan, Himachal Pradesh and Karnataka to bring complete uniformity in application of the above referred Notifications and Office Memorandums including the Notification of 2006.

VI. We direct that in the meeting it shall also discuss and appropriate recommendations be made and placed before the Tribunal, as to whether riverbed mining covering an area of less than 5 hectares can be permitted, if so, the conditions and regulatory measures that need to be adopted in that behalf.

VII. We direct that the District Environmental Committees constituted by the respective State Governments shall not discharge any functions and grant approval as contemplated under the Notification of 2006.

VIII. Secretary, Ministry of Environment and Forest along with such experts and the States afore-referred will also consider the possibility of constituting the branches of SEIAA at the district or at least, division levels, to ensure easy accessibility to encourage the mine holders to take Environmental Clearance expeditiously.

IX. It is stated before us that in large number of cases, particularly in relation of State of Rajasthan, persons carrying on mining activity of minor minerals, non-coal mining and brick earth and ordinary earth have applied for obtaining Environmental Clearances in accordance with the terms and conditions of the Notification of 2006. Let all such applications be dealt with and

orders passed by the concerned authorities at the earliest and in any case not later than six months from today.

X. We direct the respondent authorities, particularly SEIAA, to dispose of the application of all these private respondents who have already filed applications seeking Environmental Clearance as expeditiously as possible, in any case not later than three months from today. Thus, Appeal No. 23/2014 and M.A. No. 469/2014, M.A. No. M.A No. 488/2014, 489/2014, 479/2014, 480/2014, 473/2014, 470/2014, 471/2014 and 469/2014 stand disposed of with the above directions. Till the grant of environmental clearance they would not carry out any activity of marble mining.

XI. We dispose of Original Application No. 123/13 with a direction that SEIAA shall consider the applications filed for seeking Environmental Clearance in accordance with law and observations made in this judgment, expeditiously, and in any case within a period of three months from today.

XII. In the meanwhile, no State shall permit carrying on of sand mining or minor mineral extraction on riverbed or otherwise without the concerned person obtaining Environmental Clearance from the competent authority.

XIII. We direct the Ministry of Environment and Forest to issue comprehensive but self-contained Notification relating to all minor mineral activity on the riverbed or otherwise, to avoid

unnecessary confusion, ambiguities and practical difficulties in implementation of the environmental laws.

XIV. In light of the judgment of the Supreme Court and what has emerged from the various cases that are subject matter of this Judgment, we direct the Ministry of Environment and Forest to formulate a uniform cluster policy in consultation with the States for permitting minor mineral mining activity including, its regulatory regime, in accordance with law.

84. For the reasons afore stated, we dispose of the Original Applications, Appeal and Miscellaneous Applications filed by different parties in all those Original Applications and Appeal, in terms of above directions, while leaving the parties to bear their own costs.

Justice Swatanter Kumar
Chairperson

Justice M.S.Nambiar
Judicial Member

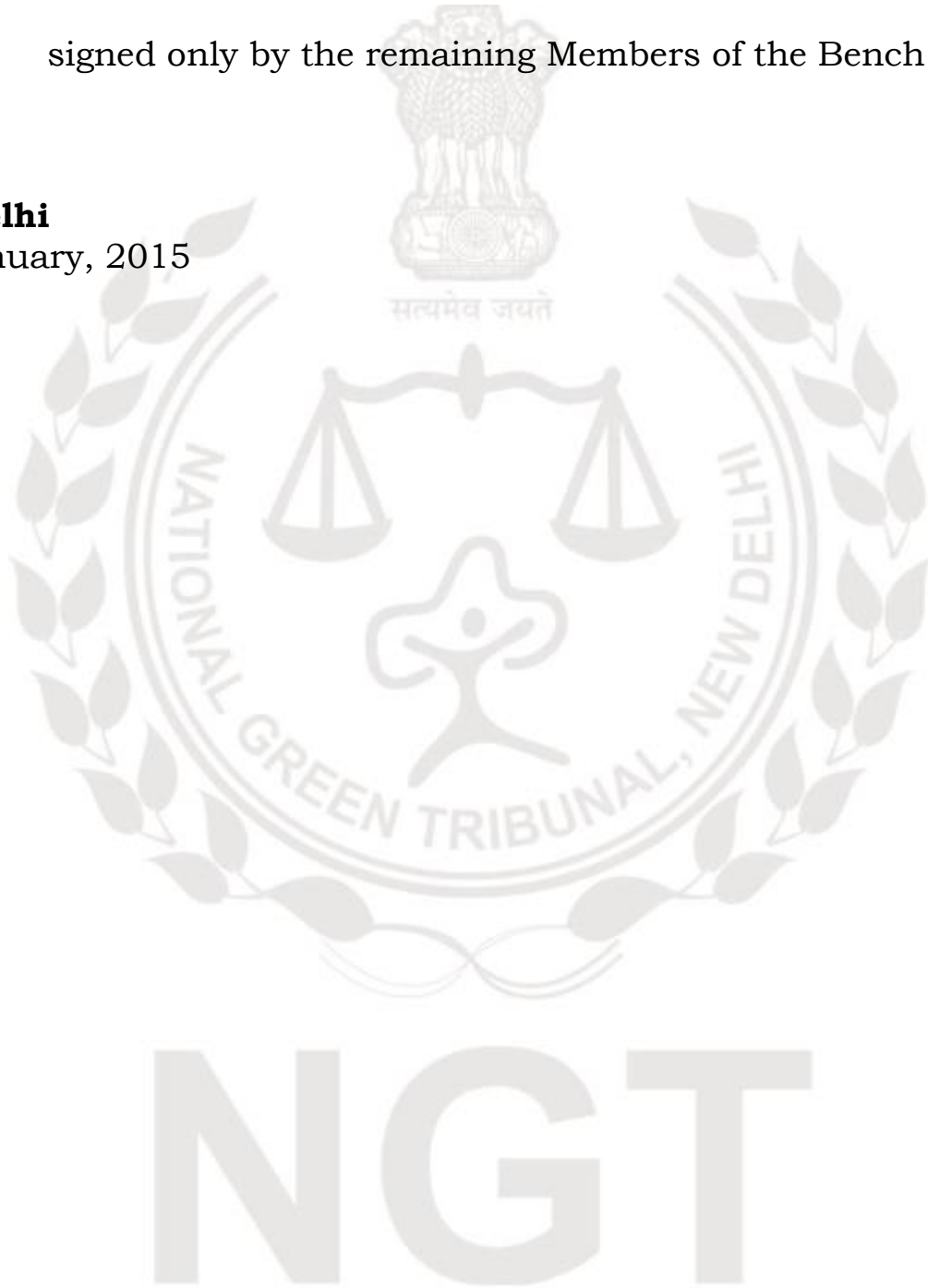
Dr. D.K. Agrawal
Expert Member

Order: This case was heard by a Bench consisting of Hon'ble Mr. Justice Swatanter Kumar (Chairperson), Hon'ble Mr. Justice M.S. Nambiar (Judicial Member), Hon'ble Dr. D.K. Agrawal (Expert Member) and Hon'ble Dr. R.C.

Trivedi (Expert Member). After the judgment was reserved, but, before its pronouncement, unfortunately, Dr. R.C. Trivedi, Learned Expert Member expired and left for heavenly abode on 26th December, 2014. Thus, the present judgment is being signed only by the remaining Members of the Bench.

New Delhi

13th January, 2015



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

Original Application No. 186/2016
(M.A. No. 350/2016)
And
Original Application No. 200/2016
And
Original Application No. 580/2016
(M.A. No. 1182/2016)
And
Original Application No. 102/2017
And
Original Application No. 404/2016
(M.A. No. 758/2016, M.A. No. 920/2016,
M.A. No. 1122/2016, M.A. No. 12/2017 & M.A. No. 843/2017)
And
Original Application No. 405/2016
And
Original Application No. 520 of 2016
(M.A. No. 981/2016, M.A. No. 982/2016 & M.A. No. 384/2017)

IN THE MATTERS OF:

Satendra Pandey
Vs.
Ministry of Environment, Forest & Climate Change & Anr.
And
Rajeev Suri Vs. Union of India
And
Badal Singh Vs. Union of India & Ors.
And
Nature Club of Rajasthan (NGO) Vs. Union of India & Ors.
And
Naresh Zargar Vs. Ministry of Environment & Forest and Anr.
And
Rajeev Suri Vs. Union of India & Anr.
And
Vikrant Tongad Vs. Union of India

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Present: Applicant:	Mr. Rahul Choudhary and Ms. Meera Gopal, Advs. in Original Application No. 388/2018
Respondents	Mr. Divya Prakash Pande, Adv. for Ministry of Environment, Forest and Climate Change Dr. Abhishek Atrey, Adv. for Ministry of Environment, Forest and Climate Change Mr. Amit Tiwari, Adv. for State of Uttar Pradesh Mr. Ashok Kumar Sharma and Mr. Kshitij Mudgal, Advs. Mr. V.K. Shukla, and Ms. Vijay Lakshmi, Advs. for State of MP, State Environment Impact Assessment Authority & Mining Corporation Mr. Rahul Pratap, Adv. for Ministry of Environment, Forest and Climate Change Mr. Shiv Mangal Sharma, AAG with Mr. Saurabh Rajpal and Mr. Vikramjeet Singh, Advs. for State of Rajasthan

	Date and Remarks	Orders of the Tribunal
	Item Nos. 07 to 14 September 13, 2018 DV & AT	1. By this application, the applicant has sought to assail Notifications dated 15.01.2016, 20.01.2016 and 01.07.2016 amending the EIA Notification dated 14.09.2006 on the ground that the procedure for obtaining Environmental Clearance in respect of mining of minor minerals for areas from 0 to 25 ha has been diluted by bringing it within B-2 category projects and exempting such category from Public Consultation, Environment Impact Assessment (EIA) and Environment Management Plan (EMP) which was in contravention of the judgment of the Hon'ble Supreme Court in <i>Deepak Kumar Vs. State of Haryana & Ors.: (2012) 4SCC 629</i> and also of this Tribunal in <i>Original Application No. 123 of 2014</i> dated 13.01.2015. 2. The crux of the case of the applicant is that while in <i>Deepak Kumar</i> case (supra) it had been held that all mining leases in respect of its size would require to obtain Environmental Clearance and be subjected to strict regulatory framework as that of all major minerals, the impugned Notifications, more particularly 15.01.2016, exempts the necessity of having EIA and Public Consultation for areas upto 25 ha. 3. According to the applicant the impugned Notification dated 15.01.2016 provided exemption of the rigors of the necessity of EIA and EMP even for areas ranging from 5 to 25 ha when in the earlier Notifications it was necessary from 5 to 50 ha. It was contended that the Hon'ble Supreme Court had expressed its concern on

	Item Nos. 07 to 14 September 13, 2018 DV & AT	dispensing with the necessity of obtaining Environmental Clearance and the other requirements cognate thereto for areas less than 5 ha in the case of <i>Deepak Kumar</i> (supra). 4. Further contention was that B-category as it stood originally, was broken to B-1 and B-2 categories by bringing areas of mining of minerals from 25 ha to 50 ha within B-1 category and 0 to 25 ha as B-2 category. For B-2 category, the authority prescribed for grant of Environmental Clearance is now the District Environment Impact Assessment Authority (DEIAA) which would base its decision on the recommendations of District Expert Appraisal Committee (DEAC). 5. Further contentions of the applicant in assailing the Notification dated 15.01.2016 are as follows: a) Form-1M prescribed in the impugned Notification dated 15.01.2016, required to be submitted for mining of minor minerals upto 5 ha under Category B-2 projects provided in Appendix-VII, is generic seeking only basic details pertaining to the lease holder and the mine with perfunctory information on the environmental effect of the project which was in contrast to Form-1 which is required to be filled up for all other categories which is comprehensive seeking detailed information on environmental implications of the project. b) B-2 projects of 0 – 5 ha under individual and cluster category are exempted from requirements of preparing an Environment Impact Assessment

	Item Nos. 07 to 14 September 13, 2018 DV & AT	Report (EIA) and Environment Management Plan (EMP) and those greater than 5 ha and less than or equal to 25 ha are exempted from preparing Environment Impact Assessment Report (EIA) both with respect to individual Mine Lease and cluster situation. No such exemption has been provided in para 7 (i) of the EIA Notification, 2006 under Stage (2) - Scoping which stipulates such requirement, but it has been done away with now at Appendix-XI of Notification dated 15.01.2016. c) EIA/EMP is an integral and most critical component of Environmental Clearance as it is only through the EIA that the potential impacts and risks of a project can be assessed and mitigation measures formulated and adopted in the EMP. By exempting EIA/EMP, critical environmental aspects like anticipated environmental impacts, mitigation measures and additional studies involving public consultation, risk assessment, social impact assessment and rehabilitation and resettlement action plans, stand exempted. These requirements provided under Appendix-III, defeats the very purpose of the Notification and the Environment (Protection) Act, 1986. d) The District Level Environment Impact Assessment Authority (DEIAA) and District Level Expert Appraisal Committee (DEAC) comprises mostly of officers/bureaucrats who have no

	Item Nos. 07 to 14 September 13, 2018 DV & AT	expertise and scientific knowledge to assess environmental implications, and have been conferred with excessive and uncanalized power devoid of any guidelines. Even the power to appoint the Expert Members vested upon the authorities in the DEIAA and DEAC are unguided whereas there is an extensive elaborations with regard to qualifications, skill sets and competencies for the members of SEAC and SEIAA. 6. Based, <i>inter-alia</i>, upon the aforesaid grounds, the applicant seeks a direction for quashing the impugned Notifications. 7. Mr. Divya Prakash Pande, Ld. Counsel for MoEF&CC in his arguments, at the outset, raised objection as to the maintainability of the application on the ground of jurisdiction of the Tribunal to grant relief for quashing the impugned notifications. It is contended that the decision of this Court in the case of <i>S.P. Muthuraman v. Union of India</i>, in O.A. No. 676 of 2017 (Earlier O.A. No. 37/2015) whereby the Tribunal has held that it had the jurisdiction to pass such orders has since been challenged before the Hon'ble Supreme Court in Civil Appeal No. 7191-7192 of 2015 and is yet to be decided and, by implication of the orders passed by the Hon'ble Supreme Court, operation of the impugned judgement stands stayed. 8. On the merits of the application, it is submitted that Notification dated 15th January, 2016 which is sought to

	Item Nos. 07 to 14 September 13, 2018 DV & AT	be assailed, had been passed by the MoEF&CC in exercise of its powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986. The notification was issued after due deliberations with various stakeholders and the State Governments over the draft notification in respect thereof issued on 22nd September, 2015 and, after a committee constituted <i>vide</i> letter dated 3rd December, 2015 to examine the comments/suggestions submitted by them, had submitted its report. The impugned Notification provides for DIEAA/DEAC in the districts which also includes appointment of Officers/bureaucrats as experts in the two bodies. The impugned Notification is further justified by the Learned Counsel contending that as the Executive Engineer, Irrigation Department has been made part of the DEAC as he deals with the rivers and canals in the district and, therefore, has the best information and knowledge about sand and gravel deposits in the districts. The Forest Department officials are also part of these committees who have the ability to do value addition in forest areas or areas adjoining the forest having deposits of minor minerals. 9. Upon consideration of the fact and circumstances set out in the original application and upon hearing the Ld. Counsel for parties, we find that the impugned Notification dated 15th January, 2016 is not consistent with the decision of the Hon'ble Supreme Court in the case of <i>Deepak Kumar (supra)</i>. We find substance in the

	Item Nos. 07 to 14 September 13, 2018 DV & AT	submissions of the Ld. Counsel for the applicant that while breaking category B of the mines to B-1 & B-2 may not <i>per se</i> be bad, it certainly dilutes the stringent requirement of lease areas upto 25 ha being exempted from the necessity of submitting EIA and EMP for grant of Environmental Clearance. It is undisputed that the impugned Notification is issued with the object to comply with the directions passed in the case of <i>Deepak Kumar (supra)</i>. This case had arisen as the EIA Notification dated 14th September, 2006 was being flouted by breaking homogenous areas into pieces of less than 5 ha in the States of Uttar Pradesh, Rajasthan and Haryana, as the notification then did not require Environmental Clearance for areas less than 5 ha. The Hon'ble Supreme Court after noting the serious deleterious effect of quarrying, mining and removal of sand in-stream and up-stream of rivers to the environment, in paragraphs 9 and 10 (of SCC), held as follows: <i>"9. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.</i> <i>10. We are expressing our deep concern since we are faced with a situation where the</i>

	Item Nos. 07 to 14 September 13, 2018 DV & AT	<i>auction notices dated 3-6-2011 and 8-8-2011 have permitted quarrying mining and removal of sand from in-stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and river beds and sand extraction may have an adverse effect on bio-diversity as well. Further it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. The rivers mentioned in the auction notices are on the foothills of the fragile Shivalik hills. Shivalik hills are the source of rivers like Ghaggar, Tangri, Markanda etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, river Yamuna.</i> <i>11. We find that it is without conducting any study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a riverbed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 km, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan.”</i> 10. The Hon’ble Supreme Court also took note of the fact that the MoEF&CC had constituted a Core Group under the Chairmanship of the Secretary (Environment & Forest) to look into the environment aspects associated with mining of the minor minerals <i>vide</i> order dated 24th March, 2009 with specific terms and conditions. The Core Group after consideration of various issues including cluster of mine approach for addressing and implementing EMP in case of small mines, submitted a report on 29th

	Item Nos. 07 to 14 September 13, 2018 DV & AT	January, 2010 with the recommendation to permit mining of minor minerals under strict regulatory regime and carried out only under an approved framework of mining plan which should provide for reclamation and rehabilitation of mine areas. For smaller mine lease areas a cluster approach was recommended. It was directed that the States should adopt the recommendations and the model guidelines framed by the Ministry of Mines, namely the Model Rules, 2010. 11. In pursuance of the directions, the impugned Notification dated 15th January, 2016 was ultimately issued. The MoEF&CC Notification dated 14th December, 2006 as it stood earlier prescribed for two categories of projects and activities as Category A and Category B based on the spatial extent of potential impacts, potential impacts on human health and natural and man-made resources. Stage (1)-Screening that provides for Category 'B' projects or activities, entail scrutiny of an application seeking prior Environment Clearance made in Form 1 by the concerned State Level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of EIA for appraisal prior to grant of Environment Clearance depending upon the nature and location specificity of the project. It further provides that the project requiring EIA report would be termed as Category 'B-1' and remaining projects as Category 'B-2' that would not require EIA report. Discretion to make such categorization was left upon the MoEF&CC and to issue appropriate guidelines from time to time. This

	Item Nos. 07 to 14 September 13, 2018 DV & AT	provision was a subject matter of challenge in the case of <i>Himmat Singh Shekhawat v. State of Rajasthan</i>, 2015 ALL (I) NGT Reporter (1) DEL 44 by which it was upheld as having been issued by the Ministry as a Subordinate Legislation. However, the office memorandums dated 24th June, 2013 and 24th December, 2013 prohibiting grant of Environment Clearance to the mine areas of less than 5 ha was quashed as being in conflict with the aforesaid provision. 12. The only contention that require for us to consider in this case is as to whether the Notification dated 15th January, 2016 would satisfy the spirit of the directions issued in the case of <i>Deepak Kumar (supra)</i>. As already noted, EIA Notification dated 14th September, 2006 under the Schedule provided thereto require all mining lease area of equal to and up to 50 ha to seek Environment Clearance requiring to submit EIA for appraisal from the SEIAA. 13. The impugned Notification dated 15th January, 2016, however, would clearly indicate that Category B has been split into category B1 and B2 and again, category B2 has been further split into areas of 0-5 ha and 5-25 ha. While 0-5 ha has been exempted from the requirement of EIA/Public Consultation, such exemption has also been provided even for mining areas of 5 ha to 25 ha with the DEAC and the DEIAA as the prescribed authority for evaluation and grant of Environmental Clearance. Category B-1 being mining areas of 25 ha to 50 ha, the authorities prescribed are the SEAC and SEIAA. For falling in excess of 50 ha being Category-A, it is the EAC and the

	Item Nos. 07 to 14 September 13, 2018 DV & AT	MoEF&CC. 14. The procedure for grant of the Environment Clearance by the DEIAA for areas between 0 to 5 ha falling under Category 'B-2' is found prescribed in paragraphs 6, 7(iii) (a) and 7(iii) (b) of the impugned Notification read with appendices VIII, X and XI. The Schematic Presentation of Requirement of Environment Clearance of Minor Minerals including cluster situation provided in a table to Appendix XI would substantiate indubitably that even for areas between 5 to 25 ha, no EIA and Public Hearing is required and in cluster situation also, the requirement of EIA and Public Hearing have been exempted. 15. Introduction of such procedure, in our view, is clearly not consistent with the directions contained in the case of <i>Deepak Kumar (supra)</i> and the spirit behind such direction. By the provision, mining area upto from 5 ha to 25 ha has been completely exempted from the EIA and Public Consultation. For areas of 5 ha and below, apart from the exemption, it has been made only subject to a separate procedure of preparing a District Survey Report (DSR). These provisions quite apparently are more mine-centric rather than striving a balance between mining and environment especially with regard to Form-1M which needs to be made more elaborate incorporating environment related aspects. 16. The Sustainable Sand Mining Management Guidelines, 2016 prepared by the MoEF&CC has also deprecated the procedure as will appear from below which

	Item Nos. 07 to 14 September 13, 2018 DV & AT	is contained in the chapter on “The Issues and Management of Mining in Cluster”:- “It is seen that the categorization of mines into 'B1' and 'B2' category in which Category 'B2' leases are being exempted from the requirement of Environment Impact Assessment, Environment Management Plan, and Public Consultation for grant of EC, in many cases now the mining leases are being given for 25 hectares or less. This defeats the purpose and intent of Hon'ble Supreme Court Judgment which orders environment clearance for all mining leases irrespective of size. The environment clearance without Environment Impact Assessment, Environment Management Plan, and Public Consultation does not serve the purpose of environment clearance which is to ensure environmentally sustainable and socially responsible mining. So if a cluster or individual lease size exceeds 5 hectare, the EIA/ EMP should be completed in the process of grant of prior environment clearance.” 17. Thus, even according to the Sustainable Sand Mining Management Policy issued by the MoEF&CC by dispensing with Public Hearing, the judgment of the Hon'ble Supreme Court in the case of <i>Deepak Kumar (supra)</i> will stand defeated. 18. We also find that parameters for consideration while preparing District Mining Plan (DMP) and District Survey Report (DSR) are only for the purpose of ascertaining whether an area is fit for mining which are quite different from the parameters laid down for EIA. The consideration of the view point of the public by keeping DSR in public domain is not a substitute of Public Hearing for consideration of the view point of the public for EIA. 19. With specific reference to mining in cluster, the Report of the Committee of Secretaries, Ministry of Environment, Forest and Climate Change, 2010 recommended as follows:

	Item Nos. 07 to 14 September 13, 2018 DV & AT	<i>“Considering the nature of occurrence of minor mineral, economic condition of the lessee and the likely difficulties to be faced by Regulatory Authorities in monitoring the environmental impacts and implementation of necessary mitigation measures, it may be desirable to adopt cluster approach in case of smaller mine leases being operated presently.”</i> 20. This report which is a part of the Sustainable Sand Mining Management Guidelines, 2016 finds reinforcement in the Chapter “The Issues and Management of Mining in Cluster” referred to earlier where it has inter-alia been recommended as under: <i>“The Hon'ble Supreme Court, NGT, SEAC/EAC and the Project Proponents have raised issue of cluster in mine lease allotment and environment clearance for the same, so following conditions need to be ensured for cluster of mines:</i> <i>1. To address the concern of adverse impact of minor mineral mining on environment it is proposed that all mining activity including river sand mining (above 5 hectare individual or cluster) will need to prepare Environment Impact Assessment Report and Environment Management Plan before grant of environment clearance. These reports (EIA /EMP) can be prepared by the State or State nominated Agency / the Project Proponent (s).</i> <i>2. As can be seen from the data provided by the States most of the mining leases for minor minerals are of lease area less than 5 hectare. It is also reported that in hill states getting a stretch in river with area more than 5 hectare is very uncommon. So the size of lease for minor minerals including river sand mining will be determined by the States as per their circumstances.</i> <i>3. The EIA Notification, 2006 does not provide for cluster EC, it provides for issuance of EC to individual project proponents and the same has also been upheld in the judgment of Hon'ble Supreme Court in Vijay Bansal vs. State of Haryana case. So EC will have to be applied for and issued to the individual project proponent.</i> <i>4. A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area.</i> <i>5. The mining of minor minerals is mostly in clusters. The Environment Impact Assessment or Environment Management</i>

Item Nos. 07 to 14 September 13, 2018 DV & AT	Plan are required to be prepared for the entire cluster in order to capture all the possible externalities. These reports shall capture carrying capacity of the cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area. The Environment Impact Assessment or Environment Management Plan shall be prepared by the State or State nominated Agency or group of project proponents in the Cluster or the project proponent in the cluster. 6. The individual lease holders in cluster can use the same Environment Impact Assessment or Environment Management Plan for application for environmental clearance. The cluster Environment Impact Assessment or Environment Management Plan shall be updated as per need keeping in view any significant change. 7. There shall be one public consultation for entire cluster after which the final Environment Impact Assessment or Environment Management Plan report for the cluster shall be prepared. 8. The details of cluster Environment Impact Assessment or Environment Management Plan shall be reflected in each environmental clearance in that cluster and District Expert Appraisal Committee (DEAC), SEAC, and EAC shall ensure that the mitigative measures emanating from the Environment Impact Assessment or Environment Management Plan study are fully reflected as environmental clearance conditions in the environmental clearance's of individual project proponents in that cluster. 9. 10. 11.” 21. Dispensing with the requirement of Public Hearing which forms a part of the Public Consultation under Stage-III of the Environmental Clearance process under EIA Notification, 2006 for areas measuring 0 to 25 ha for individual mine areas and in cluster situation where public hearing has been provided, has resulted in gross dilution of EIA Notification dated 14th September, 2006. Such dilution would, in our view, result in its misuse by unscrupulous elements and the situation would revert

	Item Nos. 07 to 14 September 13, 2018 DV & AT	back to the lawless state prevailing prior to the decision in the case of <i>Deepak Kumar (supra)</i>. Stringent measures are, therefore, necessary if the rampant exploitation of the minor minerals is to be curbed. This apparently was also the view of the Hon'ble Supreme Court in the case of <i>Deepak Kumar (supra)</i>. 22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of <i>Deepak Kumar (supra)</i> by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster situation wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (<i>supra</i>) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area; (vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.

Item Nos. 07 to 14 September 13, 2018 DV & AT	23. We have permitted retention of 0-5 ha as a category keeping in view that some States grant isolated single lease of 5 ha and less not falling in cluster situation for which stringent requirements in Form-1M will serve the purpose of providing safeguards for protection of the environment and sustainable mining of minor minerals. This is particularly true in smaller and mountainous States as will also appear from condition no. 2 under “The Issues and Management of Mining in Cluster” referred to earlier in para 20 of this order. 24. It is reiterated that any attempt to split the lease area for the purpose of avoiding the applicable regulatory regime shall be viewed seriously. This in our view will be in the interest of the environment as deliberated in detail in the case of <i>Deepak Kumar (supra)</i> and would also satisfy the Precautionary Principle and the Principle of Sustainable Development contemplated under Section 20 of the National Green Tribunal Act, 2010. 25. The MoEF&CC shall, therefore, take appropriate steps to revise the procedure laid down in the impugned Notification dated 15th January, 2016 in terms of the above directions and observations so that it is conformity with the letter and spirit of the directions passed by the Hon’ble Supreme Court in <i>Deepak Kumar (supra)</i>. The applications stand disposed of. , CP (Adarsh Kumar Goel) , JM (Dr. Jawad Rahim)

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Reply on behalf of Original Applicant to the IA No. 08 of 2025 filed by Respondent No.6 in O.A. 349 of 2024 in matter titled 'Yashpal Singh v. State of Uttarakhand & Ors.'

1 message

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Thu, Oct 9, 2025 at 6:09 PM

To: cs-uttaranchal@nic.in, seiaa.seac.uk@gmail.com, dm-deh-ua@nic.in, secy-moef@nic.in, "banidikshit.advocate@gmail.com" <banidikshit.advocate@gmail.com>, dirukmining@gmail.com, msukpcb@yahoo.com

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Respected Sir/Ma'am,

I am writing to you on behalf of Mr. Ajit Sharma, Advocate for the Original Applicant in 'Yashpal Singh v. State of Uttarakhand & Ors.' [O.A. No. 349 of 2024]. Please find attached a soft copy of reply of the Original Applicant to I.A. No. 08 of 2025 filed by Respondent No. 6.

Thank you,
Anant Ram Mishra
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New Delhi-110001

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