BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

APPEAL NO. 144 OF 2025

IN THE MATTER OF:

VIJAYKUMAR KARSANBHAI GADHAVI AND ORS. .... APPELLANTS

VERSUS

UNION OF INDIA AND ORS. .... RESPONDENTS

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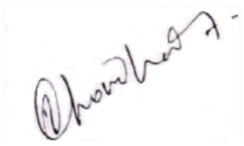

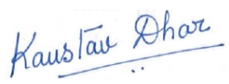

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

APPEAL NO. 19 OF 2025

IN THE MATTER OF:

VIJAYKUMAR KARSANBHAI GADHAVI AND ORS. .... APPELLANTS

VERSUS

UNION OF INDIA AND ORS. .... RESPONDENTS

REJOINDER ON BEHALF OF THE APPELLANTS TO THE REPLY AFFIDAVIT DATED 19.08.2025 FILED BY RESPONDENT NO. 5, GREENFIELD CHEMICAL COMPLEX LTD. (GHCL).

MOST RESPECTFULLY SHOWETH:

1. The above-mentioned Appeal was filed under Section 16(e) of the National Green Tribunal Act, 2010 challenging the legality and correctness of the order granting commencement of work issued on 21.03.2025 by the Deputy Secretary of Forest and Environment Department, Gandhinagar, for the project involving the diversion of 0.9689 ha of forest land for laying part of seawater intake and effluent disposal pipeline and passage for related construction equipment movement in Kachhch District in favour of Chief Operating Officer, Greenfield Chemical Complex Ltd. Ahmedabad. That the impugned order dated 21.03.2025 granting working permission was passed pursuant to the grant of the Stage-I Forest Clearance dated 18.07.2023 and Stage-II Forest Clearance dated 04.01.2024 by the MoEF&CC under the Forest (Conservation) Act, 1980.

2. That the present Rejoinder is being filed in response to the Reply Affidavit dated 19.08.2025 filed by Respondent No. 5, Greenfield Chemical Complex Ltd. (GHCL). The Appellants herein submit that nothing should be assumed to be admitted for want of specific traverse

and all averments in the Reply Affidavit should be assumed to be denied unless specifically admitted or part of the record. The Appellants reiterate all the facts and submissions made in the Appeal to be true and correct and the same may be read as part of the instant rejoinder and are not all being repeated for the sake of brevity.

PARA-WISE SUBMISSIONS:

3. That the contents of Para No. 1 and 2 of the Reply Affidavit dated 19.08.2025 require no response as these are factual averments relating to the case.

4. That the contents of Para No. 3 and 4 of the Reply Affidavit dated 19.08.2025 require no response as these are factual averments relating to the proceedings of the case.

5. That the contents of Para No. 5 to 7 of the Reply Affidavit dated 19.08.2025 require no response as these are factual averments relating to the impugned project.

REJOINDER TO PARA 'I (A)' OF THE REPLY AFFIDAVIT:

6. That the contentions of the Respondent No. 5, in Para Nos. 8 and 9 are denied except which are matter of record. That the Respondent No. 5 has stated that the present Appeal is barred by limitation. The Appellants herein submit that the State Government Order is an appealable order under Section 16 of the NGT Act and while challenging the State Government Order, i.e., the work permission order, the Stage I and Stage II Clearances are also assailed. In this regard, it is submitted that this Hon'ble Tribunal, in the matter of **Vimal Bhai & Ors. vs. Union of India & Ors., 2012 SCC OnLine NGT 77,** vide order dated 07.11.2012, has categorically held that an Appeal under Section 16(e) of the National Green Tribunal Act, 2010, is maintainable against an order issued by the State Government under Section 2(A) of the Forest

(Conservation) Act, 1980. The Hon'ble Tribunal further clarified that even though such an appeal is directed against the State Government's order, the Appellant is entitled to also challenge the forest clearances granted by the Central Government, as those clearances form the foundation of the State Government's order. The Appellants further submit that the aforesaid order of the Hon'ble Tribunal has neither been challenged nor stayed and therefore continues to hold good in law. Accordingly, in the present case, the Appellants have filed the Appeal challenging the Work Permission Order dated 21.03.2025 within the prescribed limitation period of 30 days under Section 16 of the NGT Act. It is further submitted that since the Work Permission Order dated 21.03.2025 has been impugned, the Stage-I Forest Clearance dated 18.07.2023 and Stage-II Forest Clearance dated 04.01.2024 are also assailed, as these clearances issued by the MoEFCC constitute the integral and sole basis for the grant of the said Work Permission Order, in accordance with the observations made by this Hon'ble Tribunal in the **Vimal Bhai case (supra):**

> *"However, a party cannot be remediless, a person who is aggrieved by the Approval/Clearance granted by the Central Government has to avail an opportunity to assail the same. In the aforesaid scenario it can safely be concluded that after receiving a Stage - I and/or Stage - II Clearance, thereby granting a consent 35 to permit use of forest land for non-forest purposes, from the Central Government, it is incumbent upon the State Government to pass a reasoned order transferring and/or allowing the land in question for being used for non-forest purpose. It is needless to be said that bereft or such order no forest lands can be put to use for non-forest purpose. Further, all activities done without such orders would be ab initio void.* ***An Appeal can be filed against the said order of the State Government under Section 2 (A) of FC Act and/or under Section 16 (e) of the NGT Act. In the event such an Appeal is filed it would be open for the person aggrieved, to assail the order/Clearances granted by the Central***

Government under Section 2 of the Act which forms an integral part and sole basis of the order passed by the State Government."

Copy of the order dated 07.11.2012 of the matter titled Vimal Bhai & Ors. vs. Union of India & Ors., Appeal No. 7 of 2012 is annexed herewith as **ANNEXURE A/1.**

7. That the Respondent No. 5 further alleges that the decision of any coordinate Bench is not binding in this bench. The Appellants deny such averments in its entirety. In this regard, it is submitted that the Hon'ble Supreme Court as well as various High Courts in catena of cases have adjudicated on the binding nature of the judgments of a Coordinate Bench thereby stressing upon the Judicial Discipline. The Hon'ble Supreme Court in the recent matter titled **Mary Pushpam vs. Telvi Curusumary & Ors. 2024 3 SCC 224,** highlighted the importance of ensuring judicial discipline and made the observation that when a decision of a coordinate Bench of same High Court is brought to the notice, it is to be respected and is binding on the Bench:

"The rule of "Judicial Discipline and Propriety" and the doctrine of precedents has a merit of promoting certainty and consistency in judicial decisions providing assurance to individuals as to the consequences of their actions. *The Constitution Benches of this Court have time and again reiterated the rules emerging from judicial discipline.* ***Accordingly, when a decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding subject to right of the Bench of such co-equal quorum to take a different view and refer the question to a larger Bench****. It is the only course of action open to a Bench of co-equal strength, when faced with the previous decision taken by a Bench with same strength.*

20. The legal position on coordinate Benches has further been elaborated by this Court in State of Punjab v. Devans Modern

Breweries Ltd. [State of Punjab v. Devans Modern Breweries Ltd., (2004) 11 SCC 26]: (SCC p. 157, paras 339-340)

"339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench.

*****

340. In Halsbury's Laws of England (4th Edn.), Vol. 26 at pp. 297-98, para 578, it is stated:

'A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow.' "

8. The Appellants further submit that the Hon'ble Supreme Court in the matter titled **Gammon (I) Ltd. v. Commissioner of Customs, Mumbai (2011) 12 SCC 499,** has also held that the precedent law must be followed by all concerned without any deviation:

"35. ***It needs to be emphasised that if a Bench of a tribunal, in an identical fact situation, is permitted to come to a conclusion directly opposed to the conclusion reached by another Bench of the tribunal on an earlier occasion, that will be destructive of the institutional integrity itself. What is important is the tribunal as an institution and not the personality of the members constituting it.*** *If a Bench of the Tribunal wishes to take a view different from the one taken by the earlier Bench, propriety demands that it should place the matter before the President of the Tribunal so that the case is referred to a larger Bench, for which provision exists in the Act itself.*

36. In this behalf, the following observations by a three-Judge Bench of this Court in Sub-Inspector Rooplal v. Lt. Governor [(2000) 1 SCC 644 : 2000 SCC (L&S) 213] are quite apposite: (SCC p. 654, para 12)

"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two

coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system*. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A coordinate Bench of a court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement."*

We respectfully concur with these observations and are confident that all the courts and various tribunals in the country shall follow these salutary observations in letter and spirit".

Copy of the relevant extracts of the judgment titled Mary Pushpam vs. Telvi Curusumary & Ors. 2024 3 SCC 224 is annexed as **ANNEXURE A/2.**

Copy of the relevant extracts of the judgment titled Gammon (I) Ltd. v. Commissioner of Customs, Mumbai (2011) 12 SCC 499 is annexed as **ANNEXURE A/3.**

9. That the Respondent No. 5 has further questions the bona fides of the RTI Applicants. In this regard, the Appellants respectfully submit that the RTI information dated 23.03.2022, 06.02.2025, and 15.05.2025 were obtained from a Government Authority, namely the Forest Range Officer, Mandvi, Kachchh West Forest Division. The said information clearly indicates the presence of a turtle nesting site in the project area—an aspect that Respondent No. 5 has consistently concealed at every stage while securing the requisite clearances. It is further submitted that such information provided by the Forest Department pertains to a

matter of significant public interest and, therefore, is of critical importance in the present case.

REJOINDER TO PARA 'I (B)' OF THE REPLY AFFIDAVIT:

10. That the contents of Para No. 10 of the Reply Affidavit dated 19.08.2025 are denied in their entirety. The Respondent No. 5 has incorrectly alleged that the Appellants, under the guise of challenging the Forest Clearances, have raised issues relating to violations of the CRZ Notification, 2011. The Appellants submit that this contention is wholly misconceived, as the reliefs sought in the present Appeal are strictly confined to the quashing of the Work Permission Order and the Stage-I and Stage-II Forest Clearances, and do not extend to the CRZ Clearance. Furthermore, the Appellants submit that examining the potential adverse impacts on the ocean and marine life is an essential requirement under the Forest (Conservation) Rules, 2022 which mandate an assessment of both direct and indirect impacts on wildlife. Therefore, it is erroneous to contend that such considerations fall exclusively within the scope of the CRZ Clearance. Accordingly, the Appellants deny the allegation that multiple or overlapping remedies have been sought in the present Appeal.

REJOINDER TO PARA 'I (C)' OF THE REPLY AFFIDAVIT:

11. That the contents of Para Nos. 11 to 18 of the Reply Affidavit are denied except those which are matters of record. The Respondent No. 5, in Para No. 12 and 13, has specifically contended that the Forest (Conservation) Rules, 2022 have been repealed and superseded by the Forest (Conservation) Rules, 2023, and therefore no longer hold any legal validity. The Appellants most respectfully submit that the said contention of Respondent No. 5 is misconceived and is denied in its entirety. It is submitted that Rule 16(8) of the Forest (Conservation) Rules, 2023 expressly provides for the applicability of the Rules and clearly stipulates that any proposal which has already received "In-

principle approval" under the 2022 Rules shall continue to be processed in accordance with those Rules. In the present case, since the Stage-I Forest Clearance was granted on 18.07.2023, when the Forest (Conservation) Rules, 2022 were in force, the proposal shall be governed by and processed under the same Rules for the purpose of granting Final (Stage-II) approval as well. The relevant extracts of the provisions of the FC Rules 2023 **(annexed as ANNEXURE R/3 Pg. No. 157 of the Reply Affidavit dated 19.08.2025 filed by Respondent No. 5)** are as follows:

> *"16. Any proposal which has already been submitted under the provisions of the Forest (Conservation) Rules, 2003 or Forest (Conservation) Rules, 2022 and are currently under consideration of the various authorities in the State Government or Union territory Administration or the Central Government for grant of 'In-principle' or 'Final' approval shall be dealt in the following manner, namely:-*
> ***(i) Any proposals granted 'In-principle' approval shall be dealt under the provisions of the extant rules and be processed and considered for grant of 'Final' approval without amending the conditions stipulated in the 'In-principle' approval; and***
> *(ii) Any provision of the extant rules will be applicable on the proposals which are yet to be granted 'In principle approval' under the Adhiniyam".*

12. That the contents of Para Nos. 14 and 15 of the Reply Affidavit are denied except those which are matters of record. The Respondent No. 5, in Para Nos. 14 and 15, has contended that the Forest (Conservation) Rules, 2003 shall be applicable to the present case on the ground that the proposal was submitted in 2021 and the recommendations for grant of Stage-I Forest Clearance were made by the Nodal Officer on 31.01.2022. The Respondent No. 5 has further relied upon the Office Memorandum dated 18.07.2022 to support its contention that the Forest (Conservation) Rules, 2003 would govern the present proposal. The Applicants herein submit that Section 4(1) of the Forest (Conservation) Act, 1980 talks about the power to make Rules, wherein it is stated that:

> ***"4. <u>Power to make Rules</u>.***
> ***(1) The Central Government may, by notification in the Official Gazette, makes rules for carrying out the provisions of this Act.***
> *(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule".*

13. That in view of the powers under Section 4(1) Forest (Conservation) Act, 1980, the Forest (Conservation) Rules, 2022 came up in 29.06.2022. That the FC Rules 2022 in Rule 1(2) clearly states that Rules will be effective from the date of its publication:

> ***"1 (2) They shall come into force on the date of their publication in the Official Gazette."***

That further the letter dated 29.06.2022 published along with the Forest (Conservation) Rules, 2022 categorically states that Rules will be effective from the date of its publication all proposals involving the use of forest land for non-forest purposes must be processed according to the procedures given in these new Rules. The relevant extract are hereby reproduced:

> *"I am directed to refer to the above mentioned subject and enclosed herewith a copy of the Notification of Forest (Conservation) Rules, 2022 published in the Gazette of India on 28.06.2022. In this regard it is to inform that these Rules shall be applicable from 28.06.2022 and all proposals for use of non-forestry purpose shall be dealt as per the procedure prescribed in. Therefore, you are requested to implement these Rules henceforth".*

14. The Applicants respectfully submit that it is pertinent to note that Respondent No. 5 has selectively relied upon the Recommendation Letter dated 31.01.2022 issued by the Nodal Officer, while conveniently

omitting to disclose the subsequent Recommendation Letter dated 16.05.2023 issued by the State Government. It is crucial to emphasize that the Forest (Conservation) Rules, 2022 were very much in force at the time when the State Government issued its recommendation on 16.05.2023. Accordingly, the said recommendation was made under the 2022 Rules, and therefore, these Rules shall govern the present proposal. It is further significant to note that the Notification dated 28.06.2022 categorically stipulates that the Forest (Conservation) Rules, 2022 came into effect from the date of their publication in the Gazette of India. It very clearly stated that all proposals seeking permission to use forest land for non-forest purposes must be processed according to the procedure laid down in the new Forest (Conservation) Rules, 2022. The Appellants herein further submit that the Stage – I Clearance is granted on 18.07.2023 after the FC Rules, 2022 came into existence and hence the same is applicable as per Rule 1(2) of the FC Rules, 2022. Further, it is crucial to note that the Rule 16(8) of the Forest (Conservation) Rules, 2023 expressly provides for the applicability of the Rules and clearly stipulates that any proposal which has already received "In-principle approval" under the 2022 Rules shall continue to be processed in accordance with those Rules. In the present case, since the Stage-I Forest Clearance was granted on 18.07.2023, when the Forest (Conservation) Rules, 2022 were in force.

15. Furthermore, the Appellants herein submits that the OM dated 18.07.2022 issued by the MoEFCC with respect to the applicability of the FC Rules, 2022 cannot be relied upon. It is a settled position of law that when a particular provision is not specifically provided for in the parent statute or in the statutory rules framed thereunder, it cannot be introduced or supplemented through an Office Memorandum, circular, or executive instruction. An Office Memorandum, being an executive instrument without statutory force, cannot create new rights, impose

new obligations, or add to or alter the scope of the law. It may only serve to clarify or implement what is already provided in the statute or the rules, but cannot travel beyond or in contravention of them. This principle has been consistently upheld by the Hon'ble Supreme Court and various Hon'ble High Courts, which have held that executive instructions or Office Memoranda cannot override, amend, or expand the scope of statutory provisions and no decisions can be taken based on such OMs. That the Hon'ble Supreme Court in the matter titled **Union of India v. Ashok Kumar Aggarwal (2013), 16 SCC 147** vide order dated 22.11.2013 has held that:

> *"**59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders / office memorandum / executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions.** (Vide Union of India v. Majji Jangamayya [(1977) 1 SCC 606 : 1977 SCC (L&S) 191] , P.D. Aggarwal v. State of U.P. [(1987) 3 SCC 622 : 1987 SCC (L&S) 310 : (1987) 4 ATC 272] , Paluru Ramkrishnaiah v. Union of India [(1989) 2 SCC 541 : 1989 SCC (L&S) 375 : (1989) 10 ATC 378 : AIR 1990 SC 166] , C. Rangaswamaiah v. Karnataka Lokayukta [(1998) 6 SCC 66 : 1998 SCC (L&S) 1448] and Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation [(2011) 5 SCC 435 : AIR 2011 SC 2220]"*

Copy of the relevant extracts of the judgment titled Union of India v. Ashok Kumar Aggarwal (2013), 16 SCC 147 is annexed as **ANNEXURE A/4.**

16. That it is pertinent to note that the OM dated 18.07.2022 is not in supplement to the FC Rules, 2022, as it is specifically stated therein the 2022 Rules shall be applicable from the very date of its publication. Thus, the OM dated 18.07.2022 being an executive instrument without statutory force, cannot create new rights, impose new obligations, or add to or alter and cannot travel beyond or in contravention of the existing law. Furthermore, the Rule 16(8) of the Forest (Conservation)

Rules, 2023 expressly provides for the applicability of the Rules and clearly stipulates that any proposal which has already received "In-principle approval" under the 2022 Rules shall continue to be processed in accordance with those Rules. In the present case, since the Stage-I Forest Clearance was granted on 18.07.2023, when the Forest (Conservation) Rules, 2022 were in force.

17. Furthermore, the Applicants herein submit that the Hon'ble Supreme Court in the matter of **State of Orissa v. Mamata Mohanty, (2011) 3 SCC 436,** where the Hon'ble Supreme Court has laid down with regard to orders/letters/circulars issued by the Statutory Authorities that no right can accrue from such a circular which is not in conformity with law:

> ***"Order bad in inception***
> *37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits.* ***If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin****. (Vide Upen Chandra Gogoi v. State of Assam [(1998) 3 SCC 381: 1998 SCC (L&S) 872 : AIR 1998 SC 1289] , Mangal Prasad Tamoli v. Narvadeshwar Mishra [(2005) 3 SCC 422 : AIR 2005 SC 1964] and Ritesh Tewari v. State of U.P. [(2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315 : AIR 2010 SC 3823])*
> *……*
> ***62. It is a matter of common experience that a large number of orders/letters/circulars, issued by the State/statutory authorities, are filed in court for placing reliance and acting upon it. However, some of them are definitely found to be not in conformity with law. There may be certain such orders/circulars which are violative of the mandatory provisions of the Constitution of India****. While dealing with such a situation, this Court in Ram Ganesh Tripathi v. State of U.P. [(1997) 1 SCC 621 : 1997 SCC (L&S) 186 : AIR 1997 SC 1446] came across with an illegal order passed by the statutory authority violating the provisions of Articles 14 and 16 of the Constitution. This Court simply brushed aside the same*

without placing any reliance on it observing as under: (SCC p. 625, para 9)

*"9. … The said order was not challenged in the writ petition as it had not come to the notice of the appellants. It has been filed in this Court along with the counter-affidavit…. **This order [is also deserved] to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents**…."*

18. That is crucial to note the observations made by this Hon'ble Tribunal in the matter titled **Mr. K. Saravanan vs. Union of India O.A No. 74 of 2021** wherein vide order dated 28.04.2025. This Hon'ble Tribunal has stated that time and again the MoEFCC has come up with OMs that weakens the laws in existence:

"30. The above aspect makes it clear that the Ministry is moving in two contradictory directions - while tightening compliance through formal notifications, simultaneously issuing OMs that open up exceptions and weaken oversight. This certainly would undermine the integrity of environmental governance. *While the environmental safeguard should be the prime concern, the regulatory shift prioritising ease of business and operational flexibility should not be allowed to overtake the same.*

…..

33. …..This only highlights the fact that there is a change in the environmental governance. The SO and the OMs earlier allowed strict norms while these policy instruments like OMs have taken away the norms through procedural shortcuts.

34. The MoEF&CC which is a regulatory body of the environment and ecology, instead of converting towards higher accountability it is drifting towards dilution in the name of reforms.

35. …. ***The OMs in question are not legislative rules as they do not udergo the public consultation, stakeholder engagement or gazette publication in the same manner as that of the S.O or any statute. The OMs are issued without any scientific study or in fact assessment. Such a shift in regulatory thresholds through OMs is inconsistent with the Principle of Legality and with well-established limits on delegated legislation.***

36. The present case is the classic example to revisit the structural issue in India's environmental governance and its over-reliance on subordinate legislation and executive instructions. The powers provided to Central Government under Section 3 to take measures to protect environment is very wide and the same is already reiterated in M.C. Mehta vs. Union of India- AIR 1988 Supreme Court 1037. ***However, in practice the environmental law is largely driven by notifications, guidelines, office memorandum and circulars none of which comes under the legislative oversight. When the environmental norms are weakened then there is no institutional accountability mechanism".***

Copy of the relevant extracts of the judgment titled State of Orissa v. Mamata Mohanty, (2011) 3 SCC 436 is annexed as **ANNEXURE A/5.**

Copy of the relevant extracts of the judgment titled Mr. K. Saravanan vs. Union of India O.A No. 74 of 2021 is annexed as **ANNEXURE A/6.**

19. The Respondent No. 5, in Paragraphs 16 to 18, has contended that the Forest (Conservation) Rules, 2003 are applicable to the present case and that under the said Rules, assessment of direct and indirect impacts arising from diversion of forest land is mandated only for projects involving diversion of more than 40 hectares of forest area. The Applicants, at the very outset, categorically deny that the Forest (Conservation) Rules, 2003 are applicable to the present proposal. Arguendo, even if it is assumed, without admitting, that the 2003 Rules were applicable at the time of granting Stage-I Forest Clearance, it is nowhere mentioned in the entire Rule that projects below 40 hectares do not require any assessment of direct and indirect impacts upon forest, wildlife and environment arising from diversion of forest land. That Rule 7(3)(b) of the Forest (Conservation) Rules, 2003 categorically mandates that, while examining any proposal, the Regional Office ***shall*** ensure that the final decision is taken in conformity with all existing

Rules and Guidelines issued by the Central Government. This clearly indicates that the evaluation of proposals is not confined merely to the size of the area proposed for diversion, but must also take into account all applicable norms, safeguards, and environmental considerations prescribed under the prevailing legal framework. Therefore, it is wholly misconceived and legally untenable to assume that projects involving diversion of less than 40 hectares of forest land can be approved automatically or straightaway without conducting any assessment of the direct and indirect impacts such diversion may have on wildlife, forests, and the surrounding environment. The relevant extracts **(annexed as ANNEXURE R/3 Pg. No. 124 of the Reply Affidavit dated 19.08.2025 filed by Respondent No. 5)** are hereby reproduced:

> *"7(3)(b) While examining the proposal, the Regional Office shall ensure that the final decision is in conformity with the National Forest Policy, Working Plan Guidelines and other relevant Rules and Guidelines issued by the Central Government from time to time."*

REJOINDER TO PARA 'I (D)' OF THE REPLY AFFIDAVIT:

20. That the contents of Paragraph 19 and 20 of the Reply Affidavit are denied except which are matter of record. The contention of Respondent No. 5 that the information furnished in Form A Part II of the Forest Clearance and Form I Part C of the Environmental Clearance are distinct and, therefore, the data from one cannot be relied upon in the other are denied. In this regard, the Appellants submit that such a contention is wholly untenable, as both the Environmental Clearance and the Forest Clearances pertain to the same project, in the same project area, and are sought by the same project proponent. It is, therefore, alarming to note that while Form A Part II of the Forest Clearance declares that no wildlife is present in or around the forest land, Form I Part C of the Environmental Clearance explicitly lists several Schedule I species within the study area, including the Flap Shell Turtle, Green Sea Turtle, Olive

Ridley Sea Turtle, Indian Monitor Lizard, Black-shouldered Kite, Eurasian Spoonbill, Indian Peafowl, Marsh Harrier, Oriental Honey Buzzard, and Gugal. Such a glaring contradiction in the information submitted for the same project raises serious concerns about the accuracy, integrity, and reliability of the data provided by the project proponent. Furthermore, the Respondent No. 5 alleges that the requirement of a 10km study area has also been mentioned in the Technical Guidance Manual for Soda Ash Plants. However, no such distance requirement or study area has been included in the Forms for Forest Clearance, either for the project proponent or for the Divisional Forest Officer in Form A Part I. That in this regard, the Appellants respectfully submit that the Respondent No. 5, in Paragraph No. 18 of their Reply, has themselves admitted that the Divisional Forest Officer (DFO), in his inspection report, recommended the proposed diversion of forest land subject to the conduct of a detailed study or assessment on sea turtles within a 10 km radius of the project site. This categorical recommendation by the DFO underscores the ecological sensitivity of the region and the necessity of a scientific evaluation of the area's suitability before any diversion could be considered. It is, therefore, pertinent to note that the Forest Department itself has recognized and mandated the need for a study or assessment of sea turtle habitats **within a 10 km radius surrounding the project.** This clearly indicates that the presence and protection of turtle nesting grounds constitute a crucial environmental parameter for appraisal. Consequently, while preparing and submitting Form A, Part I, the project proponents were obligated to consider the 10 km radius in and around the project site with specific reference to turtle nesting and related ecological features.

REJOINDER TO PARA 'I (E)' OF THE REPLY AFFIDAVIT:

21. That the contents of Paragraph 21 to 27 of the Reply Affidavit are denied except which are matter of record. The Respondent No. 5 herein states

that the Appellants are not aggrieved persons under Section 18 of the NGT Act and the antecedents of the Appellants are questionable. It is submitted that the Appellants have filed the present Appeal with a clear and bona fide intent. The Appellants No. 1 to 5 are longstanding residents of Village Bada, located in District Kuchhch, Gujarat, where the impugned project has been granted Forest Clearance. As residents of the region, they are directly and adversely affected by the proposed project. The adverse impacts of the project on the environment, specifically to the green sea turtles and coral reefs, makes them stakeholders with a legitimate interest in challenging the approval of the project. The Appellants are not only directly affected but are also public-spirited individuals with a deep concern for environmental conservation and the protection of community rights. Their involvement in this matter stems from a genuine commitment to safeguarding the ecological balance as the project is proposed to come up in the Gulf of Kuchhch area which is extremely fragile in biodiversity and is one of the nesting sites for Green Sea Turtle and Olive Ridley Turtles in India. The Appellants in this regard submits that this Hon'ble Tribunal in the matter titled **Save Mon Region Federation vs. Union of India and Ors. (Appeal No. 39 of 2012)** has held that:

> *"18. Law gives a right to 'any person' who is 'aggrieved' by an order to prefer an appeal. The term 'any person' has to be widely construed. It is to include all legal entities so as to enable them to prefer an appeal, even if such an entity does not have any direct or indirect interest in a given project. The expression 'aggrieved' again, has to be construed liberally. The framers of law intended to give the right to any person aggrieved, to prefer an appeal without any limitation as regards his locus or interest".*

22. That it is clear from the above cited judgment that any person aggrieved may approach the Hon'ble Tribunal to initiate action on bona fide ground to agitate his grievance as to protect the natural environment. That in the present case, the Appellants are being aggrieved with the threat or

damage caused to the environment and the endangered species i.e., Sea Turtles as a result of the activities undertaken by the Respondent No. 5 and hence can very well espouse the cause before this Hon'ble Tribunal.

23. That the allegation made by Respondent No. 5 that the Appellants are acting as proxies of the Vipasana Meditation Centre is entirely baseless, unsubstantiated, and devoid of any merit. The Appellants unequivocally assert their independent standing and interest in the present proceedings, which arise solely from their status as longstanding residents of Village Bada and their direct and legitimate concern over the adverse environmental impacts of the impugned project. It is submitted that the RTI Application dated 23.03.2022, as referred to by Respondent No. 5, was not filed by any of the Appellants in the present case. There is no material on record to suggest or establish any connection between the Appellants and the said RTI Application. Additionally, the letter allegedly circulated on the website of the Vipasana Meditation Centre does not contain any reference to or mention of the any of the Appellants, either individually or collectively. The attempt to draw a connection between the Appellants and the Vipasana Meditation Centre is a deliberate mischaracterization intended to divert attention from the substantive issues raised in the present Appeal. It is pertinent to emphasize that the Appellants have no role in, nor any association with, the protests or representations made by the Vipasana Meditation Centre. Similarly, the said Centre is not in any way connected either directly or indirectly with the filing or subject matter of the present Appeal. The Appellants' involvement in these proceedings is purely in their individual capacity as affected parties and environmentally concerned citizens, acting in good faith and in public interest.

24. Furthermore, the contention raised by the Respondent No. 5 with regard to the purchase of land admeasuring 21.19 acres in Survey No. 426 of Village Bada, are wholly irrelevant and extraneous to the present proceedings. The said dispute regarding land ownership or transaction is entirely separate and distinct in nature, and does not fall within the scope of issues contemplated under Schedule I of the National Green Tribunal Act, 2010, which outlines the specific environmental matters that fall within the jurisdiction of this Hon'ble Tribunal. That the present Appeal has been filed by the Appellants strictly within the ambit of environmental concerns arising from the grant of Forest Clearance to the impugned project. The allegations made by the Appellants are centred on procedural and substantive lapses in the environmental appraisal and clearance process. It is, therefore, submitted that any reference to private land transactions or civil disputes relating to Survey No. 426 has no bearing on the subject matter of the present Appeal. The inclusion of such unrelated contentions by Respondent No. 5 appears to be a diversionary tactic aimed at discrediting the Appellants and distracting from the core environmental issues raised before this Hon'ble Tribunal. Accordingly, such contentions deserve to be disregarded in their entirety as they fall outside the jurisdictional purview of this Tribunal and have no nexus to the grounds raised in the Appeal.

REJOINDER TO PARA 'II (A)' OF THE REPLY AFFIDAVIT:

25. That the contents of Para No. 28 to 41 are denied except which are matter of record. The Respondent No. 5 in Para No. 29 contended that a passage route for movement of man, material and equipment is demanded through the treeless riverbed to prevent tree felling and cutting. The Appellants herein submit that the passage that will be used for movement and transportation of construction machineries will invariably include heavy vehicles within the forest land. That arguendo,

it is assumed that the passage will not require any felling of trees, but the plying of heavy vehicles above the sandunes will disrupt the morphology and the ecology therein. Furthermore, it is most pertinent to note that the area adjoining and surrounding the proposed project site forms an important turtle nesting habitat, as has been evidenced and substantiated through multiple RTI responses obtained from the Forest Department. The nesting activity of turtles is highly sensitive to disturbances of this nature, and any anthropogenic interference, including vehicular movement, artificial lighting, or noise, poses a direct threat to their breeding cycle and habitat viability. The Appellants further submit that the so-called "treeless passage" proposed to be used for vehicular movement in fact consists of dense, healthy beach grass that plays a crucial ecological role in stabilizing coastal sand dunes. Beach grass, with its extensive and deeply penetrating root systems, binds the sand and facilitates dune formation by promoting continued sand accumulation. The movement of heavy vehicles over these dunes to transport construction materials will inevitably damage and uproot this vegetation, thereby undermining dune stability and significantly altering the natural dune morphology.

Copy of the images taken by the treeless riverbed that will be used by the Respondent No. 5 for transportation of construction materials are annexed herewith as **ANNEXURE A/7.**

26. That the Respondent No. 5 in Para No. 32 of the Reply Affidavit states that the Conservation Plan was prepared which encompasses the conservation of scheduled species, marine and terrestrial biodiversity and sea turtles. The Appellants herein in this regard submit that it is crucial to note that despite stating there are no wildlife species in the proposed project area, the DFO, DCF and CCF without giving any detailed reason as required under the law recommended for preparation

and implementation of a conservation plan to mitigate the negative effects upon sea turtles. The recognition of the need for a Conservation Plan implies that the ecological value of the site—particularly in relation to sea turtle habitat—is known and accepted by the authorities.

27. That the contents of Para No. 33 are denied except which are matter of record and has been appropriately replied in Para No. 11 to 19 of the Rejoinder and the same is not repeated for the sake of brevity.

28. That the contents of Para No. 41 wherein the Respondent No. 5 has alleged that the RTI replies, Goggle images reflect isolated incidents are denied in tits entirety. The Appellants herein submit that the RTI reply dated 23.03.2022 **(annexed as ANNEXURE A/10 Pg. 126-137 of the Appeal)** received from the Forest Range Officer Mandvi, Kutch West Forest Division clearly shows year wise data from 2011 to 2021 with regard to the number of eggs found, as well as the details of number the of dead turtles found between 2019 to 2022 which clearly makes it evident about the presence of turtles along the coast of Mandvi and Bada i.e., the proposed project site. The data thus serves as evidence confirming the presence of Green Sea Turtles and Olive Ridleys, along with their nesting sites along the coasts of Mandvi and Bada. Additionally, the RTI response includes a list of wild animals rescued from in and around Bada, such as Nilgai, Sarus Crane, Crocodiles, Striped Hyena, Peacocks, and others. Further, a RTI response received from the Range Forest Officer, Mandvi-Kachchh dated 06.02.2025 (erroneously typed as 06.02.2024), **(annexed as ANNEXURE A/1 of the Additional affidavit)** clearly affirms the presence of turtles on the Mandvi seashore. This official response substantiates the ecological significance of the proposed project area thereby confirming the presence of turtle nesting activity. That the RTI reply demonstrates that a total of 8,682 turtle eggs were recorded

between 2011 and 2024, and 33 dead turtles were found along the seashore of Mandvi Taluka. These figures, officially provided by the Forest Department, establish the presence of turtles in the proposed project area and are not just isolated incidents as wrongly claimed by Respondent No. 5.

REJOINDER TO PARA 'II (B)' OF THE REPLY AFFIDAVIT:

29. That the contents of Paragraph 42 to 48 of the Reply Affidavit are denied except which are matter of record. That the Respondent No. 5 herein states that there is no impact of the diversion of forest land on marine, biodiversity, sand dunes as well as turtles nesting site. The Respondent No. 5 also denies the presence of any wildlife and turtle nesting site and states that the area is not feasible for turtle nesting due to rocky beach. The Appellants herein reiterates the earlier submissions made in the Appeal as well as the Additional Affidavit dated 31.07.2025 regarding the presence of turtle nesting and the presence of wildlife. That RTI reply dated 23.03.2022 **(annexed as ANNEXURE A/10 Pg. 126-137 of the Appeal)** received from the Forest Range Officer Mandvi, Kutch West Forest Division clearly shows year wise data from 2011 to 2021 with regard to the number of eggs found, as well as the details of number the of dead turtles found between 2019 to 2022 which clearly makes it evident about the presence of turtles along the coast of Mandvi and Bada i.e., the proposed project site. The data thus serves as evidence confirming the presence of Green Sea Turtles and Olive Ridleys, along with their nesting sites along the coasts of Mandvi and Bada. Additionally, the RTI response includes a list of wild animals rescued from in and around Bada, such as Nilgai, Sarus Crane, Crocodiles, Striped Hyena, Peacocks, and others. Further, a RTI response received from the Range Forest Officer, Mandvi-Kachchh dated 06.02.2025 (erroneously typed as 06.02.2024), **(annexed as ANNEXURE A/1 of the Additional affidavit)** clearly affirms the

presence of turtles on the Mandvi seashore. This official response substantiates the ecological significance of the proposed project area thereby confirming the presence of turtle nesting activity. That the RTI reply demonstrates that a total of 8,682 turtle eggs were recorded between 2011 and 2024, and 33 dead turtles were found along the seashore of Mandvi Taluka. These figures, officially provided by the Forest Department, establish the presence of turtles in the proposed project area. Thus, the contentions raised by the Respondent No. 5 are denied.

30. That the Respondent No. 5 in Para No. 43 states that six different experts of national and international repute namely, CSIR-NEERI, CSIR-NIO, ZSI, GUIDE, TR Associates have undertaken detailed studies on environmental impact assessment, marine impact assessment, presence of turtles and coral reefs. The Appellants submit that the issues pertaining to each of the studies have been comprehensively examined and critiqued in Appeal No. 19 of 2025, wherein the grant of Environmental Clearance has been challenged. Owing to the discrepancies and the fundamentally flawed nature of these studies, they cannot be relied upon, as they fail to present accurate findings regarding the presence of turtle nesting and stand in stark contradiction to the data submitted by the Forest Department. Accordingly, the same are not being reiterated herein for the sake of brevity. However, the Appellants submit that Respondent No. 5 has repeatedly relied on the GUIDE study. In this regard, it is pertinent to note that the GUIDE study did not assess the potential impacts of the proposed pipelines on sand dune morphology. The study contains no analysis of sand erosion that may result from drilling activities or from the installation of the pipelines. Despite emphasizing that the pipelines will be placed 15 meters below ground, Respondent No. 5 has remained completely silent on the adverse effects of the drilling process itself, including the degradation

of the top layer of the sand dunes and the disturbance or destruction of beach grass during pipeline laying.

31. That the contents of Paragraph 44 of the Reply Affidavit are denied except which are matter of record. The Respondent No. 5 herein alleged that the Appellants are contradicting their own submissions the Appellants have submitted that the turtle nesting sites are 2.6 to 6 km away from the project site. In this regards, the Appellants herein submits that it is pertinent to note that sea turtles exhibit a strong tendency of *natal homing*—a biological behaviour of sea turtles wherein they return to or near the same locations to nest in successive breeding seasons. In this context, it is significant that turtles have been recorded nesting at locations situated approximately 2.6 km from the proposed project site in December 2022, around 3 km in March 2025, and about 6 km in July 2025. Based on established scientific understanding, these turtles are will return and re-nest within a range of 4 to 6 km from their previous nesting sites. Therefore, the proposed project area falls well within the potential re-nesting zone of the turtles, underscoring the ecological sensitivity of the region. It is crucial to understand the nesting site fidelity of Green Sea Turtles and Olive Ridleys which means the turtles tend to return to the same beach or area where they previously laid their eggs to nest again. Thus, they show a strong preference for coming back to the same location during each nesting season or even multiple times within the same season with repeat nesting within 4-6 km of the nests. That a study titled "Strong site fidelity and longer internesting interval for solitary nesting Olive Ridley Sea Turtles in Brazil" published in International Journal on Life in Oceans and Coastal Waters gave the findings that **(annexed as ANNEXURE A/5 of the Additional Affidavit filed by the Appellants)**:

> "*Results: We investigated nest site fidelity at Pirambu, Lagoa Redonda and Santa Isabel beaches analyzing interesting intervals*

and renesting attempts separately. Renesting attempts showed no particular distribution pattern (Fig. 3). In contrast, we found a pattern within internesting intervals' events: females renesting closer to a previous nest location. Distances registered for internesting intervals were significantly smaller than those found for renesting attempts (U = 2,345.5, N1 = 47, N2 = 126, P = 0.035). The average distance between internesting events was 4.83 ± 4.37 km (N = 126). The majority (mean ± confidence intervals) of internesting distances varied between 4.06 and 5.59 km."

32. That the contents of Para No. 47 of the Reply Affidavit are denied except which are matter of record the same has been appropriately replied in Para No. 28 of the present Rejoinder.

REJOINDER TO PARA 'III' OF THE REPLY AFFIDAVIT:

33. That the contents of the Para No. 50 of the Reply Affidavit are denied in its entirety and the same has been appropriately replied in Para No. 8 of the Rejoinder and the same is not repeated for the sake of brevity.

34. That the contents of Para No. 51 of the Reply Affidavit are denied except which are matter of record the same has been appropriately replied in Para No.11 to 19 of the Rejoinder and the same is not repeated for the sake of brevity. The Respondent No. 5 herein states that the pipelines are being established 15 meters below the ground level and will not impact the forest land and also states that not even a blade of grass shall be removed from the forest land. The Appellants in this regard submit that the intake and out take pipelines which will be laid through underground tunnel will massively disturb the sand dunes. That the underground pipelines will significantly impact sand dunes, primarily through increased erosion and habitat disruption. Pipeline construction and maintenance activities significantly destabilize the sand, leading to dune erosion and changes in dune morphology. Further, it is crucial to note that the movements of heavy equipment will significantly disturb

the riverbed and will change the dune morphology thereby leading to major dune erosions. This aspect has been overlooked completely by the EAC, MoEFCC and by the Coastal Zone Management Authority.

35. That the contents of Para No. 52 of the Reply Affidavit are denied except which are matter of record the same has been appropriately replied in Para No. 23 & 24 of the Rejoinder and the same is not repeated for the sake of brevity. The Appellants respectfully submit that the subject matter and cause of action in Writ Petition No. 85/2022, filed before the Hon'ble High Court of Gujarat, were prior to the grant of the impugned EC and FC. It is further submitted that in the said Writ Petition No. 85/2022, the alleged grievances pertained specifically regarding the legality of the notice dated 26.09.2022,which scheduled the public hearing for 17.10.2022 without ensuring the mandatory 30 days gap between the issuance of the notice and the date of final hearing. The challenge was based on the contention that such scheduling was illegal, arbitrary, irrational, and violative of fundamental rights, and thus warranted being quashed and set aside. However, the present Appeal does not concern with the public hearing and hence nothing has been supressed by the Appellants herein.

36. That the contents of Para No. 53 are denied in its entirety. That the Respondent No. 5 herein states that the present appeal is the third attempt by the Appellants to derail and delay the project. The Appellants herein submit that the Appellants herein are challenged the Work Permission Order and since the work permission order is challenged, the Stage-I Forest Clearance dated 18.07.2023 and Stage-II Forest Clearance dated 04.01.2024 are also assailed, as these clearances issued by the MoEFCC constitute the integral and sole basis for the grant of the said Work Permission Order. That Work Permission order has been challenged because the manner in which the Forest Clearances are

obtained are incorrect as the same has been obtained by concealment of factual information regarding the presence of Turtle Nesting Site despite the RTI Responses of the Forest Department as discussed earlier categorically gives the finding on the presence of turtle nesting. Thus, the Appellants are not seeking to derail or delay the project, but are merely challenging the procedural irregularities and legal infirmities that have deliberately committed by the Respondent No. 5 at various stages in the process of obtaining Environmental Clearance and Forest Clearance.

37. That the contents of Para No. 10 of the Reply Affidavit dated 19.08.2025 are denied in their entirety. The Respondent No. 5 has incorrectly alleged that the Appellants, under the guise of challenging the Forest Clearances, have raised issues relating to violations of the CRZ Notification, 2011. The Appellants submit that this contention is wholly misconceived, as the reliefs sought in the present Appeal are strictly confined to the quashing of the Work Permission Order and the Stage-I and Stage-II Forest Clearances, and do not extend to the CRZ Clearance. Furthermore, the Appellants submit that examining the potential adverse impacts on the ocean and marine life is an essential requirement under the Forest (Conservation) Rules, 2022 which mandate an assessment of both direct and indirect impacts on wildlife. Therefore, it is erroneous to contend that such considerations fall exclusively within the scope of the CRZ Clearance. Accordingly, the Appellants deny the allegation that multiple or overlapping remedies have been sought in the present Appeal. Further the Respondent No. 5 has Google Earth images does not provide a complete picture. The Appellants in this regard submit that the Hon'ble Supreme Court in the matter titled **M.C. Mehta vs. Union of India Writ Petition (Civil) No(s). 4677 of 1985** vide order dated 30.09.2022 has made the observation that:

"It is necessary that the modern technologies for Satellite mapping of lands and buildings to detect encroachments and unauthorized / illegal constructions and Geo fencing of lands/premises for prompt monitoring and control takes place.
Geo fencing is widely used for various purposes including surveillance / monitoring of selected areas / premises requiring constant vigil and care and it would possibly be ideally used in the cases of water bodies, forests, mining areas etc. which require regular monitoring to prevent various illegalities such as encroachments, illegal mining etc."

38. That the contents of Para No. 55 to 57 of the Reply Affidavit are denied except those which are matters of record. The Respondent No. 5 has erroneously alleged that the Appellants have sought to impose the study requirements applicable to Environmental Clearance upon the process of Forest Clearance. The Appellants respectfully submit that no such assertion has been made anywhere in the Appeal, and at no stage have the Appellants equated the study requirements of Environmental Clearance with those of Forest Clearance. The Appellants herein contends that the Form A Part II in Forest Clearance is a form used to provide detailed information about the project proposal, including its impact on wildlife and the forest ecosystem. It is filled to gather specific data for evaluating the project's environmental impact and ensuring compliance with the Forest (Conservation) Act. The Appellant herein submits that Form A Part II filled by the Deputy Conservator of Forest in Serial No. 8 (i) has submitted that no wildlife is present in and around the forest land proposed for diversion. That such a finding is absolutely incorrect as the the Appellants herein reiterates the earlier submissions made in the Appeal as well as the Additional Affidavit dated 31.07.2025 regarding the presence of turtle nesting and the presence of wildlife. That RTI reply dated 23.03.2022 **(annexed as ANNEXURE A/10 Pg. 126-137 of the Appeal)** received from the Forest Range Officer Mandvi, Kutch West Forest Division clearly shows year wise data from 2011 to 2021 with regard to the number of eggs found, as well as the details of number the of dead turtles found between 2019 to 2022 which

clearly makes it evident about the presence of turtles along the coast of Mandvi and Bada i.e., the proposed project site. The data thus serves as evidence confirming the presence of Green Sea Turtles and Olive Ridleys, along with their nesting sites along the coasts of Mandvi and Bada. Additionally, the RTI response includes a list of wild animals rescued from in and around Bada, such as Nilgai, Sarus Crane, Crocodiles, Striped Hyena, Peacocks, and others. Further, a RTI response received from the Range Forest Officer, Mandvi-Kachchh dated 06.02.2025 (erroneously typed as 06.02.2024), (annexed as ANNEXURE A/1 of the Additional affidavit) clearly affirms the presence of turtles on the Mandvi seashore. This official response substantiates the ecological significance of the proposed project area thereby confirming the presence of turtle nesting activity. That the RTI reply demonstrates that a total of 8,682 turtle eggs were recorded between 2011 and 2024, and 33 dead turtles were found along the seashore of Mandvi Taluka. These figures, officially provided by the Forest Department, establish the presence of turtles in the proposed project area. Thus, the contentions raised by the Respondent No. 5 are denied.

39. That the contents of Para No. 58 of the Reply Affidavit are denied except which are matter of record the same has been appropriately replied in Para No. 31 of the Rejoinder and the same is not repeated for the sake of brevity.

40. That the contents of Paragraph 59 of the Reply Affidavit are denied except those which are matters of record. The Respondent No. 5 has contended that since no authority has found any element of fraud, mala fides, or fundamental misapplication, the reliance placed by the Appellants on the judgments in Hanuman Laxman and Sreeranganathan K.P. is untenable. The Appellants respectfully submit that the said judgments were cited in the Appeal to demonstrate that the Form-I

submitted for obtaining Forest Clearance contained misleading and incorrect information, and that there was a deliberate concealment of material facts, particularly concerning the presence of turtle nesting sites in and around the project area. The reliance on these judgments, therefore, is both relevant and justified in the context of the present case.

41. That the contents of Para No. 60 of the Reply Affidavit are denied except which are matter of record the same has been appropriately replied in Para No. 11 of the Rejoinder and the same is not repeated for the sake of brevity.

42. That the contents of Para No. 61 of the Reply Affidavit are denied except which are matter of record the same has been appropriately replied in Para No. 31 of the Rejoinder and the same is not repeated for the sake of brevity.

43. That the contents of Para No. 62 of the Reply Affidavit are denied in its entirety. That the Respondent No. 5 herein alleges that the Appellants have not provided a single map, government document or record to clarify the presence of turtle nesting in the proposed project site. That the Appellants whole contention with regard to the presence of turtles in the proposed project site is based on the RTI Reply information dated 23.03.2022, 06.02.2025, and 15.05.2025 which are duly obtained from a credible government authority, namely the Forest Range Officer, Mandvi, Kachchh West Forest Division. The said information clearly indicates the presence of a turtle nesting site in the project area—an aspect that Respondent No. 5 has consistently concealed at every stage while securing the requisite clearances. It is further submitted that such information provided by the Forest Department pertains to a matter of significant public interest and, therefore, assumes critical importance in the present case. Furthermore, the Appellants have categorically placed

on record the Google Earth Images between the years 2022 and 2025, and have documented the nesting sites located around the project area by capturing photographs of these sites, which are protected by the Forest Department. Additionally, the Appellants have prepared Google Earth satellite imagery based on the geo-coordinates of these nesting sites, indicating their respective distances from the project site. **(annexed as ANNEXURE A/4 of the Additional Affidavit dated 31.07.2025 filed by the Appellants).**

44. That the contents of Para No. 63 of the Reply Affidavit are denied except which are matter of record the same has been appropriately replied in Para No. 11 to 219 of the Rejoinder and the same is not repeated for the sake of brevity. The Respondent No. 5 herein states that as a matter of precaution, the DFO has given recommendation by imposing conditions for the preparation of holistic turtle conservation plan. The Appellants herein in this regard submit that it is crucial to note that despite stating there are no wildlife species in the proposed project area, the DFO without giving any detailed reason as required under the law recommended for preparation and implementation of a holistic conservation plan to mitigate the negative effects upon sea turtles. The recognition of the need for a Conservation Plan implies that the ecological value of the site—particularly in relation to sea turtle habitat—is known and accepted by the authorities.

45. That the contents of Para No. 64 of the Reply Affidavit are denied except which are matter of record and the same has been appropriately replied in Para No. 43 & 44 of the Rejoinder and the same is not repeated for the sake of brevity.

46. That the contents of Para No. 65 of the Reply Affidavit are denied except which are matter of record the same has been appropriately replied in

Para No. 11 to 19 of the Rejoinder and the same is not repeated for the sake of brevity.

47. That the contents of Para No. 66 of the Reply Affidavit are denied except which are matter of record the same has been appropriately replied in Para No. 30 of the Rejoinder and the same is not repeated for the sake of brevity.

48. That the contents of Para No. 67 of the Reply Affidavit are denied except which are matter of record. The Respondent No. 5 has alleged that the Appellants are raising grounds with respect to alleged violation of the CRZ Notification, 2011. The Appellants submit that this contention is wholly misconceived, as the reliefs sought in the present Appeal are strictly confined to the quashing of the Work Permission Order and the Stage-I and Stage-II Forest Clearances, and do not extend to the CRZ Clearance. Furthermore, the Appellants submit that examining the potential adverse impacts on the ocean and marine life is an essential requirement under the Forest (Conservation) Rules, 2022 which mandate an assessment of both direct and indirect impacts on wildlife. Therefore, it is erroneous to contend that such considerations fall exclusively within the scope of the CRZ Clearance. Accordingly, the Appellants deny the allegation that multiple or overlapping remedies have been sought in the present Appeal.

49. That the contents of Para No. 67 of the Reply Affidavit are denied wherein the Respondent No. 5 states that the treated effluents will not pose significant risk to algal and marine ecosystem. The Appellants herein submit that it is crucial to note that the significant consequences of seawater intake and hot water discharge on the spawning of coral reefs and aquatic life has been completely overlooked. This region is home to diverse and fragile marine ecosystems, including coral reefs and aquatic species that are highly susceptible to environmental

disturbances. The proposed activities pose severe risks to the spawning processes of coral reefs, which are essential for maintaining marine biodiversity. The thermal discharge of hot water into the ecosystem could alter water temperatures, disrupting the delicate balance required for coral reproduction and the survival of other marine species. The effluent discharged into the sea would be 5°C warmer than the surrounding seawater, posing a serious threat to marine ecosystems. This temperature increase could cause irreversible damage, affecting thousands of marine species. Sea turtles, which migrate to the Gulf of Kachchh for nesting, would be particularly vulnerable. A rise in seawater temperature combined with the release of toxic effluents could lead to the complete destruction of their habitat.

REJOINDER TO PARA III OF THE REPLY AFFIDAVIT:

50. That the contents raised in Para No. 70 of the Reply Affidavit are denied wherein the Respondent No. 5 wrongly alleges that instead of filing an Additional Affidavit clarifying the status of turtle nesting in the proposed project site, the Appellants have amended the original Appeal by without seeking leave of this Hon'ble Tribunal. That the Appellants herein submit that Additional Affidavit dated 31.07.2025 was filed pursuant to the liberty granted by this Hon'ble Tribunal vide order dated 27.06.2025, for the purpose of placing on record the available information indicating that the proposed project area is a turtle nesting site. That the Appellants filed additional documents i.e., RTI Response dated 06.02.2025 received from the Range Forest Officer, Mandvi-Kachchh wherein the RTI reply demonstrates that a total of 8,682 turtle eggs were recorded between 2011 and 2024, and 33 dead turtles were found along the seashore of Mandvi Taluka. These figures, officially provided by the Forest Department, establish the presence of turtles in the proposed project area. The Additional affidavit further pertains the Google Earth Images of the nesting sites which are fenced and protected

by the Forest Department. That nothing has been filed in the Additional Affidavit by the appellants which shows that it was an attempt to amend the original Appeal.

51. That the contents raised in Para No. 71 of the Reply Affidavit are denied except which are matter of record is. The Respondent No. 5 has contended that the information sought under the Right to Information RTI Act ought to have been requested with specific reference to the geo-coordinates of the project site. The Appellants respectfully submit that such a contention is wholly misplaced and irrelevant. Instead of addressing the substance and findings contained in the RTI responses provided by the Range Forest Officer, Mandvi–Kachchh — which categorically confirm the presence of turtle nesting activity and record the number of eggs found in the area — the Respondent is attempting to divert the attention of this Hon'ble Tribunal from the core issue. It is further submitted that the framing of questions in an RTI application lies entirely within the discretion of the applicant, and the adequacy or format of such questions cannot be used as a ground to undermine or discredit the official information furnished by the Forest Department under the RTI Act.

52. That the contents of the Para No. 72 of the Reply Affidavit are denied except which are matter of record and the same has been appropriately replied in Para No. 31 and 34 of the Rejoinder and the same is not repeated for the sake of brevity.

53. That the contents of the Para No. 73 of the Reply Affidavit are denied except which are matter of record. The Appellants respectfully submit that a letter dated 18.07.2025 was addressed to the Forest Range Officer, Mandvi Range, Kachchh West Forest Division, Bhuj, requesting the location details, map, and geo-coordinates of the turtle nesting sites in Mandvi Taluka. However, despite the lapse of more than three months, the Forest Department has failed to respond to the said

communication. It is pertinent to note that the Forest Department, Gujarat (Respondent Nos. 3 and 4) are parties to the present Appeal. This Hon'ble Tribunal, vide its order dated 01.08.2025, had specifically directed all Respondents to file their respective Affidavits. The stand of the Forest Department is of crucial importance in the present matter, particularly in light of their contradictory findings regarding the presence of turtle nesting activity within the proposed project area. However, till date, Respondent Nos. 3 and 4 have not filed any Affidavit in compliance with the said directions issued by this Hon'ble Tribunal on 01.08.2025.

54. That the contents of the Para No. 74 to 76 of the Reply Affidavit are denied except which are matter of record. The Appellants herein submit that the Images taken by the Appellants annexed as ANNEXURE A/4 of the additional affidavit dated 31.07.2025 categorically shows that the Forest Department has themselves protected and fenced all the turtle nesting sites around the proposed project area. Thus, it is evident that turtle nesting has been consistently witnessed around the proposed project site. The Appellants herein submit that it would not be wrong to say that the Respondent No. 5 is completely unaware of the concept of natal homing which is a biological behaviour of sea turtles. In this regards, the Appellants herein submits that it is pertinent to note that sea turtles exhibit a strong tendency of *natal homing*—a biological behaviour of sea turtles wherein they return to or near the same locations to nest in successive breeding seasons. In this context, it is significant that turtles have been recorded nesting at locations situated approximately 2.6 km from the proposed project site in December 2022, around 3 km in March 2025, and about 6 km in July 2025. Based on established scientific understanding, these turtles are will return and re-nest within a range of 4 to 6 km from their previous nesting sites. Therefore, the proposed project area falls well within the potential re-nesting zone of the turtles, underscoring the ecological sensitivity of the

region. It is crucial to understand the nesting site fidelity of Green Sea Turtles and Olive Ridleys which means the turtles tend to return to the same beach or area where they previously laid their eggs to nest again. Thus, they show a strong preference for coming back to the same location during each nesting season or even multiple times within the same season with repeat nesting within 4-6 km of the nests. That a study titled "Strong site fidelity and longer internesting interval for solitary nesting olive ridley sea turtles in Brazil" published in International Journal on Life in Oceans and Coastal Waters gave the findings that (annexed as ANNEXURE A/5 of the Additional Affidavit filed by the Appellants):

> "*Results: We investigated nest site fidelity at Pirambu, Lagoa Redonda and Santa Isabel beaches analyzing interesting intervals and renesting attempts separately. Renesting attempts showed no particular distribution pattern (Fig. 3). In contrast, we found a pattern within internesting intervals' events: females renesting closer to a previous nest location. Distances registered for internesting intervals were significantly smaller than those found for renesting attempts (U = 2,345.5, N1 = 47, N2 = 126, P = 0.035). The average distance between internesting events was 4.83 ± 4.37 km (N = 126). The majority (mean ± confidence intervals) of internesting distances varied between 4.06 and 5.59 km.*"

55. That the contents of Para No. 77 and 78 of the Reply Affidavit are denied except which are matter of record the same has been appropriately replied in Para No. 11 to 19 and 44 of the Rejoinder and the same is not repeated for the sake of brevity.

56. That the contents of Para No. 79 of the Reply Affidavit are denied except which are matter of record the same has been appropriately replied in Para No. 11 to 19 of the Rejoinder and the same is not repeated for the sake of brevity.

57. That the contents of Para No. 80 to 82 of the Reply Affidavit are denied except which are matter of record. The Appellants herein submits that the whole argument raised is with regard to the assessment of direct and indirect impact upon the wildlife, forest and environment while granting In-Principal Approval. The Appellants further submit that it is crucial to understand the intention of the legislature. A statute is an edict of the legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. In this regard, it is important to understand the Latin Maxim, 'sententia legis' which means 'the intention of the legislature' or 'the spirit of the law'. That a statute is to be construed according to the intention of the legislature and thus it is the duty of the judicature to act upon the true intention of the legislature. That the very object and purpose of the Forest (Conservation) Act, 1980 and the Rules framed thereunder is the protection, preservation, and conservation of forest ecosystems. Accordingly, the Forest Department, while examining the proposal, ought to have duly considered the areas in and around the project site, particularly with respect to the presence of turtle nesting habitats and their ecological significance. Furthermore, the Appellants respectfully submit that the Respondent No. 5, **in** Paragraph No. 18 of their Reply, has themselves admitted that the Divisional Forest Officer (DFO), in his inspection report, recommended the proposed diversion of forest land subject to the conduct of a detailed study or assessment on sea turtles within a 10 km radius of the project site. This categorical recommendation by the DFO underscores the ecological sensitivity of the region and the necessity of a scientific evaluation of the area's suitability before any diversion could be considered. It is, therefore, pertinent to note that the Forest Department itself has recognized and mandated the need for a **study or assessment of sea turtle habitats within a 10 km radius surrounding the project**. This clearly indicates that the presence and protection of turtle nesting

grounds constitute a crucial environmental parameter for appraisal. Consequently, while preparing and submitting Form A, Part I, the project proponents were obligated to consider the 10 km radius in and around the project site with specific reference to turtle nesting and related ecological features.

58. Pass any other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case.

APPLICANT NO.1

THROUGH

RAHUL CHOUDHARY **KAUSTAV DHAR**
ADVOCATES
COUNSELS FOR THE APPELLANTS

VERIFICATION

Verified by Vijaykumar Karsanbhai Gadhavi, S/o Karsanbhai Gadhavi, aged about 63 years, R/o Village-Panchotiya Vadi Visar, P.O. Mota Layaja, Pincode-370465, that the contents of Paragraphs 1 to 58 are true to my personal knowledge and that I have not suppressed any material fact.

APPLICANT NO.1

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

APPEAL NO. 144 OF 2025

IN THE MATTER OF:

VIJAYKUMAR KARSANBHAI GADHAVI AND ORS. ....APPELLANTS

VERSUS

UNION OF INDIA AND ORS. ...RESPONDENTS

AFFIDAVIT

I, Vijaykumar Karsanbhai Gadhavi, S/o Karsanbhai Gadhavi, aged about 63 years, R/o Village - Panchotiya Vadi Visar, P.O. Mota Layaja, Pincode - 370465, do hereby solemnly affirm and state as follows:

1. I am the person authorized by the Appellant No. 1 in the above titled Appeal and conversant with the facts and circumstances of the case and competent to swear this Affidavit.

2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

Verified on this _____ day of November, 2025 that the contents of the above mentioned Affidavit are true and correct and nothing material has been concealed therefrom.

NOTARY BHARAT H. MEHTA Mandvi Dist. Kachchh Gujarat State Reg. No. 21375/20 GOVERNMENT OF INDIA

DEPONENT

B. H. MEHTA SEAL NOTARY

NOTARIAL REGISTER
SR. No. : 2525
DATE : 13 NOV 2025

NOTARY BHARAT H. MEHTA Mandvi Dist. Kachchh Gujarat State Reg. No. 21375/20 GOVERNMENT OF INDIA

NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL

SOLEMNLY AFFIRMED
BEFORE ME

BHARAT H. MEHTA
ADVOCATE & NOTARY
LAYJA ROAD,
MANDVI - KACHCHH

13 NOV 2025

Annexure A-1

2012 SCC OnLine NGT 77

National Green Tribunal New Delhi
(Principal Bench)
(BEFORE A.S. NAIDU, A.C. AND G.K. PANDEY, E.M.)

1. Vimal Bhai Convener, Matu Jansangthan D-334/10 Ganesh Nagar, Pandav Nagar Complex, Delhi - 110092
2. Bharat Jhunjhunwala Lakshmoli, PO Maletha, Via Kirti Nagar, District Tehri, Uttrakhand - 249161 ... Appellants;

Versus

1. Union of India Through the Secretary Ministry of Environment and Forests Government of India Paryavaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi - 110003
2. State of Uttrakhand Through the Principal Secretary (Forests) Civil Secretariat, Dehradun - 248001, Uttrakhand
3. GMR Energy Limited Through Managing Director Mira Corporate Suites Block D, Second Floor, Plot 1 & 2, Ishwar Nagar, New Delhi - 110065 ... Respondents.

Appeal No. 7/2012
Decided on November 7, 2012

Counsel for Appellants:
Shri Ritwick Dutta, Advocate along with
Shri Rahul Chaudhary, Advocate

Counsel for Respondents:
Ms. Neelam Rathore, Advocate for R. 1 (MoEF)
Mr. Abhishek Atrey, Advocate for R. 2 (State of Uttarakhand)
Mr. A.D.N. Rao, Advocate for R. 3 (GMR (Badrinath) Hydro Power Generation Pvt. Ltd.

JUDGMENT

A.S. NAIDU, (Acting Chairperson) DR. G.K. PANDEY, (Expert Member):— Shri Vimal Bhai claiming to be the convener of a social organization called Matu Jansanghthan and a social activist working for decades on environment and social issues in the middle of Himalaya region has approached this Tribunal, along with another, invoking jurisdiction under Section 16(e) of the National Green Tribunal Act, 2010 (hereinafter called as NGT Act) and seeks to assail the communication dated 8th November, 2011 issued by the Government of India, Ministry of Environment and Forests (MoEF) according, Stage-I approval under Section 2 of the Forest Conservation Act, 1980 (hereinafter called as FC Act) for diversion of 60.513 hac. of forest land in favour of GMR Energy Limited for construction of Alaknanda Badrinath Hydro Electric Project in Chamoli District of Uttrakhand, subject to fulfilling of certain conditions of environmental safeguards. The said letter (Annexure A - 1) was addressed to the Principal Secretary (Forests) Government of Uttrakhand, Dehradun. According to the Appellants, the Stage-I Forest Clearance granted by the MoEF is palpable, illegal and suffers from following infirmities:—

(i) The approval was granted without taking into consideration the recommendations of the Forest Advisory Committee (FAC). It is averred that the Forest Advisory Committee after considering all the facts and circumstances had

came to the conclusion that prior approval under Section 2 of the FC Act, 1980 should not be accorded in favour of the project for use of forest lands for non-forest purpose.

(ii) Relying upon the report submitted by the Wildlife Institute of India (WII), it is averred that the diversion of forest land in the proposed site, would lead to severe fragmentation and degradation of the important wildlife habitats as well as habitats of RET species. The WII report it is stated reveals that the project in question is located in the buffer zone of the Nanda Devi Biosphere Reserve and the same will seriously hamper the movement of RET species like Snow Leopard and Brown Bear existing in the vicinity. The project shall also pose adverse effect on the ecology and bio-diversity and would cause irreparable and irreversible impact on the environment.

2. It appears that Appellants are aggrieved by the fact that the MoEF relied upon an interim report submitted by H.N.B. Garhwal, University, which was prepared at the instance of the project proponent so as to suit its purpose. It is averred that the said report was prepared by the expenses paid by the company and was in the nature of a critic to the report submitted by the WII.

3. In course of hearing a further affidavit was filed indicating that in the meanwhile the WII has submitted its final report recommending therein for exclusion of the forest lands from the project mainly on the ground that the same are located within Alaknanda III sub-basin and the habitats of more than 250 birds including Indian white-backed vulture would be affected. Further, case of the Appellant is that the report prepared by the EIA Consultant Group of HNB Garhwal University and the report of IIT was not sent to the Forest Advisory Committee by the MoEF, thereby causing a dent in the decision making process. In short, according to the Appellants the decision to grant Forest Clearance without seeking any opinion from the Forest Advisory Committee is a clear case of bias and exhibits arbitrariness on the part of the MoEF.

4. After receiving notice, Respondents filed their replies, strongly repudiating the allegations made in the Memorandum of Appeal. In the respective replies the Respondent took the stand that the provision of the FC Act and Rules framed thereunder were sacrosanctly followed by the MoEF and submissions made to the contrary are unfounded. According to the Respondent the MoEF is the final authority to grant or refuse approval. The Forest Advisory Committee, as the name itself indicates, is required to advise the MoEF, which may be agreed or disagreed by the latter. It is submitted that the report submitted by WII was only an interim report. The said report as well as the subsequent report submitted by WII has not been accepted by the MoEF as yet and as such it has not attained finality. Respondents further submits that the decision was taken by the MoEF after due consideration of the prevalent circumstances and topography, thus the allegations made contrary are without any basis and deserves no consideration.

5. The last but not the least contentions raised by the Respondents, is that the present Appeal is not maintainable under Section 16(e) of the NGT Act and on that ground alone the same should be dismissed. A prayer is also made to consider the question of maintainability of the Appeal at the first instance, before going to the merits.

6. Heard Learned Counsel for the parties at length. As we propose to dispose of this case on the question of maintainability we refrain from entering into the merits of controversies raised by different parties and leave it open for the parties to raise the same if contingency arises.

Before entering into the arena of controversy, it would be proper to discuss relevant provisions of law on the point. Realising that rampant and indiscriminate deforestation, was the cause for ecological imbalances and the same would lead to

environmental deterioration, the Legislature in order to check further deforestation promulgated FC Act, 1980. Section 2 of the said Act imposes restrictions on diversion of forest and restricts use of forest land for non-forest purposes. The said Section reads as follows:

Section 2: "Restriction on the de-reservation of forests or use forest land for non-forest purpose.

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the central Government, any order directing-

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest-land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest-land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation. Explanation - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plant;

(b) any purpose other then reafforstation;

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and constructions of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes".

It is evident that the FC Act, 1980, imposes a strict restriction upon deforestation and use of Forest lands for non-forest activities. It mandates that no State Government shall accord permission for use of any forest land for non-forest purpose without obtaining prior permission of the Central Government.

7. In the event a Project Proponent desires to use any forest lands for non-forest purpose, he has to file an application before the concerned State Government.

The said proposals are disposed of as under:—

(i) All proposals involving diversion/de-reservation of forest land up to 40 hectares and proposals for clearing of naturally grown tress in forest area or portion thereof shall be sent by the concerned State/UT Government to the concerned Regional Officer of MoEF.

(ii) Chief Conservator of Forests of the concerned Regional office shall be competent to finally dispose of all proposals (including decision regarding violation of Act) involving diversion/de-reservation for forest land up to 5 hectare, except in respect of proposals for regularization of encroachments and mining (including renewal of mining leases). Similarly, proposals involving clearing of naturally grown trees in forest area or portion thereof for reforestation shall also be finally disposed of by the Chief Conservator of Forests of the concerned Regional Office, subject to guidelines/instructions issued in this regard (refer to para 1.8) and any other instructions issued from time to time.

(iii) In the absence of Chief Conservator of Forests, these powers shall be exercised

by the concerned Conservator of Forests of the Regional Office in case the post of Chief Conservator of Forests is vacant due to transfer, long leave, etc.

(iv) A list of cases finally disposed of and a list of cases rejected along with reasons thereof for rejection would be required to be sent every month to the MoEF by the Regional Office.

(v)(a) In respect of proposals involving diversion of forest area above 5 hectares and up to 40 hectares and all proposals for regularization of encroachments and mining up to 40 ha., the proposals shall be examined by the Regional Chief Conservator of Forests/Conservator of Forests in consultation with the Advisory Group consisting of representatives of the State Government from Revenue Department, Forest Department, Planning and/or Finance Department and concerned Department whose proposal is being examined. The views of the Advisory Group shall be recorded by the Regional Chief Conservator of Forests and along with the same, the proposal shall be sent to Secretary, MoEF for consideration and final decisions. It is to be clarified that views of this Advisory Group in no way shall be binding while deciding the proposal. The meeting of the Advisory Group may be held at the State Capital. The proposal will not be deferred for want of quorum.

(b) The meeting of the State Advisory Group (SAG) will normally be held once in a month at concerned State Capital. The Regional Chief Conservator of Forests shall act as Chairman of the Advisory Group and Nodal Officer may be nominated to work as Member Secretary of the State Advisory Group.

(c) State Government may take immediate steps to nominate representatives of the State Government not below the rank of Joint Secretary for the Advisory Group. Nodal Officer may be nominated to work as Member Secretary of the State Advisory Group.

(d) The details of the officers along with addresses, telephone number, etc. may be directly communicated to the concerned Regional Chief Conservator of Forests under intimation to this Ministry to facilitate early processing of the proposals by the Advisory Group.

Forestry clearance will be given in two Stages. In 1st Stage, proposal shall be agreed to in-principle in which usually the conditions relating to transfer, mutation and declaration as RF/PF under the Indian Forest Act, 1927 of equivalent non-forest land for compensatory afforestation and funds for raising compensatory afforestation thereof are stipulated and after receipt of compliance report from the State Government in respect of the stipulated conditions, formal approval under the Act shall issued."

The decision for granting approval by the Central Government are taken in exercise of the powers conferred under Section 2 of the FC Act.

8. Section 2(A) of the NGT Act stipulates that if any person aggrieved, by an order or decision of the State Government or other authority made under Section 2, on or after the commencement of the NGT Act, 2010 (19 of 2010), has an option to file an appeal before the National Green Tribunal established under Section 3 of the NGT Act, 2010 (19 of 2010), in accordance with the provisions of that Act".

9. The parameteria provision to Section 2(A) of FC Act is Section 16(e) of the NGT Act. The said section stipulates that any person aggrieved by an order or decision, made, on or after the commencement of NGT Act, 2010 by the State Government or other authorities under Section 2 of the FC Act, 1980, may within a period of 30 days from the date on which the order or decision or direction or determination is communicated to him prefer an appeal to the Tribunal.

The sole contention raised by the Respondents in the case in hand is that the impugned order dated 08th November, 2011 having not being passed by the State

Government nor by any authority cannot be assailed in this Appeal.

10. Perusal of the impugned order reveals that after careful consideration of the proposal of the State Government of Uttrakhand, the Central Government by order dated 08th November, 2011, accorded in-principle Stage-I approval under the FC Act, 1980 for diversion for 60.513 hac. of forest land in favour of GMR Energy Limited, for construction of Alaknanda Badrinath Hydro-Electric Project at Chamoli District of Uttrakhand subject to fulfillment of other conditions stipulated in the order.

In the aforesaid scenario of facts the mute question which arises for consideration is, as to whether an Appeal lies against the order of the MoEF granting Stage - I Forest Clearance, under Section 2(A) of FC Act or Section 16(e) of the NGT Act.

11. Mr. A.D.N. Rao, learned Counsel appearing for Respondent No. 3 drew attention of this Tribunal to Section 2(A) of the FC Act, 1980 as well as Section 16(e) of the NGT Act, 2010 and submitted that an Appeal is prescribed under those two Acts only against an order or decision passed by the State Government or other authority. Expanding his arguments Mr. Rao submitted that under the provision of the aforesaid two Acts, a person aggrieved by the order passed under Section 2 of FC Act by the State Government or any other authority can file an Appeal. Further according to Mr. Rao neither Section 16(e) of the NGT Act, 2010, nor Section 2(A) of the FC Act, 1980 provide for or contemplates an Appeal against an order passed by the Central Government. The Legislature on its wisdom having consciously and specifically omitted the word “Central Government” in both the Sections i.e. Section 2(A) of FC Act and 16 (e) of NGT Act, 2010 and such intention of the Legislature being clear and unambiguous, no contrary view can be taken by this Tribunal which is a creature under the Statute.

12. A cogent reading of NGT Act as well as FC Act, reveals that the word “Central Government”, “State Government” and “other authority” has been distinctly used in different Sections. Thus the words Central Government cannot include within the words ‘Authority’. Relying upon G.S.R. 94(e) dated 3.2.2004, Mr. Rao submitted that sub-rule 2 clauses (c)(d) under Rule 6 (III) of G.S.R. contemplates that ‘or the other authority” should be substituted by words ‘or the Union Territory Administration’ as and where required. In the light of the above Rule, it is submitted that the word ‘other authority’ used in Section 16(e) of the NGT Act and Section 2(A) of the FC Act, 1980 can be referred or substituted by words “Union Territory Administration”. In short according to Mr. Rao both Sections 16(e) of the NGT Act and FC Act, 1980 provide for an Appeal to the Tribunal only against an order passed by the State Government or Union Territory Administration and thus no Appeal is contemplated by the Legislature against any order passed by the Central Government or MoEF. The order impugned, having not been passed either by the State Government or the Union Territory Administration, the same cannot be assailed by filing an Appeal before this Tribunal and this Appeal is liable to be dismissed as not maintainable, on that ground alone.

13. Provisions of Indian Forest Act and FC Act, 1980 read together leads an irresistible conclusion that the permission for carrying out any of the activities mentioned in Sections 5 and 26 of the Indian Forest Act can be granted by the State Government only upon the formulation of Rules contemplated under Section 32 of the Indian Forest Act. Though the activities mentioned in Section 2 of the FC Act, 1980 can be carried only after obtaining prior permission of the Central Government, the authority for granting such permission still continues to be the State Government and not the Central Government. That apart a cause of action accrues upon an aggrieved party only when the necessary orders to transfer forest lands are issued by the State Government and not before that, Thus, according to Mr. Rao an Appeal under Section 2(A) of the FC or Section 16(e) of NGT Act can be filed before this Tribunal only

against an order passed by the State Government and not against the order granting in-principal approval, which is commonly called as Stage - I approval, granted by the Central Government or Stage - II approval granted after compliance of the conditions imposed in Stage - I approval. In other words the Central Government is only a sanctioning authority, whereas the actual power to accord approval for conversion of Forest lands for non-forest purpose still lies with the respective State Government.

14. Ms. Neelam Rathore, learned Counsel appearing for the MoEF supported the stand taken by Respondent No. 3. According to her the provisions of Section 2 of the FC Act makes it clear that the role of the Central Government is limited only to granting a prior approval/permission. The Legislature has clearly defined the role of the Central Government and as there is no provision to assail any order passed by the Central Government by filing an Appeal before this Tribunal, the present Appeal cannot be entertained. In other words, according to Ms. Rathore, Section 2(A) of the FC Act cannot be interpreted to include "Central Government" within its ambit and scope and that the words other authorities do not engulf the Central Government within its scope and ambit. Section 16 of the NGT Act more particularly Section 16(e) also envisages and grants opportunity to any person aggrieved by an order passed under Section 2 of the FC Act by the State Government or other authorities, to file an Appeal before this Tribunal. The said Section excludes the sanctions/approvals granted by the Central Government from the purview of Appeal. The approval of the Central Government under Section 2 of the FC Act, 1980 is precursor to passing of an order by the State Government or other Authority and if a person is aggrieved by the said latter order, he can approach this Tribunal either under Section 16(e) of the NGT Act or Section 2(A) of the FC Act, 1980.

15. Repudiating the contentions raised by the MoEF and Respondent No. 3, Mr. Ritwick Dutta, learned Counsel appearing for the Appellant submitted that under the provisions of FC Act the only decision making authority is the Central Government. Bereft of an order of approval passed by the Central Government, granting forest clearance, no diversion of forest land can be made. It is submitted by Mr. Dutta, that the powers of the State Government is limited to submission of proposals only, whereas the, decision making power for granting forest clearance completely lies with the Central Government and therefore the State Government or other authority cannot be called as the decision making body within the meaning of Section 2 of the FC Act and an Appeal under Section 2(A) can only be filed against the decision of the Central Government permitting diversion of forest land, the intention of the Legislature cannot be otherwise.

16. Further, according to Mr. Dutta the Courts have the power to iron out the creases and to remove ambiguity and give full effect to the intention of the Legislature. In support of such submission he relied upon the decision of the Supreme Court in the case of *Nathi Devi* v. *Radha Devi Gupta*, (2005) 2 SCC 271. In the said decision the Hon'ble Supreme Court observed as follows:

> "*The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a Statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective for the consequences. Those words must be expounded in their natural ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the*

statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconditional."

17. In the case in hand, the Legislature has used the phrase "State Government and any other authority" in Section 16(e) of NGT Act and Section 2(A) of the FC Act, for the purpose of providing an Appeal against the diversion of forest land for non forest uses. According to Mr. Dutta since the decision to divert forest land has to be taken by the Central Government, on the basis of the recommendation of the Forest Advisory Committee, the purpose of the said Section would become nugatory if the appeal is confined only to the orders passed by the State Government which are more less ministerial in nature and are consequential to the orders passed by Central Government. Further, the State Government has the power only to make a proposal to the Central Government for diversion of forest land and cannot take a decision under Section 2 of the FC Act, the permission granted or clearance accorded by the Central Government would be binding upon the State Government, thus, the decision that has to be assailed is that of the Central Government and not of the State Government. In other words according to Mr. Dutta the State Government is only a recommending authority whereas the Central Government is the authority vested with the power to accord approval, as such if the final order granting approval by the Central Government is not assailed the purpose of the Act would be frustrated.

18. The NGT Act, according to Mr. Dutta was constituted to provide a full-fledged redressal to a person who is aggrieved by any Act, commission or omission of the authorities by which the environment is effected. Diversion of forest land for non forest uses has severe effect on the ecology/bio-diversity and the environment, therefore, the Legislature has provided the remedy of an Appeal against an order passed under Section 2 of the FC Act, dealing with diversion of forest land. Since the Central Government is the primary decision making authority, under no stretch of imagination it can be argued that against the decision taken by the Central Government no Appeal lies. Such an argument according to Mr. Dutta would not only be contrary to the letter and spirit of the NGT Act and FC Act, but also contrary to the interest of general public. Such a narrow construction would also render the decision or orders passed by the Central Government, virtually non assailable thereby vesting an unbridled power upon the said Respondent.

19. We have heard learned Counsel for parties at length. We have also perused different provisions of NGT Act and FC Act meticulously. We have considered the pleading of the parties consciously. It is well settled law that while interpreting a Statute effort should be made to give effect to each and every word used by the Legislature. It should be always presumed that the Legislature inserted every word in the Statute for a purpose and legislative intention is that every part of the Statute should have a meaningful effect. A construction which attributes redundancy to the Legislation should not be expected, except for compelling reasons such as obvious drafting errors (see *State of U.P.* v. *Vijay Anand Maharaj*: AIR 1963 SC 946)

20. In the case of *P.K. Unni* v. *Nirmala Industries* (1990) 2 SCC 378, the Hon'ble Supreme Court held:—

"*Where the language of the Statute leads to manifest contradiction of the apparent purpose of the enactment, the Court can, of course, adopt a construction which will carry out the obvious intention of the Legislature. In doing so "a judge must not alter the material of which the Act is woven, but he can and should iron out the creases*".

On the touchstone of the legal position enunciated above and admitted facts, we proposed to answer the question posed, i.e. whether an Appeal lies against the impugned order passed by the MoEF granting in principle Stage - I Forest Clearance.

Right of appeal is statutory and no one inherits it. When conferred by statute it becomes a vested right. In this regard there is essential distinction between right of appeal and right to suit. Where there is inherent right in every person to file a suit and for its maintainability it requires no authority of law, appeal requires so.

21. Section 2(A) of the FC Act as well as Section 16(e) of the NGT Act clearly stipulates that an order or decision made by the State Government or other authority passed under Section 2 of the FC Act 1980 can be assailed by filing an Appeal before this Tribunal.

Section 2 of the FC Act, 1980 deals with restrictions or de-reservation of forest or use of forest land for non-forestry purpose. The said section starts with a non-obstante clause and stipulates that notwithstanding anything contained in any other law no State Government or other authority shall pass, except with the prior approval of the Central Government, any order directing de-reservation of any forest land for any non forest purpose, lease out any forest land to a person or authority, corporation, agency etc. and/or permit deforestation of any forest land for the purpose of using it for cultivation of tea, coffee, spices, rubber etc. or for any other purpose other than reafforestation. The said Section therefore curtails the power of the State Government from leasing out or otherwise permitting use of forest land for non forest purpose, without obtaining prior permission of the Central Government.

22. The questions now arises as to whether the approval granted by the Central Government under Section 2 of the FC Act granting in-principle sanction can be assailed by filing an Appeal, the said order not being the final allotment order. The language of the Section stipulates that before permitting user of forest land for non-forest purposes, the State Government has to obtained prior approval of the Central Government, thus there is no ambiguity that the State Government is the authority to grant permission for use of forest land for non-forest purpose, but then such permission can be granted only after the Central Government accords approval. Further a right to use the forest land for non-forest purpose accrues only after the State Government passes the order and not from the date of granting Stage - I or Stage - II Clearance.

There is no ambiguity in the proposition that a person aggrieved by any action of the instrumentalities of the State or Central Government should have a right to assail the same before competent forum.

23. It is no more *res-integra* that an Appeal is a creation of a Statute and it cannot be created by acquiescence of the parties or by the order of the Court. The findings of a Court or a Tribunal becomes irrelevant and unforceable/inexecutable once the Forum is found to have no jurisdiction, as doctrine of nullity will come into operation (see *State of Gujrata* v. *Rajesh Chiman Kal Barat* (1996) 5 SCC 477. Further, there is also no quarrel to the legal proposition that right to Appeal is neither an absolute nor an ingredient of natural justice and the Legislature can put conditions for maintaining the same. In the case of *Vijay Prakash D. Mehta & Jawahar D. Mehta* v. *Collector of Customs (Preventive), Bombay*, (1988) 4 SCC 402 : AIR 1988 SC 2010, the Apex Court held as under:—

> "*Right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial or quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant……The purpose of the Section is to act in terrorem to make the people comply with the provisions of law*".

24. In the case of *Nand Lal* v. *State of Haryana* 1980 Supp SCC 574 : AIR 1980 SC 2097, it was held that "*right of appeal is a creature of Statute and there is no reason why the Legislature, while granting the right, cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to*

unreasonable restrictions rendering the right almost illusory".

25. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See *Institute of Chartered Accountants of India* v. *Price Waterhouse* ((1997) 6 SCC 312 : AIR 1998 SC 74)) The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford* v. *Spooner* (1846 (6) Moore PC 1), Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend and by construction make up deficiencies which are left there. (See *The State of Gujarat* v. *Dilipbhai Nathjibhai Patel (JT)* 1998 (2) SC 253).

26. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See *Stock* v. *Frank Jones (Tiptan) Ltd.* (1978, 1 All ER 948 (HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in *Vickers Sons and Maxim Ltd.* v. *Evans* (1910) AC 445 (HL), quoted in *Jamma Masjid, Mercara* v. *Kodimaniandra Deviah* (AIR 1962 SC 847).

The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co.* v. *Yensavage* 218 FR 547). The view was re-iterated in *Union of India* v. *Filip Tiago De Gama of Vedem Vasco De Gama* ((1990) 1 SCC 277 : AIR 1990 SC 981).

27. In *Dr. R. Venkatchalam. etc.* v. *Dy. Transport Commissioner etc.* ((1977) 2 SCC 273 : AIR 1977 SC 842), it was observed that Courts must avoid the danger of apriori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *Commissioner of Sales Tax, M.P.* v. *Popular Trading Company, Ujjain* (2000) 5 SCC 515). The legislative *casus omissus* cannot be supplied by judicial interpretative process.

Two principles of construction one relating to *casus omissus* and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the

Legislature. “An intention to produce an unreasonable result”, said *Danackwerts, L.J. in Artemiou* v. *Procopiou* (1966, 1 QB 878), “is not to be imputed to a statute if there is some other construction available”.

28. “Appeal”, is defined in the *Oxford Dictionary*, volume I, page 398, as the transference of a case from an inferior to a higher Court or tribunal in the hope of reversing or modifying the decision of the former. In the *Law Dictionary* by Sweet, the term “appeal” is defined as a proceeding taken to rectify an erroneous decision of a Court by submitting the question to a higher Court or Court of appeal and it is added that the term, therefore, includes, in addition to the proceedings specifically so called, the cases stated for the opinion of the Queen's Bench Division and the Court of Crown Cases reserved and proceedings in error. In the *Law Dictionary* by Bouvier an appeal is defined as the removal of a case from a Court of inferior to one of superior jurisdiction for the purpose of obtaining a review and re-trial and it is explained that in its technical sense it differs from a writ of error in this, that it subjects both the law and the facts to a review and re-trial, while the latter is a Common Law process which involves matter of law only for re-examination; it is added, however, that the term “appeal” is used in a comprehensive sense so as to include both what is described technically as an appeal and also the common law writ of error.(See - *Shiv Shakti Coop. Housing Society* v. *Swaraj Developers* (2003) 6 SCC 659)

The discussions made above leaves no doubt in our mind that an Appeal flows from a Statute and if the Statute does not provide an Appeal against a specific order, no Appeal can be entertained.

29. Cumulative reading of Section 2(A) of the FC Act and 16(e) of the NGT Act, leads to an irresistible conclusion that under the said Sections an Appeal is provided for only against an order passed by the State Government or other authorities. In other words, the Legislature in its wisdom has kept the order of approval/clearance passed by the Central Government under FC Act beyond the scope of Appeal.

30. However, a party cannot be remediless, a person who is aggrieved by the Approval/Clearance granted by the Central Government has to avail an opportunity to assail the same. In the aforesaid scenario it can safely be concluded that after receiving a Stage - I and/or Stage - II Clearance, thereby granting a consent to permit use of forest land for non-forest purposes, from the Central Government, it is incumbent upon the State Government to passa reasoned order transferring and/or allowing the land in question for being used for non forest purpose. It is needless to be said that bereft or such order no forest lands can be put to use for non-forest purpose. Further, all activities done without such orders would be *ab initio void*. An Appeal can be filed against the said order of the State Government under Section 2(A) of FC Act and/or under Section 16(e) of the NGT Act. In the event such an Appeal is filed it would be open for the person aggrieved, to assail the order/Clearances granted by the Central Government under Section 2 of the Act which forms an integral part and sole basis of the order passed by the State Government.

31. We are surprised to find that most of the State Governments do not pass separate orders in the light of the basic requirement of Section 2 of the FC Act as explained above thereby creating an embargo and depriving a person aggrieved from filing an Appeal. Section 2 of the FC Act, mandates that as and when the State Government decides to permit use of the Forest land for non forest purpose, it has to pass order to that effect. The said order along with the conditions imposed by the Central Government according Stage - I and Stage - II Clearance ismandatorily required to be displayed in the website. A copy of the order should also be sent to the MoEF forthwith. After receiving the copy of the order MoEF is also required to upload the same in its website so as to make the entire transactions transparent and bring it to public domain or Government portal and to enable any person aggrieved by the

order passed under the provision of Section 2 of the FC Act, to approach this Tribunal in consonance with Section 2(A) for FC Act or Section 16(e) of the NGT Act.

32. Apart from the said action the State Government should also insist that the Project Proponent should publish the entire forest clearances granted in verbatim along with the conditions and safe-guards imposed by the Central Government in Stage - I Forest Clearance in two widely circulated daily newspapers one in vernacular language and the other in English language so as to make people aware of the permission granted to the Project Proponent for use of forest land for non-forest purposes. The cause of action for filing an Appeal would commence only from the date when such publication is made in the newspapers, as well as from the date when the forest clearance and permission to use the Forest land for non-forest purpose is displayed in the website of the concerned State Government or the MoEF, as the case may be. The copies of the Forest Clearance should also be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.

33. In view of the discussions made above and reasons assigned we come to the conclusion that the order dated 08th November, 2011 (Annexure A/1), according Stage - I Forest Clearance cannot be assailed by filing an Appeal at this stage and as such the present Appeal is premature and has to be dismissed. Liberty is however granted to the Appellants to prefer an Appeal as and when the State Government passes the final order, permitting the Project Proponent to use the Forest land for non-forest purpose, if they feel aggrieved. In the event such an Appeal is filed, it would be open for the said Appellants to raise all the points which have been raised in the present Appeal and also other points which would be available to them in law and also bring to the notice the infirmities/omissions and commissions committed by the MoEF (Central Government) while granting Stage - I and Stage - II forest clearances.

34. The MoEF is directed to issue necessary Notification, stream lining the procedure to be adopted by the State Government and other Authorities for passing orders/decision for granting Forest Clearance under Section 2 of the FC Act, as well as the modalities for communicating the said order in the Public domain on Government portal.

With the directions and observations made in the preceding paragraphs the Appeal stands disposed of. Parties to bear their own cost.

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2J

(BEFORE VIKRAM NATH AND RAJESH BINDAL, JJ.)

MARY PUSHPAM . . Appellant;

Versus

TELVI CURUSUMARY AND OTHERS . . Respondents.

Civil Appeal No. 9941 of 2016†, decided on January 3, 2024

A. **Civil Procedure Code, 1908 — Ss. 11 and 100 — Res judicata — Binding effect of findings in previous round of litigation which had attained finality — Held, High Court in present case erred at second appeal stage in departing from findings in previous suit re the same subject-matter, which had attained finality — First appellate court, held, had rightly followed these final findings recorded in the previous suit to decree the present suit — Hence, judgment of first appellate court, decreeing the present suit, restored**

— Interpreting the final judgment in the earlier round, which was clear in itself, any differently, by trial court and High Court in the present round, further held, amounted to judicial indiscipline

— Furthermore, the judgments of the courts below, vide the doctrine of merger, had merged with that of the final High Court judgment in the previous round — Hence, held, High Court in present case further erred in going behind the final binding judgment of the High Court in previous round by purporting to rely on the findings of the courts below in the previous round, rather than proceeding as being bound by the clear final judgment of the High Court in the previous round

— High Court in earlier round of litigation specifically recorded that dispute was with respect to 8 cents of land and construction standing thereon — In light of above facts, contentions and findings recorded by High Court in its judgment in earlier round, apparently no defence was left for respondents to take as it was already held that appellant had perfected her rights by adverse possession over suit property which was 8 cents of land — Construction of appellant was standing over 8 cents of land may be on part of it but she was found in possession of entire 8 cents

— Respondents herein (plaintiffs in the previous round and defendants in the present suit) never sought any clarification of findings of High Court in the earlier round or observations made therein nor did they assail the same before any higher forum — Judgment of High Court in earlier round attained finality — Interpreting said judgment which was clear in itself any differently would clearly amount to judicial indiscipline — First appellate court in present round had rightly recorded finding that trial court had no business to interpret judgment of High Court in earlier round in any other way than what was recorded therein

† Arising from the Judgment and Order in *Telvi Curusumary* v. *Mary Pushpam* (Madras High Court, Madurai Bench, Second Appeal No. 451 of 2004, dt. 21-7-2009) **[Reversed]**

— In present case High Court's judgment in earlier round, noted that disputed property included 8 cents of land, not just building structure on it — As per doctrine of merger, judgments of trial court and first appellate court from first round of litigation are absorbed into High Court's judgment in earlier round — This 1990 judgment should be regarded as conclusive and binding order from initial litigation — Following principles of judicial discipline, lower or subordinate courts do not have authority to contradict decisions of higher courts

— In present case, trial court and High Court, in second round of litigation, violated this judicial discipline by adopting a position contrary to High Court's final judgment in earlier round, from first round of litigation — Practice and Procedure — Doctrine of Merger (Paras 17 to 25)

B. **Civil Procedure Code, 1908 — S. 11 — Doctrine of merger — What is — Implication of, in application of res judicata principle — Held, doctrine of merger implies that judgments of the courts below from first round of litigation would stand absorbed into judgment of court before which proceedings attain finality in earlier round — Thereafter, it would be the final judgment of such last court that would prevail, and in later proceedings no court can go behind the final judgment of the last court, and purport to base its judgment on findings of the lower courts in the previous proceedings (*see also* Shortnote *A*)**

— Doctrine of merger is a common law doctrine that is rooted in idea of maintenance of decorum of hierarchy of courts and tribunals — Doctrine is based on simple reasoning that there cannot be, at same time, more than one operative order governing same subject-matter — Practice and Procedure — Merger — Doctrines and Maxims — Merger of Decree, Order, Judgment, Appeal, Award (Paras 17 to 25)

C. **Contract and Specific Relief — Specific Relief Act, 1963 — Ss. 5, 34 and 38 — Suit for possession — Maintainability — Requirements of — Accurate description of property in question with all details of measurement and boundaries — Necessity of — Reiterated**

— Held, suit for possession has to describe the property in question with accuracy and all details of measurement and boundaries — This was completely lacking — A suit for possession with respect to such a property would be liable to be dismissed on the ground of its identifiability — Civil Procedure Code, 1908, Or. 7 R. 7 (Paras 24 and 25)

Kunhayammed v. *State of Kerala*, (2000) 6 SCC 359; *State of Punjab* v. *Devans Modern Breweries Ltd.*, (2004) 11 SCC 26; *Central Board of Dawoodi Bohra Community* v. *State of Maharashtra*, (2005) 2 SCC 673 : 2005 SCC (Cri) 546 : 2005 SCC (L&S) 246, *followed*

Telvi Curusumary v. *Mary Pushpam*, Second Appeal No. 451 of 2004, order dated 21-7-2009 (Mad), *reversed*

Halsbury's Laws of England, (4th Edn.), Vol. 26 at pp. 297-98, para 578, *referred to*

RM-D/70750/CV

Advocates who appeared in this case :

Ms N.S. Nappinai, Rakesh K. Sharma (Advocate-on-Record), V. Balaji, A. Krishna Kumar, C. Kannan and Nizamuddin, Advocates, for the Appellant;

Vikas Mehta (Advocate-on-Record), Advocate, for the Respondents.

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

1. Second Appeal No. 451 of 2004, order dated 21-7-2009 (Mad), *Telvi Curusumary* v. *Mary Pushpam* **(reversed)** 226*d-e*, 227*f-g*, 228*b-c*, 231*d-e*
2. (2005) 2 SCC 673 : 2005 SCC (Cri) 546 : 2005 SCC (L&S) 246, *Central Board of Dawoodi Bohra Community* v. *State of Maharashtra* 230*b-c*
3. (2004) 11 SCC 26, *State of Punjab* v. *Devans Modern Breweries Ltd.* 229*g*
4. (2000) 6 SCC 359, *Kunhayammed* v. *State of Kerala* 229*e-f*

The Judgment of the Court was delivered by

VIKRAM NATH, J.— The rule of "Judicial Discipline and Propriety" and the doctrine of precedents has a merit of promoting certainty and consistency in judicial decisions providing assurance to individuals as to the consequences of their actions. The Constitution Benches of this Court have time and again reiterated the rules emerging from judicial discipline. Accordingly, when a decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding subject to right of the Bench of such co-equal quorum to take a different view and refer the question to a larger Bench. It is the only course of action open to a Bench of co-equal strength, when faced with the previous decision taken by a Bench with same strength.

2. The plaintiff is in appeal assailing the correctness of the judgment and order dated 21-7-2009[1] passed by the Madurai Bench of the Madras High Court, whereby, the second appeal filed by the respondent-defendant was allowed, the judgment and decree passed by the Sub-Judge, Padmanabhapuram dated 13-10-2003 was set aside and that of the trial court dated 30-6-1997 was restored and confirmed.

3. The appellant instituted a civil suit for declaration of title, possession and permanent injunction against the respondents which was registered as OS No. 308 of 1995 in the Court of District Munsiff-cum-Judicial Magistrate at Eraniel. The basis for filing the suit was that earlier in 1976, the respondents had filed a suit for ejectment of the appellant which was registered as OS No. 70 of 1976. The said suit was dismissed, first appeal was dismissed and the second appeal was also dismissed by the High Court, vide judgment dated 30-3-1990. The same became final as it was not carried any further.

4. The appellant continued in possession of the property in suit. However, as the respondents were trying to interfere with the possession of the appellant, she filed the suit.

5. The respondents contested the suit and filed their written statements. According to them, the defence taken was that they had purchased 8 cents of land by way of registered sale deed on 13-3-1974 which was with respect to an open piece of land and did not contain any building as such. The suit of 1976

1 *Telvi Curusumary* v. *Mary Pushpam*, Second Appeal No. 451 of 2004, order dated 21-7-2009 (Mad)

filed by them was with respect to the constructions raised by the appellant and not with respect to 8 cents of land. The appellant had no right, title or interest over the suit property. The suit was liable to be dismissed.

6. The trial court framed the following six issues:

(*i*) Whether the suit property properly absolutely belongs to the plaintiffs?

(*ii*) Whether the decision of the Hon'ble High Court of Madras in Second Appeal No. 2082 of 1990 relates to the entire 8 cents of the suit property or whether it pertains to the house in a portion of the suit property?

(*iii*) Whether the plaintiffs have been in possession and enjoyment of the entire suit property?

(*iv*) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?

(*v*) Whether the suit property is to be demarcated and northern boundary is put up as prayed for?

(*vi*) What reliefs are the plaintiffs entitled to?

7. Issue (*ii*) related to the question whether the judgment of the High Court in Second Appeal No. 2082 of 1990 related to the entire 8 cents of the property or whether it pertained only to the house in a portion of the land in dispute.

8. The trial court, vide judgment dated 30-6-1997, decreed the suit for declaration of title, possession and permanent injunction but only with respect to the portion over which the house property was situated out of the total extent of 8 cents of the suit property. With respect to the other property, the suit was dismissed.

9. Aggrieved by the dismissal of the suit, the appellant preferred an appeal which was registered as Appeal No. 169 of 1997. The Sub-Judge vide judgment dated 13-10-2003 modified the judgment and decree of the trial court and declared that the appellants were entitled for the entire suit property for relief of declaration of title, permanent injunction and for setting up their boundary for securing the said property. The learned Sub-Judge had mainly relied upon the judgment of the High Court dated 30-3-1990 in the earlier round of litigation.

10. Aggrieved by the judgment of the Sub-Judge, the respondents preferred second appeal before the High Court registered as Second Appeal No. 451 of 2004. The High Court, by the impugned judgment dated 21-7-2009[1], allowed the appeal, set aside the judgment of the Sub-Judge and restored the decree of the trial court. Aggrieved by the same, the plaintiff has preferred the present appeal.

11. Heard the learned counsel for the parties and perused the material on record.

1 *Telvi Curusumary* v. *Mary Pushpam*, Second Appeal No. 451 of 2004, order dated 21-7-2009 (Mad)

12. The main argument advanced on behalf of the appellant is that the High Court in the first round in its judgment dated 30-3-1990 had specifically recorded that the dispute was with respect to 8 cents of land and the construction standing thereon. The trial court or the High Court therefore in the present round of litigation could not have confined it only to the construction and not the entire portion of land measuring 8 cents. It is further submitted that under the law of merger, the judgment of the trial court and the first appeal court in the first round of litigation merged with the judgment of the High Court dated 30-3-1990 and it is that judgment alone which has to be read as final and binding between the parties. It is also submitted that the first appeal court in its judgment dated 13-10-2003 in the present round had specifically recorded that the trial court had no jurisdiction to go against the judgment of the High Court. The High Court in its impugned judgment[1] has in fact breached judicial discipline by taking a view contrary to the earlier judgment.

13. On the other hand, the learned counsel for the respondents submitted that the judgments of the trial court and the High Court in the present round is correct in law and facts. The earlier round of litigation initiated by the respondents was only with respect to the constructions raised by the appellant which of course they had lost. The respondents had throughout been in possession of the 8 cents of land. The appellants were never in possession thereof. The judgment of the trial court and that of the High Court deserves to be maintained.

14. In the judgment of the High Court in the first round dated 30-3-1990, it is not at one place, but at number of places that the High Court has recorded that the suit property comprised of 8 cents of land which was the land purchased by the respondents in 1974. It would be relevant to refer to such facts noted in the said judgment. In the opening paragraph the High Court mentioned as follows:

> "The suit property is consisting of 8 cents. The defendant was residing in this property even prior to the purchase of this property by the plaintiff."

Then again in para 2, the High Court records as follows:

> "The learned counsel appearing for the appellant contended that the suit property is comprised of 8 cents of land and the appellant purchased the same by a sale deed dated 13-3-1974, which is marked as Ext. A-1."

15. The above clearly shows that not only the High Court notes that it was 8 cents of land which was in dispute but also the counsel for the appellants therein (respondents herein) whose submissions are recorded, understood it in the same manner. Again, in para 3, the High Court records as follows:

> "In the sale deed dated 13-3-1974 (Ext. A-1) there is no mention about the superstructure in which the respondent herein is residing. The sale deed merely states about the sale of 8 cents of land. As already stated, that the

1 *Telvi Curusumary* v. *Mary Pushpam*, Second Appeal No. 451 of 2004, order dated 21-7-2009 (Mad)

respondent was residing in the suit property even prior to the purchase by the appellant."

16. Lastly, the High Court records its finding as follows:

> "The courts below found that all the documents produced by the respondent herein are in the name of the respondent. Therefore, considering all these documents, the courts below came to the conclusion that the respondent herein is in possession of the suit property for more than the statutory period and so she had perfected her title by adverse possession."

17. In the light of the above facts, arguments and findings recorded by the High Court in its judgment dated 30-3-1990, apparently no defence was left for the respondents to take as it was already held that the appellant had perfected her rights by adverse possession over the suit property which was 8 cents of land. The construction of the appellant was standing over the 8 cents of land may be on part of it but she was found in possession of the entire 8 cents.

18. The respondents never sought any clarification of the findings of the High Court or the observations made therein nor did they assail the same before any higher forum. The judgment dated 30-3-1990 attained finality. Interpreting the said judgment which was clear in itself any differently would clearly amount to judicial indiscipline. The Sub-Judge in its judgment dated 13-10-2003 had rightly observed that the trial court had no business to interpret the judgment of the High Court dated 30-3-1990 in any other way than what was recorded therein.

19. The doctrine of merger is a common law doctrine that is rooted in the idea of maintenance of the decorum of hierarchy of courts and tribunals. The doctrine is based on the simple reasoning that there cannot be, at the same time, more than one operative order governing the same subject-matter. The same was aptly summed up by this Court when it described the said doctrine in *Kunhayammed* v. *State of Kerala*[2]: (SCC p. 383, para 44)

> "*44*. … (*i*) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the law."

20. The legal position on coordinate Benches has further been elaborated by this Court in *State of Punjab* v. *Devans Modern Breweries Ltd.*[3]: (SCC p. 157, paras 339-340)

> "*339*. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench.

2 (2000) 6 SCC 359
3 (2004) 11 SCC 26

* * *

340. In *Halsbury's Laws of England* (4th Edn.), Vol. 26 at pp. 297-98, para 578, it is stated:

> 'A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow.' "

21. We have already discussed about the importance of ensuring judicial discipline and the same has also been upheld by various judgment of this Court. In *Central Board of Dawoodi Bohra Community* v. *State of Maharashtra*[4], this Court has summed up the legal position of rules of judicial discipline as follows: (SCC pp. 682-83, para 12)

> "*12*. … (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.
>
> (2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted."

22. In the current case, as previously mentioned, the High Court's judgment from the initial round dated 30-3-1990, noted that the disputed property included 8 cents of land, not just the building structure on it. As per the doctrine of merger, the judgments of the trial court and the first appellate court from the first round of litigation are absorbed into the High Court's judgment dated 30-3-1990. This 1990 judgment should be regarded as the conclusive and binding order from the initial litigation. Following the principles of judicial discipline, lower or subordinate courts do not have the authority to contradict the decisions of higher courts. In the current case, the trial court and the High Court, in the second round of litigation, violated this judicial discipline by adopting a position contrary to the High Court's final judgment dated 30-3-1990, from the first round of litigation.

23. The argument of the counsel for respondents is mainly that the judgment of the trial court and first appellate court in the first round of litigation clearly stated in the case of the plaintiff that it was with respect to the constructed portion only in which the mother of the appellant was residing and not the whole area of 8 cents purchased by them. The High Court committed

4 (2005) 2 SCC 673 : 2005 SCC (Cri) 546 : 2005 SCC (L&S) 246

a bona fide error in recording that the suit property was 8 cents along with constructions standing over it. As such the trial court and the High Court in the present round were correct in limiting the decree only to the constructions and not the entire area of 8 cents.

24. In order to test the above argument, we carefully examined the judgment of the trial court as also the first appellate court. What is discernible is that nowhere it is recorded the actual boundary or the measurements of the property in possession of the mother of the appellant (defendant therein). The respondents-plaintiff therein had based her case on the ground that they had purchased 8 cents of open piece of land and the defendant therein had raised construction over some adjoining land, and had trespassed over part of her purchased land as such decree of possession be granted.

25. We are unable to appreciate the said argument of the respondents. Suit for possession has to describe the property in question with accuracy and all details of measurement and boundaries. This was completely lacking. A suit for possession with respect to such a property would be liable to be dismissed on the ground of its identifiability. Further, it may be noted that if the construction by the defendant were not made over 8 cents of purchased land, then the plaintiff therein would not have a claim to possession of the same. The argument thus has to be rejected not only on facts but also on legal grounds as discussed above.

26. The appeal is, accordingly, allowed. The impugned judgment and order[1] of the High Court is set aside and that of the first appellate court dated 13-10-2003 passed by the Sub-Judge, Padmanabhapuram is restored and maintained.

27. There shall be no order as to costs.

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1 *Telvi Curusumary* v. *Mary Pushpam*, Second Appeal No. 451 of 2004, order dated 21-7-2009 (Mad)

Annexure A-3

3. Repeated opportunities have been given by us to the respondents to file counter-affidavit. No counter-affidavit has been filed.

4. The only question to be decided is whether Dr. Kamath could represent the appellant. We have been taken through Rule 2(*b*) of the Consumer Protection Rules, 1987 which defines an "agent" as under:

> "**2.** (*b*) 'agent' means a person duly authorised by a party to present any complaint, appeal or reply on its behalf before the National Commission;"

5. Rule 14(1) allows the complainant or his agents to file the complaint. Similarly Rule 14(3) allows parties or their agents to appear before the National Commission. Given the wide definition of the word "agent", there was no reason, if the Commission were otherwise satisfied that Dr. Kamath was authorised on behalf of the appellant, to refuse to allow Dr. Kamath to represent the appellant before it and to cross-examine the complainant.

6. The learned counsel appearing on behalf of the respondents has relied upon Section 33 of the Advocates Act, 1961. Section 33 makes it clear that advocates alone will be entitled to practice before any court or before any authority, etc. "except as otherwise provided in this Act or in any other law for the time being in force". The Consumer Protection Act read with the Rules would be "a law for the time being in force".

7. We, therefore, allow the appeal and permit Dr. Kamath or any other duly authorised agent of the appellant to represent the appellant before the Commission in the pending proceedings. However, we make it clear that the authorisation should be in writing.

(2011) 12 Supreme Court Cases 499

(BEFORE D.K. JAIN AND H.L. DATTU, JJ.)

GAMMON INDIA LIMITED . . Appellant;

Versus

COMMISSIONER OF CUSTOMS, MUMBAI . . Respondent.

Civil Appeal No. 5166 of 2003†, decided on July 6, 2011

A. **Customs — Exemption — Goods required for construction of roads — Exemption Notification No. 17/2001/Cus. dt. 1-3-2001 — Condition 38 of exemption notification, stipulating goods should be imported by a "person" who has been awarded a contract for construction of roads in India — Contract awarded to joint venture — Import of machine by appellant, one of two partners of joint venture — Entitlement to exemption — Held, it was never the case of appellant nor suggested by the documents that import of machine was by or on behalf of joint venture — Correspondence with supplier of goods and placement of order had been done by appellant and**

† From the Judgment and Order dated 4-4-2003 of the Customs, Excise and Gold (Control) Appellate Tribunal, West Zonal Bench, Mumbai in Appeal No. C/298/02-Mum

not by joint venture or on their behalf — Payment for machine had not been made from joint venture account but from funds of appellant — Hence, import of machine by appellant cannot be considered as import by M/s Gammon-Atlanta JV, even if joint venture is considered "a person" for purpose of Condition 38 had been awarded contract for construction of roads in India — Therefore, neither joint venture nor appellant fulfil requisite requirement stipulated in condition of exemption notification — CEGAT rightly disallowed benefit of exemption notification — Costs of appeal quantified at Rs 50,000 imposed on appellant — Customs Act, 1962 — S. 25(1) — Customs Tariff Act, 1975 — Sch. I, Ch. 84 List 11 — Customs — DGFT Notifications/Circulars/Instructions — Notification No. 17/2001/Cus. dt. 1-3-2001 — Condition 38 (Paras 28 to 31 and 37)

B. **Corporate Laws — Joint venture — Nature of — If "a person" — Reiterated, a joint venture is a legal entity in the nature of a partnership of the constituent companies — Hence, M/s Gammon-Atlanta JV, the joint venture could be treated as a "legal entity", with the character of a partnership in which Gammon was one of the constituents — Question whether a joint venture was also "a person" not conclusively answered — Companies Act, 1956, S. 34 (Paras 25 to 31)**

Ganpati RV-Talleres Alegria Track (P) Ltd. v. *Union of India*, (2009) 1 SCC 589 : (2009) 1 SCC (Civ) 269; *C.K. Gangadharan* v. *CIT*, (2008) 8 SCC 739, *referred to*

New Horizons Ltd. v. *Union of India*, (1995) 1 SCC 478, *considered*

Black's Law Dictionary, 6th Edn., pp. 342 & 839, *referred to*

C. **Customs — Concession/Exemption/Incentive/Rebate — Exemption notification — Principle for interpretation of — Held, provision providing for exemption to be construed strictly — However, as language of Condition 38 in Exemption Notification No. 17/2001/Cus. dt. 1-3-2001 is clear and unambiguous, no need to resort to interpretative process to determine whether said condition is to be imparted strict or liberal construction (Paras 32 and 33)**

Novopan India Ltd. v. *CCE & Customs*, 1994 Supp (3) SCC 606, *followed*

Commr. of Customs (Preventive) v. *M. Ambalal & Co.*, (2011) 2 SCC 74; *Mangalore Chemicals and Fertilisers Ltd.* v. *CCT*, 1992 Supp (1) SCC 21; *Union of India* v. *Wood Papers Ltd.*, (1990) 4 SCC 256 : 1990 SCC (Tax) 422; *Hansraj Gordhandas* v. *CCE and Customs*, AIR 1970 SC 755, *referred to*

D. **Precedents — Tribunal — Tribunal vis-a-vis itself — Two Benches of tribunal although noticing decision of a coordinate Bench on identical issue, taking a contrary view — Held, it is destructive of institutional integrity itself — What is important is tribunal as an institution and not personality of members constituting it — If a Bench of tribunal wishes to take a view different from the one taken by the earlier Bench, propriety demands that it should place matter before President of tribunal so that case is referred to a larger Bench, for which provision exists in Act itself — Customs Act, 1962, S. 129-C — Procedure of Appellate Tribunal — Larger Bench — Reference to — When imperative — Judicial discipline and comity — Tribunals**

Held :

There is deep concern on the conduct of the two Benches of the Tribunal in deciding appeals in *IVRCL Infrastructures & Projects Ltd. case*, (2004) 166 ELT 447 (Tri) and *Techni Bharathi Ltd. case*, (2006) 198 ELT 33 (Tri) needs to be strongly deprecated. After noticing the decision of a coordinate Bench in the present case, they still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment, thereby creating a judicial uncertainty with regard to the declaration of law involved on an identical issue in respect of the same exemption notification. It needs to be emphasised that if a Bench of a tribunal, in an identical fact situation, is permitted to come to a conclusion directly opposed to the conclusion reached by another Bench of the tribunal on an earlier occasion, that will be destructive of the institutional integrity itself. What is important is the tribunal as an institution and not the personality of the members constituting it. If a Bench of the tribunal wishes to take a view different from the one taken by the earlier Bench, propriety demands that it should place the matter before the President of the tribunal so that the case is referred to a larger Bench, for which provision exists in the Act itself. (Paras 33 to 35)

Sub-Inspector Rooplal v. *Lt. Governor*, (2000) 1 SCC 644 : 2000 SCC (L&S) 213, *followed*

IVRCL Infrastructures & Projects Ltd. v. *Commr. of Customs*, (2004) 166 ELT 447 (Tri); *Techni Bharathi Ltd.* v. *Commr. of Customs*, (2006) 198 ELT 33 (Tri), *overruled*

Appeal dismissed with costs B-D/48249/SV

Advocates who appeared in this case :

J.S. Sinha, Braj Kishore Mishra, Vikas Malhotra, Ms Aparna Jha, Abhishek Yadav, M.P. Sahay and Vikram Patralekh, Advocates, for the Appellant;

Harish Chander, Senior Advocate (Ms Kiran Bhardwaj, A. Deb Kumar and B. Krishna Prasad, Advocates) for the Respondent.

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

1. (2011) 2 SCC 74, *Commr. of Customs (Preventive)* v. *M. Ambalal & Co.* 505*d*
2. (2009) 1 SCC 589 : (2009) 1 SCC (Civ) 269, *Ganpati RV-Talleres Alegria Track (P) Ltd.* v. *Union of India* 504*g*
3. (2008) 8 SCC 739, *C.K. Gangadharan* v. *CIT* 505*g*
4. (2006) 198 ELT 33 (Tri), *Techni Bharathi Ltd.* v. *Commr. of Customs* **(overruled)** 505*c*, 510*b*
5. (2004) 166 ELT 447 (Tri), *IVRCL Infrastructures & Projects Ltd.* v. *Commr. of Customs* **(overruled)** 505*c*, 510*b*
6. (2000) 1 SCC 644 : 2000 SCC (L&S) 213, *Sub-Inspector Rooplal* v. *Lt. Governor* 510*d-e*
7. (1995) 1 SCC 478, *New Horizons Ltd.* v. *Union of India* 504*d-e*, 504*f-g*, 505*a-b*, 507*a-b*, 507*c*, 507*c-d*, 507*e-f*, 507*g-h*, 508*a*, 508*d*, 508*d-e*, 508*g-h*
8. 1994 Supp (3) SCC 606, *Novopan India Ltd.* v. *CCE & Customs* 505*f*, 509*c-d*
9. 1992 Supp (1) SCC 21, *Mangalore Chemicals and Fertilisers Ltd.* v. *CCT* 509*d-e*, 509*f*
10. (1990) 4 SCC 256 : 1990 SCC (Tax) 422, *Union of India* v. *Wood Papers Ltd.* 509*d-e*
11. AIR 1970 SC 755, *Hansraj Gordhandas* v. *CCE and Customs* 509*f-g*

The Judgment of the Court was delivered by

D.K. JAIN, J.— This civil appeal, under Section 130-E(*b*) of the Customs Act, 1962 (for short "the Act"), is directed against the order dated 4-4-2003 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (for short "the Tribunal"), as it then existed, in Appeal No. C/298/02-Mum. By the impugned order, the Tribunal has allowed the appeal preferred by the Commissioner of Customs, Mumbai, holding that the appellant is not entitled to claim the benefit of Exemption Notification No. 17/2001/Cus (General Exemption No. 121), issued by the Ministry of Finance, Government of India on 1-3-2001.

2. Briefly stated, the facts, material for adjudication of the issue arising in this appeal, are as follows: the appellant, namely, M/s Gammon India Ltd. (for short "Gammon") and one M/s Atlanta Infrastructure Ltd., Mumbai (for short "Atlanta") both incorporated as public limited companies, entered into a joint venture agreement on 18-9-2000. The joint venture was named and styled as "Gammon-Atlanta JV". The agreement was entered into for the purpose of submitting a bid to the National Highways Authority of India (for short "NHAI") for award of a contract for construction of 31.40 km of road on National Highway 5.

3. The terms of the agreement, inter alia, provided that: each of the said parties would share financial responsibilities in the form of guarantees, securities, etc. to the extent of 50% of the project value; the venture would be managed by setting up of a Management Board consisting of a Chairman and one Director to be nominated by Gammon and a Joint Chairman and another Director to be nominated by Atlanta. Although Gammon was to be designated as the lead partner of the venture but both the companies were to be jointly and severally liable to NHAI for due execution of the contract.

4. The bid tendered by the said joint venture was accepted by NHAI and an agreement dated 20-12-2000 was executed between NHAI, referred to as the "employer" on the one part, and M/s Gammon-Atlanta JV, referred to as the "contractor", on the other part. On behalf of Gammon-Atlanta JV, the agreement was signed by the representatives of both the companies i.e. Gammon and Atlanta.

5. On 1-3-2001, in exercise of the powers conferred by sub-section (1) of Section 25 of the Act, the Central Government, issued the aforenoted exemption notification, inter alia, exempting the goods of the description specified in Column (3) of the Table given thereunder, read with the relevant list appended thereto and falling within the chapter, heading or sub-heading number of Schedule I to the Customs Tariff Act, 1975, as specified in the corresponding entry in Column (2) of the said Table.

6. Sl. No. 217 of the said Table granted full exemption from basic customs duty and additional customs duty, on the goods falling under Chapter 84 specified in List 11, required for construction of roads. However, the said exemption was subject to certain conditions, enumerated in the said notification. Condition 38, relevant for this case, reads as follows:

"**38.** If,—

(*a*) the goods are imported by—

(*i*) the ministry of Surface Transport; or

(*ii*) a person who has been awarded a contract for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highways Authority of India, by the Public Works Department of a State Government or by a road construction corporation under the control of the Government of a State or Union Territory; or

(*iii*) a person who has been named as a sub-contractor in the contract referred to in (*ii*) above for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highways Authority of India, by Public Works Department of a State Government or by a road construction corporation under the control of the Government of a State or Union Territory;

(*b*) the importer, at the time of importation, furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that he shall use the imported goods exclusively for the construction of roads and that he shall not sell or otherwise dispose of the said goods, in any manner, for a period of five years from the date of their importation; and

(*c*) in case of goods of Sl. Nos. 12 and 13 of List 11, the importer, at the time of importation of such goods, also produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, a certificate from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Surface Transport (Roads Wing), to the effect that the imported goods are required for construction of roads in India."

7. It appears that the appellant approached NHAI for issue of the certificate, as contemplated in Para (*c*) of Condition 38, for import of one "Concrete batching plant 56 cum/hr" covered under Item 13 of List 11, referred to at Sl. No. 217 in the said exemption notification. Vide Letter dated 3-8-2001 NHAI forwarded a certificate, issued by the Deputy Secretary, Government of India, Ministry of Road Transport and Highways, addressed to the Assistant Commissioner of Customs, Mumbai, certifying that the said equipment was required for construction of roads and recommending its duty-free import.

8. Equipped with the said certificate, Gammon, the appellant herein, imported the specified concrete batching plant from Germany and filed bill of entry (for home consumption) for its clearance at "nil" rate of duty under Notification No. 17/2001/Cus dated 1-3-2001. The Deputy Commissioner of Customs, by his Order dated 5-10-2001 rejected the claim of the appellant for exemption from payment of customs duty on the ground that the appellant had failed to comply with the conditions stipulated at Sl. No. 38 appended to the exemption notification.

9. According to the adjudicating authority, as per the said condition, the exemption is available only if the goods are imported by "a person who has

been awarded the contract" by NHAI for construction of roads in India by or on behalf of the Ministry of Surface Transport, but in the present case the goods have been imported by Gammon to whom no contract had been awarded by the authorities specified in the notification. Admittedly, the contract had been awarded in the name of the joint venture, M/s Gammon-Atlanta JV.

10. Thus, the adjudicating authority came to the conclusion that the appellant was not entitled to the benefit of exemption notification in their capacity as a partner in the joint venture, to whom the contract had been awarded.

11. Aggrieved thereby the appellant preferred an appeal to the Commissioner of Customs (Appeals). The Commissioner (Appeals) was of the view that Gammon having been nominated as the lead partner in the joint venture for due performance of the contract awarded by NHAI, with authority to incur liabilities and to receive instructions for and on behalf of the joint venture, and the machine having been imported on behalf of the joint venture for the purpose of road construction, the benefit of the said exemption notification could not be denied to the appellant. Inter alia, observing that the appellant was not an outsider and perhaps due to some technical reasons the machine had been imported in the name of the appellant, the Commissioner held that outright denial of the benefit of the said notification was not warranted. Accordingly, he allowed the appeal.

12. Being dissatisfied with the decision of the Commissioner (Appeals), the Revenue carried the matter in further appeal to the Tribunal. As aforestated, by the impugned order the Tribunal has allowed the said appeal. Distinguishing the case of *New Horizons Ltd.* v. *Union of India*[1], relied on behalf of the importer, the Tribunal has come to the conclusion that the benefit of exemption notification cannot be availed of by a joint venture because it is nothing more than an association of two persons, having no identity in law. The Tribunal has gone on to observe that had such a bill of entry been filed even by a joint venture, the Department would have been justified in rejecting it on the ground that the identity of the real importer was not known. Aggrieved, Gammon is before us in this appeal.

13. We have heard the learned counsel for the parties.

14. Mr J.S. Sinha, learned counsel appearing on behalf of the appellant, strenuously urged that in light of the decision of this Court in *New Horizons*[1], wherein the concept of a joint venture has been explained and the same has been subsequently followed in *Ganpati RV-Talleres Alegria Track (P) Ltd.* v. *Union of India*[2], the view taken by the Tribunal is clearly erroneous. It was contended that since a joint venture is a legal entity with all the trappings of a partnership under the Partnership Act, 1932, the general principles of the said Act were applicable to the joint venture and, therefore, any one of the two partners of the joint venture viz. Gammon and Atlanta was competent to

1 (1995) 1 SCC 478
2 (2009) 1 SCC 589 : (2009) 1 SCC (Civ) 269

import the subject machinery for and on behalf of the contractor viz. the joint venture for execution of the road project under the contract between the joint venture and NHAI. It was argued that the eligibility certificate dated 3-8-2001, issued by the Ministry of Road Transport and Highways, stating that the subject machine would be imported by the appellant herein, will sustain the eligibility of the joint venture in view of the law laid down by this Court in *New Horizons*[1].

15. It was submitted that in view of an inclusive definition of the word "person" in the Export and Import Policy for the years 1997-2002, which includes a "legal person", the import of machinery by the appellant for and on behalf of the joint venture is as good as an import by the joint venture who has been awarded the contract for construction of roads, thus fulfilling Condition 38 of the exemption notification. The learned counsel asserted that since in identical fact situations in *IVRCL Infrastructures & Projects Ltd.* v. *Commr. of Customs*[3] and *Techni Bharathi Ltd.* v. *Commr. of Customs*[4], when machinery for a road project was imported by one of the constituents of the joint venture, the benefit of the same exemption notification had been granted by the Tribunal. It was argued that the said orders of the Tribunal having been accepted by the Revenue, it cannot be permitted to take a different stand on the same point in the case of the appellant. Lastly, relying on the decision of this Court in *Commr. of Customs (Preventive)* v. *M. Ambalal & Co.*[5], the learned counsel submitted that a beneficial and promotional exemption notification has to be construed liberally.

16. Per contra, Mr Harish Chander, learned Senior Counsel appearing on behalf of the Revenue, supporting the decision of the Tribunal, submitted that the joint venture and Gammon being two independent entities, the eligibility certificate dated 3-8-2001 issued in favour of the latter was of no consequence insofar as the exemption notification was concerned because the contract for construction of roads had not been awarded to Gammon, who had imported the machine but to the joint venture. It was stressed that Gammon, on their own, were not entitled to import any goods for the execution of road works under the contract awarded to the joint venture by NHAI. Placing reliance on the decision of this Court in *Novopan India Ltd.* v. *CCE & Customs*[6] the learned counsel contended that the exemption notification has to be construed strictly.

17. Responding to the allegation of pick-and-choose policy adopted by the Revenue, the learned counsel urged that non-filing of an appeal in a similar case does not operate as a bar for the Revenue to prefer an appeal in another case. In support, the learned counsel commended us to the decision of this Court in *C.K. Gangadharan* v. *CIT*[7]. It was thus, asserted that the

3 (2004) 166 ELT 447 (Tri)
4 (2006) 198 ELT 33 (Tri)
5 (2011) 2 SCC 74
6 1994 Supp (3) SCC 606
7 (2008) 8 SCC 739 : (2008) 228 ELT 497

decision of the Tribunal did not warrant any interference and the appeal deserved to be dismissed.

18. The short question for determination is: whether import of the specified machine by Gammon can be considered to be an import "by a person who has been awarded a contract for construction of the roads in India", so as to fulfil Condition 38, laid down in Exemption Notification No. 17/2001/Cus dated 1-3-2001?

19. In order to appreciate the contentions advanced on behalf of the parties on the question in issue, it would be expedient and useful to once again notice the salient features of the agreement dated 18-9-2000 entered into between Gammon and Atlanta.

20. The agreement dated 18-9-2000 provided that financial responsibilities of each of the parties to be shared equally in the form of guarantees, securities, etc. of the joint venture would be 50% of the project value; the management of the joint venture would be subject to the overall control of the Management Board, consisting of a Chairman, to be nominated by Gammon, a Joint Chairman to be nominated by Atlanta and one Director each to be appointed by both of them; joint venture bank account would be operated under joint signatures of the authorised representatives of Gammon and Atlanta and neither party would be entitled to borrow for or on behalf of the joint venture or to acknowledge any liability without express prior consent in writing of the other party except to the extent of its share of work; Gammon being the most experienced party would be the lead partner of the joint venture for the performance of the contract; the partner-in-charge would be authorised to incur liabilities and to receive instructions for and on behalf of the partners of the joint venture, whether jointly or severally, and the entire execution of the contract including receiving payment would be carried out exclusively through the partner-in-charge but any financial commitment required by the lead partner, on behalf of the joint venture, would always be previously discussed and agreed upon by the parties.

21. As stated above, though under the agreement dated 18-9-2000, Gammon was notified as the lead partner but agreement dated 20-12-2000 executed between NHAI as the "employer" and Gammon-Atlanta JV as the "contractor" was signed by the representatives of both the companies viz. Gammon and Atlanta, meaning thereby that so far as NHAI was concerned, for them the contractor was Gammon-Atlanta JV and not Gammon or Atlanta individually.

22. According to the adjudicating authority, it was clear from both of the said agreements that the contract of construction of roads in India was awarded to the joint venture and, therefore, Gammon was not entitled to avail of the benefit of the exemption notification as an independent entity. On the contrary, the Commissioner (Appeals) allowed the benefit of the exemption notification to the appellant on the ground that the exemption notification should be given a liberal interpretation and that the Revenue should not try to take advantage of ignorance of law and procedure on the part of Gammon.

23. It is the Tribunal which has dealt with the issue in detail by taking into consideration certain factual aspects pertaining to the import of machine like placement of the supply orders by Gammon and not by the joint venture and its payment by Gammon from its own account and not from the joint venture account provided for in the joint venture agreement. Rejecting the plea of the appellant that in light of the decision of this Court in *New Horizons*[1] wherein it has been held that a joint venture is a legal entity in the nature of a partnership, the import of the machinery by Gammon is to be considered as having been done on behalf of the joint venture, the Tribunal has allowed the Revenue's appeal.

24. Since the stand of the appellant is that the issue arising in the present appeal stands concluded in their favour by the decision of this Court in *New Horizons*[1] and a subsequent decision of this Court as also of the Tribunal, in which the said decision has been relied upon, it would be necessary to discern the ratio of the decision in *New Horizons*[1].

25. In *New Horizons*[1], a joint venture company, consisting of a few Indian companies (with 60% share capital) and a Singapore-based company (with 40% share capital), had participated in tender proceedings floated by the Department of Telecommunications for printing and binding of the telephone directories of Delhi and Bombay. The tender submitted by New Horizons Ltd. (for short "NHL") was not accepted by the Tender Evaluation Committee, apparently, on the basis of the fact that the successful party had more technical experience than any one of the constituent companies of NHL. Aggrieved by the said decision, NHL filed a writ petition in the Delhi High Court against the decision of the Department of Telecommunications. The said writ petition was dismissed rejecting the plea of NHL that the technical experience of the constituents of the joint venture was liable to be treated as that of the joint venture. NHL brought the matter to this Court.

26. Explaining the concept of joint venture in detail, it was held in *New Horizons case*[1] that a joint venture is a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It was observed that a joint venture could take the form of a corporation wherein two or more persons or companies might join together. Accordingly, the appeal of NHL was allowed and it was held that it was a joint venture company in the nature of a partnership between the Indian group of companies and Singapore-based company which had jointly undertaken the commercial venture by contributing assets and sharing risks.

27. Applying the principle of "lifting the corporate veil", it was held in *New Horizons case*[1] that the joint venture companies' technical experience could only be the experience of the partnering companies and the technical experience of all constituents of NHL was liable to be cumulatively reckoned in the tender proceedings and any one of the constituents was competent to

act on behalf of the joint venture company. Highlighting the concept of joint venture, the Court observed thus: (*New Horizons case*[1], SCC pp. 493-94, para 24)

"*24*. The expression 'joint venture' is more frequently used in the United States. It connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject-matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses. (*Black's Law Dictionary*, 6th Edn., p. 839.) According to *Words and Phrases*, Permanent Edn., a joint venture is an association of two or more persons to carry out a single business enterprise for profit (p. 117, Vol. 23). A joint venture can take the form of a corporation wherein two or more persons or companies may join together. A 'joint venture corporation' has been defined as a corporation which has joined with other individuals or corporations within the corporate framework in some specific undertaking commonly found in oil, chemicals, electronic, atomic fields. (*Black's Law Dictionary*, 6th Edn., p. 342.)"

28. In short, *New Horizons*[1] recognises a joint venture to be a legal entity in the nature of a partnership of the constituent companies. Thus, the necessary corollary flowing from the decision in *New Horizons*[1], wherein the partnership concept in relation to a joint venture has been accepted, would be that M/s Gammon-Atlanta JV, the joint venture could be treated as a "legal entity", with the character of a partnership in which Gammon was one of the constituents. In that view of the matter, the next question for consideration is: whether being a legal entity i.e. a juridical person, the joint venture is also a "person" for the purpose of Condition 38 of the exemption notification, stipulating that the goods should be imported by "a person" who had been awarded a contract for construction of goods in India by NHAI?

29. In support of his submission that the joint venture is a "person" as contemplated in the exemption notification, the learned counsel for Gammon had relied on the definition of the word "person" as given in Para 3.37 of the Export and Import Policy for the year 1997-2002. It reads thus:

"**3.37**. 'Person' includes an individual, firm, society, company, corporation or any other legal person."

30. The argument was that since a joint venture has been declared to be a legal entity in *New Horizons*[1], it squarely falls within the ambit of the said definition of the word "person". We are of the opinion that even if the stated stand on behalf of the appellant is accepted, mercifully, on stark facts at hand, it does not carry their case any further. Neither was it the case of the appellant either before the adjudicating authority or before the appellate authority or before us, nor is it suggested by the documents viz. the supply order or the bill of entry, that the import of the machine was by or on behalf

of the joint venture. On the contrary, the Tribunal has recorded in its order that when questioned, the learned counsel for the appellant clarified that the correspondence with the supplier of goods and placement of order had been done by Gammon and not by the joint venture or on their behalf. He also admitted that payment for the machine had not been made from the joint venture account, which had been provided for the contract but from the funds of Gammon.

31. Thus, the inevitable conclusion is that import of "concrete batching plant 56 cum/hr" by Gammon cannot be considered as an import by M/s Gammon-Atlanta JV, "a person" who had been awarded contract for construction of the roads in India and therefore, neither Gammon-Atlanta JV nor Gammon fulfil the requisite requirement stipulated in Condition 38 of Exemption Notification No. 17/2001/Cus dated 1-3-2001.

32. As regards the plea of the appellant that the exemption notification should receive a liberal construction to further the object underlying it, it is well settled that a provision providing for an exemption has to be construed strictly. In *Novopan India Ltd.*[6], dealing with the same issue in relation to an exemption notification, a three-Judge Bench of this Court, stated the principle as follows: (SCC p. 614, para 16)

> "*16*. We are, however, of the opinion that, on principle, the decision of this Court in *Mangalore Chemicals and Fertilisers Ltd.* v. *CCT*[8]—and in *Union of India* v. *Wood Papers Ltd.*[9] referred to therein—represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee—assuming that the said principle is good and sound—does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in *Mangalore Chemicals*[8] and other decisions viz. each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in *Hansraj Gordhandas* v. *CCE and Customs*[10] that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification i.e. by the plain terms of the exemption."

8 1992 Supp (1) SCC 21
9 (1990) 4 SCC 256 : 1990 SCC (Tax) 422
10 AIR 1970 SC 755

33. Applying the above principles, we are of the opinion that since in the instant case the language of Condition 38 in the exemption notification is clear and unambiguous, there is no need to resort to the interpretative process in order to determine whether the said condition is to be imparted strict or liberal construction.

34. Before parting, we wish to place on record our deep concern on the conduct of the two Benches of the Tribunal deciding appeals in *IVRCL Infrastructures & Projects Ltd.*[3] and *Techni Bharathi Ltd.*[4] After noticing the decision of a coordinate Bench in the present case, they still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment, thereby creating a judicial uncertainty with regard to the declaration of law involved on an identical issue in respect of the same exemption notification.

35. It needs to be emphasised that if a Bench of a tribunal, in an identical fact situation, is permitted to come to a conclusion directly opposed to the conclusion reached by another Bench of the tribunal on an earlier occasion, that will be destructive of the institutional integrity itself. What is important is the tribunal as an institution and not the personality of the members constituting it. If a Bench of the Tribunal wishes to take a view different from the one taken by the earlier Bench, propriety demands that it should place the matter before the President of the Tribunal so that the case is referred to a larger Bench, for which provision exists in the Act itself.

36. In this behalf, the following observations by a three-Judge Bench of this Court in *Sub-Inspector Rooplal* v. *Lt. Governor*[11] are quite apposite: (SCC p. 654, para 12)

> "*12.* At the outset, we must express our serious dissatisfaction in regard to the manner in which a coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A

11 (2000) 1 SCC 644 : 2000 SCC (L&S) 213

subordinate court is bound by the enunciation of law made by the superior courts. A coordinate Bench of a court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement."

We respectfully concur with these observations and are confident that all the courts and various tribunals in the country shall follow these salutary observations in letter and spirit.

37. In view of the foregoing discussion, the decision of the Tribunal, holding that the appellant was not entitled to the benefit of Exemption Notification No. 17/2001/Cus dated 1-3-2001, cannot be flawed. The appeal being bereft of any merit is dismissed accordingly, with costs, quantified at Rs 50,000.

(2011) 12 Supreme Court Cases 511

(*Record of Proceedings*)

(BEFORE ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.)

EXPOSURE INSURANCE SERVICES LIMITED .. Petitioner;

Versus

LARSEN AND TOUBRO LIMITED .. Respondent.

SLP (C) No. 24772 of 2007†, decided on March 21, 2009

Corporate Laws — Companies Act, 1956 — S. 439(b) — Winding-up application on ground of failure to pay debts — Dispute as to whether debt due — Maintainability of winding-up petition — Winding-up application by creditor for payment of dues under bills of exchange — Debtor company taking plea that goods agreed to be supplied had been supplied and received by creditor-petitioner — There being a genuine dispute regarding claim put forward by creditor-petitioner — Matter, held, is required to be heard in a properly constituted suit — Remedies for parties, therefore, left open to be pursued (Paras 5, 6 and 2)

SLP dismissed SS-D/46200/S

Advocates who appeared in this case :
Ms Praveena Gautam, Advocates, for the Petitioner;
U.U. Lalit, Senior Advocate (Dhruv Kapoor, Sachin Midha, Rajneesh Chopra and Subramonium Prasad, Advocates) for the Respondent.

ORDER

1. This special leave petition is directed against the judgment and order dated 19-7-2007, passed by the Division Bench of the Bombay High Court in Appeal No. 382 of 2007 arising out of Company Petition No. 419 of 2006, filed by the petitioner herein. Claiming to be a holder in due course of two bills of exchange, both dated 15-12-2002, the petitioner filed Company

† From the Judgment and Order dated 19-7-2007 in Appeal No. 382 of 2007 arising out of CP No. 419 of 2006 of the High Court of Bombay

Annexure A-4

provide for quicker and less expensive justice to the Members of the said armed forces of the Union. The Preamble of the Act provides for adjudication or trial by the Tribunal of justice and compliance in respect of many a matter. As we find the Tribunal has been conferred powers to deal with the cases in promptitude. Promptitude does not ostracise or drives away the apposite exposition of facts and necessary ratiocination. A seemly depiction of factual score, succinct analysis of facts and law, pertinent and cogent reasoning in support of the view expressed having due regard to the rational methodology, in our considered opinion, are imperative. We have said so as we find that the Tribunal by the impugned order has not adverted to the necessitous facts. We say so despite sustaining the verdict.

66. Ex consequenti, the appeal, being sans merit, stands dismissed leaving the parties to bear their own costs.

(2013) 16 Supreme Court Cases 147

(BEFORE DR B.S. CHAUHAN AND S.A. BOBDE, JJ.)

UNION OF INDIA AND ANOTHER .. Appellants;

Versus

ASHOK KUMAR AGGARWAL .. Respondent.

Civil Appeal No. 9454 of 2013†, decided on November 22, 2013

A. **Service Law — Suspension — Purpose of — Held, is to keep delinquent out of mischief range and to complete disciplinary proceedings unhindered — Suspension is an interim measure in aid of disciplinary proceedings so that delinquent may not gain custody or control of papers or take any advantage of his position — Central Civil Services (Classification, Control and Appeal) Rules, 1965, R. 10**

B. **Service Law — Suspension — Suspension order — Imposition of — Considerations for**

— Held, suspension order can be passed by competent authority considering gravity of alleged misconduct and nature of evidence available — It cannot be actuated by mala fide, arbitrariness or for ulterior purpose — Effect on public interest due to employee's continuation in office also relevant and determining factor — Facts of each case need to be taken into consideration since no formula of universal application can be laid down — Suspension order should be passed only when there is strong prima facie case against delinquent, and if charges stand proved warrant imposition of major punishment — Where for any reason it is not possible to proceed with domestic enquiry, delinquent may not be kept under suspension — Long period of suspension however does not make order of suspension invalid — Central Civil Services (Classification, Control and Appeal) Rules, 1965, R. 10

† From the Judgment and Order dated 17-9-2012 of the High Court of Delhi at New Delhi in WP (C) No. 5247 of 2012

C. **Service Law — Suspension — Status of employee — Withdrawal of work/duty vide suspension, held, does not put an end to service and relationship of master and servant continues — Temporary deprivation of working in office — Suspension cannot be treated as punishment even when it causes some stigma — Central Civil Services (Classification, Control and Appeal) Rules, 1965, R. 10**

D. **Service Law — Suspension — Held, delinquent employee is no better off after charge-sheet is filed against him in court on conclusion of investigation than his position was during investigation of case itself — Central Civil Services (Classification, Control and Appeal) Rules, 1965, R. 10**

E. **Service Law — Suspension — Judicial review/Interference with suspension order — Scope**

— Held, even if criminal trial or enquiry is taking a long time, it is ordinarily not open to court to interfere with suspension order as it is within exclusive domain of competent authority who can review its suspension order and revoke it if it is satisfied that criminal case pending would only be concluded after unusual delay for no fault of employee concerned — However, where charges are baseless, mala fide or vindictive and are framed only to keep delinquent employee out of a job, case for judicial review made out — Where court finds that authority is not proceeding expeditiously as it ought to have, and it results in prolongation of sufferings for delinquent employee, court may direct completion of enquiry within stipulated period — However, mere delay in conclusion of trial or enquiry cannot be a ground for quashing suspension order, if the charges are grave in nature — Court cannot act as appellate forum de hors powers of judicial review — General Clauses Act, 1897 — S. 21 — Central Civil Services (Classification, Control and Appeal) Rules, 1965, R. 10

F. **Service Law — Departmental Enquiry — Enquiry procedure — Representation — Consideration of — Judicial Review/Interference — Scope — Bar on second representation on same issue — Held, representation may be considered by competent authority if it is statutorily provided for — Court cannot pass order directing authority to consider representation of delinquent since many a time, unwarranted or time-barred claims are sought to be raised — Besides, once a representation is decided, second representation on similar issue is not allowed, which may also involve issue of limitation, etc.**

G. **Service Law — Departmental Enquiry — Enquiry procedure — Notings in a file — Nature of — Held, notings in file are merely notings simpliciter representing expression of opinion by particular individual and cannot be treated as decisions to be relied on — Administrative Law — Administrative Action — Administrative or Executive Function — Administrative Orders/Decisions/Executive Instructions/Orders/Circulars — File notings**

H. **Administrative Law — Administrative Action — Administrative or Executive Function — Administrative Orders/Decisions/Executive Instructions/Orders/Circulars — Primacy of statutory rules — Held, competent authority cannot issue orders/office memorandum/executive instructions in contravention of statutory rules — Instructions are subservient to statutory provisions and can be issued only to supplement statutory rules and not to supplant them**

I. **Constitution of India — Art. 136 — Nature of jurisdiction under — Equity jurisdiction — Jurisdiction under Art. 136 is plenary, residuary and basically one of conscience — Even if matter is admitted there is no requirement of law that Court must decide it on each and every issue — Court can revoke leave as such jurisdiction is required to be exercised only in suitable cases and very sparingly — Law is to be tempered with equity and Court can pass equitable order considering facts of case — Conduct of party is most relevant factor, and in given case Court may even refuse to exercise discretion under Art. 136 since it is not necessary to exercise such jurisdiction just because it is lawful to do so — Equity**

J. **Practice and Procedure — Res judicata — Applicability — On facts held, it was not permissible for appellant UoI to consider renewal of suspension order or pass fresh order without challenging order of Tribunal dt. 1-6-2012 whereunder Tribunal had quashed suspension orders passed against respondent and said order dt. 1-6-2012 had attained finality — Such attitude tantamounts to contempt of court, legal malice and arbitrariness as it is not permissible for executive to scrutinise order of court — Service Law — Suspension — Contempt of Court — Civil Contempt — General principles — Wilful disobedience/Contumacious conduct**

K. **Administrative Law — Administrative Action — Administrative or Executive Function — Implementation of Court orders — Non-compliance with order of Tribunal which had attained finality — Effect**

— Tribunal quashing suspension order passed against respondent IRS Officer and vide order dt. 1-6-2012 directing appellant UoI to reinstate him in service with all consequential benefits, despite which competent authority continuing suspension order vide order dt. 31-7-2012 — Order dt. 1-6-2012 attaining finality — Held, order passed by authority in spite of knowledge of order of court is of no consequence as it remains nullity and any subsequent action based thereon is also a nullity — Thus, order dt. 31-7-2012 was a nullity being in contravention of order of Tribunal which had attained finality and also amounted to contempt of court — Fact that Supreme Court vide its interim order dt. 8-10-2012 had stayed the order dt. 1-6-2012 did not validate order dt. 31-7-2012

The respondent who belonged to Indian Revenue Service was put under suspension since 28-12-1999 in view of pendency of two criminal cases against him. The respondent challenged the order of suspension, which was allowed by the Tribunal vide order dated 17-1-2003 giving opportunity to appellant UoI to pass fresh orders. Pursuant thereto the appellants vide order dated 25-4-2003 decided that the respondent should remain under suspension.

58. A Constitution Bench of this Court while dealing with a similar issue in respect of executive instructions in *Sant Ram Sharma* v. *State of Rajasthan*[56], held: (AIR p. 1914, para 7)

> "7. … It is true that the 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."

59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide *Union of India* v. *Majji Jangamayya*[57], *P.D. Aggarwal* v. *State of U.P.*[58], *Paluru Ramkrishnaiah* v. *Union of India*[59], *C. Rangaswamaiah* v. *Karnataka Lokayukta*[60] and *Joint Action Committee of Air Line Pilots' Assn. of India* v. *DG of Civil Aviation*[61].)

60. Similarly, a Constitution Bench of this Court, in *Naga People's Movement of Human Rights* v. *Union of India*[62], held that the executive instructions have binding force provided the same have been issued to fill up the gap between the statutory provisions and are not inconsistent with the said provisions.

61. In *Nagaraj Shivarao Karjagi* v. *Syndicate Bank*[63] this Court has explained the scope of circulars issued by the Ministry observing that it is binding on the officers of the department, particularly the recommendations made by CVC.

62. In *State of U.P.* v. *Dharmander Prasad Singh*[64] this Court held that the order must be passed by the authority after due application of mind uninfluenced by and without surrendering to the dictates of an extraneous body or an authority.

63. Considering the case in totality, we are of the view that the appellants have acted in contravention of the final order passed by the Tribunal dated 1-6-2012[2] and therefore, there was no occasion for the appellants for passing the order dated 31-7-2012 or any subsequent order. The orders passed by the

56 AIR 1967 SC 1910
57 (1977) 1 SCC 606 : 1977 SCC (L&S) 191
58 (1987) 3 SCC 622 : 1987 SCC (L&S) 310 : (1987) 4 ATC 272
59 (1989) 2 SCC 541 : 1989 SCC (L&S) 375 : (1989) 10 ATC 378 : AIR 1990 SC 166
60 (1998) 6 SCC 66 : 1998 SCC (L&S) 1448
61 (2011) 5 SCC 435 : AIR 2011 SC 2220
62 (1998) 2 SCC 109 : 1998 SCC (Cri) 514 : AIR 1998 SC 431
63 (1991) 3 SCC 219 : 1991 SCC (L&S) 965 : (1992) 19 ATC 639 : AIR 1991 SC 1507
64 (1989) 2 SCC 505 : AIR 1989 SC 997

2 *Ashok Kumar Aggarwal* v. *Union of India*, OA No. 495 of 2012, order dated 1-6-2012 (CAT)

Annexure A-5

(2011) 3 Supreme Court Cases 436

(BEFORE P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.)

STATE OF ORISSA AND ANOTHER . . Appellants;

Versus

MAMATA MOHANTY . . Respondent.

Civil Appeals No. 1272 of 2011† with Nos. 1246-71, 1273-74, 1277-81, 1283, 1285-87, 1289-93, 1295-1300, 1302-13, 1315-21 and 1284 of 2011, decided on February 9, 2011

A. **Education and Universities — Employment and Service Matters — Appointment and Recruitment — Eligibility conditions — Necessity of possession of prescribed qualifications by teachers, emphasised and purpose of grant-in-aid to private educational institutions, pointed out — Excellence of instruction provided by an educational institution mainly depends directly on excellence of teaching staff — Hence, unless teachers themselves possess a good academic record/minimum qualifications prescribed as an eligibility, standard of education cannot be maintained/enhanced — Constitution of India, Art. 21-A**

B. **Education and Universities — Generally — "Education" — What is — Object and role of — Importance of academic excellence of teachers themselves — Words and Phrases — "Education" — Constitution of India, Art. 21-A**

Held :

Education is the systematic instruction, schooling or training given to the young persons in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. *The excellence of instruction provided by an educational institution mainly depends directly on the excellence of the teaching staff.* Therefore, unless they themselves possess a good academic record/ minimum qualifications prescribed as an eligibility, standard of education cannot be maintained/enhanced. (Para 29)

Lok Shikshana Trust v. *CIT*, (1976) 1 SCC 254 : 1976 SCC (Tax) 14; *Frank Anthony Public School Employees' Assn.* v. *Union of India*, (1986) 4 SCC 707 : (1987) 2 ATC 35; *Osmania University Teachers' Assn.* v. *State of A.P.*, (1987) 4 SCC 671; *Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology* v. *Vaibhav Singh Chauhan*, (2009) 1 SCC 59, *affirmed*

Education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private

† From the Judgment and Order dated 22-3-2006 of the High Court of Orissa at Cuttack in WP (C) No. 14157 of 2005

conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide *Delhi Development Horticulture Employees' Union* v. *Delhi Admn.*[7], *State of Haryana* v. *Piara Singh*[8], *Excise Supdt.* v. *K.B.N. Visweshwara Rao*[9], *Arun Tewari* v. *Zila Mansavi Shikshak Sangh*[10], *Binod Kumar Gupta* v. *Ram Ashray Mahoto*[11], *National Fertilizers Ltd.* v. *Somvir Singh*[12], *Telecom District Manager* v. *Keshab Deb*[13], *State of Bihar* v. *Upendra Narayan Singh*[14] and *State of M.P.* v. *Mohd. Abrahim*[15].)

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.

Order bad in inception

37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to

7 (1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386 : AIR 1992 SC 789
8 (1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : AIR 1992 SC 2130
9 (1996) 6 SCC 216 : 1996 SCC (L&S) 1420
10 (1998) 2 SCC 332 : 1998 SCC (L&S) 541 : AIR 1998 SC 331
11 (2005) 4 SCC 209 : 2005 SCC (L&S) 501 : AIR 2005 SC 2103
12 (2006) 5 SCC 493 : 2006 SCC (L&S) 1152 : AIR 2006 SC 2319
13 (2008) 8 SCC 402 : (2008) 2 SCC (L&S) 709
14 (2009) 5 SCC 65 : (2009) 1 SCC (L&S) 1019
15 (2009) 15 SCC 214 : (2010) 1 SCC (L&S) 508

permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (Vide *Upen Chandra Gogoi* v. *State of Assam*[16], *Mangal Prasad Tamoli* v. *Narvadeshwar Mishra*[17] and *Ritesh Tewari* v. *State of U.P.*[18])

38. The concept of adverse possession of lien on post or holding over are not applicable in service jurisprudence. Therefore, continuation of a person wrongly appointed on post does not create any right in his favour. [Vide *M.S. Patil (Dr.)* v. *Gulbarga University*[19].]

Eligibility lacking

39. In *Prit Singh (Dr.)* v. *S.K. Mangal*[20] this Court examined the case of a person who did not possess the requisite percentage of marks as per the statutory requirement and held that he cannot hold the post observing: (SCC pp. 718-19, paras 12-13)

> "*12.* ... It need not be pointed out that the sole object of prescribing qualification that the candidate must have a consistently *good academic record* with first or high second class Master's degree for appointment to the post of a Principal, is to select a most suitable person in order to maintain excellence and standard of teaching in the institution apart from administration. ... The appellant had not secured even second class marks in his Master of Arts Examination whereas the requirement was first or *high second class (55%)*. The irresistible conclusion is that on the relevant date the appellant did not possess the requisite qualifications.
>
> *13.* ... on the date of the appointment the appellant did not possess the requisite qualifications and as such *his appointment had to be quashed*." (emphasis added)

40. In *Pramod Kumar* v. *U.P. Secondary Education Services Commission*[21] this Court examined the issue as to whether a person lacking eligibility can be appointed and if so, whether such irregularity/illegality can be cured/condoned. After considering the provisions of the U.P. Secondary Education Services Commission Rules, 1983 and the U.P. Intermediate Education Act, 1921, this Court came to a conclusion that lacking eligibility as per the rules/advertisement cannot be cured at any stage and making appointment of such a person tantamounts to an illegality and not an irregularity, and thus cannot be cured. A person lacking the eligibility cannot approach the court for the reason that he does not have a right which can be enforced through court.

16 (1998) 3 SCC 381 : 1998 SCC (L&S) 872 : AIR 1998 SC 1289
17 (2005) 3 SCC 422 : AIR 2005 SC 1964
18 (2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315 : AIR 2010 SC 3823
19 (2010) 10 SCC 63 : (2010) 2 SCC (L&S) 785 : AIR 2010 SC 3783
20 1993 Supp (1) SCC 714 : 1993 SCC (L&S) 246 : (1993) 23 ATC 783
21 (2008) 7 SCC 153 : (2008) 2 SCC (L&S) 244 : AIR 2008 SC 1817

decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law."

(See also *Commr. of Police* v. *Gordhandas Bhanji*[61].)

62. It is a matter of common experience that a large number of orders/letters/circulars, issued by the State/statutory authorities, are filed in court for placing reliance and acting upon it. However, some of them are definitely found to be not in conformity with law. There may be certain such orders/circulars which are violative of the mandatory provisions of the Constitution of India. While dealing with such a situation, this Court in *Ram Ganesh Tripathi* v. *State of U.P.*[62] came across with an illegal order passed by the statutory authority violating the provisions of Articles 14 and 16 of the Constitution. This Court simply brushed aside the same without placing any reliance on it observing as under: (SCC p. 625, para 9)

> "*9.* ... The said order was not challenged in the writ petition as it had not come to the notice of the appellants. It has been filed in this Court along with the counter-affidavit.... *This order [is also deserved] to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents*...."
>
> (emphasis added)

63. The whole exercise done by the State authorities suffers from the vice of arbitrariness and thus is violative of Article 14 of the Constitution. Therefore, it cannot be given effect to.

Per incuriam* — *Doctrine

64. "Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. The courts have developed this principle in relaxation of the rule of stare decisis. Thus the "quotable in law", is avoided and ignored if it is rendered, in ignoratium of a statute or other binding authority.

65. In *Mamleshwar Prasad* v. *Kanhaiya Lal*[63] this Court held: (SCC p. 235, para 7)

> "*7.* ... where by obvious *inadvertence or oversight* a judgment fails to notice a plain statutory provision or *obligatory authority running counter to the reasoning* and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission."
>
> (emphasis added)

66. In *State of Orissa* v. *Damodar Nayak*[64], question arose that in case the teacher at the time of appointment, did not possess the requisite eligibility i.e. qualifications, whether he could claim any benefit under the grant-in-aid scheme. The respondent teacher therein had secured 53.9% marks and

61 AIR 1952 SC 16
62 (1997) 1 SCC 621 : 1997 SCC (L&S) 186 : AIR 1997 SC 1446
63 (1975) 2 SCC 232 : AIR 1975 SC 907
64 (1997) 4 SCC 560 : 1997 SCC (L&S) 979 : AIR 1997 SC 2071

Annexure A-6

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Monday, the 28th day of April, 2025.

Original Application No. 74 of 2021 (SZ)
&
I.A. Nos. 1 to 4 and 8 of 2025(SZ)
(Through Video Conference)

IN THE MATTER OF

Mr. K. Saravanan,
S/o kasinathan,
Aged about 37 years,
No. 30, Urur Kuppam, Besant Nagar,
Chennai – 90.

...Applicant(s)

Versus

1. **The Union of India**
Represented by its Secretary to Government,
Ministry of Environment & Forests& Climate Change,
Indra Paryavaran Bhavan, Jor Bagh, New Delhi.

...Respondent(s)

For Applicant(s): Mr. A. Yogeshwaran.

For Respondent(s): Mr. Sai Srujan Tayi for R1.
Mr. Chetan Sharma, ASG along with M/s. Adarsh Tripathi & Ajitesh Garg - I.A.

Judgment Reserved On: 5th March, 2025.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGMENT

Delivered by* Smt. Justice Pushpa Sathyanarayana*, Judicial Member

1. The challenge in this application is to the OM dated 11.11.2020 bearing number F.No.-J-13012/8/2009-IA,II(T) issued by the MoEF&CC. The said OM allowed the thermal power plants to change their coal source without requiring fresh EIA or Environmental

utilisation notification dated 31.12.2021 and 30.12.2022 and its subsequent amendments from time to time".

29. To be noted here is that the above referred fly ash notification which has been amended from time to time from 1999 till 2022 mandate 100% ash utilisation by power plants within 03 to 05 years, introducing penalties for non-compliances. But from subsequent OMs there is a marked dilution of earlier environmental obligations even as the sector continues to under preform in ash utilisation as per various CAG and CPCB reports. In the light of the above, the invocation of 2021 notification in the 2025 amendment appears performative, lacking real regulatory bit.

30. The above aspect makes it clear that the Ministry is moving in two contradictory directions- while tightening compliance through formal notifications, simultaneously issuing OMs that open up exceptions and weaken oversight. This certainly would undermine the integrity of environmental governance. While the environmental safeguard should be the prime concern, the regulatory shift prioritising ease of business and operational flexibility should not be allowed to over take the same. The environmental risks associated with changes in coal source are not theoretical. The variation in coal grade, ash content, sulphur content, moisture level and calorific value can significantly affect emissions, thermal efficiency and ash generation. It is specifically pointed out that imported coal often has lower ash content but higher in sulphur content. Whereas domestic coal on other hand can lead to increased particulate emissions and greater fly ash volumes. The exemption provided under the OMs failed to account for the scientific realities. The fugitive dust control and

reporting of ash disposal cannot be equated with safeguards against pollution escalation, particularly, when they rely entirely on self-reporting with no provision for free change environmental appraisal. The result is a system that trusts project proponents to implement post-facto mitigation measures rather than requiring them to prove in advance that pollution will not increase.

31. Learned Counsel appearing for the applicant would contend that even the invocation of fly ash utilisation notification dated 31.12.2021 is not complete as there is another notification in SO 6169 (E) dated 30.12.2022 issued regarding the ash utilisation which amends earlier notification from "**a year" to "three years**".

32. SO 5481(E) dated 31.12.2021 provide for unutilised accumulative ash i.e. legacy ash to be used utilised progressively by thermal power plants in such a manner that the utilisation of the legacy ash shall be completed fully within 10 years from the date of publication of the notification. Further it provided that the CPCB, State PCBs or the PCCs shall certify for the stabilisation or reclamation of the ash pond which will be carried out within **"a year"**. But the said notification is further diluted by virtue of subsequent SO 6169(E) dated 30.12.2022 by substituting **03 years** instead of **01 year**.

33. This is only a status update which has to be sent to the State PCBs or PCCs without mandating adherence to any specific utilisation targets. The SO is also silent about the enforcement mechanism or penalty for non-compliance attached to this requirement. This only highlights the fact that there is a change in the environmental governance. The SO and the OMs earlier allowed strict norms while

these policy instruments like OMs have taken away the norms through procedural shortcuts. The apprehension of the applicant that the fly ash notification and the impugned OM have not adverted to the air ambient quality, coal transportation, increased consumption of coal, coal stockyard, ash pond handling system and water requirement. It is alleged that change in the fly ash notification from time to time and reference to the same in the impugned OM has become symbolic signal compliance rather than enforcing it.

34. The MoEF&CC which is a regulatory body of the environment and ecology, instead of converting towards higher accountability it is drifting towards dilution in the name of reforms.

Plenary Environment Legislation and limits of subordinate legislation.

35. The Environment (Protection) Act, 1986 enables Central Government to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution. The OMs in question are not legislative rules as they do not udergo the public consultation, stakeholder engagement or gazette publication in the same manner as that of the S.O or any statute. The OMs are issued without any scientific study or in fact assessment. The legal character of the OMs is administrative but their effect is legislative creating de facto exemptions from legal mandates. Such a shift in regulatory thresholds through OMs is

inconsistent with the Principle of Legality and with well established limits on delegated legislation.

36. The present case is the classic example to revisit the structural issue in India's environmental governance and its over-reliance on subordinate legislation and executive instructions. The powers provided to Central Government under Section 3 to take measures to protect environment is very wide and the same is already reiterated in ***M.C. Mehta vs. Union of India- AIR 1988 Supreme Court 1037***. However, in practice the environmental law is largely driven by notifications, guidelines, office memorandum and circulars none of which comes under the legislative oversight. When the environmental norms are weakened then there is no institutional accountability mechanism.

37. In view of the forgoing circumstances, the Original Application is allowed and the OM dated 11.11.2020 bearing number F.No.-J-13012/8/2009-IA.II(T) and subsequent amendments dated 06.12.2023 bearing number F.No.-J-13012/8/2009-IA.II(T) and O.M. dated 07.01.2025 bearing number F.No.-J-13012/8/2009-IA.II(T)[E-167634] issued by MoEF&CC are quashed. In view of the disposal of the O.A, the pending Interlocutory Application Nos. 1 to 4 and 8 of 2025 also stand disposed of.

.....J.M.
(Smt. Justice Pushpa Sathyanarayana)

.....E.M.
(Dr. Satyagopal Korlapati)
Internet – Yes/No
All India NGT Reporter – Yes/No

O.A. No.74/2021 (SZ)&
I.A. Nos. 1 to 4 & 8/2025(SZ)
28th April, 2025. (AM).

Before the National Green Tribunal
Southern Zone (Chennai)

O.A. No. 74 of 2021(SZ)

Mr. K. Saravanan,

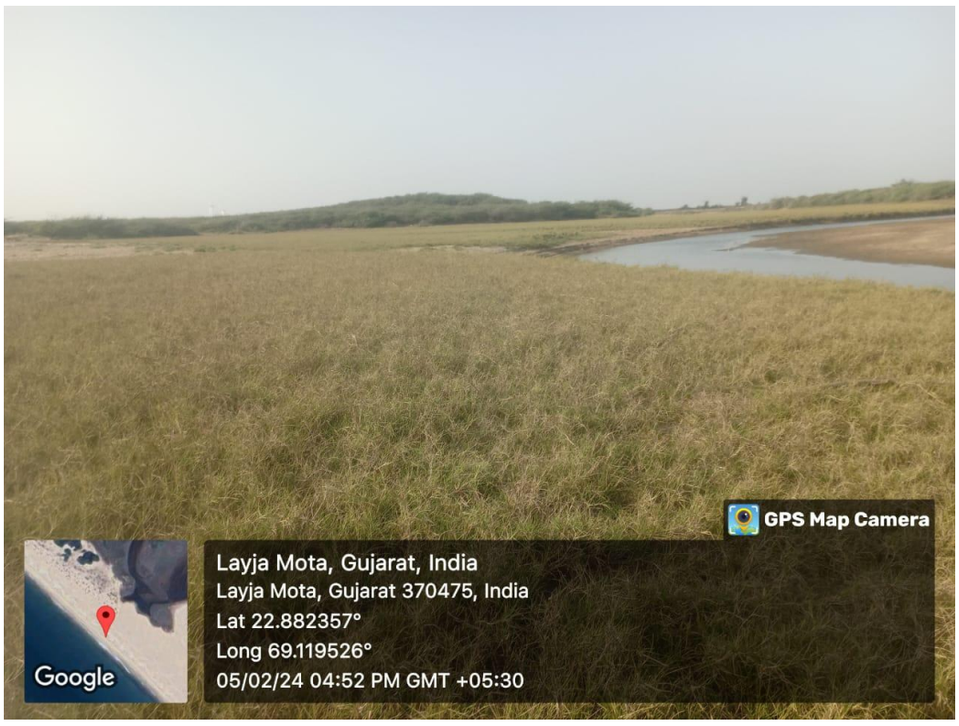
Vs.

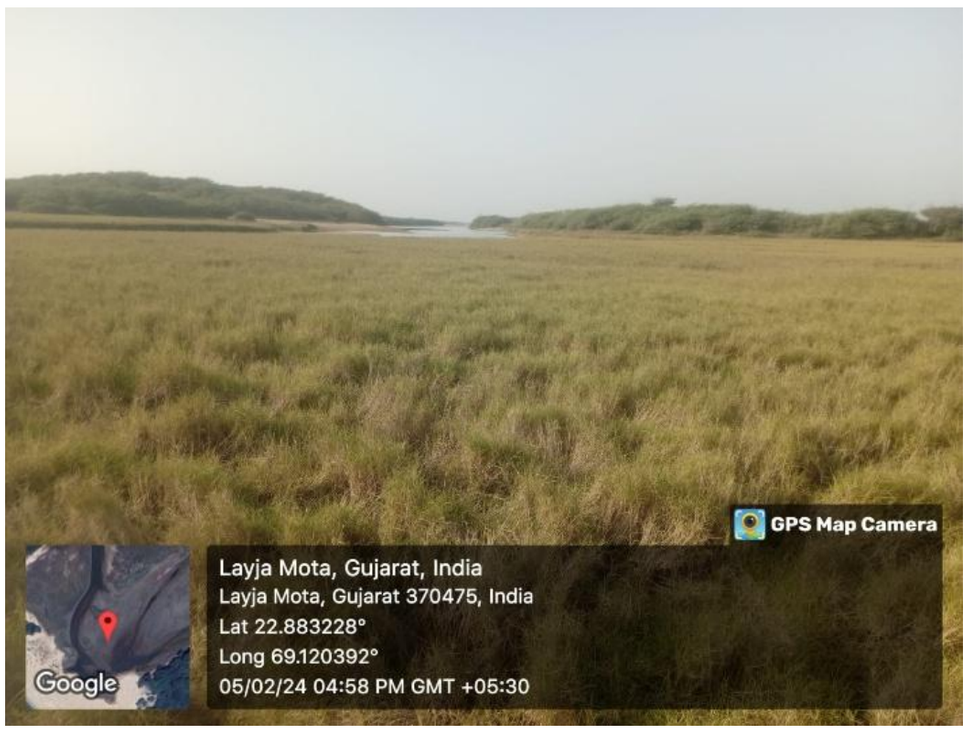
Union of India & Ors.

O.A. No. 74/2021(SZ)&
I.A. Nos. 1 to 4 & 8/2025(SZ)
28th April, 2025. (AM)

ANNEXURE A/7

COPY OF THE IMAGES TAKEN BY THE TREELESS RIVERBED THAT WILL BE USED BY THE RESPONDENT NO. 5 FOR TRANSPORTATION OF CONSTRUCTION MATERIALS:





Gmail

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Litigation . <litigation@dclawchambers.com>

Copy of Rejoinder to R-5 on behalf of the Appellant in Appeal No. 144 of 2025 Vijaykumar Karsanbhai Gadhavi & Ors. Versus. Union of India & Ors

1 message

Litigation . <litigation@dclawchambers.com> Fri, Nov 14, 2025 at 4:54 PM
To: ENVIRO LEGAL DEFENCE FIRM <eldflegal@gmail.com>, maulik@nanavatico.com, Pushkal Mishra <pushkalm6@gmail.com>
Cc: Kol Office <kol_office@dclawchambers.com>

Dear Sir/madam,

Please find attached- Copy of Rejoinder to R-5 on behalf of the Appellant in Appeal No. 144 of 2025 Vijaykumar Karsanbhai Gadhavi & Ors. Versus. Union of India & Ors

Thanks & Regards
Counsel for the Appellant

Rejoinder to R-5 on behalf of the Appellant.pdf
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