BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE
APPEAL NO. 68/2019

IN THE MATTER OF:

MR. VISHAL ARINJAY SHAH ... APPELLANT

Versus

SAU. SMITA PRADEEP SHAH & ORS. ... RESPONDENTS

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Date: 10.05.2023

APPELLANT

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
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REJOINDER ON BEHALF OF THE APPELLANT TO THE REPLY OF R-2-M/s. GRENESIIS CONSTRO PVT. LTD–PP VIDE DATED 01.10.2020 AND R-7-MPCB VIDE DATED 03.09.2021

I, Vishal Shah S/o Arinjay Shah Aged: Adult, Occupation: Self-Business, R/at: Manorama, S. No. 39, Manik Baug, Sinhgad Road, Pune-411051, do hereby solemnly affirm and state on oath as follows:

Part	Para	Description
Part-A	1-4	Brief Facts
Part-B	5	Important Dates & Events
Part-C	6	Illegal Excess Construction Without prior EC, CTE & Operation without prior CTO and Procurement of *Ex-Post Facto* Environment Clearance, Consent To Establish, Consent To Operate and Admitted Facts by Respondents
Part-D	7	PMC Plan Sanctions, Plinth Check Certificate (PCC), Occupancy Certificate (OC) And Completed Total BUA
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Part-I	12	MPCB & SEIAA are favouring the PP by not imposing penalty for grant of ex-post facto EC, CTE, CTO
Part-J	13	Case Laws by Original Applicant
Part-K	14	Request/Suggestions on behalf of Original Applicant seeking Reliefs/Directions/Orders

PART-A: BRIEF FACTS

1. It is most respectfully state & submits that, Appellant have filed present Appeal vide dated 07.09.2019 challenging the ***ex-post facto*** Environment Clearance Vide No. SEIAA-EC-0000001952 dated 09.08.2019 granted by Respondent No. 5–SEIAA to the residential & commercial building construction project "Grand Horizon" under taken by the Respondent No. 1-Mrs. Smita P. Shah & Respondent No. 2-M/s. Grenesiis Constro Pvt. Ltd.-PP situated at Survey No. 34/1/4, 39/1A, 39/2/2/1 village: Vadgaon Budruk, Taluka: Haveli, District: Pune on total land area admeasuring 10120 M^2 having total BUA of 25335.25 M^2 out of proposed TBUA of 27060.25 M^2 within local limits & jurisdiction of Pune Municipal Corporation (PMC).

2. At the outset, I state that this Appellant filed IA No. **237/2019** vide dated 19.11.2019 for submission of additional documents {**P@59-621**} to be relied in support of the Appeal. Further I state that this Hon'ble NGT issued notice to the Respondents vide its Order dated 17.07.2020 and this Appellant completed the service on all Respondents. Thereafter, Appellant filed service affidavit vide dated 23.09.2020 {**P@622-644**}.

3. I state that, the Respondent No. 2-M/s. Grenesiis Constro Pvt. Ltd.-PP filed its reply affidavit vide dated 01.10.2020 {**P@645-752**} and Respondent No. 7-MPCB filed its reply affidavit vide dated 03.09.2021 {**P@753-777**}.

4. I state that, the Respondent No. 3-PMC, Respondent No. 4-MoEFCC, Respondent No. 5-SEIAA, Respondent No. 6-SEAC-III and private Respondent No. 8-Club Aminda have not filed their reply affidavit since issue notice & service i.e. even after lapse of 32 months. Therefore, this matter may kindly be proceed for final hearing by passing "No Say" order for Respondents No. 3, 4, 5, 6 & 8.

PART-B: IMPORTANT DATES & EVENTS

5. I state that, the following facts are important to decide the present matter;

Sr.	Date	Event	Page No.
1.	14.09.2006	EIA Notification-2006 mandating prior environment clearance	**P@72-108**
2.	04.04.2011	S.O.695(E) Notification for Clarification on BUA	P@109-115
3.		PMC granted first sanction	
4.	20.11.2010	PMC First Sanction CC/2821/10	Item#13 P@14
5.	25.08.2011	First NA Order PMH/NA/SR/68/2011	Item#13 P@14
6.	09.11.2012	PMC Revision Sanction CC/2330/12	Item#13 P@14
7.	24.07.2013	PMC Tree Authority NOC	P@116-117
8.	05.10.2013	Second NA Order PMH/NA/SR/1136/2012	Item#13 P@14
9.	19.12.2015	PMC Revision Sanction CC/3023/15	Item#13 P@14
10.	28.01.2016	PMC Revision Sanction CC/3613/16	Item#13 P@14
11.	02.02.2016	PMC Occupancy Certificate OCC/1476/16	Item#13 P@14
12.	12-15.01.2016	Minutes of 40th SEAC-III Meeting	P@118
13.	25-29.04.2016	Minutes of 46th SEAC-III Meeting	P@119
14.	19-23.09.2016	Minutes of 54th SEAC-III Meeting	P@120
15.	13-15.10.2016	Minutes of 56th SEAC-III Meeting	P@121
16.	09.12.2016	EIA Notification-2016	P@122-144
17.	14.03.2017	EIA Notification-2017 for regularization of violation case	P@145-151
18.	17.07.2017	Application for ex-post facto EC	P@152-317
19.	02.08.2017	order passed by the Hon'ble High Court at Bombay in W.P. No. 8402 of 2017	P@729-732
20.	04.12.2017	order passed by the Hon'ble High Court of Bombay in W.P. No. 13203 of 2017	P@733-735
21.	08.03.2018	EIA Notification-2018 for delegation of powers to SEAC & SEIAA for consideration of violation cases	P@318-324
22.	27.03.2018	Refusal of Consent to Establish by MPCB	A-25, P@615–616
23.	19.04.2018	Order passed by this Hon'ble	P@668-677

		NGT in O.A. No. 22/2016	
24.	19.08.2018	Minutes of 67th SEAC-III Meeting	P@332–342
25.	10.09.2018	indemnity bond by PP	P@343–344
26.	28.09.2018	Minutes of 139th SEIAA meeting	P@710-722
27.	April-2019	Assessment for Environmental Damage and Estimation of Remediation Costs submitted by PP	P@546–555
28.	10.04.2019	Minutes of 85th SEAC-III Meeting	P@556–565
29.	10.04.2019	Presentation for compliance by PP	P@566–597
30.	17.07.2019	Minutes of 171th SEIAA Meeting	P@604–614
31.	09.08.2019	SEIAA Granted ex-post facto EC without recovering Environment Compensation for past violation of PP	P@14-26
32.	07.09.2019	Appellant filed present Appeal	P@01-13
33.	31.01.2020	*Ex-post facto* Consent to Establish (CTE) granted by the MPCB	P@723-728
34.	01.02.2020	Revocation of the stop work order	P@737-740
35.	19.01.2021	MPCB First Site Visit	P@758-759
36.	11.03.2021	MPCB Second Site Visit	P@760-761
37.	31.03.2021	*Ex-post facto* 1st Consent to Operate granted by MPCB	P@
38.	01.09.2021	Amended Consent to Establish (CTE) granted by the MPCB	P@762-769
39.	02.09.2021	Amended Consent to Operate granted by MPCB	P@770-777

PART-C

6. ILLEGAL EXCESS CONSTRUCTION WITHOUT PRIOR EC, CTE & OPERATION WITHOUT PRIOR CTO AND PROCUREMENT OF *EX-POST FACTO* ENVIRONMENT CLEARANCE, CONSENT TO ESTABLISH, CONSENT TO OPERATE AND ADMITTED FACTS BY RESPONDENTS:

A. I state that, this is admitted case of grant of ex-post facto EC, CTE, CTO and procurement of *Ex-Post Facto* EC, CTE, CTO by PP from SEIAA & MPCB. Further I state that, the Respondent No. 2-PP himself have admitted at "**Sr. No. 13#Note on the initiated work**" of the impugned EC dated 09.08.2019 that the total BUA of covered construction completed prior to

obtaining EC is **25335.25 M²** (FSI=7144.60 M^2 + Non-FSI= 18190.65 M^2) as per the PMC sanction dated 28.01.2016.

B. Further I state that, the Respondent No. 2-PP himself have admitted at "**Sr. No. 13#Note on the initiated work**" of the impugned EC dated 09.08.2019 that the **part completion certificate** is received vide no. OCC/1476/15 dated 02.02.2016 for TBUA **25335.25 M²**.

C. Therefore, it is clear that the PP have procured the ex-post facto EC dated 09.08.2019 and there is no environmental compensation paid by PP or imposed by the PP for his past violations as the sub-sequent grant of ex-post EC does no exonerate the PP from past violaitons and therefore, PP shall be put under strict & absolute liability for the Environmental Compensation for restitution & restoration of the area under the "**polluter pays principles**" of Section-20 of the NGT Act, 2010 or EC shall be quashed & set aside. I state that, the bank guarantee taken for Rs. 1.55 Crores from PP is not the Environmental Compensation and bank guarantee is for the compliance of terms & conditions of EC ought to be done by PP. Therefore, considering the careless, reckless conduct of the PP, environmental compensation ought to be imposed on the PP shall be 10% of the total Project Cost i.e. 95 Crores as disclosed at Sr. No. 21 of the EC.

D. Further I state that, the Respondent No. 2-PP as well as MPCB have admitted the ex-post facto CTE is granted on 31.01.2020 after completion of substantial construction of **25335.25 M²**. Also as well as ex-post facto CTO is granted on 31.03.2021 and use of completed premises has been started since 2016 i.e. Gym & other shops are under use without even installation & operation of environment infrastructure. Therefore, Environment Compensation for the violation of Water (P&CP) Act, 1974 & Air (P&CP) Act, 1981 shall be imposed as per the

formula laid down by this Hon'ble NGT in "**Paryavaran Suraksha case**". For the computation of the Environmental Compensation on account of CTE shall be calculated from the year 2012 and for Environmental Compensation on account of CTO shall be calculated from the year 2016 as Occupancy received on 02.02.2016.

PART-D

7. PMC PLAN SANCTIONS, PLINTH CHECK CERTIFICATE (PCC), OCCUPANCY CERTIFICATE (OC) AND COMPLETED TOTAL BUA:

a) I state that, the PMC have granted the Original Sanction vide dated 20.11.2010 and thereafter, PMC granted revised sanction vide dated 09.11.2012, 19.12.2015 & 28.01.2016 and carried out the construction to the tune of **25335.25 M²**, which is more than 20000M² mandating prior EC, however, PP failed to obtained the prior EC and thereafter, procured the ex-post facto EC vide dated 09.08.2019, which is under challenge here.

b) I state that, the PP have procured two Non-agricultural permissions, First NA Permission vide No. PMH/NA/SR/68/2011 dated 25.08.2011 and second NA permission vide No. PMH/NA/SR/1136/2012 dated 02.02.2016.

c) I state that the, PP commenced the construction after 09.11.2012 and completed the plinth only thereafter. Therefore, PP shall pay the Environmental Compensation without for carrying out construction without CTE must be calculated from 09.11.2012 and Occupancy (OCC) is procured on 02.02.2016 for Gym situated at Shop no. 301, 302, 303 & put under enjoyment without obtaining prior CTO.

d) Therefore, total BUA completed by Respondent No. 2-PP without prior EC & CTE is **25335.25 M²** for which PP shall pay the Environmental Compensation without remorse.

PART-E

8. SHOW CAUSE NOTICE (SCN), STOP WORK NOTICES AND REFUSAL OF CTE:

I state that, the PMC have issued stop work notice vide dated 05.03.2016 & 17.05.2017 as mentioned in Letter dated 01.02.2020 {**P@737-738**} for revocation of stop work notice & revalidation of sanction plan issued by the Executive Engineer of PMC. Further, MPCB were also issued Show Cause Notice (SCN) vide dated 25.04.2017 & refusal of grant of Consent to Establish vide dated 27.03.2018 {**P@615-616**}. However, PMC & MPCB both failed to consider the issue of restitution & restoration of the environment & area damaged by PP due his illegal construction activity to the tune of **25335.25 M²** only because of grant of ex-post facto EC dated 09.08.2019 {**P@14-26**}. Further, it is important to note that, mere filing of criminal case by MPCB, will not going to help the restitution & restoration of the Area and it is important to apply the Section-20 of NGT Act, 2010 for end of justice as the compliance to the Environmental norms is the supreme and India have adopted the pro-environment jurisprudence and it is admitted case of violation, and in any circumstances, PP shall not be scot free.

PART-F

9. REJOINDER TO THE REPLY OF R-2-M/S. GRENESIIS CONSTRO PVT. LTD–PP VIDE DATED 01.10.2020:

A) I state that, the Reply Affidavit of the Respondent No. 2-PP is misleading & baseless, casual, cursory and trying to regale out the violation under the garb of ex-post facto EC & CTE, claiming his actions to be innocent under the garb of Notification dated 14.03.2017 as his legal right at one hand and admitted violations are covered up by sub-sequent event of procuring ex-

post facto EC dated 09.08.2019 as well as ex-post facto CTE dated 31.01.2020.

B) I state that, the contents of Para-1 & 2 Reply Affidavit of the Respondent No. 2-PP are false, baseless, misleading and this Appellant have disclosed all necessary facts that ought to disclosed in respect of the independent cause of action of grant of ex-post facto EC dated 09.08.2019, which is under challenge. On the contrary, I state that, the Respondent No. 2-PP is misleading this Hon'ble NGT to cover up his violations of carrying out illegal construction without EC, CTE & operations without CTO. Moreover, PP have not paid the Environmental Compensation for restitution & restoration of the area that has admittedly caused irreparable damage. And also, by undertaking the illegal operations of the project without prior CTO.

C) I state that, the contents of Para-3 Reply Affidavit of the Respondent No. 2-PP are part of record and PP have admitted that, PP have obtained the ex-post facto EC dated 09.08.2019 which under challenge and granted to the for the construction activity at Survey No. 34/1/4, 39/1A, 39/2/5/1, Vadgaon Budruk, Manikbaug, Sinhgad Road, Pune – 411051. The SEIAA has granted "Post Facto" Environmental Clearance dated 09.08.2019 to the Respondent No. 2 in terms of the Notification dated 14.03.2017 issued by the MOEFCC for the Building and Construction project falling under category B in item 8(a) of the Environment Impact Assessment Notification of 2006.

D) I state that, the contents of Para-4 & 5 Reply Affidavit of the Respondent No. 2-PP are true and Appellant have challenged the ex-post facto EC dated 09.08.2019 granted by SEIAA without application of mind and also, PP have not complied with the terms and conditions of the said EC, thereby PP is not complying terms and conditions on account of illegal operations

of project without CTO & subsequently obtaining ex-post facto CTE & CTO, non-preservation of soil, non-plantation of trees, sub-sequent installation of scrap skeleton of STP/non-installation of STP, non-installation of OWC operations of various Hotels, dining Halls, commercial establishment having huge waste generation of water & solid, non-installation of energy saving devices like solar system etc. Also, SEIAA & MPCB have not given attention to these issues while granting ex-post facto environmental permission against the law.

E) I state that, the contents of Para-6 Reply Affidavit of the Respondent No. 2-PP are partly true and partly false as the Bank Guarantee imposed while granting ex-post facto EC is only for compliance of term & conditions of EC under Notification dated 14.03.2017 and SEIAA ought to impose and recover the Environmental Compensation from PP as such violations does not exonerate the past violations and therefore, SEIAA & MPCB failed to impose & recover the environmental compensation from PP for his intentional violations. Basically, penalty, environmental compensation, EMP cost etc. are the different heads from each other having different application in the statute and PP cannot get escape from his liability for betterment of environment casted upon him.

F) I state that, the contents of Para-7 of Reply Affidavit of the Respondent No. 2-PP are partly true and partly false as the present Appeal is for challenge to the ex-post facto EC dated 09.08.2019 and not for the judicial review for the legality & validity of the MoEFCC notification dated 14.03.2017 granting one time opportunity for the polluter. Therefore, this Hon'ble NGT shall not travel beyond the scope of Appeal & relief ought to be granted in the facts & circumstances of the blatant violations committed on part of the PP.

G) I state that, the contents of Para-8 & 9 of Reply Affidavit of the

Respondent No. 2-PP are misleading and as SEAC-III have apprised the proposal in its 85th meeting held on 10.04.2019 and thereafter, SEIAA have assessed the proposal in its 171st meeting held on 17.07.2019 with opinion of the cost of remediation plan and natural & community resource augmentation plan as Rs. 1.95 Crores and therefore decided to obtain bank guarantee of Rs.1.95 Crores from the project proponent in compliance of the MoEFCC Notification dated 14.03.2017. However, this amount of 1.95 Crores is not the environmental compensation for past violations of illegal construction carried out by the PP. Further I state that, the bank guarantee of Rs.1.95 Crores is refundable to the PP after, successful implantation of EMP, which PP have implemented and this amount of Rs. 1.95 Crores cannot be treated as Environmental compensation for past violations and on the contrary this Hon'ble NGT shall direct the SEIAA to forfeit this amount for not complying in addition to the environmental compensation ought to be imposed for the past violations under senction-20 of the NGT Act, 2010 r/w Rule No. 24 of the NGT Act, 2010. Further I state that, the Hon'ble Apex Court in "**D. Swamy**" case vide its final order dated 22.09.2022 in **Civil Appeal No. 3132/2018** have clarified that the grant of ex-post facto EC shall not be routinely and for such grant of EC, PP may be penalised by an imposition of heavy penalty on the principle of '**polluter pays**' and the **cost of restoration of environment** may be recovered from it. Here in this case, SEIAA & MPCB failed to recover the penalty as well as cost of restoration of environment for his past violation.

H) I state that, the contents of Para-10 of Reply Affidavit of the Respondent No. 2-PP are admitting the facts from Order dated 19.04.2018 of this Hon'ble NGT in OA No. 22/2016 (WZ) (**Renumbered as O.A. No. 115 of 2018** (PB)) that, this NGT

have given "**liberty to the parties and also, direction to the Respondent No. 2-PP for not to undertake any construction or create any third party interest**". Therefore, Appellant have rightly approached this Hon'ble NGT in Appeal as the SEIAA & MPCB have applied their mind and not followed due process of law while granting the ex-post facto EC and PP have scot free for making money at the cost of Mother Nature, which ought not to happen.

I) I state that, the contents of Para-11 of Reply Affidavit of the Respondent No. 2-PP are absolutely false, baseless & misleading on account of allegation made by Respondent No. 2-PP on basis of of vexatious, ill intentioned, oblique motive of Appellant. It is important to note here, that the Appellant is the resident of the Area and any illegal construction which is non-sustainable development is having adverse impact on the area and moreover, Respondent No. 2-PP have not placed single piece of paper showing the ill motive of Appellant and mere having litigation with the Respondent No. 1, project of Respondent No. 2-PP is affecting is the imaginary ground. Basically, in OA No. 22/2016, this Hon'ble NGT have directed PP for not to create third party right as well as construction. Also, Neither Respondent No. 1 nor Respondent No. 2-PP have not filed any case against Appellant for vexatious, ill intentioned, oblique motive before appropriate court of law as held by Hon'ble Apex Court in "***Civil Appeal No 12251 of 2018****, in the case of* ***Hanuman Laxman Aroskar***" vide its final order dated 29.03.2019 in Para-148, that the this Hon'ble NGT have not come to any conclusion in OA No. 22/2016, therefore, Respondent No. 2-PP cannot make such vague allegation just to cover up his own defaults and Hon'ble NGT shall look into the environmental aspects.

J) I state that, the contents of Para-12 of Reply Affidavit of the

Respondent No. 2-PP are misleading and Hon'ble NGT have to grant the final relief on the basis of facts & circumstance of the case and NGT Act, 2010 provide powers under Section-20 of the NGT Act, 2010 to apply the "*The Tribunal shall, while passing any order or decision or award, apply* ***the principles of sustainable development, the precautionary principle and the polluter pays principle***". Therefore, it cannot be said that this Hon'ble NGT have limited powers under section 16 of the NGT Act, 2010 confining to quash & set aside of impugned orders. Moreover, this Hon'ble NGT have powers under Rule No. 24 of the NGT (Practice & procedures) Rules, 2011 for "**end of justice**" and also this Hon'ble NGT have power over riding effect under section 33 of NGT Act, 2010. Therefore, it cannot be said that the Hon'ble NGT is restricted to the challenge to the Order under section 16 of the NGT Act, 2010. In actual, Hon'ble NGT have to use its powers to deal with the environmental issue on the basis of facts & circumstances, in present case, SEIAA have granted ex-post facto EC without following due process of law and without recovering the environmental damages for the past violations as well as MPCB while granting ex-post facto Consents also have not applied their mind and leading to the unbridle & uncontrolled situation at site. Therefore, this Hon'ble NGT have to apply Section-20 of the NGT Act, 2010 and Rule No. 24 of the NGT (P&P) Rules, 2011 for end of justice and if not applied, only option is to restore the OA No. 22/2016 as well as quashing of the impugned EC. In Appeal No. 34/2020(WZ) & Appeal No. 32/2020(WZ), this Hon'ble NGT have applied the Section 20 of NGT Act, 2010 and 24 of the NGT (P&P) Rules, 2010 for end of justice vide its Order dated 04.05.2022 and uphold the impugned EC subject to the Compensation to the tune of 10% of the project Cost i.e. Rs. 10 Crores & Rs. 15 Crores in each case.

K) I state that, the contents of Para-13 to 36 of Reply Affidavit of the Respondent No. 2-PP are misleading as the facts, grounds, prayers made in the Appeal are true and correct. This Appellant to avoid the repetition is not willing to reproduce same here.

L) I state that, this Hon'ble NGT may kindly reject the contention of the Respondent No. 2-PP and grant the prayers of the Appellant by applying the Section 20 of NGT Act, 2010 and 24 of the NGT (P&P) Rules, 2010 for end of justice as per the settled position based on the Order dated 04.05.2020 passed in Appeal No. 34/2020 (WZ) & Appeal No. 32/2020 (WZ).

PART-G

10. REJOINDER TO THE REPLY OF R-7-MPCB VIDE DATED 03.09.2021:

I state that, the Respondent No. 7-MPCB have admitted that the MPCB have granted CTE vide dated 31.01.2020 based on the EC dated 09.08.2019 for the TBUA 25335.25 M^2 and CTO vide dated 31.03.2021. I state that, the both the CTE & CTO are ex-post facto. However, MPCB is failed to impose the penalty as per circular dated 21.07.2022 as imposed in OA No. 38/2020(WZ) and also not shown any willingness to impose such penalty by filing additional affidavit as well as MPCB failed to apply the "Paryavaran Suraksha Case" principle for imposition of Compensation for violations of Air Act & Water Act. This act on part of MPCB creates the doubt on their functioning & misuse of discretionary powers on for facilitating the polluters at the cost of Mother Nature. Therefore, this Hon'ble NGT may kindly direct the MPCB to impose & recover the compensation for of Air Act & Water Act as per "Paryavaran Suraksha Case" as held in OA No. 28/2019 vide Order dated 24.02.2023, OA No. 35/2022 vide Order dated 30.01.2023 and OA No. 38/2020 vide Order dated 08.05.2023.

PART-H

11. NO REPLIES BY SEIAA & PMC:

I state that, the in this Appeal, EC dated 09.08.2019 is under challenge which is granted by SEIAA and despite multiple opportunity, SEIAA failed to defend their EC and also failed to explain, as why there is no imposition of environmental compensation on PP as well as its recovery. Also, PMC is failed to file its reply affidavit. This illegal act on part of SEIAA & PMC shows inherit lack of coordination at inter department level. Therefore, this Hon'ble NGT may kindly proceed in the case for final hearing by forfeiting the opportunity of SEIAA & PMC to file reply.

PART-I

12. MPCB & SEIAA ARE FAVOURING THE PP BY NOT IMPOSING PENALTY FOR GRANT OF EX-POST FACTO EC, CTE, CTO:

A) I state that, the SEIAA has granted ex-post facto EC vide dated 09.08.2019 under MoEF Notification dated 14.03.2017. However, MoEF has issued the procedure vide its Office Memorandum vide dated 07.07.2021 to the handle the proposal received under notification dated 14.03.2017, wherein at Para-12 (a) (ii) it is stated that, PP has to pay penalty of 1% of the total project cost incurred upto the date of filling of application along with EIA/EMP **Plus** 0.25% of the total turnover during the period of violations. But, SEIAA have not yet recovered the said amounts of penalty from the Respondent No. 2-PP till date, despite grant of ex-post facto EC dated 09.08.2019 to the project already in violation.

B) I state that, the MPCB has granted ex-post facto CTE vide dated 31.01.2020 and CTO vide dated 31.03.2020 and thereafter, granted amendment to the CTE vide dated 01.09.2021 and amendment to the CTO vide dated 02.09.2021. However, MPCB failed to impose the penalty as per their Circular dated

12.07.2022. But, SEIAA have not yet recovered the said amounts of penalty from the Respondent No. 2-PP till date, despite grant of ex-post facto CTE dated 31.01.2020 and CTO dated 31.03.2020 with amendment to CTE vide dated 01.09.2021 & amendment to CTO vide dated 02.09.2021 to the project already in violation.

C) Therefore, if this Hon'ble NGT is of opinion that instead of quashing the EC, would like to apply Section-20 of NGT Act, 2010 for principles of polluter pay principles, then above penalties must be imposed on the PP and also directions shall be given to the SEIAA & MPCB to recover the same from PP either by forfeiture of Bank Guarantees or direct recovery.

PART-J

13. CASE LAWS BY ORIGINAL APPLICANT:

A) Forward Foundation-**NGT-2015 SCC OnLine NGT 5**: At **Para-72 (1) & (2):** No construction without prior EC:

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

1) The construction of both the projects had started prior to the grant to Environmental Clearance.

2) The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment."

B) Hon'ble Supreme Court in the matter of "Common Cause Case-**(2017) 9 SCC 499":** At **Para-125**: Grant of EC is not mechanical exercise, Grant of EC after due diligence since damage to the environment can have long term impact, Grant of ex-post facto EC would be detrimental to the environment

and could lead to irreparable degradation of the environment, concept of the ex-post facto or retrospective EC is completely alien to the environmental jurisprudence, EC will come into force not earlier than the date of its grant.

C) Hon'ble Supreme Court in the matter of "Goel Ganga Case"- **(2018) 18 SCC 257** at **Para-17**: Natural Resource-sand, gravel, steel, glass, marble-Building Material does not concern FSI & Non-FSI, entire covered area to be considered for Adverse impact on environment by use of natural resources, **Para-26-28**: Ex-post facto EC granted without scientific appraisal & assessment is quashed, **Para-64**: Manipulation of Government Officials & Higher environmental damages to be imposed on polluter,

D) Hon'ble Supreme Court in the matter of "Mantri Techzone Pvt. Ltd. Vs. Forward Foundation & Ors." **(2019) 18 SCC 494** at **Para-50 opines**: No mention of provisions, well settled principle of law, non-mention or erroneous mention of provisions would not be any relevance, if court had requisite jurisdiction to pass an order, it would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.

E) Hon'ble Supreme Court in the matter of "**Hanuman Laxman Aroskar Case, Civil Appeal No 12251 of 2018**", (2019) 15 SCC 401, have observed that; In Para-148 that:

> "148 Before we part with the present case, we consider it appropriate to record a finding on the *bona fides* of the appellants before this Court. It was briefly urged by the respondents that the appellants have invoked the jurisdiction of this Court based on a personal agenda and consequently, the present appeal is liable to be dismissed. This argument cannot be accepted. We accept the submission of Ms Shenoy, learned counsel appearing

on behalf of the appellants, that the non-consideration of vital issues by the EAC has led to the invocation of the statutory remedy available to them under Section 22 of the NGT Act 2010. Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment. If a court comes to the finding that the appeal before it was lacking *bona fides*, it may issue directions which it thinks appropriate in that case. In cases concerning environmental governance, it is a duty of courts to assess the case on its merits based on the materials present before it. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow.

F) Hon'ble Supreme Court in the matter of "MCGM Vs Ankita Sinha & Ors. **2021 SCC Online SC 897": Para-41.** Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. **The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties**.

G) Hon'ble NGT in the case of "Tanaji B Gambhire Vs Union of India & Ors" in **OA No. 34/2020(WZ)** Order dated **24.02.2022** at **Para-8:** Application for ex-post facto EC & PP not informed for requirement of EC while issuing commencement certificate cannot be accepted as ignorance of law is no excuse.

H) Hon'ble NGT in the case of "Tanaji B Gambhire Vs Union of India & Ors", In **OA No. 33/2020(WZ)** Order dated 02.03.2022**: Para-5:** Grant of subsequent EC does not **exonerate** the PP of consequences of violation in obtaining prior EC, as held inter-alia in *Alembic Pharmaceuticals Ltd. vs. Rohit Prajapati and Ors., 2020 SCC Online SC 347* and *Keystone Realtors (P) Ltd. v. Anil v. Tharthare* reported in *(2020) 2 SCC 66*.

I) Hon'ble NGT in the case of "Tanaji B Gambhire Vs Union of India & Ors, In **OA No. 64/2020(WZ)** Order dated 23.03.2022 at **Para-13**: Even if ex post facto EC is granted, **PP has to be held accountable for past violations**.

J) Hon'ble NGT in the case of "Tanaji B Gambhire Vs Union of India & Ors, In **Appeal No. 32/2020(WZ) & Appeal No. 34/2020(WZ)** Order dated 04.05.2022, this Hon'ble NGT has upheld the ex-post facto EC subject to payment of environmental compensation by PP to the tune of 10% of the total Project Cost i.e. Rs. 10 Crores & Rs. 15 Crores.

K) Hon'ble Supreme Court in the matter of "**D. Swamy Vs. KSPCB & Ors." Civil Appeal No. 3132 OF 2018** vide its judgment dated 22.09.2022 have observed that; In Para-46 & 47, clears that the requirement of obtaining of EC is non-negotiable and in Para-47 further observes that, ex-post facto EC should ordinarily not be granted routinely and if granted, the PP may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

"46. There can be no doubt that the need to comply with the requirement to obtain EC is non-negotiable. A unit can be set up or allowed to expand subject to compliance of the requisite environmental norms. EC is granted on condition of the suitability of the site to set up the unit, from the environmental angle, and also existence of necessary infrastructural facilities and equipment for compliance of

environmental norms. To protect future generations and to ensure sustainable development, it is imperative that pollution laws be strictly enforced. Under no circumstances can industries, which pollute, be allowed to operate unchecked and degrade the environment.

47. Ex post facto environmental clearance should ordinarily not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of ex post facto approval outweigh the consequences of regularization of operations by grant of ex post facto approval, and the establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. In a given case, ***the deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it****."*

PART-K

14. REQUEST/SUGGESTIONS ON BEHALF OF ORIGINAL APPLICANT SEEKING RELIEFS/DIRECTIONS/ORDERS

In view of the **Para-41** of **2021 SCC Online SC 897,** have widest powers to give appropriate relief as may be justified this Hon'ble NGT may kindly consider the above fact, circumstances and following suggestions on behalf of the Appellant, while passing final Order & judgment.

a) That this Hon'ble NGT may kindly allow the Appeal No. 68/2019 filed by Appellant.

b) That this Hon'ble NGT may kindly quash and set aside the Environment Clearance granted to the Respondent No. 2-PP vide No. SEIAA-EC-0000001952 dated 09.08.2019.

c) Therefore, as held by Hon'ble Supreme Court in **Para-41** of **MCGM Vs. Ankita Sharma (2021) SCC OnLine SC 897** this Hon'ble NGT have widest powers to give appropriate relief as may be justified in the facts and circumstances of the case,

even though such relief may not be specifically prayed for by the parties.

d) That this Hon'ble NGT may kindly direct the R-11-PP to deposit the substantial damage to environment & ecology to the tune of 10% of total Project Cost and same shall be recovered from Respondent No. 11-PP.

e) That this Hon'ble NGT may kindly direct the Respondent No. 7-MPCB to recover the Compensation as per the formula laid down in the case of "Paryavaran Suraksha Samiti Case" for violation of Air Act & Water Act.

f) That this Hon'ble NGT may kindly direct the SEIAA & MPCB to impose & recover the penalty for as per the OM dated 07.07.2021 & Circular dated 12.07.2022 for grant of ex-post facto EC & Consents.

g) That this Hon'ble NGT may kindly stop the construction of the project till restoration & restitution of site under degradation by using its powers by applying the principles of Sec-20 of the NGT Act, 2010 & Rule No. 24 of the NGT (P&P) Rules, 2011 for end of justice.

h) Therefore, considering above facts, circumstances and suggestions, this Hon'ble NGT may kindly pass appropriate orders.

15. Hence this Rejoinder on behalf of the Appellant.

Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune.

Date: 10.05.2023



DEPONENT
(VISHAL ARINJAY SHAH)

NOTARY ★ GOVERNMENT OF INDIA ★
Rameshkumar B. Nage
Haveli, Pune(Mah.)
Reg No. 16396
Exp. Date 27/01/2025

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

WESTERN ZONE BENCH AT PUNE

APPEAL NO. 68/2019

IN THE MATTER OF:

MR. VISHAL ARINJAY SHAH ... APPELLANT

Versus

SAU. SMITA PRADEEP SHAH & ORS. ... RESPONDENTS

AFFIDAVIT IN SUPPORT OF REJOINDER ON BEHALF OF THE APPELLANT TO THE REPLY OF R-2-M/s. GRENESIIS CONSTRO PVT. LTD–PP VIDE DATED 01.10.2020 AND R-7-MPCB VIDE DATED 03.09.2021

I, Vishal Shah S/o Arinjay Shah Aged: Adult, Occupation: Self-Business, R/at: Manorama, S. No. 39, Manik Baug, Sinhgad Road, Pune-411051, do hereby solemnly affirm and state on oath as follows:

1. I state that I am Appellant in the aforesaid matter and I am well aware with the facts and circumstances of the case and in such capacity competent to depose by way of this affidavit.

2. I state that the Rejoinder Affidavit from Para No. **1 to 15** have been

drafted under my instructions and that the facts stated therein are true to the best of my knowledge and belief.

3. I state that the Annexures to the Rejoinder Affidavit are true copies of their respective originals.

VISHAL ARINJAY SHAH
DEPONENT

I Identify the deponent

Shivraj P Kadam Jahagirdar
ADVOCATE

BEFORE ME

RAMESHKUMAR. B. NAGE
Notary Govt. of India

Noted and Registered
at Sr. No. 6126/N/2023
Date:- 10 MAY 2023

NOTARY Rameshkumar B. Nage Haveli, Pune(Mah.) Reg.No. 16396 Exp. Date 27/01/2025 GOVERNMENT OF INDIA

NOTARIAL

ANNEXURE-A-1

F. No. 22-21/2020-IA.III

Government of India

Ministry of Environment, Forest and Climate Change

Impact Assessment Division

*****

Indira ParyavaranBhawan
Jor Bagh Road, Aliganj
New Delhi – 110003
sujit.baju@gov.in

Date: 7th July, 2021

Office Memorandum

Subject: Standard Operating Procedure (SoP) for Identification and handling of violation cases under EIA Notification 2006 in compliance to order of Hon'ble National Green Tribunal in O.A. No.34/2020 WZ - Regarding.

The Ministry had issued a notification number S.O.804(E), dated the 14th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. &Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority &Ors., vide order dated 03.06.2021 held that "(...) ***for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process***".

4. Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that ***"...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country"***.

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn.The Ministry is also seized of different categories of 'violation' cases which have been

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pending for want of an approved structural/procedural framework based on *'Polluter Pays Principle'* and *'Principle of Proportionality'*. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations / decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined.

7. Relevant Court Cases on the issue: It is noted that while deciding issues related to violations of the Environment Protection Act, 1986 on account of running the project/activity without prior environmental clearance or in excess of capacity allowed in such clearances, **the Hon'ble courts have, *inter-alia*, deliberated on various facets involving 'violation' cases** and have **enunciated principles of 'Proportionality' and 'Polluter Pays'** in various decisions viz. Industrial Council for Enviro-Legal Action Vs Union of India (the Bichhri village industrial pollution case) (1996 SCC [3] 212); Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. (C.A. No. 1526 of 2016, order dated 1.4.2020) and Hindustan Copper Limited Vs Union of India in (W.P. (C) No. 2364 of 2014, order dated 28.11.2014). The salient extracts of the judgements are as under:

Issue 1: Proposal for grant of Environmental Clearance in violation cases – to be considered on merits:

i. Hon'ble High Court of Jharkhand in the matter of Hindustan Copper Limited Vs Union of India in W.P. (C) No. 2364 of 2014, vide order dated 28.11.2014

> *Held: "(...) action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the project proponent."*
>
> *"(...) the proposal of the petitioner company for **environmental clearance must be examined on its merits, independent of any proposed action for the alleged violation of the environmental laws**."*

ii. Hon'ble Madras High Court in the matter of Puducherry Environment Protection Association Vs The Union of India in W.P. No. 11189 of 2017, vide order dated 13.10.2017

> *Held "27. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating*

pollution laws or the pollution, if any, can conveniently and effectively be checked. ***The answer necessarily has to be in the negative.***"

"29. It is reiterated that protection of environment and prevention of environmental pollution and degradation are non-negotiable. At the same time, the Court cannot altogether ignore the economy of the Nation and the need to protect the livelihood of hundreds of employees employed in projects, which as stated above, otherwise comply with or can be made to comply with norms."

Issue 2: Environmental Clearance – Prospective & not ex-post facto:

Hon'ble Supreme Court in the matter of Common Cause Vs Union of India in W.P. (C) No. 114 of 2014, vide order dated 2.8.2017

Held: "(...) an EC will come into force ***not earlier than the date of its grant.***"

Issue 3: 'Principles of Proportionality' – to be applied:

Hon'ble Supreme Court in the matter of Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. in C.A. No. 1526 of 2016, vide order dated 1.4.2020

Held: "(...) ***this Court must take a balanced approach*** *which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord* ***with the principle of proportionality***"

Issue 4: 'Polluter pays' principle &

&

Issue 5: Costs for remedial measures implicit in Sections 3 & 5 of Environment (Protection) Act, 1986.

Hon'ble Supreme Court in the matter of Indian Council for Enviro- Legal Action Vs Union of India (the Bichhri village industrial pollution case) in (1996 SCC [3] 212)

Held:

a) The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. The said powers will ***include giving directions ...*** *and also the power to* ***impose the cost of remedial measures*** *on the offending industry and utilize the amount so recovered for carrying out remedial measures.....*

b) ***Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5*** *which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry.*

c) The question of liability of the respondents to defray the costs of remedial measures can also be looked into from accepted universally sound principle, viz., the ***"Polluter Pays" Principle****. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".*

8. Legal provisions:

i. The Environment (Protection) Act, 1986 mandates the Central Government to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution (reference sub-section (1) of Section 3 of Environment (Protection) Act, 1986). Further, clause (xiv) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 specifies that the measures stipulated under sub-section (1) of Section 3 of the Environment (Protection) Act 1986 includes *'such other matters as the Central Government deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act'*.

ii. Further, notwithstanding anything contained in any other law but subject to the provisions of the Environment Protection Act, 1986, Section 5 of the Environment (Protection) Act, 1986, provides that the Central Government may, in the exercise of powers and performance of Central Government functions under the said Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

9. Definition of Violation and Non-compliance:

The Standard Operating Procedure (SoP) considers 'Violation' & 'Non-compliance' from the following perspective:

i. "Violation" means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or have expanded the production capacity and / or project area beyond the limit specified in the Environmental Clearance (Prior-EC) without obtaining Prior-EC or change of scope without prior approval from the Ministry.

ii. "Non-compliance" means non-compliance of terms and conditions prescribed by the Regulatory Authority in the Prior Environment Clearance accorded to the project.

10. Standard Operating Procedure – Guiding Principles:

i. Without prejudice to any other consequences, **action has to be initiated under section 15 read with section 19** of The Environment (Protection) Act, 1986 **against all violations.**

ii. Projects not allowable/permissible, for grant of EC, as per extant regulations: **To be demolished**.

iii. Projects allowable/permissible, if prior EC had been taken as per extant regulations: **To be closed until EC is granted (if no prior EC has been taken) or to revert to permitted production level (in case prior EC has been granted)**.

iv. **Polluter pays**: Violators to pay for violation period - proportionate to the scale of project and extent of commercial transaction.

v. Setting up a mechanism for reporting of violation to the regulatory authority(ies).

11. SOP for dealing with the violation cases:

Step 1: Closure or Revision

Sl no.	Status of EC	Actions
1	If no prior EC has been taken	Order to **close** its operation
2.	If prior EC is available for existing/old unit	Order to **revert the activity/ production** to **permissible limits.**
3.	If prior EC was not required for earlier production level but is now required	**Restrict the activity/production** to the extent to which prior EC was not required.

Step 2: Action under Environment (Projection) Act, 1986

Action under section 15 read with section19 of the Environment (Protection) Act, 1986 shall be initiated against the violators.

Step: 3: Appraisal under EIA Notification, 2006

The permissibility of the project shall be examined from the perspective of whether such activity/project was at all eligible for the grant of prior EC.

A. If not permissible:

i. The project shall be **ordered for the demolition/closure after issuing show cause notice and providing an opportunity of hearing**.

Ex. If a red industry is functioning in a CRZ-I area which means that the activity was, in the first place, not permitted at the time of commencement of project. Therefore, the activity is not permissible and therefore it shall be ***closed & demolished****.*

ii. Respective regulatory authorities shall issue directions under section 5 of the Environment (Protection) Act, 1986 for such closure & demolition of the project/activity.

B. If permissible:

i. As per extant regulations at the time of scoping, if it is viewed that the project activity is otherwise permissible, Terms of Reference (TOR) shall be issued with directions to complete the impact assessment studies & submit Environmental Impact Assessment (EIA) report & Environmental Management Plan (EMP) in a time bound manner.

ii. Such cases of violation shall be subject to appropriate

(a) Damage Assessment

(b) Remedial Plan and

(c) Community Augmentation Plan by the Central level Sectoral Expert Appraisal Committees or State/Union Territory Level Expert Appraisal Committees, as the case may be.

iii. The Competent Authority shall issue directions to the project proponent, under section 5 of the Environment (Protection) Act, 1986 on case to case basis mandating payment of such amount (as may be determined based on Polluters Pay principle) and undertaking activities relating to Remedial Plan and Community Augmentation Plan (to restore environmental damage caused including its social aspects).

iv. Upon submission of the EIA & EMP report, the project shall be appraised by the Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, as if it was a new proposal. If, on examination of the EIA/EMP report, the project is considered permissible for operation as per extant regulations, the requisite Environmental Clearance shall be issued **which shall be effective from the date of issue**.

v. However, during appraisal after examination if it is found that even though the project may **be permissible but not environmentally sustainable in its present**

form/configuration/features then the project shall be directed to be **modified so that the project would be environmentally sustainable.**

vi. If, however, it is not considered appropriate to issue EC, the project shall be directed to be **demolished/ closed. If such proposal is a case of expansion, the project shall be directed to revert back to the extent of activity for which EC had been granted earlier or to revert back to the extent of activity for which EC was not required (as the case may be).**

vii. Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, may insist upon public hearing to be conducted for such categories of projects for which the EIA Notification 2006, as amended from time to time, requires the public hearing to be conducted.

viii. The project proponent will be required to **submit a bank guarantee equivalent to the amount of Remediation Plan and Natural & Community Resource Augmentation Plan with Central / the State Pollution Control Board (depending on whether it is appraised at Ministry or by SEIAA).** The quantification of such liability will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority. The bank guarantee shall be deposited prior to the grant of environmental clearance and **will be released after successful implementation of the Remediation plan and Natural & Community Resource Augmentation Plan**.

Note - The activities, as per above clauses, shall be undertaken simultaneously wherever feasible. Environmental Clearance, if granted, to such projects or activities, after due appraisal of EIA/EMP report, **shall be effective only from the date of issuance of such clearance** and shall be subject to compliance of obligations towards Damage Assessment, Remedial Plan & Community Augmentation Plan, etc. finalized in each case.

12. Penalty provisions for Violation cases and applications:

a. **For new projects:**

i. **Where operation has not commenced**: 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report; [Ex: Rs.1 lakh for project cost of Rs.1 Cr]

ii. **Where operations have commenced without EC**: 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report **PLUS** 0.25% of the total turnover during the period of violation. [Ex: For Rs.100 Cr project cost and Rs.100 Cr total turnover, the penalty shall be Rs.1 Cr + Rs. 0.25 Cr = Rs.1.25 Cr]

b. **For expansion projects:**

i. **Where operation/production with expanded capacity has not commenced**: 1% of the project cost, attributable to the expansion, incurred up to the date of filing of application along with EIA/EMP report.

ii. **Where operation/ production with expanded capacity have commenced**: 1% of the project cost (attributable to the expansion activity) incurred upto the date of filing of application along with EIA/EMP report PLUS 0.25% of the total turnover (attributable to the expanded activity/capacity) involved during the period of violation.

12.1. Without prejudice to obligation as per (a) & (b) above, where the project or activity is considered for appraisal as above & the project proponent fails to provide required information or requisite documents or complete the requisite study for the purpose of EIA/EMP reports or does not furnish such reports within such period, as specified by the appraisal committee, without reasonable cause, it shall be inferred that the project proponent is not serious enough and the project or activity shall be directed to be demolished / closed.

12.2. The percentage rates, as above, shall be halved if the project proponent *suo-moto* reports such violations without such violations coming to the knowledge of the Government either on inquiry or complaint.

12.3. The penalty, as above, shall be in addition to liability for carrying out various remedial measures which shall be worked out based on the damage assessment for quantifying the environmental damage caused due to unauthorized project activity [as per Step 3 enumerated above].

13. Identification of Violation cases:

With a view to protecting the environment and to expeditiously bring violators into a regulatory regime so as to prevent & control environment damage caused by such violation & to determine whether operation of such projects is permissible and to take action stipulated under Section 15 of the Environment (Protection) Act, 1986 for contravention of the provisions of the said Act, Rules, orders and directions, it is expedient to also identify the cases of violation, examine and appraise such projects so as to refrain them from causing further environmental damage and also to compensate for causing damage to the environment.Therefore, in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986, the Central Government hereby directs that:-

i. State Pollution Control Boards & Union Territory Pollution Control Committees, before grant or renewal of Consents under Water(Prevention & Control of Pollution) Act, 1974 & Air (Prevention& Control of Pollution) Act, 1981, shall ensure that the project proponents applies for or possess valid Prior

Environmental Clearance in terms of extant EIA Notification and shall not grant or renew CTO (Consent to Operate) unless Environment Clearance (if applicable) has been obtained.

ii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall identify cases of violation under their respective jurisdiction, report such cases to the Ministry or State/Union Territory Level Environmental Impact Assessment Authority, as the case may be and also revoke CTO, if granted to the unit after giving an opportunity of being heard.

iii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall expeditiously examine the references, received from public and other bodies, relating to violations and take necessary steps as per (ii) above.

14. This is issued with the approval of the Competent Authority.

07/7/2021

(Dr. Sujit Kumar Bajpayee)
Joint Secretary (IA)

To

1. Chairperson/Member Secretary of Central Pollution Control Board
2. Chairperson/Member Secretaries of all the SEIAAs/SEACs
3. Chairman/Members of all the Expert Appraisal Committees
4. Chairman/Members of all the State Pollution Control Boards and Union Territory Pollution Control Committees

Copy for information:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS for Environment, Forest and Climate Change
3. PPS to Secretary(EF&CC)
4. PPS to AS(RS) / AS (RA)/ AS (UD)/ JS(JT) / JS (MP)/ JS (NPG)
5. All the officers of IA Division
6. Website of MoEF&CC/PARIVESH/Guard file

Copy (by email) also forwarded to the Registrar, NGT, in compliance to instruction given in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors.(order dated 24.05.2021).

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ANNEXURE-A-2

MAHARASHTRA POLLUTION CONTROL BOARD

Tel: 24010437/24020781/24014701	MAHARASHTRA	Kalpataru Point, 2nd - 4th Floor
Fax: 24024068 / 24023515		Opp. Cine Planet Cinema,
Website: http://mpcb.gov.in		Near Sion Circle, Sion (E)
E-mail: ast@ mpcb.gov.in		Mumbai-400 022.

No. BO/MPCB/AS(T)/Circular/B- 2207122FTS0047 Date: 12/07/2022

CIRCULAR

Sub: Provision of penal fess for occupiers violating combine consent regime prescribed under Air/Water Act – reg.

Ref: Minutes of 178th Board Meeting held on 24/02/2022.

...

It is mandatory on the part of industries/entrepreneurs to obtain Consent to Establish and Operate under section 25/26 of the Water (Prevention & Control of Pollution Act) 1974, under section 21 of Air (Prevention & Control of Pollution) Act 1981 and Authorization under Hazardous & Other Waste (Management & Transboundary Movement) Rule 2016. However, it has been noticed that, often industries were found to be violating the aforesaid provisions and the violations noticed are as below:

1. To take effective steps towards establishment of project/unit without obtaining Consent to Establish from the Board
2. To take effective steps without revalidating Consent to Establish from the Board.
3. To start Commercial production/to hand over occupancy without obtaining Consent to Operate from the Board
4. To carry out expansion activity and applying directly for Consent to Operate without obtaining Consent to Establish of the Board.
5. To operate the activity without valid consent to operate of the Board and applying after lapse of validity period.
6. To store and disposal of Hazardous Waste not consistent with provisions of rules

The MPC Board has published Enforcement Policy for issuance of directions on account of degree of violation by imposing/forfeiting proportionate Bank Guarantee. The matter of such violations was discussed during Consent Appraisal Committee/Consent Committee and was decided to formulate the deterrent policy towards above mentioned violations and such other violations. Hence, it is important to discourage the defaulting industries by adopting "Polluter Pays" principal by imposing appropriate cost for violation of provisions of Environment enactments.

The MPC Board in its 178th Board meeting held on 24/02/2022 vide item No. 12 has considered to impose appropriate penal fees towards violation of Environmental enactments, the penal fees shall be imposed as below:

..2

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Sr. No.	Violation	Cost of Violation
01	Taking effective steps towards establishment of project/unit prior to obtain Consent to Establish from the Board	**Red Category:** 5 times of one term consent fee X no. of years of violation* **Orange Category:** 3 times of one term consent fee X no. of years of violation* **Green Category:** 1 time of one term consent fee X no. of years of violation*
02	Taking effective steps without revalidating Consent to Establish of the Board.	
03	**Industry:** Starting Commercial production prior to obtain Consent to Operate of the Board.	
	Infrastructure Project: Handing over possession prior to obtaining Consent to Operate of the Board and Occupancy certificate from Local Body.	
04	Operating the industry/activity without valid consent to operate of the Board and applying after lapse of validity period.	

*** Calculations of number of years shall be calculated on the basis of number of days of non-compliance.**

The penal fees amount to be paid by PP through online e-payment gateway.

All the Officers of the Board should implement this circular scrupulously without fail.

(Ashok Shingare, *IAS*)
Member Secretary

Copy submitted to: The Hon'ble Chairman, MPC Board Mumbai- for favour of information

Copy to:
1. The Assistant Secretary (Tech)/Joint Director (APC)/Joint Director (WPC)/Principal Scientific Officer/Regional Officer (HQ) MPC Board Mumbai
2. Law Officer/Statical Officer, MPC Board Mumbai

Copy to:
1. All Regional Officer, MPC Board
2. All Sub-Regional Officer, MPC Board
3. EIC- He is directed to place the circular on Board's website.

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2015 SCC OnLine NGT 5

Affirmed in *Mantri Techzone (P) Ltd.* v. *Forward Foundation*, (2019) 18 SCC 494

In the National Green Tribunal, Principal Bench New Delhi

(BEFORE SWATANTER KUMAR, CHAIRPERSON, U.D. SALVI, J.M., DR. D.K. AGRAWAL, E.M. AND PROFESSOR A.R. YOUSUF, E.M.)

In the Matter of:

Forward Foundation A Charitable Trust Having its registered office at 24/B, Haralur Village, HSR Layout Post Bangalore-560102 Through its Secretary and Others ... Applicants;

Versus

State of Karnataka, Vidhana Soudha Bangalore-560001 Through its Chief Secretary and Others ... Respondents.

Original Application No. 222 of 2014

Decided on May 7, 2015, [Reserved on: January 27, 2015]

Counsel for Applicant:

Mr. Raj Pajwani, Sr. Adv. Along with Ms. Megha Mehta Agrawal, Advocate

Counsel for Respondents:

Mr. Devraj Ashok, Advocate for Respondent No. 1, 3, 4 & 5

Mr. B.R. Srinivasa G., Advocate for Respondent No. 7

Mr. R. Venkatramani, Sr. Advocate, Mr. Shekhar G. Devasa, Mr. D. Mahesh, Advocates for respondent No. 9

Mr. Raju Ramachandran, Mr. Devashish Bharuka, Mr. Vaibhav Niti and Mr. Suraj Govindraj, Advocates for Respondent No. 10

Mr. Sajan Poovayya, Sr. Advocate and Mr. Sumit Attri, Advocate for Respondent Nos. 11 & 12

JUDGMENT

1. Whether the judgment is allowed to be published on the net?

2. Whether the judgment is allowed to be published in the NGT Reporter?

SWATANTER KUMAR, (CHAIRPERSON):— All the three applicants have approached the Tribunal under the provisions of the National Green Tribunal Act, 2010 (for short 'the NGT Act'), with a common prayer that a direction be issued to respondent no. 1, the State of Karnataka to take cognizance of the Reports dated 12th June, 2013 and 14th August, 2013 prepared by respondent nos. 6 and 2 respectively, and take coercive and punitive action including restoration of the ecologically sensitive land. Further the applicants also prayed for issuance of a direction that the valley land is to be maintained as a sensitive area, without developments of any sort, so that the ecological balance of the area is not disturbed. Besides this, they even prayed for issuance of such other order or directions as the Tribunal may deem fit in the circumstances of the case and render justice.

The three applicants are either a registered charitable trust and/or a Society, registered under the relevant laws in force. They claim to be keenly interested in protecting the environment and ecology, particularly, in the State of Karnataka. Their principal grievance is in relation to certain commercial projects that are being developed by respondent nos. 9 & 10 in a large-sized, mixed use development project/building complex, including setting up of a SEZ park, Hotels, Residential

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Apartments and a Mall, covering approximately 80 acres on the valley land immediately abutting the Agara Lake and more particularly identified as lying between Agara and Bellandur Lakes, exposing the entire eco system to severe threat of environmental degradation and consequential damage. According to them, it is of alarming significance that the Project has encroached an Ecologically Sensitive Area, namely, the valley and the catchment area and *Rajakaluves* (Storm Water Drains) which drains rain water into the Bellandur Lake. Thus, in the interest of environment and ecology, they have approached the Tribunal with the above prayers.

2. Shorn of any unnecessary details, the precise facts leading to the filing of this application are that, according to these applicants, the ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short the 'KIADB'), respondent no. 7 herein, to respondent nos. 9 & 10 vide Notifications dated 23rd April, 2004 and 7th May, 2004, respectively. This land was allotted for setting up of Software Technology Park, Commercial and Residential complex, hotel and Multi Level Car Parks. The Master Plan formulated by the Bangalore Development Authority (for short the 'BDA'), respondent no. 8, identifies the allotted land as 'Residential Sensitive', though the same land was identified in the draft Master Plan as 'Protected Zone'. It is stated by the applicant that the Revenue Map in respect of properties as referred in the land lease Agreements has multiple *Rajakaluves*. The development projects in question sit right on the catchment and wetland areas which feeds the *Rajakaluves*, which in turn drain rain water into Bellandur Lake. The project will thus encroach two *Rajakaluves* of 1.38 acres and 1.23 acres each. The satellite digital images of the area from year 2000 to 2012 clearly show encroachment upon these *Rajakaluves*, as well as, the manner in which they are covered by this construction. The State Level Expert Appraisal Committee (for short the 'SEAC'), which was to assist State Level Environment Impact Assessment Authority (for short the 'SEIAA'), held its meetings on various dates to examine the project. It had required respondent no. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short the 'BWSSB'), respondent no. 5 herein, for the project in question. It was also observed that the project lies between the above stated two lakes. Respondent no. 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11th November, 2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

3. It is the case of respondent no. 5 that such NOC was issued but it covers only an area of 17,404 sq mtr, whereas the total built-up area as noted by the SEAC is 13,50,454.98 sq mtr. It is alleged by the applicants that respondent no. 9 obtained NOC from respondent no. 5 by concealing material facts and by misrepresenting that NOC is required only for residential units, which forms a very minuscule part of the total project. Respondent no. 9 had approached the Karnataka State Pollution Control Board (for short the 'KSPCB'), respondent no. 4 herein, for obtaining clearance which was granted on 4th September, 2012, subject to the fulfillment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. The applicant contends that the grant of consent by the KSPCB to respondent no. 9 also contained a condition with regard to obtaining Environmental Clearance from the Competent Authority and no construction was to commence until such clearance was granted.

4. According to the applicants, respondent no. 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of the SEAC, in relation to buffer zone and construction over *Rajakaluves*. The construction has been commenced over the ecologically sensitive area of the Lake Catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities the applicant submits that the

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conversion of land from 'Protected Zone' to 'Residential Sensitive' area is violative of the law. The Project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the *Rajakaluves*. It is also alleged that respondent nos. 9 & 10 have started to level the land by filling it with debris, thus causing damage to the drains. It is further stated that the conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the *Rajakaluves* have been violated. This has in turn, affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is also in violation of Rule 4 of Wetlands (Conservation and Management) Rules, 2010 (for short Rules of 2010). It is submitted that SEIAA in its meeting dated 29th September, 2012, decided to close the file pertaining to respondent nos. 10 due to non-submission of requisite information and the application therefore was rejected in November, 2012. Despite the rejection, respondent no. 10 commenced construction on the project in full swing.

5. The applicants have also relied on the findings of the Joint Legislative Committee, constituted under the chairmanship of Sh. A.T. Ramaswamy in the month of July, 2005, which stated that there were 262 water bodies in Bangalore city in 1961, which drastically came down because of trespass and encroachments. It was also affirmed that about 840 Kms of *Rajakaluves* have been encroached upon in several places and have become sewage channels.

6. The Hon'ble High Court of Karnataka in *Environment Support Group* v. *State of Karnataka*, Writ Petition No. 817/2008 appointed a Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil to suggest immediate remedial action in order to remove encroachments on the lake area and the *Rajakaluves* and preservation of the lakes in and around Bangalore city. Other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for Preservation, Restoration or otherwise of the existing tanks in Bangalore Metropolitan Area, 1986 which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tanks is not polluted. The findings of the Environmental Information System (ENVIS), Centre for Ecological Science, Indian Institute of Sciences, Bangalore, in May 2013 on the Conservation of the Bellandur Wetlands obligation of Decision Makers is ensure Intergenerational Equity recommended restoration of wetlands and cessation of plan to set up the SEZ in the area. Even the Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas.

7. The applicants claim to have obtained the monitoring report of the project by respondent no. 2 through RTI on 21st August, 2013. The report dated 14th August, 2013 revealed that the Project Proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that the Bellandur lake is not affected by the construction or operational phase of the project. This breach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

8. The Lake Development Authority (for short 'the LDA'), respondent no. 6 herein, had initiated an inspection in the catchment area of the Bellandur Lake. The report dated 12th June, 2013 confirms that the project will have disastrous impact, including deleterious effect on the Bellandur Lake. This report was brought to the notice of respondent no. 7 vide letter dated 7th July, 2013. Respondent no. 6 has also opined that the land should be classified and maintained as Sensitive Area. Respondent no. 7 in furtherance thereto had called upon respondent no. 9 to comply with rules of

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Ecology and Environment Department and to obtain necessary approval from respondent nos. 6 and 4. It is alleged that a vague reply had been submitted by respondent no. 9 making certain misrepresentations. Despite all this, respondent nos. 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardizing the ecological balance in this sensitive area. The applicants also rely upon the fact that the revised Master Plan, 2013 issued by Respondent no. 8 specifically provides that 30 meters buffer zone is to be created around the lakes and 50 meters buffer zone to be created on either side of the *Rajakaluves*. It is also the case pleaded by the applicant that Respondent no. 9 had obtained the NOC from Respondent no. 5 only with regard to residential units and not for the entire project and that the Environmental Clearance obtained by the Respondent No. 9 is based upon the said partial NOC issued by Respondent no. 5 which itself is a misrepresentation. The applicants have pleaded that the projects are bound to create water scarcity as the requirement of project of Respondent no. 9 alone is approximately 4.5 million liters per day, i.e. 135 million liters per month, which is more than what Respondent no. 5 supplies to the entire Agaram Ward. It is stated by the applicants that the construction of respective projects by respondents No. 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in topography of the area, posing potential threat of extinction of the Bellandur lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the water bodies.

The applicants have stated that they have filed the application against threat posed to the ecological balance from the ongoing commercial constructions project near Agara Lake and Bellandur Lake, and the same is continuing every day in violation of the law. With these allegations, the three applicants have instituted this application with prayers afore-noticed.

9. Different respondents in the application have filed independent replies as already noticed. Respondent nos. 9 and 10 are the Project Proponents against whom the applicant has raised the principal grievance. Thus, first we may notice the case advanced by respondent nos. 9 and 10. In its replys, respondent no. 9 has submitted that the said respondent corporation was incorporated with the objective of establishing an Information Technology Park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. This respondent had submitted the proposal to establish such Information Technology Park and other facilities to the State Government and requested for allotment of land for the project. Proposal of respondent no. 9 was considered in 78th High Level Committee meeting held on 21st June, 2000 and after examining the proposal, the same was approved by the government on 06th July, 2000. Before the State High Level Committee, the Respondent had mentioned that it would require 110 acres of land, 25MW of power from the Karnataka Power Transmission Corporation Limited (for short the 'KPTCL'), and 4 lakh litres of water per day from respondent no. 5. The lands for the project were initially notified by the BDA. However, later the lands were de-notified vide notification dated 10th February, 2004. Subsequently, the lands were allotted to the replying respondent vide letter dated 28th June, 2007 for which lease-cum-sale agreement was signed on 30th June, 2007. Considering the overall development of the State of Bangalore, the said Respondent proposed a Mixed Use Development Project consisting of an Information Technology Park, residential apartments, retail, hotel and office buildings with a total built up area of 13,50,454.98 sq mtr. The Project was conceived as a zero waste discharge project. According to this Respondent, the project is located one and a half kilometres away

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from the southern-side of the Bellandur Lake. Towards the North adjacent to the Project site, lie vast stretches of lands belonging to the Defence, and towards the East, which is completely developed lies the Project of Respondent no. 10 and that another developer is also developing a project on the western side. Respondent no. 9 has submitted that it has obtained sanction plan on 4th July, 2007 which was being renewed from time to time. The Respondent also claims that it has obtained No Objection Certificate from Airport Authority of India on 9th April, 2010, certificate dated 15th April, 2010 from Dr. Ambedkar Institute of Technology and that the Bharat Sanchar Nigam Ltd., vide its communication dated 16th April, 2010, granted clearance for the project construction. BWSSB, respondent no. 5 herein vide its communication dated 26th April, 2011 issued No Objection Certificate for portion of the proposed construction to be built. Bangalore Electricity Supply Company Limited also granted No Objection Certificate for arranging power supply to the proposed residential and commercial building in favour of the Respondent no.

10. Environmental Clearance was granted by SEIAA vide communication dated 17th February, 2012. Director General of Police issued No Objection Certificate and KSPCB vide order dated 4th September, 2012 accorded its consent for construction of the said project site subject to the conditions stated therein.

Respondent no. 9 further states that after grant of the Environmental Clearance on 17th February, 2012, the same was published in the leading newspapers "*Kannada Prabha*" and the "*Indian Express*" on 12th and 14th March, 2012 respectively.

11. Respondent no. 9 later modified the building plan and the same was approved by Respondent no. 7 vide its letter dated 30th August, 2012, which was valid up to 10th August, 2014. It is further claimed that they started the construction of the project in November, 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. The respondent further submitted that he has raised the constructions in accordance with the plans and conditions of the Environmental Clearance and consent orders. According to him, he has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. The allegation with regard to the covering and blocking the Rajakaluves (Storm Water Drains) drying the wetland and raising of the construction thereupon adversely affecting the lake, are specifically disputed and denied. The Respondent claims that it has already spent a sum of Rs. 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities etc., that it has availed financial assistance from various banks and financial institutions towards the construction and proper execution of the project and that various contracts have been signed with third parties.

12. It is specifically stated by this Respondent that certain print media had published articles stating that construction was unauthorized, illegal and that it was prejudicial to the environmental and ecological interest of that area. Not only this, Namma Bengaluru Foundation, Citizen's Action Forum, Koramangala Residents Association and others, on the basis of a report prepared by Professor T.V. Ramachandra, filed a Public Interest Litigation in the High Court of Karnataka (Writ Petition No. 36567-36574/2013). Besides making the above allegation, it was also alleged in those petitions that the project would adversely affect the Bellandur Lake and prayed for stay of the construction activity. The Hon'ble High Court of Karnataka after hearing the parties issued notice, however, denied to pass any interim order of stay as prayed by the petitioners. The said petition is stated to be pending before the Hon'ble High Court.

In the meanwhile, Bruhat Bengaluru Mahanagara Palike (for short the 'BMP') issued a stop work notice to the said respondent in regard to illegal and unauthorized construction as well as its adverse impacts on the lake. Aggrieved from the stop work

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notice dated 23rd December, 2013, Respondent no. 9 filed a Writ Petition before the Hon'ble High Court being Writ Petition No. 366-367 of 2014 and 530-625/2014 in which the Hon'ble High Court vide its order dated 21st January, 2014 stayed the operation of the stop work notice dated 23rd December, 2013. Another notice was also issued by respondent no. 7 directing stoppage of work on 2nd January, 2014, which was again challenged by the respondent no. 9 in Writ Petition No. 792 of 2014 before the same High Court and vide its order dated 7th January, 2014 the operation of the stay order was also stayed by the Hon'ble High Court. Replying respondent has taken up specific pleas with regard to the present application being barred by time because the Environmental Clearance was granted on 17th February, 2012 and even article in the newspapers were published on 3rd June, 2013 as such the present petition has been filed beyond the prescribed period of limitation and the Tribunal has no power to condone the delay which in fact has not even been prayed by the Applicant. According to respondent no. 9, this Tribunal has no jurisdiction to entertain and decide this application in the form and content in which it has been filed, as no question or substantial question of environment has been raised in relation to the Scheduled Acts under the NGT Act, 2010. Another objection raised by respondent no. 9 is that the applicants are guilty of suppression and misrepresentation of material facts and have not approached the Tribunal with clean hands and also that the proceedings before the Tribunal ought to be dismissed in face of the proceedings pending before the Hon'ble High Court of Karnataka in the Writ Petitions afore-referred. If the dates as stated by the applicant are taken to be correct, even then the application should have been filed within 30 days of the constitution of the Tribunal i.e. 18th October, 2010 and in any case within 60 days thereafter, by showing that they were prevented by sufficient cause. Since the application has been filed much beyond the prescribed period, it is barred by time and suffers from the defect of latches.

13. Respondent no. 10 besides raising the same preliminary objection with regard to the maintainability of the application and jurisdiction of the Tribunal, as raised by respondent no. 9, has also stated that application of applicant is hit by the Principle of *Falsus in Uno, Falsus in Omnibus*. It is also averred that the present application is a cut-paste of the Public Interest Litigation filed before the Hon'ble High Court of Karnataka and that the allegations made therein and in the present application are similar. On merits it is contended that averments made in the application are factually incorrect.

According to respondent no. 10, crux of the dispute is with regard to the allocation of the land and its conversion from 'Protected Zone' to 'Residential Sensitive' in the Master Plan, without giving any reason, which does not fall within the jurisdiction of the Tribunal. The applicants have raised multifarious proceedings against respondent no. 10 which is an abuse of the process of law and are *mala fide*. The applicant has not only stated identical facts in their application before the Tribunal, but have even submitted the same set of documents as were filed before the Hon'ble High Court of Karnataka, which clearly shows that the application before the Tribunal lacks *bona fides* and there is suppression and misrepresentation of material facts.

14. On merits respondent no. 10 has stated that the State of Karnataka has formulated a policy to invite investment in Karnataka and for that purpose the Karnataka Industries (Facilitation) Act, 2002 had been promulgated. Under this Act, State Level Single Window Clearance Committee and State High Level Clearance Committee were created to examine and clear the projects. All investment projects submitted to Karnataka Udyoga Mitra were forwarded to Single Window Agency, if it was less than the value of Rs. 50.00 crores for necessary processing and clearance and for value above Rs. 50.00 crores, is placed before the State High Level Clearance Committee for processing and approval. Respondent no. 10 had submitted a proposal for developing of a Software Technology Park with an investment of 48.75 crores in 25

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acres of land along the outer ring road in Bangalore to which the clearance certificate dated 27th March, 2004 was issued. Respondent no. 10 submitted a revised proposal in respect of the same project and to obtain fresh clearance on 31st August, 2007 and revised proposal was with the investment of Rs. 179.22 crores. The State High Level Committee had cleared the project which was communicated to Respondent no. 10 on 25th January, 2008. According to Respondent no. 10, properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drain and secondary storm water drains that exist in the above properties. The application by respondent no. 10 seeking sanction of development and building plan in respect of the above properties into a Software Technology Park, Hospitality, Commercial and Residential Complex was also allowed and as per the directive of respondent no. 7, respondent no. 10 has deposited a sum of Rs. 1,28,56,830. Respondent no. 10 had also taken clearance from various authorities including Environmental Clearance and consent for establishment. The details of the same are as follows:

Sl. No.	Date	Document No.	Nature of Document	Issued by	Annexure
1	17.3.2011	ASC/CM(AO)/181/HAL: BG:58/2011	No Objection Certificate	Airport Services Centre, Hindustan Aeronautics Limited, Bangalore Complex	'R22'
2	30.07.2011	AGM(TP)/S:6/IX/2010 –11.	No Objection Certificate	Bharat Shanchar Nigal Ltd., CGM, Telecom, KTK Circle, Bangalore	'R23'
3	22.05.2012	CEE(P&C)/SEE/ (Plg)/EEE(plg)/K CO-95/F-46611/2012–13./R-50 (75)	No Objection Certificate	Karnataka Power Transmission Corporation Ltd., Chief Engineer, Electric City, Cauvery Bhavan, Bangalore	'R24'
4	03.08.2012	GBC(1)478/2011	No Objection Certificate	Office of Director General, Karnataka State Fire & Emergency Services	'R25'
5	04.04.2013	BWSSB/EIC/ACE ®/DCE(M)-II/TA(M)-II/137/2012–13.	No Objection Certificate	Bangalore Water Supply & Sewerage	'R26'

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				Board, Cauvery Bhavan, Bangalore	
6	03.06.2013	PCB/136/CNP/12/H321	No Objection Certificate	Karnataka State Pollution Control Board, Church Street, Bangalore	'R27'
7	30.09.2013	SEIAA:37:CON: 2012	No Objection Certificate	State Level Environment Impact Assessment Authority, Karnataka	'R28'

Certain sections of the media had raised some queries to respondent no. 10 to furnish the copy of the Consent to Establish and Environmental Clearance certificate on 30th September, 2013. They had also expressed that the project had started without such clearances. However, upon issuance of Consent to Establish and Environmental Clearance dated 4th June, 2013 and 30th September, 2013 respectively, same were furnished to the reporter of newspaper. The Hindu', vide letter dated 11th October, 2013. According to respondent no. 10, around this project, much development has already taken place, even around various lakes, but it has not caused any damage to the lakes and similarly, project of respondent no. 10 would also not cause any damage to the area and the lakes. Respondent no. 10 has also referred to the Writ Petition 36567-36574 of 2013, where relief of resumption of land from both the respondent nos. 9 and 10 was prayed. Notice dated 28th February, 2014 was issued by respondent no. 7 to respondent no. 10 containing direction to stop work/construction activity against which respondent no. 10 had also filed a Writ Petition in the Hon'ble High Court of Karnataka, being Writ Petition No. 18119 of 2014. The Writ Petition was pending and Interim Order was passed. This Respondent claims that they are entitled to develop the projects, having received all clearances. It is specifically stated that the Bellandur Lake does not support any fishing activity or forms a source of water for domestic purpose nor is the agricultural activity carried out at the said area. There are no wetlands and none of the functional aspects of the wetland exist on the site in question. It is also denied that the project carried out by respondent no. 10 on the property belonging to it has any adverse impact on environment. Respondent no. 10 further states that the ENVIS report relied upon by the applicant is prepared by persons interested in opposing his project. In any case, the said report dated 14th August, 2013 stood superseded by the Environmental Clearance dated 30th September, 2013, wherein, respondent no. 3 has accorded consent to the project after considering the actual facts, after due application of mind and by subjecting respondent no. 10 to strict terms and conditions as mentioned in the clearance dated 30th September, 2013. On these averments, respondent no. 10 prays that the application should be dismissed and no relief should be granted by the Tribunal to the applicants.

15. Respondent no. 7 has filed a short reply. He submits that after the possession of the land was handed over to respondent no. 9 and 10, one year time was granted to implement the project, which was extended from time to time. According to

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respondent no. 7, the building drawings were approved on 4th July, 2007, modified building drawings were approved on 26th April, 2011 and 30th August, 2012 with specific conditions. In the meeting of the KIADB held on 16th July, 2013, it was resolved to inform respondent no. 9 to fully comply with the Ecology and Environment rules as well as to obtain approvals from the respondent no. 6, LDA and respondent no. 4, KSPCB. Respondent no. 6, LDA vide its letter dated 24th September, 2013, had informed respondent no. 7 that the construction activity in the catchment area in the Bellandur Lake could drastically impact the Lake, with deleterious effects and asked the Respondent no. 7 to stop construction activity of respondent nos. 9 & 10, however, the validity of the building drawings was again extended up to 10th August, 2014. The Lokayukta on 17th December, 2013 had written a letter in respect of complaint filed by South East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21st December, 2013 to keep in abeyance the approval accorded and even the revalidations of plans. This was also informed to respondent no. 9. The Board took a decision which was communicated to respondent no. 9 on 2nd January, 2014, wherein it asked the said respondent no. 9 to stop all construction activities on the allotted lands. It is admitted that the said communication was challenged by respondent no. 9 and on the stop work notice, stay was granted by the Hon'ble High Court of Karnataka. Stop work notice issued by BBMP dated 23rd December, 2013 was also challenged before the Hon'ble High Court and operation of the said communication was stayed vide order dated 21st January, 2014. It is submitted by respondent no. 7 that the project of respondent nos. 9 and 10 had been approved by the Government. It is specifically submitted that the answering respondent had not acquired any '*Rajakaluves*' and the land allotted by respondent no. 7 to respondent no. 10 does not consist of the same. Respondent no. 7 further states that the Storm Water Drains are not always flowing in strict or permanent path and are prone to flow in different paths from time to time. Respondent no. 7 further states that it had allotted 17 acres 33½ guntas of land in favour of respondent no. 10 for the purpose of establishing Software Technology Park, Hospitality, Commercial and Residential Complex and has executed lease-cum-sale agreement on 20th March, 2008.

16. Respondent no. 6 has taken a stand that it was not at all aware of the project initiated by respondent no. 7, KIADB. The said respondent claims it came to know about the entire project only when certain newspaper reports surfaced during the month of June, 2013 and till that time respondent no. 6 was in the dark. After the complaints, the said respondent immediately inspected the Bellandur Lake and the Agara Lake on 12th June, 2013 and prepared an inspection report. In the report, it was noticed that the large scale construction activities in the catchment area of Bellandur Lake was going on and there was a change in the land use which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk which originally formed the irrigation area for the adjoining agricultural lands. Respondent no. 6, vide its letter dated 6th July, 2013, had questioned the decision of respondent no. 7 and even requested to stop the construction activity and to reclassify the land as non-SEZ area. It was thereafter on 31st August, 2013 that respondent no. 9 wrote a letter to respondent no. 6 for according approval for the proposed development projects. However, vide its letter dated 23rd September, 2013, respondent no. 6 informed respondent no. 7 that the replying respondent had no authority to grant or deny construction projects but at the same time it also communicated their objections to respondent no. 7, mentioning that construction activity would be in contravention to the directions of the Hon'ble High Court of Karnataka as well as of the Hon'ble Supreme Court. Despite these warnings, respondent no. 7 granted approval to the extension of building drawings of the project in favour of respondents no. 9 & 10 on 11th October, 2013 and 3rd January, 2013 respectively, with certain conditions like ensuring that all natural valleys, valley zone,

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irrigation tanks and existing roads leading to villages in the said land should not be disturbed; further, that the natural sloping pattern of the project site shall remain unaltered and the lakes and other water bodies within and/or at the vicinity of the project area should be protected and conserved. Despite these objections by respondent no. 6, the plans were approved and approvals extended from time to time. Therefore, respondent no. 6 submits that these projects, as approved by respondent no. 7 would have adverse impacts on Bellandur Lake and Agara Lake.

17. Respondent nos. 1, 3 and 5 though have filed separate replies but they have taken up the stand that the projects have been granted, No Objections Certificates and Environmental Clearance by SEIAA, subject to the conditions noticed above. According to these respondents, if there is any breach, the same would be dealt with in accordance with law. According to respondent nos. 1 & 3, the file of respondent no. 10 was closed by SEIAA, Karnataka on 16th November, 2012 for non-submission of the required information but was later revived in the meeting held on 27th June, 2013 and Environmental Clearance was granted on 30th September, 2013. Both the projects are ongoing projects. The proposals have been considered in accordance with law.

18. Vide order dated 25th July, 2014 of the Tribunal, respondent nos. 11 and 12 were impleaded on their applications. Both these respondents are registered as charitable trust or a society. Replies by both these respondents have been filed wherein they have raised specific objections with regard to allotment of land in Ecologically Sensitive Area in the catchments of the Bellandur Lake for the construction of IT Park and related infrastructure, in flagrant violation of the applicable rules and regulations. According to respondent nos. 11 and 12, the allotment of this land is in contravention of the directions laid down by the Hon'ble Supreme Court in the case of *Karnataka Industrial Areas Development Board* v. *Sri. C. Kenchappa*, (2006) 6 SCC 371. It is further stated that the fact that these projects would essentially result in alteration of natural hydrology of the area and sloping pattern of the project site, clearly shows that there was no application of mind on the part of the concerned authority for granting approvals. The plans sanctioned in favour of respondent nos. 9 and 10 are replete with irregularities and illegalities and despite objections from respondent no. 6, the plans have been renewed contrary to law. For instance, respondent no. 9 had first represented that the project will have a built up area of 1.75 lakh sq.ft. while seeking approval from respondent no. 6, while in reality the built up area is 1.30 crore sq. ft./9.54 lakh sq. mtr., which is evidenced by respondent no. 9's own admission, and is not even disputed by him. The water requirement of the project would be nearly 135 million litres per month, which would exert excessive pressure over the wetland and would also lead to scarcity of water for the residents of the nearby areas. As already stated, the execution of the project will necessarily result in altering the hydrology of the area and the natural sloping pattern of the project site. Therefore, the conditions imposed in the Environmental Clearance are incapable of being complied with. According to these respondents, the Google satellite images that have been placed on record, reveal that the excavation work by respondent nos. 9 and 10 commenced much prior to obtaining approvals by them in 2012 & 2013 respectively, making the construction unauthorised and illegal. The matters before the Hon'ble High Court are stated to be restricted to the prayer for resumption of land and not connected with these proceedings before the Tribunal. According to these respondents, the stop work orders for the construction of the project have been stayed in terms of the orders of the Hon'ble High Court of Karnataka and are subject to the result of the Writ Petition and the Project Proponents are entitled to claim their equities in the event they failed before the Hon'ble High Court. The Hon'ble High Court had granted the interim order staying the stop work orders primarily on the ground that BBMP did not have jurisdiction to issue such order. According to respondent nos. 11 and 12, respondent no. 10 obtained the

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Environmental Clearance on 30th September, 2013, but it still does not have the mandated clearance from the BDA which was one of the conditions imposed by the State High Level Clearance Committee on 25th January, 2008. The project consists of residential block and commercial block, among other constructed areas. It is averred that as of present, a very small part of the project has been completed and if the construction of the project is permitted to be completed in all respects, the environment and ecology of the area would suffer and residents and public at large would have to face severe and fatal environmental consequences. These adverse consequences would not only be limited to flooding, water shortage, geological instability but would also affect the Bellandur Lake, which is one of the largest lakes in Bangalore, gathering an area of 338.28 hectares, with catchment area, of approximately 171.17 square kms.

As already noticed, respondent nos. 11 and 12 were ordered to be impleaded as respondents in this case on the condition that they would withdraw the Public Interest Litigation filed by them before the Hon'ble High Court of Karnataka. These Respondents had thus moved the Hon'ble High Court for withdrawal of the Writ Petitions. However, the Hon'ble High Court only permitted these two Respondents to withdraw themselves from the Writ Petitions in terms of the undertaking given by them before the Tribunal. The Petitioner before the Hon'ble High Court who had not given any undertaking before the Tribunal, their Writ Petitions are still continuing before the Hon'ble High Court. They have denied the allegation that any of them has committed violation of the order of the Tribunal or abused the process of law. It is also denied that the averments made and stand taken by them is false, incorrect and vexatious. Respondent no. 7 had first issued a letter dated 14th August, 2013 requiring respondent no. 9 to comply with the ecology and environmental rules and also to take necessary approval from the LDA, Bangalore and KSPCB before taking up any further activity of the project. Then, it issued the order dated 2nd January, 2014 informing the said respondent that the layout plan has been kept in abeyance and thus the Project Proponent should stop all construction activities in the allotted land until further orders. It is also the case of respondent nos. 11 and 12 that the report by Dr. T.V. Ramachandra is not a report by interested persons, but is part of scientist's social responsibility and the report published in May, 2013 gives the complete and correct position at site. It is their case that the cause of action has arisen on various dates, including first on 11th October, 2013 when respondent no. 7, despite objections from various authorities, extended its approval of plan, on the conditions stated therein. They have, therefore, submitted that the application is neither barred by time nor can it be contended that it does not raise a specific question of environment within the ambit of the Scheduled Acts under the NGT Act, 2010.

19. From the above pleaded case of the respective parties and the submissions advanced on their behalf, the following questions fall for consideration and determination of the Tribunal:

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

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the interest of environment and ecology issue any directions and if so, to what effect?

Discussion on Merits

1. Whether the application filed by the applicants and supported by respondent nos. 11 and 12, is barred by time and thus, not maintainable?

20. According to respondent no. 9, it had submitted a proposal to establish Information Technology Park, R & D Centre, Residential Complex and other facilities and sought for allotment of lands for the project in the year 2000. On 15th January, 2001, the Government in exercise of powers conferred upon it under Section 3(1) of the Karnataka Industrial Area Development Act, 1966 declared the land in question as an Industrial Area. Preliminary notification for acquisition of land in question was issued on 15th January, 2001 by KIADB and final Notification for acquisition of the land was issued on 23rd April, 2004, which was preceded by a Global Investor meet held on 10th February, 2004. On 28th June, 2007, respondent no. 7 issued the letter of allotment to respondent no. 9 allotting 63 acres 37½ gunta in Agara and Jakkasandra village. The possession certificate in favour of respondent no. 9 was issued on 29th June, 2007 in furtherance to which said respondent had paid the amount and executed the lease-cum-sale agreement. Project lease was sanctioned on 4th July, 2007. Airport Authority issued the NOC on 9th April, 2010. Clearance for the project construction was issued by BSNL on 16th April, 2010. BWSSB issued NOC on 12th May, 2011. Bangalore Electricity Supply Company Ltd. issued NOC on 27th April, 2011. After meetings of the State Level Expert Appraisal Committee and SEIAA, proposal was considered and Environmental Clearance was granted to respondent no. 9 on 17th February, 2012 for which notice was published in 'Kannada Prabha' and 'Indian Express' on 12th March, 2012 and 14th March, 2012 respectively. Modified building plan had been approved by respondent no. 7 on 30th August, 2012 which was valid up to 10th August, 2014. On 4th September, 2012, KSPCB issued consent for establishment under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as per conditions stated in the NOC. On 12th June, 2013, the LDA made a report stating that the KIADB has initiated a colossal mixed-use development project in the catchment area of Bellandur Lake. With reference to these dates and events, respondent no. 9 had advanced the plea that the application is barred by limitation. It is the contention of respondent no. 9, that all material events that would give rise to filing of an application under the provisions of NGT Act, 2010, had occurred on and prior to 17th February, 2012 and as the application was filed before the Southern Zone Bench of the Tribunal on 13th March, 2014, thus, same is hopelessly barred by time and is liable to be rejected on that short ground alone.

Similar events had taken place in regard to the project of respondent no. 10 who had been granted Environmental Clearance on 30th September, 2013. The contention raised by this respondent, which is, without prejudice to its other contentions, is that the grant of Environmental Clearance would put an end to all other challenges and even if the reports dated 12th June, 2013 and 14th August, 2013 are taken into consideration, even then the application had to be filed within a period of 6 months from the date on which the 'cause of action for such dispute has first arisen' in terms of Section 14 of the NGT Act, 2010. Admittedly, present application has been filed in March, 2014 i.e. much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Even otherwise, the period of 60 days beyond the prescribed period of limitation has long expired and as such the Tribunal will have no jurisdiction to condone the delay. The Applicants contend, which contention is also duly supported by respondent Nos. 11 and 12 that the present application is not an application simplicitor under Section 14 of the NGT Act. It is an application where a specific prayer has been made with reference to the reports dated 12th June, 2013 and 14th August, 2013 for restoration of

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the Ecologically Sensitive Land and for maintaining the sensitive area in its natural condition, so that ecological balance of the area is not disturbed. This being a petition under Section 15 of the NGT Act, it could be filed within five years from the date on which the cause for such compensation or relief 'first arose'. According to the applicants, the present application is even filed within the period of limitation as contemplated under Section 14 of the NGT Act, 2010, for the reason that with reference to the inspection reports dated 12th June, 2013 by respondent no. 6 and 14th August, 2013 by respondent no. 2, various actions had been taken by different authorities, fully substantiating the plea of the applicant that such huge construction activity in the catchment area of the lakes is bound to have adverse impact on the environment and ecology. According to them, it is evident from the record that on 14th August, 2013, respondent no. 7 had issued a communication to respondent no. 9 to comply with Ecology and Environmental Rules, as well as to take approval from the LDA. Various letters were exchanged between different authorities and the Project Proponent about the progress of the project and its irregularities. A letter of stop work notice was issued by the BBMP on 23rd December, 2013. KIADB also issued a stop work notice to respondent no. 9 on 2nd January, 2014. According to these applicants, in light of these facts, it is the case of 'continuing and/or recurring' cause of action relatable to environmental issues. Thus, the application had been filed within the prescribed period of 6 months even in terms of Section 14 of the NGT Act and the limitation would trigger from each of these dates mentioned above.

21. Sections 14 and 15 of the NGT Act, 2010 to a large extent are self contained provisions. They deal with the remedies that an aggrieved person is entitled to invoke. The present application, if treated as an application under Section 15 of the NGT Act, viewed from any angle, is within the prescribed period of limitation. The Environmental Clearance was granted to respondent no. 9 vide order dated 17th February, 2012 and all events have occurred thereafter till institution of the petition. The applicant has prayed for relief and restoration of ecology particularly with reference to the catchment areas of Bellandur Lake & Agara Lake. The applicant could not have availed of any remedy before the Tribunal, prior to 2nd June, 2010 and/or 18th October, 2010 respectively, i.e. the dates on which the Act came into force and the Tribunal was constituted. Thus, the period of limitation would start running at best from these dates. The present application for the purposes of Section 15 has been filed within 5 years there-from and thus, has to be treated as within time.

However, what needs to be deliberated upon is whether in terms of Section 14 of the NGT Act, 2010, the present application has been filed within the prescribed period of limitation or not. Section 14(3) mandates that no application for adjudication of dispute under Section 14(1) shall be entertained by the Tribunal unless it is made within the period of 6 months from the date on which the 'cause of action for such dispute first arose'. The jurisdiction of the Tribunal under Section 14 is over civil cases where a substantial question relating to environment, including enforcement of any legal right relating to environment, is involved and such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. The dispute or questions that the Tribunal is required to settle must fall within the ambit and scope of Section 14(1) of the NGT Act. In other words, it must be a dispute raising a substantial question relating to environment.

22. The contesting respondents while relying upon the language of Section 14 read cumulatively, contend that the expression 'within the period of 6 months from the date of which the cause of action for such dispute first arose' mandates that the period of limitation has to be reckoned when the cause of action for such dispute first arose and not thereafter. In the present case, the Environmental Clearance had been granted to respondent no. 9 on 17th February, 2012 and therefore it is their contention

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that the application could at best be filed by 16th August, 2012 and not thereafter.

23. 'Cause of Action' as understood in legal parlance is a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed. It is the foundation of a suit or an action. 'Cause of Action' is stated to be entire set of facts that give rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In other words, it is a bundle of facts which when taken with the law applicable to them gives the plaintiff, the right to relief against defendants. It must contain facts or acts done by the defendants to prove 'cause of action'. While construing or understanding the cause of action, it must be kept in mind that the pleadings must be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or passage and to read it out of the context, in isolation. Although, it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, from the pleading taken as a whole. [Ref. *Shri Udhav Singh* v. *Madhav Rao Scindia*, (1977) 1 SCC 511, *A.B.C. Laminart Pvt. Ltd.* v. *A.P. Agencies*, AIR 1989 SC 1239].

24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land *simplicitor* or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: *Liverpool and London S.P. and I Asson. Ltd.* v. *M.V. Sea Success I*, (2004) 9 SCC 512, *J. Mehta* v. *Union of India*, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, *Kehar Singh* v. *State of Haryana*, 2013 ALL (I) NGT REPORTER (DELHI) 556, *Goa Foundation* v. *Union of India*, 2013 ALL (I) NGT REPORTER DELHI 234].

Furthermore, the 'cause of action' has to be complete. For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as afore-stated would have to be considered as to when it first arose.

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law. 'Cause of action first arose'

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would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of *Bal Krishna Savalram Pujari* v. *Sh. Dayaneshwar Maharaj Sansthan*, AIR 1959 SC 798.

26. In the case of *State of Bihar* v. *Deokaran Nenshi*, (1972) 2 SCC 890, Hon'ble Supreme Court was dealing with the provisions of Section 66 and 79 of the Mines Act, 1952. These provisions prescribed for a penalty to be imposed upon guilty, but provided that no Court shall take cognizance of an offence under Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the provision specifically provided that if the offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence continues. The Hon'ble Supreme Court held as under:

> "5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

27. Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of 'continuing wrong or offence'. For instance, using the factory without registration and licence was an offence committed every time the premises were used as a factory. The Hon'ble Supreme Court in the case of *Maya Rani Punj* v. *Commissioner of Income Tax, Delhi*, (1986) 1 SCC 445, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not, the Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assesse does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. Hon'ble High Court of Delhi in the case of *Mahavir Spinning Mills Ltd.* v. *Hb Leasing and Finances Co. Ltd.*, 199 (2013) DLT 227, while explaining Section 22 of the Limitation Act took the view that in the case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury which renders the doer of the act responsible and liable for consequence in law.

Thus, the expressions 'cause of action first arose', 'continuing cause of action' and

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'recurring cause of action' are well accepted cannons of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case. It is not possible to lay down with absolute certainty or exactitude, their definitions or limitations. They would have to be construed with reference to the facts and circumstances of a given case. These are generic concepts of civil law which are to be applied with acceptable variations in law. In light of the above discussed position of law, we may revert to the facts of the case in hand.

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: *Khatri Hotels Private Limited* v. *Union of India (UOI)*, (2011) 9 SCC 126, *Bal Krishna Savalram Pujari* v. *Sh. Dayaneshwar Maharaj Sansthan*, AIR 1959 SC 798, *G.C. Sharma* v. *Municipal Corporation of Delhi*, ILR 2 Delhi 771, *Kuchibotha Kanakamma* v. *Tadepalli Ptanga Rao*, AIR 1957 AP 419].

29. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011, shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and therefore, there is exclusion of the concept of the 'joinder of causes of action' under the Rules of 2011. The multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time. In first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may gives rise to a fresh cause of action.

To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the

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action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of *M.R. Gupta* v. *Union of India*, (1995) 5 SCC 628, the Court held that:

> "The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that it the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.
>
> The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China Subba Rao* v. *Mattapalli, Raju*, AIR (1950) FC 1."

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It

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may have even be *de hors* the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: *Ex. Sep. Roop Singh* v. *Union of India*, 2006 (91) DRJ 324, *Bengal Waterproof Limited* v. *Bombay Waterproof Manufacturing Company*, (1997) 1 SCC 99].

32. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not *de bar* a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose.

33. The Environmental Clearance was granted to the project of Respondent no. 9 on 17th February, 2012 and to Respondent no. 10 on 30th September, 2013. Both these Environmental Clearances being appealable in terms of Section 16 of the NGT Act, 2010, their legality and correctness could be challenged within the prescribed period of limitation i.e. 30 days (or within the extended period of 60 days) which has not been done and as already noticed there is no challenge in this application to the grant of the Environmental Clearance. The applicants have primarily raised a challenge within the ambit and scope of Section 14 and 15 of the NGT Act. As already discussed, the application in so far as it prays for the relief of the restoration, it is within the period of limitation of 5 years. According to the applicants, the facts on record disclose violations of the condition of Environment Clearance and poses serious threat to the environment and ecology because of the reckless construction in the catchment areas of the lakes. During the period of August, 2012 to January, 2014, various notices have been issued by different authorities in relation to the modification of building plans. These stop work notices/orders and the inspection reports including report by LDA clearly demonstrates that the development project in the catchment area of Bellandur Lake as implemented would probably have adverse effect on the Bellandur Lake. The applicant may not challenge the grant of Environmental Clearance *per se* but upon commencement of the project and in view of their being definite documentary

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evidence supported by data, that the Project Proponent has committed breaches and implementation of the project is bound to have serious adverse impacts on ecology, environment and particularly the water bodies would give an independent 'cause of action' to him *de hors* the grant of Environmental Clearance. The averments in the application and the record fully satisfy the ingredients of Section 14 of the NGT Act. From those occurrences particularly of January, 2014, a fresh period of limitation has to be reckoned. The applicant may rely upon various reports, notices and orders in support of its claim. Whether the applicant succeeds on merits or not, is a different issue. However, for the purpose of limitation, the dates of these reports, stop work orders and notices would be relevant dates, which would provide the 'recurring cause of action' to the applicant and thus, the application will be within the prescribed period of limitation. In addition to this, the applicant has also prayed for taking action in accordance with law on the basis of the report dated 14th August, 2013, communication letter of LDA dated 23rd September, 2013, communication dated 12th December, 2013 by LDA to Respondent No. 9, stop work notice dated 23rd December, 2013 issued by BBMP to Respondent No. 9 and stop work notice issued dated 2nd January, 2014 by KIADP to Respondent No. 9. Thus, the application having been instituted on 13th March, 2014 is well within the period of limitation under Section 14 of the NGT Act and for the reasons afore-recorded, we find no merit in the plea of limitation raised on behalf of the Respondents.

2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application, under the provisions of NGT Act, 2010?

34. It is a settled principle that while determining whether the application discloses a cause of action, which would squarely fall within the ambit and scope of the provisions of the NGT Act, the petition has to be read as a whole by the Court or the Tribunal. Thus, we have to examine the cumulative effect of the averments made in the application, read in conjunction with the prayer clause. If upon reading of the entire application together, such cause of action is disclosed, that would fall within the jurisdiction of this Tribunal, the Tribunal would be obliged to entertain and decide such pleas. In the case in hand, the applicant has made reference to various activities in general and illegal and unauthorised activities of respondent nos. 9 and 10 in particular, which are having adverse effect on the water bodies as well as the water supply to the city of Bangalore. It is alleged that the construction activity that is being carried on by respondent no. 9 is in violation of all the stipulations of the Environmental Clearance. Rampant construction work is being carried on in the buffer zone as well as over and around the Rajakaluves. While pointing out the blatant irregularities, it is also averred that the project is in the midst of fragile wetland area and is bound to severely disturb and damage the Rajakaluves. In terms of the Environmental Clearance, a condition has been imposed that the project proponent shall not disturb the storm water drains, natural valleys, etc. and buffer zone area around the Rajakaluves was to be maintained. However, according to the applicant, the project area is located between two lakes and therefore, the construction is in violation of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010. There has been violation of maintaining the buffer zone in accordance with the revised Master Plan of 2015. There has to be 30 meter buffer zone created around the lakes and 50 meter buffer zone created on either side of the Rajakaluves. This has also not been adhered to. Further, the consent had been granted to respondent no. 9 for residential units and not for other activities.

35. While referring the water shortage, the averment is that the project requires 4.5 million litres of water per day i.e. 135 million litre water per month. Such requirement of the project would be beyond the capacity of respondent no. 5, as the quantity of water required for the project would still be more than the water supply

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being made by respondent no. 5 to the entire Agaram ward in Bangalore. The NOC issued by respondent no. 5 covers an area of only 17404 sq. meters whereas the total built up area of the construction is 13,50,454.98 sq. meters. Thus, the NOC was partial. Therefore, it is clear that even the Environmental Clearance had been obtained by respondent no. 9 without disclosure of correct facts. Further, the averments are that the construction activity has severely disturbed and damaged the Rajakaluves that run through the entire land and in fact is likely to result in disappearance of the Rajakaluves. Relying upon the two reports dated 12th June, 2013 and 14th August, 2013, it is averred that the project will have disastrous effect on the Agara Lake and the Bellandur Lake. If the construction is not stopped, the sensitive area and its ecology and environment would be at stake. Even the authorities had issued notices/stop work orders to the respondents for the breach of the conditions committed by them and for the construction activity being illegal.

On these averments, the two prayers that have been made is that the respondent - State of Karnataka - should take cognizance of the reports dated 12th June, 2013 and 14th August, 2013 and should take coercive and punitive actions against the respondents, as well as restore the ecology in the sensitive area. Further that, the Government should be directed to maintain the very land as a sensitive area and no development or construction activity should be allowed to be carried on, that would disturb the ecological balance of the area.

36. We have to examine whether on the facts afore-noticed, the prayers made would squarely fall within the scope of implementation of any of the Acts specified under Schedule I to the NGT Act. This Tribunal has three jurisdictions - original, appellate and special jurisdiction, enabling it to grant reliefs of compensation and restitution of property and environment both. Section 14 gives a very wide jurisdiction to the Tribunal to resolve and pass orders in all civil disputes, where substantial question relating to environment including enforcement of legal right relating to environment is involved and such question arises from the implementation of the enactments specified under Schedule I. Section 16 provides that appeal would lie to the Tribunal against the certain orders passed by authorities and Boards, in relation to the orders specified in clauses (a) to (j) of section 16, which also includes appeal against an order refusing or granting Environmental Clearance for carrying out of any activity, operation or process. Section 15 of the NGT Act gives to the Tribunal jurisdiction to grant relief, compensation and restitution in the event there is a victim of pollution and other environmental damage arising under the enactment specified in Schedule I of the NGT Act, for restitution of property damage as well as for restitution of environment in such areas.

37. The definition of 'environment' under Section 2(c) of the NGT Act again is widely framed. It is comprehensive enough to take within its ambit all matters in relation to environment. This definition practically covers every activity that will have water, air and land and inter-relationship, which exists among and between these and the human being, other living creatures, plants, microorganism and property. This definition is identical to the definition of 'environment' as provided under section 2(a) of the Act of 1986. In terms of the object and purpose of the Act of 1986, it has primarily been enacted to protect and improve the environment and for prevention of hazards to human being, other living creatures, plants and property.

Therefore, both protection and improvement of the environment are two very fundamental aspects of these legislations. Certainly, the applicant has not raised specific challenge to the Environmental Clearances dated 17th February, 2012 and 30th September, 2013 in the present appeal, but what is being questioned is the disappearance and further likelihood of complete extinction of the water bodies in the area in question in the city of Bangalore. Furthermore, since studies have shown

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serious adverse impacts upon the ecology and environment of the area, the authorities concerned, including the State Government, should take appropriate steps in accordance with law and the ecological degradation or damage should be directed to be restored. Once these reliefs are read in conjunction with the averments made in the record and examined within the domain of Order VII Rule 11 of the Code of Civil Procedure, 1908, then it is not possible to hold that the petition does not disclose a cause of action that would squarely fall within the ambit of the jurisdiction conferred upon the Tribunal in terms of Sections 14 and 15 of the NGT Act.

38. Section 15 of the NGT Act provides not only for relief and compensation to victims of pollution and other environmental damage arising under the enactments specified under Schedule I, but also for restitution of property and damage and restitution of environment for such area or areas. It is a general provision and covers victims of the pollution generally. In contradistinction thereto, Section 17 is a specific provision relating to death or specific injury which has occurred to a person, to a property or environment. Such death or injury has to result from an accident or adverse impact of activity or operation or a process, under any enactment specified under Schedule I, then the person responsible shall be liable to pay such relief or compensation for death, injury or damage, in terms of all or any of the heads specified in Schedule II of the Act and as determined by the Tribunal. This provision is person-specific and relates to such injury which results from an activity, operation or process and imposes liability on the person responsible for that activity, operation or process. Furthermore, when the provision of Section 14 and 15 of the NGT Act are examined in light of the Scheme of the Act, then it becomes clear beyond ambiguity that both these provisions operate in independent fields. They are mutually exclusive and not interconnected. Section 15 is not essentially dependent upon an order being passed under Section 14 as a condition precedent. In other words, remedy under Section 15 is not a consequential remedy to the provisions under Section 14. The legislature has provided distinct criteria, procedure and limitation under both these sections. If they were to be treated interconnected or inter dependent, there was no occasion to provide entirely different limitation within which an aggrieved person can invoke the jurisdiction of the Tribunal. The essentials to be pleaded and proved under these provisions are notably different. While under Section 14, an applicant has to show that he has raised a substantial question relating to environment, which arises out of the implementation of the enactments specified under Schedule I, under Section 15, an applicant is called upon only to show that he is victim of pollution or other environmental damage.

39. Another contention raised before the Tribunal by the respondents is that as far as grant of restoration under Section 15 is concerned, the applicant has not made out a case invoking the said jurisdiction and furthermore, that Section 15 comes into play post event. This argument cannot be accepted. Firstly, we have already noticed in some detail that the factual matrix of the case as pleaded by the applicant brings out a case for invoking the jurisdiction of the Tribunal under Sections 14 and 15 both. Secondly, Section 15 when construed on its plain language does not mandate a jurisdiction which can be invoked only post event. We are persuaded to hold so because of the clear distinction in language of Sections 15 and 17 of the NGT Act. Section 17 specifically requires that there ought to have been death, injury to any person or damage to any property or environment from an accident or adverse impact of an activity or operation or process where on the liability of the person to pay such relief or compensation shall be computed on the principle of no fault i.e. strict liability. In contradistinction thereto, Section 15 would operate both to a damage that has occurred as well as the damage which is likely to occur in relation to a property or environment. Of course, such damage will be to the victim of the pollution or other environmental damage arising under the enactments specified in Schedule I. Section

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20 of the Act places an obligation on this Tribunal to apply the three principles of Sustainable Development, Precautionary Principle and the Polluter Pays Principle, in settlement of disputes before it. Since the precautionary principle will also be part of Section 15, its applicability in a likely damage to environment or property cannot be excluded. The legislature in its wisdom has enacted two different and distinct provisions. They have to operate in their respective fields, particularly, when their language is distinct and different. A clear distinction between two is that Section 17 would operate only for compensation while Section 15 would deal both with compensation and restitution.

40. The expression 'dispute' is relatable to a question which is a substantial question of environment and such question should arise out of the implementation of the scheduled enactments under the NGT Act. It is a term of wide connotation and once a fact is asserted by one party and disputed by the other it gives rise to a 'dispute'.

41. Wherever a dispute as afore-noticed would arise, it would certainly give rise to a cause of action and accrue a right to sue in favour of an applicant in order to invoke one or the other jurisdictions of the Tribunal. At this stage it may be useful to refer to the decision of the Tribunal in the case of *Kehar Singh* v. *State of Haryana*, 2013 ALL (I) NGT REPORTER (DELHI) 556, wherein it was held:

> "16. 'Cause of action', therefore, must be read in conjunction with and should take colour from the expression 'such dispute'. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. 'Such dispute' has to be considered as a dispute which is relating to environment. The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate to environmental issues would not be 'such dispute' as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the 'cause of action' referred to under Sub-section (3) of Section 14 should be the cause of action for 'such dispute' and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act. The term 'cause of action' has to be understood in distinction to the nature or form of the suit. A cause of action means every fact which is necessary to establish to support the right to obtain a judgment. It is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. It is what a plaintiff must plead and then prove for obtaining the relief. It is the factual situation, the existence of which entitles one person to obtain from the court remedy against another. A cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It does not comprise evidence necessary to prove such facts but every fact necessary for the plaintiff to prove to enable him to obtain a decree. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In wider sense, it means

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the necessary conditions for the maintenance of the suit including not only the infraction coupled with the right itself. To put it more clearly, the material facts which are imperative for the suitor to allege and prove constitute the cause of action. (Refer: *Rajasthan High Court Advocates Asson.* v. *Union of India* [(2001) 2 SCC 294], *Sri Nasiruddin* v. *State Transport Appellate Tribunal* and *Ramai* v. *State of Uttar Pradesh* [(1975) 2 SCC 671]; *A.B.C. Laminart Pvt. Ltd.* v. *A.P. Agencies, Salem* [(1989) 2 SCC 163]; *Bloom Dekor Limited* v. *Sujbhash Himatlal Desai* with *Bloom Dekor Limited* v. *Arvind B. Sheth* [(1994) 6 SCC 322]; *Kunjan Nair Sivaraman Nair* v. *Narayanan Nair* [(2004) 3 SCC 277]; *Y. Abraham Ajith* v. *Inspector of Police, Chennai* [(2004) 8 SCC 100]; *Liverpool and London S.P. and I. Asson Ltd.* v. *M.V. Sea Success I* [(2004) 9 SCC 512]; *Prem Chand Vijay Kumar* v. *Yashpal Singh* [(2005) 4 SCC 417]; *Mayar (H.K.) Ltd.* v. *Owners and Parties, Vessel M.V. Fortune Express* [(2006) 3 SCC 100].

17. Upon analysis of the above judgments of the Supreme Court, it is clear that the factual situation that existed, the facts which are imperative for the applicant to state and prove that give him a right to obtain an order of the Tribunal, are the bundle of facts which will constitute 'cause of action'. This obviously means that those material facts and situations must have relevancy to the essentials or pre-requisites provided under the Act to claim the relief. Under the NGT Act, in order to establish the cause of action, prerequisites are that the question must relate to environment or it should be a substantial question relating to environment or enforcement of any legal right relating to environment. If this is not satisfied, then the provisions of Section 14 of the NGT Act cannot be called in aid by the applicant to claim relief from the Tribunal. Such question must fall within the ambit of jurisdiction of the Tribunal i.e. it must arise from one of the legislations in Schedule I to the NGT Act or any other relevant provision of the NGT Act. For instance, the Tribunal would have no jurisdiction to determine any question relating to acquisition of land or compensation payable in that regard. However, it would have jurisdiction to award compensation for environmental degradation and for restoration of the property damaged. Thus, the cause of action has to have relevancy to the dispute sought to be raised, right to raise such dispute and the jurisdiction of the forum before which such dispute is sought to be raised."

42. The plea raised by the respondents that the application does not disclose any cause of action within the four corners of the statutory jurisdiction of the Tribunal is, therefore, liable to be rejected. The respondent can raise such plea only while on the assumption that the allegations made in the application are correct. In other words, such plea of rejection of plaint is a plea of demurer. Whether the applicant would ultimately be entitled to any relief or not, is a matter different from rejecting the application on the ground of non-disclosure of any cause of action.

43. Specific averments have been made in the application with regard to the construction activities being carried on in an irregular manner, in violation of Environmental Clearance conditions and its adverse impacts upon environment and ecology, particularly, the water bodies in the area. Furthermore, submissions have been made on the basis of reports that refer to the restitution of degraded and damaged ecology and environment, particularly with reference to the water bodies in the concerned areas. A general question with regard to adverse impacts on water supply and water bodies has been prominently raised. These averments have been denied by the project proponents. The authorities which had issued stop work notices to the project proponents have partly supported the case of the applicant, while some other respondents, including official respondents, have supported the project. Thus, these are the matters which certainly raise a substantial question relating to environment and which arise in relation to implementation of the enactments specified

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in the Schedule to the NGT Act. Once, such disputes are raised which require determination by the Tribunal, it can hardly be contended that the application does not disclose any cause of action falling within the jurisdiction of the Tribunal.

44. Applicant can make a prayer of restitution of property damaged or of environment of such area under Section 15 of NGT Act. However, applicant has to show that it arises under the enactments specified under Schedule I. Thus, there is hardly any commonality in cause of action and ingredients thereto, required to be pleaded and proved and in the scope of jurisdiction exercisable by the Tribunal under sections 14 and 15 of the NGT Act. Therefore, these provisions are mutually exclusive and contentions of the Respondents that jurisdiction under Section 15 can only be invoked as a consequence of invocation of jurisdiction and orders of the Tribunal either under Section 14 or Section 16 of the Act is devoid of any merit.

45. The Learned Counsel appearing for the respondents, particularly the Project Proponents, while relying upon the judgement of the Hon'ble Supreme Court in the case of *T. Arivandandam* v. *T.V. Satyapal*, (1977) 4 SCC 467 and *ITC Ltd.* v. *Debt Recovery Tribunal*, (1998) 2 SCC 70, contended that the application before the Tribunal does not disclose a cause of action, is a vexatious litigation without merits and is cleverly drafted to create an illusion of a cause of action and therefore the application should be rejected. In our considered opinion, the respondents cannot take any advantage from any of the judgements cited by them. Firstly, these were the judgements on their own peculiar facts. In the case of *T. Arivandandam* (supra), the Hon'ble Supreme Court was dealing with an appeal against the order of Hon'ble High Court of Karnataka dismissing the revision petition of the petitioner for granting injunction or stay on the order of the Trial Court directing vacation of premises. The Apex Court observed that it was an audacious attempt by the petitioner for seeking more and more time in vacating premises by filing these fake litigations. It was held by the Hon'ble Supreme Court that the plaint was manifestly vexatious and meritless in the sense of not disclosing a clear right to sue and, therefore, the plaint should be rejected. On the other hand, in the case of *ITC Ltd.* (supra), the appeal was filed against the judgment of the Learned Single Judge of High Court of Karnataka, dismissing the Writ Petition filed by the appellant against the orders of the Debt Recovery Tribunal and Appellate Tribunal, rejecting the application of the appellant under Order VII Rule 11 of the Code of Civil Procedure, 1908. The Hon'ble Supreme Court had therein observed that non-movement of goods can be for a variety of tenable or untenable reasons but that by itself will not give a reason to the plaintiff to use the word “fraud” in the plaint and cleverly get over any objections that may be raised by way of filing an application under Order VII Rule 11. In these circumstances, it was held that if the plaint in fact did not disclose a cause of action, clever drafting cannot create illusionary cause of action. Hon'ble Supreme Court also stated that there was gross abuse of process of law repeatedly and observed that a plaint on a meaningful and not formal reading, should disclose the cause of action.

46. In the case in hand, as has already been held by us before, the litigation pending before the Hon'ble High Court of Karnataka and the Tribunal, fall under different jurisdictions. Even the Project Proponents themselves have filed Writ Petitions before the Hon'ble High Court of Karnataka challenging the stop work notices issued to them. In our considered view, on a meaningful reading of the application, particularly seen in light of the reports and other documents placed on record, the application does disclose a cause of action that would squarely fall within the ambit of jurisdiction of this Tribunal vested in it under Sections 14 and 15 of the NGT Act.

3. Whether the present application is barred by the principle of *res judicata* and/or constructive *res judicata?*

4. Whether the application filed by the applicants should not be entertained

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or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petition 36567-74 of 2013 before the Hon'ble High Court of Karnataka?

47. The Respondents have raised the plea that the present application of the applicant is barred by the Principles of *res judicata*, constructive *res judicata* and in any case principle analogous thereto. This plea is found on the averment that some petitioners including Respondent Nos. 11 and 12 had filed a Writ Petition being Writ Petition No. 36567-574 of 2013, before the Hon'ble High Court of Karnataka with the following prayers:—

"PRAYER

In the above premises, it is prayed that this Hon'ble Court may be pleased to:

(a) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 8 vide Lease cum sale agreement dated 30.06.2007 at Annexure "B", more fully described in the schedule to the said agreement;

(b) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 9 vide Lease cum sale agreement dated 20.03.2008 at annexure "C", more fully described in the schedule to the said agreement.

(c) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from, in any manner, further alienating the public land, described in the schedule of the Lease cum Sale Agreement at Annexure B and C, in the vicinity of Agara lake to any private individual/institution/trust/societies/nongovernmental associates and organizations without following the due process of law;

(d) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from allotting the said land, described in the schedule to the Lease cum Sale Agreement at Annexure B and C, for purpose which may have an adverse consequences on the environment and, in particular the land in issue;

(e) Direct the Respondent no. 1 to appoint a Task Force to look into illegal allotment of land in favour of private persons at the cost of environment and ecology and report to the Respondent no. 1 take action over them;

(f) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case.

INTERIM PRAYERS

Pending consideration of this writ petition, this Hon'ble Court be pleased to:

(a) Pass an order staying all construction activity under the project being carried out on the land in issue;

(b) Pass an order restraining the Respondent Nos. 8 and 9 from alienating the land described in the schedule to the Lease cum Sale Agreement at Annexures B and C, or creating any third party rights or encumbrances on the land in issue; and

(c) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case."

48. It is alleged that in the above mentioned Writ Petition, averments similar to that of present application had been made and in fact averments identical to the present petition were made in paragraphs 52 to 55 of the Writ Petition. Furthermore, the applicants did not disclose the factum of filing the Writ Petition before the Hon'ble High Court to this Tribunal. Also, the parties to both the proceedings to some extent are common.

It is also argued that respondent nos. 9 and 10 have also filed two Writ Petitions

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before the Hon'ble High Court of Karnataka being Writ Petition No. 792 of 2014 and Writ Petition No. 366-367 of 2014, challenging the stop work notices issued to the respective respondents on 23rd December, 2013 and 2nd January, 2014 and that the operation of these notices have been stayed by the Hon'ble High Court on 21st January, 2014.

Thus, it is contended that the issues in the present application are directly and substantially in issue before the Hon'ble High Court of Karnataka and therefore, the present proceedings are barred by the Principle of *res judicata* and/or constructive *res judicata*. Neither the applicant nor respondent nos. 11 and 12 have disputed the filing of these Writ Petitions before the Hon'ble High Court, but have vehemently contended that neither the parties are common nor the issues in both the applications are directly and substantially the same. According to them, there is no commonality of cause of action or likelihood of a conflict between the judgments. It is therefore, their contention that the application is not liable to be rejected on that ground.

49. The pendency of the Writ Petitions before the Hon'ble High Court would not directly or incidentally render the proceedings before the Tribunal unsustainable. The scope of those Writ Petitions and the reliefs claimed therein are distinct and different. The matters relating to environment or the matters raising serious environmental issues are to be more appropriately tried before the Tribunal. We may at this stage refer to a recent judgment of the Supreme Court of India in the case of *Union of India* v. *Shrikant Sharma*, Civil Appeal No. 7400 of 2013 decided on 11th March, 2015. The Supreme Court in that case was dealing with a question of law whether the right of appeal under Section 30 of the Armed Forces Tribunal Act, 2007 against an order of the Tribunal with the leave granted by the Supreme Court against such orders, under Article 136(2) of the Constitution of India will bar the jurisdiction of the High Court Under Article 226 of the Constitution of India. After discussing the various provisions of the Act and various judgments of the Supreme Court in relation to basic principle for exercising power under Article 226 of the Constitution stated:

> "34.
>
> (iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.
>
> (Refer: *Nivedita Sharma).*
>
> (iv) The High Court will not entertain a petition Under
>
> Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: *Nivedita Sharma).*
>
> 36. *In Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO)* this Court observed that it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.
>
> In *Chhabil Dass Agrawal* this Court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

The Court then proceeded to examine the likelihood of analogous situation that could arise by exercise of such jurisdiction and finally concluded held as under:

> "37.
>
> ...Once, the High Court entertains a petition Under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal Under Section 30 with leave to appeal Under Section 31 of the Act against the

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order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court Under Article 226 of the Constitution Under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court Under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy Under Section 30 read with Section 31 Armed Forces Act.

38. The High Court (Delhi High Court) while entertaining the writ petition Under Article 226 of the Constitution bypassed the machinery created Under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions Under Article 226 and directed the writ Petitioners to seek resort Under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition Under Article 226 of the Constitution of India.

39. For the reasons aforesaid, we set aside the impugned judgments passed by the Delhi High Court and upheld the judgments and orders passed by the Andhra Pradesh High Court and Allahabad High Court. Aggrieved persons are given liberty to avail the remedy Under Section 30 with leave to appeal Under Section 31 of the Act, and if so necessary may file petition for condonation of delay to avail remedy before this Court."

50. Now firstly, let us examine if the parties in both these proceedings are common. The present application was instituted by 3 applicants and none of them is a party to the Writ Petition before Hon'ble High Court of Karnataka. The official Respondents are common in both the proceedings. Respondent Nos. 11 and 12 were the petitioners No. 1 and 2 in the Writ Petition before the Hon'ble High Court. However, at a later stage of pendency of this application, they filed M.A. No. 139 and 140 for being impleaded as party to the present application. This application was contested by the respondents including Respondent no. 9 and 10 in the present application and the same was allowed vide order dated 25th July, 2014 passed by the Tribunal. In the said order, it was recorded that both these Respondent Nos. 11 and 12 have given an undertaking to the Tribunal that they would withdraw the Writ Petition that they had filed before the Hon'ble High Court of Karnataka. In compliance to the undertaking given to the Tribunal, these two Respondents filed an application before the Hon'ble High Court and vide order dated 1st August, 2014 passed in Writ Petition No. 36567 of 2013, the name of these two Respondents as Petitioner Nos. 1 and 2 were ordered to be deleted. Thus, as of today, none of the above applicants is the party in the Writ Petition before the High Court and in fact, they have been impleaded as Respondent Nos. 11 and 12 in consonance with the order of the Tribunal and that of the High Court as afore-referred. Now, we may proceed to deal with the content and scope of these proceedings. Undisputedly, the jurisdiction of the High Court under Article 226 of the Constitution of India is very wide. The jurisdiction of the Tribunal is very limited and it has to exercise it within the limitation of the Statute that created it. There are similar and at some places even identical contentions raised by the applicants in the present application, to the facts averred in the Writ Petition by the Petitioners before the High Court of Karnataka. The prayers in the Writ Petition as referred to above, both generally and substantially relate to acquisition of land, requiring the respondent authorities to resume the land in question, to examine the question of illegal allotment of the land and stop allotment and alienation of land. While the prayers before the Tribunal are and have to be restricted to environmental degradation and its restoration along with treating the areas in question as sensitive areas. The rampant development activities carried out by Respondent Nos. 9 and 10 are stated to have adverse impact on ecology, environment and the water bodies. It is

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further prayed before tribunal that there should be restoration of ecology of sensitive area. Thus, it is evident from the prayers and genesis of the respective proceedings that they are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment, ecology and its restoration and have to be essentially a civil proceeding. While the proceedings before the High Court relate to entirely different issues i.e. the acquisition of land, its allotment and its transfer to third party. Thus, the issues in both the proceedings are neither substantially nor materially identical. Both jurisdictions have to operate in different fields governed by different and distinct laws. The objection taken by the Respondent does not satisfy the basic ingredients to attract the application of *res judicata* or constructive *res judicata*.

51. One of the tests in regard to the above is that a 'cause of action' should culminate into a judgment and lose its identity by merging into the result of the judgment. Once a 'cause of action' is culminated into the judgment, the general principle of *res judicata* or *constructive res judicata* bars re-agitating the same issue all over again. The object is to prevent abuse of process of law by re-agitating the same issues in different courts.

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

In light of the above law enunciated by the Supreme Court of India, the contention raised on behalf of the applicant that this Tribunal should entertain and decide the application despite pendency of Writ Petitions before the High Court, deserves to be accepted.

5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

52. Discussion on this issue with reference to the facts of the case would require the Tribunal to decide as to what relief, if any, could be granted to the applicant and whether there is any need for the Tribunal to pass any direction in the interest of environment and ecology in the peculiar facts and circumstances of the case. As already noticed in the afore-indicated discussions, the serious objection herein is that these projects commenced their construction activities without seeking Environmental Clearance and therefore, the constructions are illegal and unauthorised. These huge constructions of residential, commercial and other purposes are located on the wetlands of different water bodies in the city of Bengaluru. The constructions have been raised even on the catchment areas of the water bodies. With reference to the

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reports afore-noticed, averments are that these constructions have adversely affected the environment, ecology and particularly the water bodies and their biodiversity. These constructions would have tremendous impact on the water supply to the city of Bengaluru and that there is a likelihood of complete extinguishment of these historical lakes, which have been the basic factor behind maintaining the environmental and ecological balance in the city of Bengaluru.

53. One of the most important facets of deliberation on this issue would be the alleged construction on the wetlands and catchment areas of the water bodies, i.e. the Agara and the Bellandur Lakes. In common parlance, 'wetlands' are the areas where water is the primary factor controlling the environment and the associated plant and animal life. They occur where the water table is at or near the surface of the land or where the land is covered by water.

54. Ramsar Convention uses a broad definition of wetlands. It includes all lakes and rivers, underground aquifers, swamps and marshes, wet grasslands, peatlands, oases, estuaries, deltas and tidal flats, mangroves and other coastal areas, coral reefs, and all human-made sites such as fish ponds, rice paddies, reservoirs and salt pans.

55. The Indian definition of a 'wetland' means "an area or of marsh, fen, peatland or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six meters and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification of the Government of India in the Ministry of environment and Forest, S.O. number 114(E) dated the 19th February, 1991."

56. Wetlands are amongst the most productive ecosystems on the Earth, and provide many important services to human society. However, they are also ecologically sensitive and adaptive systems. "Free" services provided by wetlands are often taken for granted, but they can easily be lost as wetlands are altered or degraded in a watershed. Estimates of the per acre value of wetland services run as high as $370,000/acre in 1992 dollars (Heimlich *et al.* 1998). The exact value can be attributed to the type and location of the wetland, the services it provides, and the economic methods and assumptions used.

57. Ecosystem goods provided by the wetlands mainly include: water for irrigation; fisheries; non-timber forest products; water supply; Pollutant removal, Flood attenuation, Groundwater recharge, Shoreline protection, Wildlife habitat and recreation. Major services include: carbon sequestration, flood control, groundwater recharge, nutrient removal, toxics retention and biodiversity maintenance (Turner et al., 2000).

58. Various services provided by wetlands include Carbon Cycle/Carbon Sequestration: Swamps, mangroves, peat lands, mires and marshes play an important role in carbon cycle. Though wetlands contribute about 40% of the global methane (CH4) emissions, they have the highest carbon (C) density among terrestrial ecosystems and relatively greater capacities to sequester additional carbon dioxide (CO2). Wetlands provide for habitat for more aquatic, terrestrial, and avian species on an area basis than any other habitat type, making them one of the most ecologically and economically important ecosystems on earth. Thus, wetlands provide for soil life, habitat, biodiversity maintenance and recreation. Wetlands are a service provider to Nutrient Removal, Flood attenuation and Water supply and Ground water recharge and even are a source of employment [Ref: Pant *et. al*, 2003; Groffman and Crawford, 2003; Juliano and Simonovic, 1999; Olewiler, 2004; MFPED, 2004]. It is essential to

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provide an effective institutional framework to manage water bodies through governmental and even non-governmental organizations.

59. Bengaluru has many artificial lakes, built for various hydrological purposes and mainly to serve the needs of irrigated agriculture and other allied purposes. The studies placed on record show that lakes of Bengaluru occupy about 4.8 per cent of the city's geographical area (640 square meters) covering both urban and non-urban areas (Krishna M.B. *et al.*, 1996). The number of these lakes has rapidly fallen from 262 in 1960 to 81 in 1985. The quality of water has reduced due to discharge of industrial effluents and domestic sewage. Conversion of lakes for residential, agricultural and industrial purposes has engulfed many lakes. Similarly, between 1973 and 2007, this region lost 66 lakes with a water spread area of around 1100 hectares due to urban sprawl (Nitin Bassi *et al.*, 2014). General factors affecting wetlands especially lakes are Eutrophication, low dissolved oxygen and pH, sedimentation and heavy metal pollution, biodiversity loss, etc.

60. Studies also reflect that a comparative analysis of drainage network between the Bengaluru urban and rural areas showed that the water bodies in Bengaluru urban district were subjected to intense pressure due to the process of urbanization and increasing population, resulting in loss of interconnectivity, in contrast to water bodies in rural Bangalore, where less pressures from direct human activities were noticed. At Madivala and Bellandur, there is interconnectivity of lakes with the adjacent lakes. Due to conversion and encroachment of two water bodies, connectivity between Yelchenahallikere and Madivala is lost as in the case of *Bellandur* and *Ulsoor lakes* with the conversion of Challegatta tank into a golf course. The GIS analysis revealed that due to developmental activities in the catchment area, the drainage connectivity between the water bodies has been lost.

61. The loss in wetland interconnectivity in Bangalore district is attributed to the enormous increase in population and the reclamation of tanks for various developmental activities. Analysis of Madivala and Bellandur drainage network revealed that encroachment and conversion has resulted in the loss of connectivity between Yelchenhallikere and Madivala. Similarly the drainage network between Bellandur and Ulsoor is lost due to conversion of Chelgatta tank into a golf course (Status of wetlands in Bangalore).

62. In 1995, the National Lake Conservation Authority (NLCA) came up with National Lakes Conservation Plan (NLCP) for Bangalore, specifically aimed at raising the highest state of environmental alarm for dwindling quality of the remnants of the city's lakes. The National Lake Conservation Plan for Bangalore came with the theme of "*Integrated Lake Ecology with Water Quality*. This plan aimed at improving urban sanitation and health conditions, especially for the weaker sections of the society living within the lake catchment area. The plan also called for eco-friendly, low-cost, waste management bio-systems like "engineered wetlands". A total of 4 sub-systems comprising of around 20 lakes were selected for the first phase of the NLCP. These four subsystems included Agara Lake System (Hulimavu, Doddabegur, Madiwala, Puttenahalli; Agara Kere); Hebbal System (Narasipura I and II; Dodda Bomassandra, Hebbal Kere, and Nagavara); Bellandur Lake System (Ulsoor, Bellandur, Vartur); and Dorekere System (Vasanthapura, Janardhana, Dorekere, Moggekere). Rs. 5.542 Crore were sanctioned for the restoration of the Bellandur Lake under NLCP in January 2003. The proposal specified the following tasks for the restoration: de-silting of lakes, fencing around the lakes, afforestation and gardening, sewage water treatment, interception chambers, diversion channels, oxidation ponds, de-weeding of lakes, community sanitation, solid waste and garbage disposal, recreational facilities. This was to be a five year phasing project (1995–2000.) divided into the catchment area development (CAD); Sewage diversion channels; De-silting and Weed control; Face-lifting of lake; Biological studies and public awareness program; land acquisition, and

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others. The total cost for five years was estimated at Rupees Twenty-One Crores, Twenty Lakhs and Thirty five thousands.

63. In late 2000, the Research and Development wing of KSPCB published its report on comprehensive monitoring of lakes in and around Bangalore Metropolitan area to assess the state of the water quality. This was an interesting report given the weight of the output carried after the first phase of the city's lakes restoration process. KSPCB's results as a result of water quality monitoring on 44 selected lakes (including all but 2 in the NLCP list) revealed that most lakes still remained highly polluted.

64. The LDA instituted in January 2002, identified about 60 lakes for immediate restoration soon after it was established. This program, like the NCLP one previously was proposed to be a five year phasing project costing Rs. 250 Crores, almost ten times the estimated cost proposed by the NLCA in 1995. These selected lakes included Ulsoor Lake, Sankey tank, Agara Lake, Narasipura Lake, Lal Bagh Lake, Dodda Bamasandra Lake, Hebbal Lake, Nagavara Lake and Bellandur Lake. The LDA's main objectives were: Resuscitation of lakes to boost aquifers, Diversion and treatment of sewage to generate alternative sources of raw water; improving sanitation and health conditions; and preserving the habitat of aquatic life.

65. The wetland management program generally involves activities to protect, restore, manipulate, and provide for the functions and values emphasizing both quality and acreage by still advocating sustainable usage of them [Walters, C. 1986.]. Management of wetland ecosystems requires an intense monitoring, increased interaction and co-operation among the various agencies (state departments concerned with environment, soil, natural resource management, public interest groups, citizen groups, agriculture, forestry, urban planning and development, research institutions, government, policy makers, etc.). Such management goals should not only involve buffering wetlands from any direct human pressures that could affect the wetlands normal functions, but also in maintaining important natural processes that operate on them that may be altered by human activities. Wetland management has to be an integrated approach in terms of planning, execution and monitoring requiring effective knowledge on a range of subjects from ecology, economics, watershed management, and planners and decision makers, etc. All this would help in understanding wetlands better and evolving a more comprehensive solution for long-term conservation and management strategies.

We have noticed the above studies on record to bring clarity in regard to the importance of these water bodies and need-oriented significance to maintain the wetlands and catchment areas in the interest of environment, ecology, biodiversity and hydrological balance. The merit or otherwise, of these cases have to be examined in light of these studies, which is a matter of record.

66. It is alleged that respondents 9 and 10 had started the construction activity of their projects without grant of Environmental Clearance and it is sought to be substantiated by placing the Google Images on record. However, it cannot be disputed that subsequently both these respondents obtained ECs for the projects in question on 17th February, 2012 and 30th September, 2013, respectively. After the grant of Environmental Clearance, the respondents were expected to carry on with the projects strictly as per the terms and conditions of the orders granting them Environmental Clearance. The allegation is that they have carried out the constructions in violation of the conditions of the Environmental Clearance and have encroached upon the wetlands and catchment areas of the lakes.

67. The Environmental Information System (ENVIS), Centre for Ecological Sciences, Indian Institute of Science, Bangalore had carried out a study and submitted a report on the need for ‘Conservation of Bellandur Wetlands: Obligation of Decision Makers to Ensure Intergenerational Equity’. This report had specifically dealt with the activity of

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the SEZ projects by Karnataka Industrial Area Development Board in six zones. It was opined that this activity is contrary to Sustainable Development as the natural resources, lakes and wetlands get affected due to such activity. Removal of Rajakaluve (storm water drains) and gradual encroachment over them amounts to removal of lake connectivity, which enhances the episodes of flood and associated disasters. The Supreme Court of India, in Civil Appeal No. 1132/2011 while expressing concern regarding encroachment, particularly over lakes, had directed the State Governments to remove encroachments on all community lands. Even the High Court of Karnataka in Writ Petition No. 817/2008 had directed that the lakes should be protected across Karnataka, prohibited dumping of garbage and sewage in lakes, removal of encroachments, plantation of trees in consultation with experts lake surroundings and to declare it a 'No Development Zone' around the lakes. The report also speaks of water shortage by stating that BWSSB had not given NOC to respondent no. 9 and had communicated inability to supply such huge quantity of water on regular basis, as these projects require 4,587 kilolitres water per day (4.58 MLD per day). In this report, the Institute did not approve of the decision of the authorities to go ahead with such huge project, but also made reference to the ecological and environmental implications as follows:—

"Ecological and Environmental Implications:

- Land use change: Conversion of watershed area especially valley regions of the lake to paved surfaces would alter the hydrological regime.
- Loss of Drainage Network: Removal of drain (Rajakaluve) and reducing the width of the drain would flood the surrounding residential as the interconnectivities among lakes are lost and there are no mechanisms for the excessive storm water to drain and thus the water stagnates flooding in the surroundings.
- Alteration in landscape topography: This activity alters the integrity of the region affecting the lake catchment. This would also have serious implications on the storm water flow in the catchment.

The dumping of construction waste along the lakebed and lake has altered the natural topography thus rendering the storm water runoff to take a new course that might get into the existing residential areas. Such alteration of topography would not be geologically stable apart from causing soil erosion and lead to siltation in the lake.

- Loss of Shoreline: The loss of shoreline along the lakebed results in the habitat destruction for most of the shoreline birds that wade in this region. Some of the shoreline wading birds like the Stilts, Sandpipers; etc will be devoid of their habitat forcing them to move out such disturbed habitats. It was also apparent from the field investigations that with the illogical land filling and dumping taking place in the Bellandur lakebed, the shoreline are gobbled up by these activities.
- Loss of livelihood: Local people are dependent on the wetlands for fodder, fish etc. estimate shows that wetlands provide goods and services worth Rs. 10500 per hectare per day (Ramachandra et al., 2005).

Decision makers need to learn from the similar historical blunder of plundering ecosystems as in the case of *Black Swan event* (http://blackswanevents.org/?page_id=26) of evacuating half of the city in 10 years due to water scarcity, contaminated water, etc. or abandoning of Fatehpur Sikhri and fading out of AdilShahi's Bijapur, or ecological disaster at Easter Island or Vijayanagara empire.

It is the responsibility of Bangalore citizens (for intergenerational equity, sustenance of natural resources and to prevent human-made disasters such as floods, etc.) to stall the irrational conversion of land in the name of development

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and restrict the decision makers taking the system (ecosystem including humans) for granted as in the case of *Bellandur wetlands* by KIADB."

This report also highlighted the threats faced by the wetlands in Bengaluru with particular reference to SEZ Bellandur wetlands, which is the land in question. The report recorded as follows:

"Greater Bangalore had 207 water bodies in 1973 (Figure 6), which declined to 93 (in 2010). The rapid development of urban sprawl has many potentially detrimental effects including the loss of valuable agricultural and eco-sensitive (e.g. wetlands, forests) lands, enhanced energy consumption and greenhouse gas emissions from increasing private vehicle use (Ramachandra and Shwetmala, 2009). Vegetation has decreased by 32% (during 1973 to 1992), 38% (1992 to 2002) and 63% (2002 to 2010).

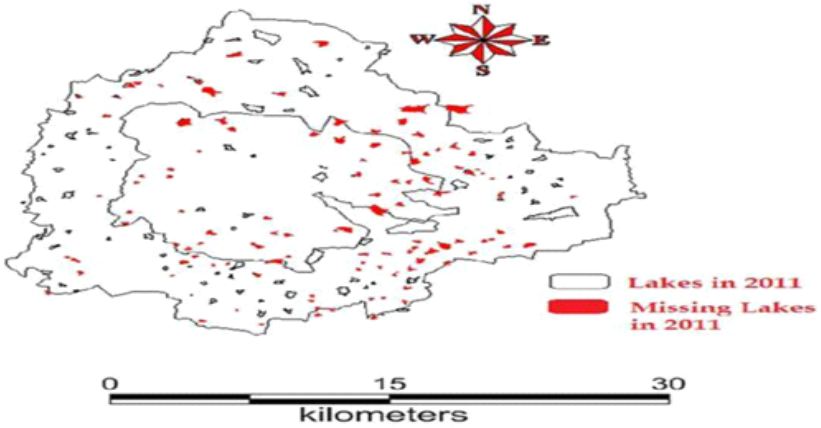


Figure 6: Lakes encroached by land mafia

Disappearance of water bodies or sharp decline in the number of water bodies in Bangalore is mainly due to intense urbanisation and urban sprawl. Many lakes (54%) were encroached for illegal buildings. Field survey of all lakes (in 2007) shows that nearly 66% of lakes are sewage fed, 14% surrounded by slums and 72% showed loss of catchment area. Also, lake catchments were used as dumping yards for either municipal solid waste or building debris (Ramachandra, 2009a; 2012a). The surrounding of these lakes have illegal constructions of buildings and most of the times, slum dwellers occupy the adjoining areas. At many sites, water is used for washing and household activities and even fishing was observed at one of these sites. Multi-storied buildings have come up on some lake beds that have totally intervene the natural catchment flow leading to sharp decline and deteriorating quality of water bodies. This is correlated with the increase in built up area from the concentrated growth model focusing on Bangalore, adopted by the state machinery, affecting severely open spaces and in particular water bodies. Some of the lakes have been restored by the city corporation and the concerned authorities in recent times. Threats faced by lakes and drainages of Bangalore:

1. Encroachment of lakebed, flood plains, and lake itself;
2. Encroachment of rajakaluves/storm water drains and loss of interconnectivity;
3. Lake reclamation for infrastructure activities;
4. Topography alterations in lake catchment;
5. Unauthorised dumping of municipal solid waste and building debris;
6. Sustained inflow of untreated or partially treated sewage and industrial effluents;

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7. Removal of shoreline riparian vegetation;
8. Pollution due to enhanced vehicular traffic.

These anthropogenic activities particularly, indiscriminate disposal of industrial effluents and sewage wastes, dumping of building debris have altered the physical, chemical as well as biological integrity of the ecosystem. This has resulted in the ecological degradation, which is evident from the current ecosystem valuation of wetlands. Global valuation of coastal wetland ecosystem shows a total of 14,785/ha US$ annual economic value. Valuation of relatively pristine wetland in Bangalore shows the value of Rs. 10,435/ha/day while the polluted wetland shows the value of Rs. 20/ha/day (Ramachandra et al., 2005). In contrast to this, Varthur, a sewage fed wetland has a value of Rs. 118.9/ha/day (Ramachandra et al., 2011). The pollutants and subsequent contamination of the wetland has telling effects such as disappearance of native species, dominance of invasive exotic species (such as African catfish, water hyacinth, etc.), in addition to profuse breeding of disease vectors and pathogens. Water qualityanalyses revealed of high phosphates (4.22-5.76 ppm) levels in addition to the enhanced BOD (119-140 ppm) and decreased DO (0-1.06 ppm). The amplified decline of ecosystem goods and services with degradation of water quality necessitates the implementation of sustainable management strategies to recover the lost wetland benefits.

SEZ in Bellandur Wetlands: Irrational decision of setting up SEZ at Bellandur wetland would affect the lake. The Mixed Use Development Project - SEZ (figure 6) is proposed along Sarjapur Road in a wetland between Bellandur and Agara Lake, extending from 77°38′28.96″ E to 77°38′57.99″E of Longitude and 12°55′ 24.98″ N to 12°55′44.43″ N of Latitude with an area of 33 hectare. The proposal of the project is to construct residential areas, offices, and retail and hotel buildings in this area.



Figure 6: SEZ

Significance of the Region:

1. Wetlands with remediation functional ability (function as *kidneys* of the landscape). Removal of wetlands will affect the functional ability of the lake and would result in the death of Bellandur lake;
2. Considering severe water shortage to meet the drinking water requirement in Bangalore, there is a need to remove deposited silt in the Bellandur lake, which will enhance the storage capacity and in turn helps in mitigating the water

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requirement;

3. Wetlands aid in recharging groundwater as soil are permeable;
4. Belanduru lake provide food (fish, etc.) and fodder;
5. Retain the excess water and prevent flooding in the vicinity;
6. Large number of farmers in the downstream is dependent on Belanduru lake water for agriculture, vegetable, etc.

Realizing these, BDA has aptly earmarked these regions in CDP 2005 for "ENVIRONMENT PROTECTION AND HERITAGE CONSERVATION". The masterplan includes the protection of valleys and tanks as part of the vision and enforcing the ban on construction over protected areas. CDP 2015: As per CDP 2015, valley region are "No Development Zone"

1. In case of water bodies a 30.0 m buffer of 'no development zone' is to be maintained around the lake (as per revenue records) with exception of activities associated with lake and this buffer may be taken into account for reservation of park while sanctioning plans.
2. If the valley portion is a part of the layout/development plan, then that part of the valley zone could be taken into account for reservation of parks and open spaces both in development plan and under subdivision regulations subject to fulfilling section 17 of KTCP Act, 1961 and sec 32 of BDA Act, 1976.
3. Rajakaluve/storm water drains categorized into 3 types namely primary, secondary and tertiary. These drains will have a buffer of 50, 25 and 15m (measured from the centre of the drain) respectively on either side. No activities shall be permitted in the buffer zone."

This technical report was prepared in the year 2013 when these projects had already commenced their constructions. Of course, as per the case of the project proponents themselves, the construction activity was not in full swing.

68. After inspection of the projects in question, another report was prepared by the Regional Office, Southern Zone (Bengaluru) of the Ministry of Environment and Forests, Government of India, in relation to the building project undertaken by respondents No. 9, which was sent to the Additional Principal Chief Conservator of Forests (Central), Ministry of Environment and Forests, Bangalore, on 14th August, 2013. It reported on the construction of mixed use development with residential, retail, hotel office, SEZ and Non-SEZ by respondent No. 9. In part III of this report, the MoEF commented upon each condition of the order granting Environmental Clearance and compliance thereto. It noticed that the projects are under initial stages, i.e. only levelling and excavation works are going on. It will be useful to refer to some of the significant observations relating to the compliance of the conditions of the Environmental Clearance in relation to the project of Respondent No. 9 in this Report. They read as follows:

Sl. No.	Conditions	Compliance
xiv)	Disposal of muck, construction debris during construction phase should not neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority	The project authorities stated that, the excavated soil from the project site would be stored in Rachenahalli village, K.R. Puram Hobli, Bangalore East Taluk which is about 10 km away from the site and further stated that, the construction debris will be reused/recycled for back filling/sub base work for roads, pavements, drains

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		etc., within the project site and the earth work excavated material will be managed through back filling between foundations on the back side of retaining walls and underground tanks/sumps and also will be reused for filing up low lying areas within the site. As on today the levelling and excavation works are going on. The foundation work of commercial block in Phase-I has been started from here the excavated earth is kept just adjacent to this foundation work within the site and agreed to reuse back.
xv)	Soil and ground water samples should be tested at the project site during the construction phase to ascertain that there is no threat to ground water quality by leaching of heavy metals and or other toxic contaminants and reports submitted to SIEAA.	Soil (one location) and ground water (…….location) samples are being tested on monthly basis through the third party. The heavy metal has not been analyzed yet and agreed to analyse in future.
xvi)	Construction spoils, including bituminous material and other hazardous materials, must not be allowed to contaminate water courses and the dumpsites for such material must be secured so that they should not leach into the ground water.	The project authorities assured that hazardous material will not be used in the site.
xx)	Fly ash should be used as building material in construction as per the provisions of fly Ash Notification of September 1999 and amended as on August, 2003.	Fly ash bricks are not used because there is no coal based thermal power plant located within 200 km of the project site.
xxiv)	No ground water is to be drawn without permission from the Central Ground Water Authority.	Agreed to comply. The project construction activities are under initial stages. As gathered that, the ground water is purchased from outside for drinking and sanitation purpose.
xxxiv)	The project authority shall maintain and operate the common infrastructure facilities created including STP and solid waste management facility for a period of 5 years after commissioning the project.	Agreed to comply.
xxxix)	The natural sloping pattern of the project site shall remain unaltered and the natural hydrology of the area be	Execution of the project will necessarily sloping pattern of the project site and the natural

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	maintained as it is to ensure natural flow of storm water.	hydrology of the area and hence specific condition no xxxix cannot be complied.
xl)	Lakes and other water bodies (if any) within and/or at the vicinity of the project area shall be protected and conserved.	The project area is in the catchment area of Bellandur lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by the project activities either during construction or during operation phase.
B. General Conditions		
ii)	All commitments made by the proponents in their application, and subsequent letters addressed to the SEAC/SEIAA should be accomplished before the construction work of the project is completed.	The project authorities have agreed to implement all the commitments made to the SEAC/SEIAA before the construction work of the project is completed.
v)	In case of any changes(s) in the scope of the project, the project would require a fresh appraisal by this Authority	Agreed to comply.
xii)	The issuance of Environmental Clearance doesn't confer any right to the project proponent to operate/run the project without obtaining Statutory clearance/sanctions from all other concerned authorities.	Agreed to comply.

There does not appear to be any such similar report in relation to the project of respondent no. 10. However, there are other general reports which deal with the project properties of respondent No. 10.

69. We have also noticed above that the High Court of Karnataka in W.P. No. 817/2008 had passed certain directions in regard to the preservation of lakes and wetlands in the State of Karnataka. These directions were based upon the report dated 21st February, 2011, submitted to the High Court by the Committee Chaired by Justice N.K. Patil, in relation to the preservation and restoration of lakes in and around the city of Bangalore. In the report, recommendation had been made with regard to preservation of lakes, noticing rapid urbanisation of Bangalore city as the main cause for reduction in water bodies. While referring to an earlier report of 1985, prepared by Shri N. Lakshman Rau Expert Committee, constituted by the Government of Karnataka, it was emphatically stated that necessity of lake preservation is more pronounced in the context of urbanization, when city takes more and more villages into its fold, as in case of Bangalore city. It stated that the lakes are the lung spaces of a city and climate moderators, adding to thermal ambience. Most importantly in this report, emphasis was made on the role of the LDA in preservation of lakes. It was referred that the LDA was constituted in the year 2002 as a registered society. Its jurisdiction extends over lakes in metropolitan cities area of Bangalore inclusive of Bangalore Metropolitan Region Development Authority area, besides this LDA has jurisdiction over the lakes in other Municipal Corporations and Town Municipal Councils within the State. It is the regulatory, planning and policy making body with nodal

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functions for protection, conservation, reclamation, restoration, regeneration and integrated development of lakes in its jurisdiction. Another important feature of this report was in relation to augmenting water supply to Bangalore city from these lakes. It stated that Bangalore population was likely to exceed 12 million by 2020 and at the current growth rate, the water shortage may lead to water crisis, if the problem is not tackled with advance planning. Report further stated that, the ground water was depleting and that bore-wells of 700 to 1000 feet deep were quite common in this city. These all were indicators of a grave situation.

70. The Hindu newspaper on 3rd June, 2013 had widely raised the issue of environmental degradation in the catchment area of the Bellandur Lake due to construction of mixed use development projects, as also undertaken by both the respondents no. 9 and 10. After this report, instructions were issued by the CEO of LDA on 4th June, 2013 to inspect the lake premises. Inspection was conducted by Shri S.R. Nagraj, EE, LDA and Sh. C. Nagesh Rao, AEE, LDA. After the inspection, a report dated on 12th June, 2013 was prepared which concluded as under:

> At the time of inspection it was observed that huge construction activities were observed in this catchment area and on enquiry it was informed that the above said land was acquired by the KIADB for SEZ and allotted for different agencies for construction of apartment complexes, malls, etc., Due to huge construction activities in this catchment area there is change of land use and directly impacting the catchment of Bellandur lake.
>
> As per the Para 2 of the report, it is reported that the wet land (a marshland ecosystem typically found around water bodies) has shrunk. It is not the wetland of Bellandur lake. It is achcutland of Agara lake. Originally Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake. It is catchment area which was shrunk due to allotment of agricultural land by KIADB to different agencies for construction of apartment complexes, malls etc.
>
> Hence KIADB's colossal “mixed - use development project in the catchment area of Bellandur will probably have adverse effect to Bellandur lake.

The above conclusions suggest that these multi-purpose construction activities of huge dimensions could have adverse environmental and ecological impacts. Of course, the report submitted by the MoEF primarily deals with the construction activity and projects of respondent No. 9 only. However, the other reports are of general nature which deals with the construction of multi-purpose projects and their adverse impacts on environment, ecology with particular reference to the water bodies like lakes etc.

71. In order to analyse the environmental and ecological impacts of these multipurpose projects appropriately, the case can be divided into two parts: First, what are the irregularities or breaches which the project proponents, i.e. respondent nos. 9 and 10 as stated to have been committed. Secondly, the likely impacts of these projects upon the environment and ecology of the area in question, particularly on the water bodies.

Proposed Mixed Use Development Project is located at Agara Village and Jakkasandra Village, Begur Hobli, Bangalore South. Special Economic Zone (SEZ) is located between the Agara Lake & Bellandur lake. The Mixed Use Development Project - SEZ is proposed along Sarjapur Road in the catchment of lakes Bellandur and Agara Lake, extending from 77°38′28.96″ E to 77°38′57.99″ E of Longitude and 12°55′ 44.43″ N of Latitude with an area of 33 hectare. Agara Lake is located at other side of 45 m wide road whereas Bellandur Lake is just 50 m away from the project boundary. Rajakaluve (Natural Drain) is running all along the project site.

Proposal envisages for construction of residential apartment with (Block-1 (Block A:

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2B+G+ 14UF; Block B: 2b+G+10 UF) + Block 2 (2B+G+14UF), retail, hotel & office building with 3B+G+11 UF, SEZ with 3B+G+11UF +Terrace and Non-SEZ 3B+G+12UF+Terrace on the plot area of 2,92,636.03 sqm. The total built-up area is 11,50,454.98 sq. m. The total water requirement is 4587 KLD and the investment is of Rs. 2347 crores.

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

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

73. There are four reports on record which are suggestive enough that there would be adverse impacts of these projects upon the environment and ecology of the area, particularly on the lakes and the wetlands. The report prepared by the Committee chaired by Justice N.K. Patil filed before the Tribunal states that the lakes and the wetlands should be protected in the city of Bangalore. Measures were required to be taken in that direction and to remove encroachment in lake area and *Rajakaluves*. The large construction activity was stated to be prejudicial to the environment in those areas. Contents of this report are neither denied nor admitted by respondent no. 9 who, in its reply, has required contents of the report to be proved by the applicants. On the other hand, respondent no. 10 has submitted that there are no *Rajakaluves* or canal in his property and thus the above recommendations are not applicable to respondent no. 10. The other report on record is prepared by ENVIS, Centre for Ecological Sciences, Indian Institute of Science, Bangalore. This report focuses on possible consequences for setting up SEZ in Bellandur Lake area and also recommends restoration of wetlands in that area. In this report, how the land use changed from

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2007 to 2012 was illustrated, stating that the wetlands have decreased from 32.80 ha to 5.95 ha, whereas the Open land (Conversion of Wetlands to SEZ Construction site) has increased from 0.6 ha to 27.46 ha. Noticing the major violations, it was recorded that development in wetland violates the CDP 2015, which would result into flooding in the vicinity due to encroachment of drains, alterations in topography, encroachment of lake-bed and encroachment of lake itself by dumping debris and filling up of same; there was violation of 30 metre buffer (lake floodplain); traffic congestion and filling of a portion of lake with building debris. While respondent no. 9 termed the report as speculative and based on presumptions, respondent no. 10 denied it as frivolous and baseless and termed it as tailor made to support the case of the applicants. At this stage, we may also notice that in the column of 'Acknowledgement' of this Report, the name of Koramangala Residents Association has been mentioned. It is contended that this Association had approached Dr. T.V. Ramachandran to prepare the Report. The said Resident Association is a party to one of the Writ Petitions before the Hon'ble High Court of Karnataka. Therefore, it is argued that the report stand vitiated because of the self-interest of Dr. T.V. Ramachandran who was a member of the Committee which prepared the said report. On the other hand, the contention of the applicant and respondent nos. 11 and 12 is that Dr. T.V. Ramachandran prepared the said Report as a part of scientists' social responsibility and that the observations and findings of the report by the scientists do not become invalid/*non est* merely because the study was undertaken at the request of a concerned group of citizens.

74. The objection taken by the respondents does not appeal to us. This report was not prepared by an individual but by a team of scientists from a Government Institute. Apparently, it appears to be in discharge of his scientists' social responsibility that Dr. T.V. Ramachandran participated in preparing this report. However, this issue loses its significance, because it is the content of the report which is to be considered by the Tribunal and not the persons who have prepared the report. There is a vague denial to the contents of the report by the respondents, who have not placed any report on record to contradict the contents of this report, which itself is largely supported by three other reports placed on record.

75. Report which is placed on record by respondent no. 10 is prepared by a Private Consultant, which only mentions that there will be no adverse impacts on environment. This report does not aspire confidence, as it is not data based and in fact, does not meet any of the issues raised in the four reports placed by the applicant on record. The other two reports are the MoEF Monitoring Committee report and the inspection report prepared by the LDA, which we have already discussed in some detail above.

76. The MoEF monitoring report prepared by regional office of MoEF has forwarded on 14th August, 2013 mentions two most significant conditions which have a substantial bearing on the matters in issue before us is with regard to the preservation of the water bodies in Bengaluru and the natural slopping pattern and natural hydrology of the area to remain unaltered. These conditions having been noticed as not possible to be adhered to, we really do not understand as to how these projects have been permitted to progress any further.

77. Lastly, it is the report of LDA, which as already noticed is the Society created by the Government of Karnataka with a specific purpose of protecting the lakes and the wetlands. This report had specifically recorded that the projects are bound to have adverse impacts on the catchment area of Ballendur Lake. This report has also been denied by the respondents stating that it is frivolous and according to respondent no. 10, there are no wetlands around Bellandur Lake.

78. There is sufficient material by way of reports, google images and other documents that the Bellandur Lake and even other lakes for that matter have wetlands

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and catchment areas. There are encroachments on the Rajakaluves as well as on the catchment areas of the water bodies. The adverse impacts of this colossal mixed development projects had got the attention of all concerned, including the Press and the issue was widely raised. This resulted in the inspection by the LDA as well as other authorities, which commented on the adverse impacts of this project in the interest of environment and ecology. Furthermore, the stop-work notices issued by different authorities from time to time also suggest that the work and progress of the projects was in violation of the laws in force. Of course, these stop-work notices have been challenged before the Hon'ble High Court of Karnataka which has granted stay on these notices, but the fact of the matter remains that various authorities including the BBMP and the KIADB have found out and observed that the construction should be stopped forthwith.

79. The cumulative effect of the above discussion would be that there is a definite possibility of environment, ecology, lakes and the wetlands being adversely affected by these projects. There are multiple public authorities including SEIAA involved in regulating such projects and they are also responsible for protecting interest of environment and ecology while keeping in mind the settled canon of sustainable development. It is the contention of the respondent nos. 9 and 10 that there are large numbers of other projects located around these lakes. If that be so, then we have no hesitation in observing that various regulatory authorities including SEIAA ought to have examined the cumulative Environmental Impact Assessment in these cases on the water bodies as the protection of the water bodies, the wetland and the catchment areas of the lakes is the obligation of these authorities.

80. It was vehemently contended before us that the construction of the projects is nearing completion and huge money of respondent nos. 9 and 10 including investments made by various land and other area purchasers is at stake. Thus, according to these respondents, the application should be declined by the Tribunal only on that fact. We are not impressed with this contention at all. The respondents have started the construction even prior to the grant of Environmental Clearance and instigated the public to invest money. They cannot be permitted to take advantage of their own wrong. However, it may also not be in the interest of justice and particularly, while applying the Principle of Sustainable Development in terms of Section 20 of the NGT Act, that these properties be demolished but that does not mean that they should not be directed to take all measures and precautions, even if it results in necessary demolition of some parts of the projects in the interest of environment, ecology and protection of lakes and wetlands. It cannot be disputed that there is serious scarcity of water in the city of Bangalore. Impact of these projects on water bodies ought to have been of fundamental consideration before the authorities concerned. In our considered view, they have failed to take complete notice of this fact and act objectively in light of the laws in force.

81. The project proponents, i.e. respondent nos. 9 and 10 submitted their respective applications for grant of Environmental Clearance to the concerned authorities in the year 2011 and 2012 respectively. The Environmental Clearance was granted to the Project proponents on 17th February, 2012 and 30th September, 2013 respectively. However, construction activities had been carried out by the project proponents much prior to the grant of Environmental Clearance. There is not even an iota, much less valid, reason placed by the project proponents before the Tribunal as to why the applications for Environmental Clearance were moved at such belated stage and why construction was started prior to grant of Environmental Clearance. The provisions of the EIA Notification, 2006 which was in force at all relevant times does not permit carrying on of any construction or any other activity in relation to the project prior to the grant of Environmental Clearance. The provisions of this Notification admit of no ambiguity that specific project or activities shall not require

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prior Environmental Clearance. All steps in that direction, including site selection, are the subject matter of scrutiny at the time of grant of Environmental Clearance. The project proponents are clear defaulters of compliance of the statutory provisions. They cannot take advantage of their own wrong of raising construction prior to submission of the application for Environmental Clearance and even grant of Environmental Clearance. The respondent nos. 9 & 10 are intentional defaulters. They violated the law being fully conscious of their obligations under different laws in force. The authorities concerned had sanctioned the building plans of these respondents subject to a specific stipulation that such sanction was subject to grant of other clearances including Environmental Clearance under different laws. Since the construction and allied activities were being carried on contrary to law, they even would be deemed to have caused pollution not only of the environment but more particularly of the lakes and caused obstructions of the Rajakaluves in the area. Applying the Principle of 'Polluter Pays' as contemplated under Section 20 of the NGT Act, the project proponents must be held liable to pay compensation for restoration and restitution of the environmental pollution and degradation. There is sufficient material on record to show that there has been environmental degradation. From the date of grant of Environmental Clearance, the construction is supposed to be carried on in accordance the conditions of the Environmental Clearance and with due protection of the environment, which the respondents have failed to comply with. The project proponents are liable to pay compensation under the 'Polluter Pays' Principle, for the illegal and unauthorised construction carried on in violation of the environmental laws and prior to grant of Environmental Clearance. One who violates law renders itself liable for consequences of such violations.— Respondent nos. 9 & 10 commenced excavation and even construction prior to submission of their application for grant of Environmental Clearance. Obviously at that stage they did not take any protections in the interest of environment and ecology in relation to the project activities. The terms & conditions in that behalf came to be stipulated only in the order granting Environmental Clearance; prior thereto the entire project activity was illegal and unauthorised. The mining, excavation and construction work adversely affected the Lakes and the Rajakaluves. The possible risk and degradation, due to construction and operation of the project include actual damage and even threats to environment and ecology pertaining to pollution, encroachment, eutrophication, illegal mining of soil, loss of Biodiversity, ungoverned human activities and cultural misuse. The consequential damage and degradation of environment and ecology from the activities of these projects can broadly be placed under two distinct heads, while invoking the Polluter Pays Principle. First being the damage that has already been caused because of such activity, particularly, for the period when the activity was carried out in an illegal and unauthorised manner and without sanction of the competent authorities. Secondly, the damage and environmental degradation that is likely to occur upon completion of these projects and the liability of the concerned respondents in regard to restoration and restitution of environment. Another very important aspect which cannot be overlooked by the Tribunal is with regard to the respondent nos. 9 & 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with condition no. xxxix and xl (or alike conditions) in the order granting the Environmental Clearance. This has even been noticed by the MoEF in its monitoring report dated 14th August, 2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof.

82. It may not be possible to determine the above compensation with exactitude but that does not mean that the project proponents can avoid liability in that regard. The Supreme Court in the case of *Sterlite Industries (India) Ltd.* v. *Tamil Nadu PCB*, JT

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2013 (4) SC 388, had directed payment of Rs. 100 crores by the Company which operated without consent of the Board. It needs to be noticed that M/s Sterlite Industries was possessed of the consent from the Board prior as well as subsequent to the period for which the compensation was imposed. In order to comply with the principle stated by the Hon'ble Supreme Court in the case of *Sterlite Industries* (supra) and as followed in the case of *Sarang Yadwadkar* v. *The Commissioner, Pune Municipal Corporation*, 2013 ALL (I) NGT REPORTER (DELHI) 299, discussed hereafter, we may refer to some relevant facts and figures from the records before us. The project area of respondent no. 9 is nearly 2,92,636.03 sq. m, while the built-up area is 13,50,454.98 sq.m., with a project cost of Rs. 2,347 Crores. While in the case of respondent no. 10 the plot area is 33,333.00 sq.m., while the built-up area is 72,180.64 sq. m., with a project cost of Rs. 450 Crores. The afore-noticed project activities and construction started much prior to moving of application and grant of Environmental Clearance. The principle which has often been adopted by the Courts, including the Hon'ble Supreme Court in the case of *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590, is to direct deposit of certain percentage of the cost of the project at the first instance. In the case of *Goa Foundation*, the Supreme Court had directed deposit of 10 per cent of the value of the mineral extracted. In the case of *Krishankant Singh* v. *National Ganga River Basin Authority*, 2014 ALL (I) NGT REPORTER 3 DELHI 1, this Tribunal directed Simbhaoli Sugar Mills which had operated without consent of the concerned Board for a long period and had polluted the environment, Phuldera drain as well as the underground water, to pay a compensation of Rs. Five Crores. The said sugar factory had operated with the consent of the Board prior and subsequent to this period. The compensation was imposed for flouting the law and for causing the pollution. It may be noticed that the appeal against the said judgment of the Tribunal was dismissed by the Supreme Court in Civil Appeal No. Civil Appeal No. 10434 of 2014 vide its order dated 21st January, 2015. This liability primarily accrues on account of the illegal and unauthorised activities carried on by the Project Proponents. These are purely commercial ventures of respondent nos. 9 & 10 to make high profits, while causing environmental and ecological degradation and also by carrying on illegal and unauthorised activities, particularly, for the period prior to grant of Environmental Clearance.

83. The drawings and construction plans had been approved by respondent no. 7 vide its letter dated 4th July, 2007 and 22nd April, 2008, for respondent nos. 9 and 10 respectively. Despite this, the applications for seeking Environmental Clearance were moved much later i.e. on 3rd March, 2011 and 4th February, 2012. Even these letters granting approval of drawing and plans had mandated that these Respondents are expected to comply with all bye-laws and even other laws in force. When they applied for renewal of building plans and drawings, the same were granted vide letter dated 11th October, 2013 and 3rd January, 2013 respectively, where specific conditions were stipulated that other laws in force relating to construction and use of premises should be complied with and they were required to install ETP/STPs and use of recycled water for washing and flushing was mandated. From this, it emerges that there was clear onus on the part of these respondents to seek Environmental Clearance before commencing construction, which they intentionally and flagrantly violated and furthermore, there is nothing on record to show that the conditions with regard to setting up of ETP/STP and recycling of water have fully been satisfied. Furthermore, respondent no. 10 has been issued a specific letter on 18th March, 2013 by respondent no. 7 directing it that no construction works should commence prior to obtaining Environmental Clearance. They were also directed to obtain Consent for Establishment from KSPCB which was also not adhered to. They were required to furnish the requisite information within 7 days. These are the apparent violations of law committed by respondent nos. 9 and 10.

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84. We are conscious of the fact that the projects in question have already been granted the Environmental Clearances and that they have raised constructions in furtherance to such Environmental Clearances. Still as discussed above, the matters in relation to conditions of the orders granting Environmental Clearances, adverse impacts of these projects upon the environment, ecology, lakes and wetlands, need for taking preventive and remedial measures for restoration of the environment and ecology as well as protection of the water bodies in future, are the matters which have been examined by us above. We may also appropriately make reference to the judgment of this Tribunal in the case of *Sarang Yadwadkar* v. *The Commissioner, Pune Municipal Corporation*, 2013 ALL (I) NGT REPORTER (DELHI) 299, wherein under somewhat similar circumstances, the Tribunal had while declining to demolish the construction raised in the project, issued substantive directions in the interest of environment and ecology and for protection of River Mutha in Pune. The Respondent Corporation had preferred an appeal before the Supreme Court of India being Civil Appeal Diary No. 3445 of 2015, which was dismissed on merits on 12th February, 2015. The Project Proponent was thus directed to comply with the directions of the Tribunal including partial demolition of the project in question. We have already indicated that at this stage the entire amount of compensation payable on various counts by the Project Proponent cannot be determined with exactitude, however, liability to pay for violation of law, raising construction unauthorizedly and illegally, renders the Project Proponent liable to pay the environmental compensation forthwith. The final amounts for restoration of environment and ecology would be determined by the Committee constituted in this judgment. We are of the considered view that 10 per cent of the project cost may be somewhat on the higher side and to maintain the equitable balance between the default and the consequential liability of the applicant, we direct the Project Proponents to pay at the first instance compensation for their default at the rate of 5 per cent of the cost of the project. In light of this, Respondent No. 10 would be liable to pay a sum of Rs. 22.5 crores and Respondent No. 9 would be liable to pay a sum of 117.35 crores.

85. This is a fit case where in exercise of its jurisdiction in terms of Section 20 of the NGT Act, the Tribunal has to invoke both polluter pays principle as well as precautionary principle. Further, where the Tribunal should also apply the principles of law enunciated by the Supreme Court and this Tribunal in the case of *Sterlite Industries* (supra), *Krishankant Singh* (supra) and *Sarang Yadwadkar* (supra) and issue the following directions:

1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal *inter alia* but specifically on the issues stated herein after.
   a) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
   b) CEO of the Lake Development Authority, Karnataka State.
   c) Chief Town Planner of BBMP, Bangalore.
   d) Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.
   e) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.
   f) Dr. Siddharth Kaul, former Advisor to MoEF.
   g) An Senior Officer from the National Institute of Hydrology, Roorkee.
2) Member Secretary of the Karnataka State Pollution Control Board shall act as the Convenor of the Committee and would submit the final report to the Tribunal.
3) The Committee shall inspect not only the sites where the projects in question are

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located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the water bodies, with particular reference to lakes.

4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of respondent nos. 9 and 10 or by any of the projects in the area in question.

5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

6) The Committee shall substantially notice if any of the conditions of the Environmental Clearance order in each case of respondent nos. 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.

8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore.

9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letter dated 4th July, 2007 and 22nd April, 2008 respectively. Further, the Committee would also report whether both respondent nos. 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing etc., in terms of letters dated 11th October, 2013 and 3rd January, 2013, issued by the Karnataka Industrial Area Development Board to respondent nos. 9 and 10 respectively.

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

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

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

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

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

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

86. Thus, we dispose of the Original Application No. 222 of 2014 in the above terms while leaving the parties to bear their own costs.

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(2017) 9 Supreme Court Cases 499

(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

Writ Petition (C) No. 114 of 2014

COMMON CAUSE .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

With

Writ Petition (C) No. 194 of 2014

PRAFULLA SAMANTRA AND ANOTHER .. Petitioners;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petitions (C) No. 114 of 2014 with No. 194 of 2014, decided on August 2, 2017

A. **Mines and Minerals — Illegal mining — Ambit of expression "illegal mining" — Held, illegal mining does not only mean mining outside lease area — Illegality can take place even inside lease area — Purpose of MMDR Act is to ensure scientific mining, balanced utilisation of natural resources and protection and preservation of environment by adhering to statutory provisions — Non-adherence would attract penalty and termination of lease — Adherence to statutory provisions necessarily implies adherence to provisions of Environment (Protection) Act, 1986, laws pertaining to air and water pollution and Forest Conservation Act, 1980 besides adherence to mining statutes — Submission against interpreting "illegal mining" with such wide ambit on ground that definition of "illegal mining" was inserted vide R. 2(ii-a), Mineral Concession Rules, 1960, by Noti. dt. 26-7-2012 and thus present case not covered, not tenable**

— Mineral Concession Rules, 1960 — Rr. 2(ii-a), 22, 22-A, 27 and 37 — Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 21, 4-A, 2, 3, 4, 5, 6, 8, 10, 12, 13, 18 and 23-C — Mineral Conservation and Development Rules, 1988 — Rr. 9, 10, 13, 31, 37, 38 and 41 — Environment (Protection) Act, 1986 — S. 3 — Forest (Conservation) Act, 1980 — S. 2 — Words and Phrases — "Illegal mining" (Paras 84 and 128 to 130)

B. **Mines and Minerals — Illegal mining — Suspension of illegal mining leases in Odisha — Directions issued**

— IAs Nos. 45 (filed by Zenith Mining), 47 (filed by *K*) and IA No. 66 (filed by *J*) dismissed as they did not have forest clearance (FC) or environmental clearance (EC) or both

— *S* (IA No. 9) actually had a working lease and has wrongly been included as a non-operational lease — Thus said IA also dismissed but as infructuous — However, State Government directed to ensure about valid statutory clearances

— All other IAs disposed of in terms of present order — Clarified that only after compliance with statutory requirements and full payment of compensation and other dues, mining leaseholders can restart their mining operations —

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And this should be deposited on or before 31-12-2017 — State Government directed to decide pending show-cause notices if not already decided by 31-12-2017 (Paras 16, 222 to 225, 227 and 232)

C. **Mines and Minerals — Illegal mining — Violation of S. 6, MMDR Act, that is, relating to entitlement of maximum area for each person — Thus this illegality also relating to benami holders — CEC not finding any such illegality in respect of 2 of 7 mining leases, accepted as nothing contrary shown — For other leases, matter directed to be listed after two weeks for fixing of dates of hearing — Mines and Minerals (Development and Regulation) Act, 1957, S. 6 (Paras 192, 193, 197 and 226)**

D. **Mines and Minerals — Illegal mining — Illegal mining in State of Odisha — Procedure for transfer of lease under R. 37, MCR — Alleged violation of — Fresh look by new Committee, required — Directions**

— Matter adjourned for setting up of new Committee to identify lapses and recommend preventive measures — Validity of constitution of earlier committee was disputed and resultant litigation pending in High Court — Mineral Concession Rules, 1960, R. 37 (Paras 198 to 200, 202, 205, 228 and 229)

E. **Mines and Minerals — Illegal mining — Illegal mining in State of Odisha — Judicial notice taken of rampant mining and huge sums of money involved**

— Judicial notice taken of illegal and rampant mining in State of Odisha causing untold misery to the tribals in area — Over-extraction of 2155 lakhs MT of iron ore and manganese ore — Rs 17,516 crores worth mineral ore produced without environmental clearance (EC) or in excess of EC — And the above figures do not include mining without forest clearance (Paras 1, 25, 26 and 48)

F. **Mines and Minerals — Illegal mining — Facts found by Justice M.B. Shah Commission under Commissions of Inquiry Act, 1952, held, reliable for present purpose — It cannot be said that mining leaseholders were not given opportunity of hearing before Commission or the Commission did not follow the procedure**

— Even otherwise First Report being a fact-finding report there is no question of giving any notice to leaseholders or their cross-examination — Public Accountability, Vigilance and Prevention of Corruption — Inquiries/Commission of Inquiry — Commissions of Inquiry Act, 1952 — Ss. 8-B and 8-C — Procedure of notice and cross-examination under (Paras 33, 34, 43 and 45)

G. **Mines and Minerals — Illegal mining — Illegal mining in Odisha — CEC report — Credibility and relevance**

— CEC reports highlighted gravity of situation — Contention that CEC exceeded its limit by reporting on issues other than environment and forest, not tenable — Directions of Court to CEC indicate that CEC was expected to report on all aspects of illegal mining — Credibility of CEC report

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cannot be doubted, though its recommendations are subject to satisfaction of Court (Paras 51 to 58 and 60)

H. **Mines and Minerals — Rehabilitation and Regeneration — Projects for tribal welfare and area development — Special Purpose Vehicle (SPV) for affected districts of Odisha — Huge amounts already available — Large amounts to be made available due to present order — Utilisation of funds and accountability — Directions**

— Chief Secretary, Odisha (Chairman, SPV) directed to provide audited accounts and ensure that amounts are utilised for benefit of tribals in affected districts — While taking up said projects, a bottom up planning and participatory approach should be followed (Paras 215, 217, 219, 220 and 231)

The probe into illegal mining in State of Odisha had started due to an IA filed against illegal mining in the State in a pending writ petition, that is, *T.N. Godavarman*, WP (C) No. 202 of 1995. Reports of Central Empowered Committee (CEC) appointed by Court and inquiries made under the Commissions of Inquiry Act, 1952 revealed that all kinds of illegalities were committed by the mining leaseholders in the State of Odisha. The Court, therefore, suspended the illegal mining leases in the State of Odisha. The Court however, permitted them to approach appropriate authorities for necessary approvals and clearances and thereafter approach the Court for modification of interim order against them. Some of the IAs in present matter were thus filed by mining leaseholders for modification of said interim order. The present case also clarified about the grounds on which illegality can be said to have been committed by mining leaseholders under various statutes and rules made thereunder and the remedial measures.

Held :

Expression "illegal mining" — Ambit

The overall purpose and objective of the MMDR Act as well as the Rules framed thereunder is to ensure that mining operations are carried out in a scientific manner with a high degree of responsibility including responsibility in protecting and preserving the environment and the flora of the area. Through this process, the holder of a mining lease is obliged to adhere to the standards laid down under the Environment (Protection) Act, 1986 or the EPA as well as the laws pertaining to air and water pollution and also by necessary implication, the provisions of the Forest (Conservation) Act, 1980. Exploitation of the natural resources is ruled out. If the holder of a mining lease does not adhere to the provisions of the statutes or the rules or the terms and conditions of the mining lease, that person is liable to incur penalties under Section 21 of the MMDR Act. In addition thereto, Section 4-A of the MMDR Act which provides for the termination of a mining lease is applicable. This provides that where the Central Government, after consultation with the State Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, prevention of pollution, etc. then the Central Government may request the State Government to prematurely terminate a mining lease. (Para 84)

It was wrongly submitted that a mining operation only outside the mining lease area would constitute "illegal mining". That is because the definition of "illegal mining" in Rule 2(*ii-a*) of the MCR was inserted by a Notification dated 26-7-2012

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while the present case is concerned with an earlier period. That apart, as mentioned above, the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the EPA, the FCA, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral. (Paras 128 and 129)

Mining operations outside a leased area are obviously illegal or unlawful mining. Illegal mining takes within its fold excess extraction of a mineral over the permissible limit even within the mining lease area which is held under lawful authority, if that excess extraction is contrary to the mining scheme, the mining plan, the mining lease or a statutory requirement. Even otherwise, it is not possible to accept such narrow interpretation since the matter is about a natural resource which is intended for the benefit of everyone and not only for the benefit of the mining leaseholders. (Para 130)

Frightening facts and figures — Judicial notice of illegal and rampant mining in State of Odisha causing untold misery to the tribals in the area

The facts revealed during the hearing of these writ petitions filed under Article 32 of the Constitution suggest a mining scandal of enormous proportions and one involving megabucks. The lessees in the districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha have rapaciously mined iron ore and manganese ore, apparently destroyed the environment and forests and perhaps caused untold misery to the tribals in the area. Steps taken by the lessees to ameliorate the hardships of the tribals, is perhaps not more than a drop in the ocean—also too little, too late. (Para 1)

There are some frightening figures mentioned by CEC in its final report. According to CEC, excess mining without environmental clearance or beyond what was authorised by the environmental clearance is 2130.988 lakhs MT of iron ore and 24.129 lakhs MT of manganese ore making a total of 2155.117 lakhs MT of iron ore and manganese ore. This does not include extraction of ore without forest clearance. These figures give an indication of the extent of excess or illegal or unlawful mining carried out. In terms of rupees, according to CEC the total notional value of minerals produced without an environmental clearance or in excess of the environmental clearance, at the weighted average price of minerals as proposed by the Indian Bureau of Mines comes to about Rs 17,091.24 crores for iron ore and about Rs 484.92 crores for manganese ore making a total of Rs 17,576.16 crores. Again, this does not include mining without forest clearance. Therefore, these can be referred to as megabucks and rapacious mining. (Paras 25 and 26)

Common Cause v. *Union of India*, IA No. 35 in IA No. 17 in WP (C) No. 114 of 2014, order dated 16-1-2015 (SC); *Common Cause* v. *Union of India*, WP (C) No. 114 of 2014, order dated 7-10-2015 (SC); *Common Cause* v. *Union of India*, (2016) 11 SCC 455, *referred to*

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Significant observations of Commission about miserable condition of tribals

The Commission made certain significant observations as follows:

(*a*) The tribals in the area have been displaced or stay in pathetic and miserable conditions in same area. There is rampant air pollution with the trees having the colour of minerals making it clear that tribals are forced to breathe polluted air and drink polluted water.

(*b*) Streams and ground water is polluted and there is hardly any facility of drinking water. Women have been seen fetching water from dirty nalas.

(*c*) Mining companies and beneficiation plants are drawing water from rivers and nearby water resources are getting depleted at a fast rate. River Baitrani has been seriously affected by this activity.

(*d*) Basic facilities such as medical facilities, shelter/residence, education facilities are absent. Roads have a heavy flow of traffic and on one road of the area about 7000 trucks passed during night time.

(*e*) The labour is not being paid adequate wages beyond the minimum wages even though the income of the mine owners runs into billions of rupees. (Para 48)

Facts found by Justice M.B. Shah Commission under Commissions of Inquiry Act, 1952, reliable for present purpose

The First Report of Justice M.B. Shah Commission under Commissions of Inquiry Act, 1952 is relevant for the purpose of the present judgment and order. A resume of the procedure followed will indicate that full opportunity was given to the leaseholders to have their say. [Ed.: For said resume, see paras 35 to 42.] (Paras 33 and 34)

The First Report is generally a limited fact-finding enquiry on the basis of information supplied by the mining leaseholders. Therefore, there is absolutely no question of any notice being issued to any mining leaseholder under Section 8-B or the right of cross-examination being granted to any mining leaseholder under Section 8-C, Commissions of Inquiry Act, 1952. The Commission made adequate efforts to collect the facts and this collation in the First Report was possible with the assistance of the mining leaseholders and the government authorities. Therefore, the procedure adopted by the Commission in collecting facts was neither irregular nor illegal. Any mining leaseholder who wanted to be heard was given an opportunity of being heard and was fully aware of what the Commission was attempting to achieve and if any particular mining leaseholder chose not to associate with it, it was at his or her own peril. All the mining leaseholders were fully aware of what was going on, if not personally then certainly through their list of counsel running into 18 pages or their representatives individually or their Federation. (Para 43)

There is no challenge to the reports of the Justice Shah Commission. However, the present judgment can confine itself to some limited facts adverted to by CEC in its final report. The reports of the Commission are not necessary for conclusions of the present judgment. (Para 45)

Goa Foundation v. *Union of India*, (2014) 6 SCC 590, *relied on*

CEC Report — Credibility and relevance

The gravity of the situation is apparent from the report of CEC and the Commission also seems to support it. (Para 51)

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The contention that in giving the Report dated 16-10-2014 CEC has exceeded its remit is not tenable. Though in *T.N. Godavarman Thirumulpad*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC), the Court stated that the report of CEC should not cover cases other than forest and environmental issues, subsequent orders have been completely overlooked by the respondent leaseholders inasmuch as on 21-4-2014 CEC was specifically directed to make a list of such lessees who are operating the leases in violation of the law. The various orders of the Court make it clear that the jurisdiction of CEC was not limited and it was expected to give a detailed report on all aspects of illegal mining or mining being carried out without any lawful authority in whatever manner. The initial objection raised on behalf of the leaseholders is therefore rejected. (Paras 52 to 54)

T.N. Godavarman Thirumulpad v. *Union of India*, (2014) 14 SCC 160, *relied on*

T.N. Godavarman Thirumulpad v. *Union of India*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC), *clarified*

CEC constituted in *T.N. Godavarman Thirumulpad (50)*, (2013) 8 SCC 198 is now an established body which renders extremely valuable advice to the Supreme Court and provides factual material on the basis of which the Court can make some recommendations and pass appropriate orders. (Para 55)

T.N. Godavarman Thirumulpad (50) v. *Union of India*, (2013) 8 SCC 198; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2013) 8 SCC 204, *relied on*

The credibility of CEC cannot be doubted though its recommendations are subject to the satisfaction of the Supreme Court. In the present cases, CEC as a fact-finding body has functioned impartially and it is only on the conclusions arrived at by CEC on the basis of the facts gathered that there can be some debate and discussion. Anyone may disagree with the views of CEC and there is no need to make heavy weather about this at all. (Para 56)

Samaj Parivartana Samudaya v. *State of Karnataka*, (2013) 8 SCC 154, *relied on*

In its Final Report dated 16-10-2014, CEC has stated that it held meetings with the Chief Secretary and other senior officials of the State of Odisha and others on six dates. It also heard the leaseholders and others on seven dates and it held meetings with three of the leaseholders, that is, Jindal Steel and Power Ltd. (JSPL), Sarda Mines Pvt. Ltd. (SMPL) and Essel Mining and Industries Ltd. (Essel) on 10-9-2014. CEC visited the site of the mining lease of SMPL from 4-3-2014 to 7-3-2014 and had site visits of a number of other lessees from 12-7-2014 to 16-7-2014. The report of CEC dealt with leasewise and yearwise details of production of iron ore and manganese ore, permissible production and production without environmental clearance/beyond environmental clearance. Separately, CEC has dealt with the facts concerning SMPL and JSPL pursuant to a meeting held with them on 11-9-2014. (Paras 57, 58 and 60)

Projects for tribal welfare and area development — special purpose vehicle (SPV) — Directions

A scheme for setting up a special purpose vehicle (SPV) for tribal welfare and area development works has been implemented by the State of Odisha. (Para 215)

T.N. Godavarman Thirumulpad v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 27-1-2014 (SC); *T.N. Godavarman Thirumulpad* v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 28-4-2014 (SC), *referred to*

T.N. Godavarman Thirumulpad (104) v. *Union of India*, (2008) 2 SCC 222, *cited*

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Some of the salient features of the scheme are as follows: The SPV will undertake specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. These will include works/projects related to livelihood intervention, health, water supply and sanitation, education, special programmes for development of women and children, entrepreneurial development of local people, communication and infrastructure projects and agro silvi-horticultural based livelihood projects through identified agencies/ Government Departments. While taking up such projects/works a bottom up planning and participatory approach will be followed. (Para 217)

Some of the mining leaseholders offered to deposit and in fact did deposit an amount of Rs 237.05 crores for utilisation by the SPV for carrying out welfare works and activities in the districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha. There are huge amounts available with the special purpose vehicle for tribal welfare and area development works but nothing is known about the utilisation of the funds. Further, as a result of present order very large amounts will again be made available to the State of Odisha. These amounts should also be kept with the special purpose vehicle. (Para 219)

To ensure that the amounts are utilised for the benefit of tribals in the affected districts and for area development works, the Chief Secretary of Odisha, ex-officio Chairman of SPV is directed to file an affidavit stating the work done as well as provided the audited accounts of the receipt and expenditure of the SPV from its inception. The Chief Secretary of Odisha should file said affidavit within a period of six weeks and in any case on or before 30-9-2017. The Registry will list these petitions along with the affidavit immediately after its receipt for consideration. (Paras 220 and 231)

Minimum area for which mining lease may be granted — Violation of and benami holders

There have been several amendments to S. 6 relating to the maximum area for which a mining lease may be granted to a person. (Paras 189 to 192)

In this background, CEC examined the case of seven mining leaseholders. (Para 193)

As far as Bonai Industrial Company Ltd. and Feegrade & Co. Pvt. Ltd. are concerned, CEC has concluded that they have not violated Section 6 of the MMDR Act. That being the position, and nothing having been shown to the contrary, the recommendation of CEC in this regard is accepted. With regard to remaining 5 companies hearing on the matter was required, thus, postponed. (Para 197)

The Court would hear Jindal Steel and Power Ltd., Sarda Mines Private Ltd., Rungta Group of Companies and Essel Mining and Industries Ltd. on the applications filed by them. For this purpose matter to be listed again after two weeks so that a convenient date of hearing can be fixed. (Para 226)

Procedure for transfer of lease — Alleged violation of — Fresh look by new committee, required — Directions

CEC has discussed the possible violation of Rule 37 of the MCR. In this context, it was noted that there were several mining leaseholders who had entered into raising contracts which were actually a transfer of the lease as postulated by Rule 37 of the MCR. (Para 198)

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On this basis the State of Odisha constituted a Committee on 8-7-2011 to carry out a study of the financial transactions between the mining leaseholders and the raising contractors to determine whether there is a prima facie violation of Rule 37 of the MCR. (Para 199)

The Committee concluded that eight mining leaseholders violated Rule 37 of the MCR. (Para 200)

The Central Government in revision under Section 30, MMDR Act and Rule 55, MCR set aside the order constituting the Committee. Writ petitions thereagainst filed by the State of Odisha are pending in the High Court. (Para 202)

It will be appropriate if in fact a fresh look is given to the matter. Thus the Court would like to hear the eight mining leaseholders concerned on the question of appointing an appropriate committee in respect of the applicability of Rule 37 of the Mineral Concession Rules to them. The Court would hear all the parties with regard to setting up of an Expert Committee presided over by a retired Judge of the Supreme Court to identify the lapses that have occurred over the years that have enabled rampant illegal and unlawful mining in Odisha and to recommend preventive measures not only to the State of Odisha but generally to all other States where mining activities are proceeding on a large scale. (Paras 205, 228 and 229)

State of Rajasthan v. *Gotan Lime Stone Khanij Udyog (P) Ltd.*, (2016) 4 SCC 469, *relied on*

Common Cause v. *Union of India*, WP (C) No. 114 of 2014, order dated 28-4-2017 (SC), *referred to*

IA pursuant to liberty granted

Pursuant to the liberty granted to move for modification of the interim order dated 16-5-2014 suspending the illegal mining leases, 17 interim applications for modification were received. (Para 16)

Common Cause v. *Union of India*, (2014) 14 SCC 155; *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590, *referred to*

IAs Nos. 45 (filed by Zenith Mining) and 47 (filed by *K*) are dismissed since their lease has not been extended or has been determined and they do not have any environmental clearance or forest clearance. (Para 222)

IA No. 66 (filed by *J*) is also dismissed since there is no forest clearance available. (Para 223)

S (IA No. 9) actually had a working lease and has wrongly been included as a non-operational lease. Accordingly, IA No. 9 (filed by *S*) is also dismissed but as being infructuous. However, it is made clear that the State Government should ensure that the lessee *S* in fact has valid statutory clearances. (Para 224)

Pending show-cause notices issued by the State Government should be decided by 31-12-2017 (if not already decided) after hearing the notices concerned. (Para 225)

The amounts determined as due from all the mining leaseholders should be deposited by them on or before 31-12-2017. Subject to and only after compliance with statutory requirements and full payment of compensation and other dues, the mining leaseholders can restart their mining operations. (Para 227)

All other pending IAs are disposed of in terms of orders in present case. (Para 232)

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I. **Mines and Minerals — Judicial Intervention — Illegal mining in State of Odisha — Prayer for CBI inquiry — Instead of CBI inquiry, expert committee to be set up under guidance of retired Supreme Court Judge to identify lapses and suggest measures for corrective steps that can be taken for future and for other States (Paras 47, 49, 50, 229, 213 and 214)**

Held :

Justice M.B. Shah Commission under the Commissions of Inquiry Act, 1952 suggests that Central Bureau of Investigation (CBI) may be directed to investigate into allegations of corruption made against politicians, bureaucrats and others. This however, would be considered at the appropriate stage. (Para 47)

Commission felt that the Vigilance Commission was unlikely to conduct an impartial and independent enquiry for arriving at just and proper findings because of external pressures. Accordingly, it would be more appropriate if the Central Bureau of Investigation (CBI) conducts a detailed enquiry into all cases that have been registered between 2008 and 2011. (Para 49)

It was also noted that the Railways have issued demand notices to the extent of Rs 1874 crores. The latest position with regard to these notices is not available. It was also noted that notices have been issued in 146 cases to various leaseholders for recovery of mined ore as per Section 21(5) of the MMDR Act for recovery of more than Rs 59,000 crores! (According to CEC the figure exceeds Rs 61,000 crores)!! (Paras 49 and 50)

For the present, no direction is passed with regard to any investigation by CBI. What is of immediate concern is to learn lessons from the past so that rapacious mining operations are not repeated in any other part of the country. This can be achieved through the identification of lapses and finding solutions to the problems that are faced. Undoubtedly, there have been very serious lapses that have enabled large-scale mining activities to be carried out without forest clearance or environment clearance and eventually the persons responsible for this will need to be booked but the violation of the laws and policy need to be prevented in other parts of the country. The rule of law needs to be established. Therefore, it would be appropriate if an Expert Committee is set up under the guidance of a retired Judge of the Supreme Court to identify the lapses that have occurred over the years enabling rampant illegal or unlawful mining in Odisha and measures to prevent this from happening in other parts of the country. (Paras 229 and 213)

There is no doubt that the recommendations of the Commission can form a platform for the study but it is also necessary to use technology for maintenance of registers, records and data through computers, satellite imagery, videography and other technology tools so that the natural wealth of our country is not rapaciously exploited for the benefit of a few to the detriment of a large number, many of whom are tribals inhabiting the land for several generations. (Para 114)

J. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment — EIA Notification — EIA 1994 — Applicability to mining leases — Following aspects, clarified**

— (i) statutory basis of environmental clearance (EC) for mining activities, (See para 86)

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— (ii) Meaning of EC, (See para 87)

— (iii) When prior approval of EC required, (See paras 88, 89 and 96) — Requirement of environmental clearance (EC) if pollution load is to exceed due to expansion or modernisation of any activity or if new project listed in Sch. I is undertaken

— (iv) When prior EC not required, (See paras 91 and 96)

— (v) Base year for computing extent of modernisation and expansion for calculation of pollution load, that is, 1993-1994, (See paras 93, 94 and 96)

— (vi) renewal of mining leases, (See paras 100 to 108) (Paras 86 to 108)

Held :

Having regard to to object of the MMDR Act, an Environment Impact Notification dated 27-1-1994 (EIA 1994) was issued by the Central Government in exercise of powers conferred by Section 3(1) and Section 3(2)(*v*) of the EPA read with Rule 5(3)(*d*) of the Environment (Protection) Rules, 1986. It is a prohibitory Notification and directs that on and from the date of its publication in the Official Gazette:

(*i*) expansion or modernisation of any activity (if pollution load is to exceed the existing one); and

(*ii*) a new project listed in Schedule I to the notification, shall not be undertaken unless it has been accorded environmental clearance (EC) by the Central Government in accordance with the procedure specified in the Notification. (Para 86)

The Notification provides, among other things, that in case of mining operations, site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years from commencing mining operations. What this means is that on receipt of an EC a mining leaseholder can extract a mineral only from a specified site, up to the sanctioned capacity and only for a period of five years from the date of the grant of an EC. This is regardless of the quantum of extraction permissible in the mining plan or the mining lease and regardless of the duration of the mining lease. Consequently, a mining leaseholder would necessarily have to obtain a fresh EC every five years and can also apply for an increase in the sanctioned capacity. There is no concept of a retrospective EC and its validity effectively starts only from the day it is granted. Thus, the EC takes precedence over the mining lease or to put it conversely, the mining operations under a mining lease are dependent on and "subordinate" to the EC. (Para 87)

On 4-5-1994 an Explanatory Note was added to EIA 1994. As per its First Note, if any proposed expansion or modernisation activity results in an increase in the pollution load, then a prior EC is required. The project proponent should approach the State Pollution Control Board concerned (for short SPCB) for certifying whether the proposed expansion or modernisation is likely to exceed the existing pollution load or not. If the pollution load is not likely to be exceeded, the project proponent will not be required to seek an EC but a copy of such a certificate from SPCB will require to be submitted to the Impact Assessment Agency which can review the certificate. (Paras 88 and 89)

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Eighth Note of Explanatory Note dated 4-5-1994 to EIA 1994, makes it clear that existing mining projects that have a no-objection certificate from SPCB before 27-1-1994 will not be required to obtain an EC from the Impact Assessment Agency. Of course, this is subject to the substantive portion of EIA 1994 and the 1st Note. However, if the existing mining project does not have a no-objection certificate from SPCB, then an EC will be required under EIA 1994. (Para 91)

A reading of EIA 1994 read with the 1st Note implies that the base year for computing extent of expansion and modernisation or increase of annual production and its impact on existing pollution load is the immediately preceding year, that is, 1993-1994. This is obvious from the opening sentence of the 1st Note, that is, a project proponent is required to seek environmental clearance for a proposed expansion/modernisation activity if the resultant pollution load is to exceed the *existing levels*. In its report, CEC also has taken 1993-1994 as the base year. (Para 93)

Circular dated 28-10-2014 cannot be interpreted to mean that production even prior to 1993-1994 could be taken as the base year. The *existing levels* mentioned in the 1st Note clearly have reference to the immediately preceding year and not to a preceding year in a comparatively remote past. Further, a very high annual production in any one year is not reflective of a consistent pattern of production — it could very well be a freak year and that freak year certainly cannot be a basic standard or the norm to measure expansion. Then if the interpretation sought to be given is accepted, there would be an absence of consistency and a lack of uniformity with different mining leaseholders having different base years. This is hardly conducive to good governance. Finally, EIA 1994 was intended to prevent the existing environmental load from increasing based on the existing data of the immediate past and not data of a few years gone by. The only exception that could be made in this regard would be if there is no production during 1993-94. In that event, the immediately preceding year would be relevant and that is the only reasonable interpretation for the use of the words "or its preceding years". (Para 94)

On a composite reading of EIA 1994, it is clear that:

(*i*) A no-objection certificate from SPCB was necessary for continuing mining operations;

(*ii*) An expansion or modernisation activity required an EC unless the pollution load was not exceeded beyond the existing levels;

(*iii*) The base year for determining the pollution load and therefore the proposed expansion would be with reference to 1993-94;

(*iv*) Whether an expansion or modernisation would lead to exceeding the existing pollution load or not would require a certificate from SPCB which could be reviewed by the IAA;

(*v*) New projects require an EC; and

(*vi*) Existing projects do not require an EC unless there is an expansion or modernisation for the duration (if any) of the validity of the certificate from SPCB. (Para 96)

Nothing more needs to be stated on this subject since CEC has proceeded to discuss the issue of mining in excess of the EC or in excess of the mining plan only

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from the year 2000-01 onwards. The prior period may, therefore, be ignored and it is the period from 2000-01 onwards which is actually relevant for the present discussion. (Para 96)

Circular dated 14-5-2002 indicates that several units had come up in violation of EIA 1994. The MoEF had taken the view that such units may be permitted to apply for an EC by 31-3-1999 which was then extended to 30-6-2001 by Circulars dated 5-11-1998 and 27-12-2000, respectively. By the Circular dated 14-5-2002 the deadline for applying for an EC was extended up to 31-3-2003 as a last and final opportunity to obtain an ex post facto EC in respect of units which had commenced mining operations without obtaining a prior EC in violation of EIA 1994. (Paras 98 and 99)

M.C. Mehta v. *Union of India*, (2004) 12 SCC 118, *referred to*

As to whether EC was required particularly in respect of pre-EIA 1994 mining leases and operations it was wrongly submitted that it was not obligatory for the mining leaseholders, who did not expand their mining operations, to obtain an EC and in any event the period for obtaining an EC was extended till 31-3-2003 with ex post facto approval. (Paras 100 and 102)

With regard to EIA 1994 and Circular dated 14-5-2002, the intention of the MoEF was not to legalise the continuance of mining activity without complying with the requisite stipulations. If that were unfortunately so, then it would demonstrate a lack of sensitivity of the MoEF to the principles of sustainable development and the object behind issuing EIA 1994. EIA 1994 would apply to the renewal of a mining lease that came up for consideration post 27-1-1994. For the renewal of a mining lease, an EC was required by the mining leaseholder. EIA 1994 is mandatory. It is applicable to all mining operations—expansion of production or even increase in lease area, modernisation of the extraction process, new mining projects and renewal of mining leases. A mining leaseholder is obliged to adhere to the terms and conditions of a mining lease and the applicable laws and the mere fact that a mining plan has been approved does not entitle a mining leaseholder to commence mining operations. Although the two clarificatory Circulars issued by MoEF on 28-10-2004 and 25-4-2005 extended the date to apply for EC and although it gave the possibility of getting an ex post facto EC, that cannot be treated as a signal to the mining leaseholders that obtaining an EC was not mandatory or that if it was not obtained, the default was retrospectively condonable. Compliance with the MMDR Act and the Rules framed thereunder are important for the protection and preservation of the environment. The obligation of everyone to abide by the law cannot be overlooked. That the MoEF took a soft approach cannot be an escapist excuse for non-compliance with the law or EIA 1994. (Paras 103 to 108)

M.C. Mehta v. *Union of India*, (2004) 12 SCC 118, *relied on*

K. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment — EIA Notification — EIA 2006 and EIA 1994 — Applicability to mining leases — Concept of ex post facto environmental clearance (EC) or retrospective EC, held, completely alien to environmental jurisprudence not only under EIA 1994 but also under EIA 2006**

— No doubt EC obtained earlier would continue under certain circumstances — But a prior EC would be required (a) if there is over-extraction

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beyond permissible limits or (b) if there is renewal of mining lease even if there is no over-extraction — And for this a mining plan is subordinate to EC, meaning that, mining would be illegal even if permitted by mining plan if such mining plan does not conform to conditions of EC or if a prior EC has not been obtained where required — And an EC will come into force not earlier than the date of its grant

Held :

The EIA 2006 Notification dated 14-9-2006 required prior EC for projects or activities mentioned in the Schedule to it both for major as well as minor minerals if the leased area is 5 ha or more. Several mining leaseholders, in compliance with EIA 2006, applied for and were granted an EC. (Para 109)

Circular dated 2-7-2007 clarified as follows:

(*i*) Mining leases, where no EC was required under EIA 1994 would continue to operate without an EC;

(*ii*) If there was an increase in the lease area or enhancement of production, an EC was required by the mining leaseholder;

(*iii*) All projects would require an EC at the time of renewal of the mining lease even if there was no increase in the lease area or enhancement of production. (Paras 111 and 112)

There is no confusion, vagueness or uncertainty in the application of EIA 1994 and EIA 2006 insofar as mining operations were commenced on mining leases before 27-1-1994 (or even thereafter). Post EIA 2006, every mining leaseholder having a lease area of 5 ha or more and undertaking mining operations in respect of major minerals (with which we are concerned) was obliged to get an EC in terms of EIA 2006. (Para 115)

A mining plan is subordinate to an EC. Having an approved mining plan does not imply that a mining leaseholder can commence mining operations. That being so, a modified mining plan without a revised or amended EC, is of no consequence. Allegedly, under the shield of a modified mining plan, illegal or unlawful mining in the form of mining without an EC, mining by over-reaching EIA 1994 and EIA 2006 was being carried out. (Para 117)

In a Letter dated 29-10-2010 addressed to the Controller General, Indian Bureau of Mines it was made clear that all modifications of mining plans shall be effective prospectively only and earlier instances of irregular mining shall not be regularised through a modification of the mining plan. (Para 118)

In respect of overproduction, a High Level Committee (called the Hoda Committee) on the National Mineral Policy noted in its Report dated 22-12-2006 that the permissible variation in production as per the Indian Bureau of Mines is ±10% but according to the Letter dated 12-12-2011 issued by the Ministry of Mines, the reasonable variation limit could be ±20%. The fact that in some cases the variation exceeded 20% was a cause for concern which necessitated strict and punitive action. (Paras 120 and 121)

For the purposes of renewal of the mining lease, an application is required to be made by the mining leaseholders and the deemed renewal clause under Rule 24-A of the MCR will come into operation only after an application for renewal is

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made in Form J in Schedule I of the MCR. Under Rule 26 of the MCR, the State Government may refuse to renew the mining lease. In view of EIA 1994, it is quite clear that the renewal of a mining lease would require a prior EC. Circular dated 28-10-2004 issued by MoEF stated that in view of the decision in *M.C. Mehta*, (2004) 12 SCC 118 all mining projects of major minerals of more than 5 ha lease area that had not yet obtained an EC would have to do so at the time of renewal of the lease. (Paras 122 and 123)

M.C. Mehta v. *Union of India*, (2004) 12 SCC 118, *relied on*

The grant of an EC cannot be taken as a mechanical exercise. It can only be granted after due diligence and reasonable care since damage to the environment can have a long-term impact. EIA 1994 is therefore very clear that if expansion or modernisation of any mining activity exceeds the existing pollution load, a prior EC is necessary and even for the renewal of a mining lease where there is no expansion or modernisation of any activity, a prior EC is necessary. Such importance having been given to an EC, the grant of an ex post facto environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment. The concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006. An EC will come into force not earlier than the date of its grant. (Para 125)

L. **Mines and Minerals — Encroachment — Joint survey — Directions to State of Odisha and CEC — Mining outside sanctioned mining areas, held, illegal — Directions issued for proper identification of nature and extent of encroachment of 82 leaseholders — As Joint Survey had been conducted by State of Odisha only in respect of 39 leases, authorities directed to complete survey of remaining 43 leases — CEC directed to present such report before Court on or before 31-12-2017 — Mines and Minerals (Development and Regulation) Act, 1957, S. 4**

Held :

Section 4(1) of the MMDR Act makes it clear that no person can carry out any mining operations except under and in accordance with the terms and conditions of a mining lease granted under the MMDR Act and the Rules made thereunder. Obviously therefore, any person carrying on mining operations without a mining lease, is indulging in illegal or unlawful mining. This would also necessarily imply that if a mining lease is granted to a person who carries out mining operations outside the boundaries of the mining lease, the mineral extracted would be the result of illegal or unlawful mining. (Para 131)

CEC stated that in 82 mining leases for iron ore and manganese ore there were encroachments in the form of illegal mining pits, illegal overburdened dumps, etc. (Para 132)

In respect of these 82 mining leases, the State of Odisha appointed a Committee on the suggestion of the Commission, to survey and identify the exact extent and location of the sanctioned lease area, lease area under occupation of the mining leaseholder and the area under encroachment/illegal mining. The Committee or the Joint Survey consisted of officers of the Revenue Department, Forest Department and Mining Department of the State of Odisha who carried out a field survey in respect of 39 mining leases. The findings of the field survey or the Joint

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Survey were verified by a team comprising of the Director, Mines, Chief Engineer, ORSAC and the Additional Secretary, F & E Department of the Government of Odisha. (Para 133)

It is mentioned in the report of CEC that the Joint Survey for each of the 39 mining leases is technically sound and reliable. However, the fact is that a joint survey has not been conducted in respect of remaining 43 mining leases. (Para 134)

For completing the record and taking the report of CEC to its logical conclusion, it would be appropriate if a fresh Joint Survey is conducted by officers concerned of the Government of Odisha from the Revenue Department, the Forest Department, the Mining Department and any other department that may be deemed necessary. The Forest Survey of India, the MoEF, the Indian Bureau of Mines and the Geological Survey of India should also be associated in the Joint Survey. In our opinion, it would also be appropriate if CEC is also associated in the Joint Survey and the best and latest technology should be made use of including satellite imagery and thereafter a report is submitted in the Supreme Court on or before 31-12-2017 after hearing the 82 lessees identified by the Commission. (Para 135)

M. **Mines and Minerals — Illegal mining — Over extraction — Permissible limits — 20% variation in extraction over and above mining plan as per R. 22(5), MCR — Scope of, explained — Clarified that this does not permit mining leaseholder to extract entire permissible quantity for 5 years plus 20% over extraction in a single year and thereafter extract miniscule amounts over the remaining 4 years — Mining in excess of permissible limits would amount to illegal or unlawful mining or mining without lawful authority — Mineral Concession Rules, 1960, R. 22(5) (Paras 136 and 140)**

Held :

A side issue raised by the learned counsel for the mining leaseholders in this regard was the necessity (if any) of adhering to the annual plan or calendar plan of mining. It was contended that a mining leaseholder could mine in excess of the annual plan. While it is so, this submission must be tempered and appreciated in the proper context. A mining plan is valid for a period of five years but there could be a 20% variation in extraction over and above the mining plan. This is the maximum that is stated to be reasonably permissible according to the Ministry of Mines. In terms of Rule 22(5) of the MCR a mining plan shall incorporate a tentative scheme of mining and annual programme and plan for excavation from year-to-year for five years. At best, there could be a variation in extraction of 20% in each given year but this would be subject to the overall mining plan limit of a variation of 20% over five years. What this means is that a mining leaseholder cannot extract the five year quantity (with a variation of 20%) in one or two years only. The extraction has to be staggered and continued over a period of five years. If any other interpretation is given, it would lead to an absurd situation where a mining leaseholder could extract the entire permissible quantity under the mining plan plus 20% in one year and extract miniscule amounts over the remaining four years, and this could be done without any reference to the EC. The submission in this regard simply cannot be accepted. (Para 136)

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While mining in excess of permissible limits under the mining plan or the EC or FC on leased area may not amount to mining on land occupied without lawful authority, it would certainly amount to illegal or unlawful mining or mining without authority of law. This is the correct interpretation of Section 21(5), MMDR Act. (Para 140)

N. **Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — S. 21(5) — Compensation for illegal mining — When attracted — S. 21(5) is attracted when any person, without lawful authority extracts any mineral from any land — State Government is entitled to recover said illegally extracted mineral or price thereof — Word "any land" not confined to violations outside lease area — It includes violations within mining lease area (Para 151)**

Held :

Section 21(5) of the MMDR Act is applicable when any person raises, without any lawful authority, any mineral from *any land*. In that event, the State Government is entitled to recover from such person the mineral so raised or where the mineral has already been disposed of, the price thereof as compensation. The words "any land" are not confined to the mining lease area. As far as the mining lease area is concerned, extraction of a mineral over and above what is permissible under the mining plan or under the EC undoubtedly attracts the provisions of Section 21(5) of the MMDR Act being extraction without lawful authority. It would also attract Section 21(1) of the MMDR Act. In any event, Section 21(5) of the Act is certainly attracted and is not limited to a violation committed by a person only outside the mining lease area — it includes a violation committed even within the mining lease area. This is also because the MMDR Act is intended, among other things, to penalise illegal or unlawful mining on any land including mining lease land and also preserve and protect the environment. Action under the EPA or the MCR could be the primary action required to be taken with reference to the MCR and Rule 2(*ii-a*) thereof read with the Explanation but that cannot preclude compensation to the State under Section 21(5) of the MMDR Act. The MCR cannot be read to govern the MMDR Act. (Para 151)

Karnataka Rare Earth v. *Deptt. of Mines & Geology*, (2004) 2 SCC 783, *relied on*

Khemka & Co. (Agencies) (P) Ltd. v. *State of Maharashtra*, (1975) 2 SCC 22 : 1975 SCC (Tax) 227, *distinguished*

Director of Public Prosecutions v. *Schildkamp*, 1971 AC 1 : (1970) 2 WLR 279 : (1969) 3 All ER 1640 (HL), *referred to*

Black's Law Dictionary, 7th Edn., p. 1421; Justice Singh, G.P.: *Principles of Statutory Interpretation* (8th Edn., 2001, p. 147), *referred to*

O. **Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — S. 21(5) — Compensation for illegal mining — Quantum — There can be no compromise on quantum of compensation — S. 21(5) contemplates 100% recovery — State should not forego what is its due in order to fill coffers of defaulting lessees (Paras 153 and 154)**

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Held :

100% recovery should be made under the provisions of Section 21(5) of the MMDR. Submission that only 30% of the value of the illegally mined ore should be recovered cannot be accepted. (Para 153)

There can be no compromise on the quantum of compensation that should be recovered from any defaulting lessee. It simply does not stand to reason why the State should be compelled to forego what is its due from the exploitation of a natural resource and on the contrary be a party in filling the coffers of defaulting lessees in an ill-gotten manner. (Para 154)

P. **Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — S. 21(5) — Compensation for illegal mining — Calculation — Base year and period of application — For said calculation, base year of 1993-1994, held, reasonable in present cases — Although some might lose and some might benefit, each leaseholder is given benefit of calculation only from year 2000-2001 and would not be penalised for period prior thereto (Paras 155 to 157)**

Held :

The issue now is with regard to the calculations made by CEC with regard to the production of iron ore and manganese ore without or in excess of the EC and/or the mining plan. The figures were not disputed (except by JSPL and SMPL). Therefore, only the application of the figures requires consideration. (Para 155)

For the said calculation, the base year of 1993-94 is most appropriate. Some lessees might lose in the process while some of them might benefit but that cannot be avoided. In any event, each mining leaseholder is being given the benefit of calculations only from 2000-2001 and is not being "penalised" for the period prior thereto. The mining leaseholders should be grateful for this since the penalty is levied from the date of EIA 1994. The cut-off from 2000-2001 (without interest) is undoubtedly reasonable and there can hardly be any grievance in this regard. The mining leaseholders cannot have their cake and eat it too, along with the icing on top. (Para 156)

Thus the compensation should be payable from 2000-2001 onwards at 100% of the price of the mineral. (Para 157)

Q. **Environment Law — Forests, Wildlife and Zoos — Mining and Industry in Forest Area — Mining in forest areas (in State of Odisha) — Permissibility of — Preconditions, stated, (a) prior approval of Central Government under S. 2, FCA, and (b) payment of net present value (NPV) as directed in *T.N. Godavarman Thirumulpad*, (2010) 15 SCC 177 considering peculiar circumstances prevailing in State of Odisha — (c) However, from 7-1-1998 any mining activity in any forest or DLC forest (forest identified by District Level Committee) is completely illegal and price of mineral extracted is recoverable under S. 21 of MMDR Act until forest clearance (FC) is obtained from Central Government, and 100% of price of iron ore or manganese ore mined without S. 2 approval should be recovered — However, clarified that a leaseholder is only liable to pay 100% price of illegally extracted ore**

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for non-compliance with either FC or EC or both — For not having both FC and EC clearances, leaseholder would not be required to pay 200% — However, this has to be distinguished from NPV — Even if NPV has been paid earlier, additional NPV is neither adjustable not refundable since that falls in a different category altogether — Further, clarified that a violation of FCA is condonable on payment of penal compensatory afforestation charges, and mining leaseholders would be entitled to temporary working permit (Paras 164 to 188)

Held :

After the commencement of the FCA no fresh breaking up of forest land or no fresh clearing of the forest on any such land could be permitted by the State Government or any authority without the approval of the Central Government. However, in respect of broken up land, if the State Government permits the lessee to remove any discovered mineral, it cannot be said that there has been a violation of Section 2 of the FCA particularly since there is no breaking up of any fresh forest land. However, this does not mean that renewal of lease can be claimed as a matter of right. The primary purpose of the FCA is to prevent deforestation and ecological imbalance as a result of deforestation. Therefore, the primary duty under the FCA was to the community and the obligation to society must predominate over the obligation to the individuals. (Paras 164 and 165)

Ambica Quarry Works v. *State of Gujarat*, (1987) 1 SCC 213; *Rural Litigation and Entitlement Kendra* v. *State of U.P.*, 1989 Supp (1) SCC 504, *relied on*

State of Bihar v. *Banshi Ram Modi*, (1985) 3 SCC 643, *distinguished*

Therefore, compliance with Section 2 of the FCA is necessary as a condition precedent even for the renewal of a mining lease. (Para 166)

The definition of the word "forest" for the purposes of the FCA came up for consideration in *T.N. Godavarman Thirumulpad*, (1997) 2 SCC 267. In this context, it was held that "forest" must be understood according to its dictionary meaning and it would cover all statutorily recognised forests, whether designated, reserved, protected or otherwise. The Supreme Court further directed each State Government to constitute within one month an Expert Committee, inter alia, to identify areas which are "forest" irrespective of whether they are so notified, recognised or classified under any law and irrespective of the ownership of the land of such forest. Pursuant to the directions given by the Supreme Court, the State of Odisha constituted District Level Committees (DLC) for identification of forest lands. After the identification process, appropriate affidavits were filed by the State of Odisha in the Supreme Court in 1997-98, the last being dated 6-1-1998. (Paras 167 to 170)

The Court in *T.N. Godavarman Thirumulpad*, (2010) 15 SCC 177 accepted the recommended by CEC that given the peculiar circumstances prevailing in the State of Odisha, mining operations in the entire DLC lands included in the mining leases may be allowed to continue on payment of the net present value (NPV) subject to the fulfilment of other statutory requirements and rules being complied with. (Para 174)

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Consequently, the State of Odisha appears to have implemented the recommendations regarding recovery of NPV and realised an amount of about Rs 1750 crores as additional NPV. (Para 175)

T.N. Godavarman Thirumulpad v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 6-11-2009 (SC); *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 15 SCC 177; *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 3 SCC 312, *referred to*

In addition to the above, the mining leaseholders have subsequently deposited an amount under the heading of penal compensatory afforestation which was introduced through guidelines issued by the MoEF on 3-2-1999. (Para 176)

Given the fact that the defaulting mining leaseholders have been asked to pay and have paid additional NPV as well as an amount towards penal compensatory afforestation, it must be assumed that the violation of the FCA has been condoned to a limited extent, more particularly since in its order dated 7-5-2010 the Court permitted the State of Odisha to accept such recommendations of CEC made in the report dated 26-4-2010 as are acceptable to it. (Para 179)

This still leaves open the question of violation of the order passed by the Supreme Court on 12-12-1996 followed by the order dated 4-3-1997, namely, that mining must cease forthwith in forest areas. In regard to this violation, the only benefit (at best) that can be granted to the mining leaseholders is till 6-1-1998 when the affidavit was filed in IAs Nos. 2746-48 of 2009 in *T.N. Godavarman Thirumulpad*, (2014) 6 SCC 167. With effect from 7-1-1998 any mining activity in forest and DLC lands would clearly be completely illegal and unauthorised and the benefit that the mining leaseholders have derived from this illegal mining would be subject to Section 21(5) of the MMDR Act. Therefore, the price of the iron ore and manganese ore mined by the mining leaseholders from 7-1-1998 is payable until forest clearance under Section 2 of the FC Act is obtained by the mining leaseholders. (Para 180)

T.N. Godavarman Thirumulpad v. *Union of India*, (1997) 2 SCC 267; *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 3 SCC 312; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 6 SCC 167; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 6 SCC 167, 172 (footnote 1), *referred to*

7-1-1998 has been fixed as the cut-off date despite the orders dated 12-12-1996 and 4-3-1997 only for the reason that it is possible that some mining leaseholders were not aware that they were inadvertently conducting mining operations on DLC lands which were identified by the State of Odisha as forest lands on the directions of the Court. For the purposes of Section 21(5) of the MMDR Act, they are entitled to the benefit of doubt along with the other mining leaseholders. (Para 183)

Therefore, the suggestion of CEC that only a part of the notional value (in this case 70%) of the iron ore and manganese ore produced by the mining leaseholders should be recovered is not acceptable. Section 21(5) of the MMDR Act should be given full effect and the recovery should be to the extent of 100%. (Para 185)

Mineral extracted either without an EC or without an FC or without both would attract the provisions of Section 21(5) of the MMDR Act and 100% of the price of the illegally or unlawfully mined mineral must be compensated by the mining leaseholder. To the extent of the overlap or the common period, obviously only one set of compensation is payable by the mining leaseholder

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to the State of Odisha. However, whatever payment has already been made by the mining leaseholders towards NPV, additional NPV or penal compensatory afforestation is neither adjustable nor refundable since that falls in a different category altogether. (Para 186)

A violation of the FCA is condonable on payment of penal compensatory afforestation charges. This obviously would not apply to illegal or unlawful mining under Section 21(5) of the MMDR Act, but the mining leaseholders would be entitled to the benefit of any temporary working permission granted. (Para 187)

T.N. Godavarman Thirumulpad v. *Union of India*, (2011) 15 SCC 658; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2011) 15 SCC 681, *relied on*

To avoid any misunderstanding, confusion or ambiguity, it is clarified as follows:

(*1*) A mining project that has commenced prior to 27-1-1994 and has obtained a no-objection certificate from SPCB prior to that date is permitted to continue its mining operations without obtaining an EC from the Impact Assessment Agency. However, this is subject to any expansion (including an increase in the lease area) or modernisation activity after 27-1-1994 which would result in an increase in the pollution load. In that event, a prior EC is required. However, if the pollution load is not expected to increase despite the proposed expansion (including an increase in the lease area) or modernisation activity, a certificate to this effect is absolutely necessary from SPCB, which would be reviewed by the Impact Assessment Agency.

(*2*) The renewal of a mining lease after 27-1-1994 will require an EC even if there is no expansion or modernisation activity or any increase in the pollution load.

(*3*) For considering the pollution load the base year would be 1993-94, which is to say that if the annual production after 27-1-1994 exceeds the annual production of 1993-94, it would be treated as an expansion requiring an EC.

(*4*) There is no doubt that a new mining project after 27-1-1994 would require a prior EC.

(*5*) Any iron ore or manganese ore extracted contrary to EIA 1994 or EIA 2006 would constitute illegal or unlawful mining (as understood and interpreted by us) and compensation at 100% of the price of the mineral should be recovered from 2000-2001 onwards in terms of Section 21(5) of the MMDR Act, if the extracted mineral has been disposed of. In addition, any rent, royalty or tax for the period that such mining activity was carried out outside the mining lease area should be recovered.

(*6*) With effect from 14-9-2006 all mining projects having a lease area of 5 ha or more are required to have an EC. The extraction of any mineral in such a case without an EC would amount to illegal or unlawful mining attracting the provisions of Section 21(5) of the MMDR Act.

(*7*) For a mining lease of iron ore or manganese ore of less than 5 ha area, the provisions of EIA 1994 will continue to apply subject to EIA 2006.

(*8*) Any mining activity carried on after 7-1-1998 without an FC amounts to illegal or unlawful mining in terms of the provisions of Section 21(5) of

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MMDR Act attracting 100% recovery of the price of the extracted mineral that is disposed of.

(*9*) In the event of any overlap, that is, illegal or unlawful mining without an FC or without an EC or without both would attract only 100% compensation and not 200% compensation. In other words, only one set of compensation would be payable by the mining leaseholder.

(*10*) No mining leaseholder will be entitled to the benefit of any payments made towards NPV or additional NPV or penal compensatory afforestation. (Para 188)

R. **Environment Law — General Principles of Environmental Law — Precautionary Principle/Sustainable Development/Inter-Generational Equity Principle — Instances re Areas/Industries — Mining policy — Judicial interference — Scope of — Held, Court cannot interfere with mining policy or lay down limits on extent of mining activity that should be permitted by the State Government or Central Government — Therefore, prayers on basis of principles of intergenerational equity, not tenable — But considering that National Mineral Policy, 2008 is only in pen and paper and also obsolete (that is, 10 years old), Central Government directed to revisit said policy and announce a fresh, more effective, meaningful and implementable policy (Paras 207 to 211 and 230)**

Held :

The petitioner sought to impress the need to consider intergenerational equity and if possible to place a limit on the extent of mining in the State of Odisha by referring to an article titled: "Intergenerational equity: a legal framework for global environment change" by Edith Brown Weiss. He laid emphasis on three principles that form the basis of intergenerational equity, that is, the principle of "conservation of options", the principle of "conservation of quality" and the principle of "conservation of access". (Paras 207 to 210)

The Court cannot lay down limits on the extent of mining activities that should be permitted by the State of Odisha or by the Union of India. Nevertheless, it does appear that there is no effective check on mining operations nor is there any effective mining policy. The National Mineral Policy, 2008 (effective from March 2008) seems to be only on paper and is not being enforced perhaps due to the involvement of very powerful vested interests or a failure of nerve. The National Mineral Policy, 2008 is almost a decade old and a variety of changes have taken place since then, including (unfortunately) the advent of rapacious mining in several parts of the country. Therefore, it is high time that the Union of India revisits the National Mineral Policy, 2008 and announces a fresh and more effective, meaningful and implementable policy. The Union of India is directed to have a fresh look at the National Mineral Policy, 2008 which is almost a decade old, particularly with regard to conservation and mineral development. The exercise should be completed by 31-12-2017. (Paras 211 and 230)

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Advocates who appeared in this case :

Ashok Desai, Rakesh Dwivedi and Gopal Subramanium, Senior Advocates ([Prashant Bhushan, Advocate) for the appearing parties.

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

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5. IA No. 35 in IA No. 17 in WP (C) No. 114 of 2014, order dated 16-1-2015 (SC), *Common Cause* v. *Union of India* 528*d-e*
6. (2014) 14 SCC 160, *T.N. Godavarman Thirumulpad* v. *Union of India* 525*d-e*, 537*g-h*
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27. 1989 Supp (1) SCC 504, *Rural Litigation and Entitlement Kendra* v. *State of U.P.* 563*e-f*
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31. 1971 AC 1 : (1970) 2 WLR 279 : (1969) 3 All ER 1640 (HL), *Director of Public Prosecutions* v. *Schildkamp* 559*d-e*

The Judgment of the Court was delivered by

MADAN B. LOKUR, J.— The facts revealed during the hearing of these writ petitions filed under Article 32 of the Constitution suggest a mining scandal of enormous proportions and one involving megabucks. The lessees in the districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha have rapaciously mined iron ore and manganese ore, apparently destroyed the environment and forests and perhaps caused untold misery to the tribals in the area. However, to be fair to the lessees, they did the detail steps taken to ameliorate the hardships of the tribals, but it appears to us that their contribution is perhaps not more than a drop in the ocean — also too little, too late.

Facts leading up to the report of the Central Empowered Committee

2. Rabi Das, the editor of a daily newspaper called *Ama Rajdhani* filed IAs Nos. 2746-48 of 2009 in a pending writ petition being *T.N. Godavarman* v. *Union of India*[1]. He prayed, inter alia, for the following directions from this Court:

> "(*a*) Issue a direction to the Central Empowered Committee to conduct an exhaustive fact-finding study of the illegal mining in Keonjhar, Sundargarh and other districts of Orissa;
>
> (*b*) Direct appointment of a "Commission" to investigate and study the modalities of the illegal machinations, fix responsibility on individuals (in Government and outside it) and recommend remedial measures to be immediately implemented by the Government of India and the Government of Orissa;
>
> (*c*) Direct the respondents to take effective and appropriate action to ensure closure/stoppage of all the illegal mining activities in the areas concerned and direct prosecution and punish all those found guilty of this illegal mining in violation of the Mines and Minerals (Development and Regulation) Act, 1957; the Forest (Conservation) Act, 1980 and other relevant laws."

3. The applications were taken up for consideration on 6-11-2009[2] when notice was issued to the Central Empowered Committee (for short "CEC") to file its report/response within six weeks.

1 WP (C) No. 202 of 1995

2 *T.N. Godavarman Thirumulpad* v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 6-11-2009 (SC), wherein it was directed:

"Taken on board. Issue notice to CEC to file its report/response within six weeks."

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4. On 26-4-2010 CEC submitted an interim report which was noted by this Court and taken on record. The report was of a general nature but contained quite a few recommendations. Some of the recommendations presently relevant are as follows:

> "(*b*) Even otherwise Rule 24-A(6), MCR, 1960 does not authorise the lessee to operate a mine without the statutory clearances/approvals. Therefore, in respect of a mine covered under the "deemed extension" clause, the mining operations should be permitted to be undertaken in the non-forest area of the mining lease only if (*i*) it has the requisite environmental clearance; (*ii*) it has the consent to operate from the State Pollution Control Board under the Air and Water Acts; (*iii*) Mining Plan is duly approved by the competent authority; and (*iv*) the NPV for the entire forest falling within the mining lease is deposited in the Compensatory Afforestation Fund.
>
> The mining in the forest land included in the mining lease should be permissible only if, in addition to the above, the approval under the FC Act/ TWP has been obtained;
>
> (*c*) No forest land can be leased/assigned without first obtaining the approval under the FC Act. Therefore, the forest area approved under the FC Act should not be lesser than the total forest area included in the mining leases approved under the MMDR Act, 1957. Both necessarily have to be the same. In view of the above, this Hon'ble Court while permitting grant of Temporary Working Permission to the mines in Orissa and Goa has made it one of the preconditions that the NPV will be paid for the entire forest area included in the mining leases. Similarly, all the mining leaseholders in Orissa should be directed to pay the NPV for the entire forest area, included in the mining lease;
>
> (*d*) In Orissa, substantial areas included in the mining leases as non-forest land have subsequently been identified as DLC forest (deemed forest/forest like areas) by the Expert Committee constituted by the State Government pursuant to this Hon'ble Court's order dated 12-12-1996[3]. While processing and/or approving the proposals under the FC Act in many cases such areas have been treated as non-forest land. It is recommended that (*i*) the NPV for the entire DLC area included in the mining lease, after deducting the NPV already paid, should be deposited by the leaseholder concerned, and (*ii*) the mining operations in the unbroken DLC land (virgin land) should be permissible only if the permission under the FC Act has been obtained/is obtained for such area. Keeping in view the peculiar circumstances as were existing in Orissa and subject to the above, the mining operations in the broken DLC land may be allowed to be continued provided the other statutory requirements and Rules are otherwise being complied with."

3 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

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The report concluded by recording as follows:

> "(*a*) an attempt has been made for the first time by CEC to comply and analyse the status of all the mining leases in a State and to suggest effective and remedial measures—something made possible because of the unstinted cooperation extended by the senior functionaries of the Forest and Mines Departments of the State Government; and
>
> (*b*) the above recommendations if accepted and implemented will, besides ensuring that mining is done in compliance with the statutory provisions, result in recovery of additional amount towards the NPV, etc. running into hundreds of crores of rupees. It would be appropriate that a part of this additional amount, say 50% is used through an SPV for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. CEC proposes to file detailed schemes in this regard for seeking permission of this Hon'ble Court provided the State of Orissa as well as the MoEF endorse the course of action proposed above."

The significance of the second conclusion will be discussed by us a little later.

5. Notice was issued on the report returnable on 7-5-2010. On the adjourned date[4], the following order was passed by this Court: (*T.N. Godavarman case*[4], SCC p. 179, paras 14-15)

> "*14*. CEC has filed its report. The State would like to file its response.
>
> *15*. Six weeks' time is granted for the same. The recommendations of CEC which are acceptable to the State Government can be complied with."

It may be mentioned that some of the recommendations made by CEC have been accepted and implemented by the State of Odisha.

6. The issue of mining in Odisha again came up for consideration on 16-9-2013[5] and this Court passed the following order:

> "We call for a report from the Central Empowered Committee within a period of six weeks. We direct that the parties of the State Government of Odisha and the Central Government will cooperate with the Central Empowered Committee to enquire into the matter and furnish a report.
>
> The matter be listed on a Monday after six weeks."

7. With reference to the order passed on 16-9-2013[5] CEC conducted an inquiry and some information was sought from M/s Sarda Mines (P) Ltd. (for short "SMPL"). This was objected to by SMPL who filed an application which was taken up for consideration on 9-12-2013. The following order[6] was passed on that day: (*T.N. Godavarman case*[6], SCC p. 172, paras 23-25)

> "*23*. By our order dated 16-9-2013[5], we had called for a report from the Central Empowered Committee within a period of six weeks. It is stated

4 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 15 SCC 177
5 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 6 SCC 167, 172 (footnote 1)
6 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 6 SCC 167

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on behalf of the Central Empowered Committee that the report could not be ready as part of the information called for has not been furnished by the State Government.

24. Mr Venugopal, learned Senior Counsel for the applicant M/s Sarda Mines (P) Ltd. in IA No. 3721 submits that since some of the matters are pending before the High Court, a prayer has been made for not furnishing the required information to the Central Empowered Committee.

25. List this matter in the second week of January 2014. In the meantime, the Central Empowered Committee may not submit its final report."

8. The matter was again taken up on 13-1-2014[7] and this Court passed the following order:

"We have heard the learned counsel for the parties.

We have also perused the letter dated 17-10-2013 of the Member Secretary, Central Empowered Committee sent to the Chief Secretary, Government of Odisha along with its annexures and in particular, the statement of details of information and documents sought by the Central Empowered Committee for the meeting convened on 30-10-2013, which cover forest and environmental issues.

We, accordingly, modify the order dated 9-12-2013[6] and direct the Central Empowered Committee to submit its final report on the queries made by the State Government with regard to the details of the documents sought for in the letter dated 17-10-2013 within a period of six weeks.

The report will not cover cases other than forest and environmental issues.

The lessees and others from whom information is sought for will cooperate, if they do not cooperate the Central Empowered Committee will give its report.

A copy of the interim report of 26-4-2010 will be furnished to the learned counsel appearing for the State of Odisha.

This matter be listed on 20-1-2014 for consideration of the recommendations made by the Central Empowered Committee in the said report dated 26-4-2010."

Thereafter and partly based on reports given by Justice M.B. Shah, a retired Judge of this Court, holding a commission under the Commissions of Inquiry Act, 1952 a writ petition being WP (C) No. 114 of 2014 was filed by Common Cause. Several prayers were made in the writ petition, and some of the more significant prayers read as follows:

"(*a*) Issue a writ of mandamus or any other appropriate writ directing the Union of India and the Government of Odisha to immediately stop

7 *T.N. Godavarman Thirumulpad* v. *Union of India*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC)

6 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 6 SCC 167

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forthwith all illegal mining in the State of Odisha and to terminate all leases that are found to be involved in illegal mining and mining in violation of the provisions of the Forest (Conservation) Act, 1980, the environment laws and other laws.

(*b*) Issue a writ of mandamus or any other appropriate writ directing the Union of India and the Government of Odisha to take action against all the violators involved either directly or indirectly in illegal mining including those named in the report of Justice Shah Commission.

(*c*) Issue a writ of mandamus or any other appropriate writ directing a thorough investigation by SIT or CBI under the supervision of this Hon'ble Court, as is recommended by the Justice Shah Commission into illegal mining in Odisha and collusion between private companies/individuals and public officials of the State/Central Governments.

* * *

(*e*) Issue a writ of mandamus or any other appropriate writ directing the respondents to recover the illegally accumulated wealth through illegal mining and related activity, as per Section 21(5) of the MMDR Act, 1957 [Mines and Minerals (Development and Regulation) Act, 1957] and launch prosecutions under Section 21(1) of the MMDR Act, 1957, and direct that the money recovered would be used for the welfare of local communities, tribals and villagers."

9. The writ petition was taken up for consideration on 21-4-2014[8] when the following order was passed: (*T.N. Godavarman case*[8], SCC p. 161, paras 1-4)

"*1*. We have heard the preliminary objections with regard to the writ petition and we are not convinced that the writ petition is not maintainable. Issue notice.

2. As the State of Odisha, Union of India and CEC have already been served with the notices, no further notices be issued to them. Notice, however, be issued to Respondents 4 and 5 returnable within four weeks.

3. It appears from the averments in para 14 of the writ petition that several lessees are operating without clearances under the Environment (Protection) Act, 1986 and the Forest (Conservation) Act, 1980, and without renewal by the Government. Hence, an interim order needs to be passed in respect of these lessees who are operating the leases in violation of the law.

4. For consideration of the interim order that should be passed, only this writ petition be listed on next Monday, 28-4-2014, as first item. It will be open for all parties and intervenors/proposed intervenors to file their respective affidavits. CEC, in the meanwhile, will make out a list of such lessees who are operating the leases in violation of the law. This list be prepared by CEC without reference to the Shah Commission's Report. Liberty is given to the parties to produce their papers before CEC. The

8 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 14 SCC 160

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State of Odisha and the Union of India will cooperate with CEC to prepare the list."

Report of the Central Empowered Committee

10. CEC gave its final report on 25-4-2014 which was considered by this Court and a detailed interim order was passed on 16-5-2014[9]. The sum and substance of the final report dated 25-4-2014 and the interim order is that in the districts of Odisha that we are concerned with, namely, Keonjhar, Sundergarh and Mayurbhanj, the total number of leases granted for mining iron and manganese ore are 187. Of these, 102 leaseholders did not have requisite environmental clearance [under the Environment (Protection) Act, 1986] or approval under the Forest (Conservation) Act, 1980 or approved mining plan and/or consent to operate under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974. This Court directed that mining operations in these 102 mining leases shall remain suspended but it will be open to such leaseholders to move the authorities concerned for necessary clearances, approvals or consents and

> "as and when the mining lessees are able to obtain all the clearances/approval/consent they may move this Court for modification of this interim order in relation to their cases". (*Common Cause case*[9], SCC p. 157, para 4)

11. This Court also found that 29 out of 187 mining leases had been determined or rejected or had lapsed. It was directed that mining operations in these 29 mining leases will also remain suspended but it would be open to all these lessees concerned to move the authorities for necessary relief and as and when they get the appropriate relief, they could move this Court for modification of the interim order.

12. This Court also found that 53 iron ore/manganese ore mining leases were operational and that they had necessary approvals under the Forest (Conservation) Act, 1980, consent to operate granted by the Odisha State Pollution Control Board and also approved mining plans. (There is no specific mention about environmental clearance.) In addition 3 mining leases were located in forest as well as non-forest land, but mining operations were being conducted in non-forest areas of the mining lease as the leaseholders did not have approvals under the Forest (Conservation) Act, 1980. Therefore a total of 56 iron ore/manganese ore mining leases were operating in the State of Odisha.

13. As far as the break-up of the 56 operational mining leases is concerned, it was found that 14 mining leases were operating on first renewal basis in accordance with the deeming provisions of Section 8(2) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the MMDR Act") read with Rule 24-A(6) of the Mineral Concession Rules, 1960 (for short "the MCR") and 16 mining leases were operating since lease deeds for grant of renewal had been executed in their favour. The remaining 26 mining

9 *Common Cause* v. *Union of India*, (2014) 14 SCC 155

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leases were operating on second and subsequent renewal basis with the renewal applications pending a final decision with the State Government.

14. In respect of the 14 first renewal mining leases, this Court permitted them to continue their operations for the time being in view of the deemed renewal provisions. This Court also permitted 16 mining leases to continue to operate since they had lease deeds executed in their favour. With regard to the remaining 26 mining leases operating on second and subsequent renewal applications, this Court drew attention to the decision rendered on 21-4-2014 in *Goa Foundation* v. *Union of India*[10] wherein it was held that the provision for a second or subsequent deemed renewal was not available in view of Section 8(3) of the MMDR Act. Consequently, these 26 leaseholders were restrained from operating until express orders were passed by the State Government under Section 8(3) of the MMDR Act. Six months' time was granted to the State Government to take a final decision on the renewal applications. This Court left it open to the mining leaseholders to apply for modification of the interim order dated 16-5-2014[9] on obtaining necessary clearances.

15. During the hearing of these petitions, we were informed that the balance 26 mining leases are now operational in view of the amendment to Section 8(3) of the MMDR Act with effect from 12-1-2015. However, we are not aware whether these 26 mining leases have the necessary statutory clearances.

16. We may also mention that pursuant to the liberty granted to move for modification of the interim order of 16-5-2014[9] we have received 17 interim applications for modification. Through a chart handed over to us in Court on 3-5-2017 we have been informed that in respect of two of the 17 applications, that is, Zenith Mining (IA No. 45) and Kavita Agrawal (IA No. 47), the lease has not been extended or has been determined and they do not have any environmental clearance or forest clearance. In respect of J.N. Pattnaik (IA No. 66), there is no forest clearance available. We were also informed that S.A. Karim (IA No. 9) actually had a working lease and had wrongly been included as a non-operational lease.

17. Be that as it may, the learned counsel for the leaseholders drew our attention to the record of proceedings of 16-5-2014 and particularly the following paragraph appearing therein:

> "We have passed interim order in a separate sheet. The Central Empowered Committee will give a final report on the writ petition by the end of July 2014 and the matter will be listed in the first week of August 2014 before the Green Bench."

We are mentioning this in the context of the order passed on 13-1-2014[7] adverted to above to the effect that "The Report will not cover cases other than forest and environmental issues."

10 (2014) 6 SCC 590
9 *Common Cause* v. *Union of India*, (2014) 14 SCC 155
7 *T.N. Godavarman Thirumulpad* v. *Union of India*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC)

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18. In its final report, CEC has dealt with the following ten topics:

In this final report CEC dealt with the following ten topics:

"*I*. Production of iron ore and manganese ore without/in excess of the environmental clearance/Mining Plan/consent to operate.

II. Mining leases operated in violation of the Forest (Conservation) Act, 1980.

III. Illegal mining outside the sanctioned mining lease areas.

IV. Mining leases acquired in violation of Section 6 of the MMDR Act, 1957.

V. Violation of Rule 37 of the Mineral Concession Rules, 1960 by the lessees.

VI. Illegalities involved in the mining leases of Essel Mining & Industries Ltd.

VII. Illegalities involved in the mining lease of Sharda Mines (P) Ltd.

VIII. Massive illegal mining in Uliburu Forest land.

IX. Inordinate delays in taking decisions by the State Government regarding renewal of the mining leases.

X. Other issues."

19. By an order dated 16-1-2015[11] objections to the final report were permitted and we have since received quite a few objections. When the matter was taken up for consideration by this Court on 7-10-2015 and pursuant

11 *Common Cause* v. *Union of India*, IA No. 35 in IA No. 17 in WP (C) No. 114 of 2014, order dated 16-1-2015 (SC), wherein it was directed:

"*IA No. 35 in IA No. 17 of 2014 in WP (C) No. 114 of 2014*

1. Dr Rajeev Dhavan, learned Senior Counsel for the applicant Orissa Mining Corporation Ltd. (Respondent 4), on instructions, seeks permission of this Court to withdraw the application for directions (IA No. 17 of 2014) with liberty to approach the High Court. Permission sought for is granted. The application for directions (IA No. 17 of 2014) is disposed of as withdrawn with liberty to the applicant to approach the High Court. Accordingly, IA No. 35 of 2014 in IA No. 17 of 2014 is allowed. We clarify that we have not expressed any opinion on the prayers made in IA No. 17 of 2014.

IAs Nos. 31-32 of 2014 in WP (C) No. 114 of 2014

2. Issue notice. Shri Prashant Bhushan, learned counsel for the petitioner and Shri A.D.N. Rao, learned Amicus Curiae on behalf of the Central Empowered Committee, accept notice. Objections, if any, may be filed within six weeks' time from today. Whosoever wants to file objections to the report of the Central Empowered Committee filed in Writ Petition (C) No. 114 of 2014, he/they may do so within eight weeks' time from today. List the matter after eight weeks."

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to the order[12] passed on that date, the learned Amicus filed a statement dated 30-10-2015 in a tabular form dealing with each IA filed in respect of the observations and recommendations made by CEC. Thereafter, when the matter was again taken up for consideration the learned Amicus filed a note dated 15-3-2016 wherein the following four issues were flagged:

> "(*i*) Leases lapsed under Section 4-A(4) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the MMDR Act, 1957) (11 leases);
>
> (*ii*) Violation of Rule 24 of the Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016 (hereinafter referred to as MCR, 2016) and Rule 37 of the Mineral Concession Rules, 1960 (hereinafter referred to as the MCR, 1960) (9 leases);
>
> (*iii*) Illegal mining in forest lands (20 leases); and
>
> (*iv*) Iron ore produced without/in excess of the environmental clearance (each of the operating leases involved)."

20. Insofar as the first issue is concerned, it is common ground that that issue has been fully, conclusively and exhaustively dealt with by this Court by a judgment and order dated 4-4-2016 (*Common Cause* v. *Union of India*[13]). Therefore, the first issue does not survive for consideration by us.

21. As far as the remaining three issues are concerned, these overlap with Topics I, II and V dealt with by CEC. Detailed submissions were made before us by the learned counsel for all the appearing parties on these issues as well as by the learned Amicus and the learned Attorney General. We propose to deal with them in this judgment and order.

22. We may mention that submissions were also made on Topics III and IV identified by CEC, that is, illegal mining outside the sanctioned mining lease areas and mining leases acquired in violation of Section 6 of the MMDR Act. We will consider these issues as well.

23. As far as Topics VI and VII identified by CEC are concerned, we would like to hear the parties in detail in respect of these issues.

---

12 *Common Cause* v. *Union of India*, WP (C) No. 114 of 2014, order dated 7-10-2015 (SC), wherein it was directed:

"*Order in all the applications except IAs Nos. 57 and 59*

For disposal of all the applications that are listed before us today, we need the assistance of Mr A.D.N. Rao, learned Amicus Curiae, in preparing a tabular form, inter alia indicating the number of application(s), the nature of relief(s) sought in the application(s) and the remarks of the Central Empowered Committee (for short "the Committee"), if any, on those reliefs. Since there are a large number of applications pending before us for urgent orders, we request the Committee to devote its time and prepare the tabular form as desired by us and submit the same before us within three weeks' time from today. After preparing the said table, Shri Rao, learned Amicus Curiae would supply a copy of the same to all the learned counsel, who have filed the applications before this Court. List the matter on 5-11-2015."

13 (2016) 11 SCC 455

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24. No challenges or submissions were made on Topics VIII, IX and X and therefore we accept the report of CEC on these topics.

25. At this stage, we may mention some rather frightening figures mentioned by CEC in its final report. According to CEC, excess mining without environmental clearance or beyond what was authorised by the environmental clearance is 2130.988 lakhs MT of iron ore and 24.129 lakhs MT of manganese ore making a total of 2155.117 lakhs MT of iron and manganese ore. This does not include extraction of ore without forest clearance. These figures give an indication of the extent of excess or illegal or unlawful mining carried out.

26. In terms of rupees, according to CEC the total notional value of minerals produced without an environmental clearance or in excess of the environmental clearance, at the weighted average price of minerals as proposed by the Indian Bureau of Mines comes to about Rs 17,091.24 crores for iron ore and about Rs 484.92 crores for manganese ore making a total of Rs 17,576.16 crores. Again, this does not include mining without forest clearance. It is for this reason that we have referred to the megabucks and rapacious mining.

Justice M.B. Shah Commission of Inquiry

27. Apparently, and it appears quite independently of all these developments, the Central Government issued a Notification on 22-11-2010 under the Commissions of Inquiry Act, 1952 whereby it appointed Justice M.B. Shah, a retired judge of this Court to conduct an inquiry on the following Terms of Reference:

> "**2.** (*i*) to inquire into and determine the nature and extent of mining and trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and to identify, as far as possible, the persons, firms, companies and others that are engaged in such mining, trade and transportation of iron ore and manganese ore, done illegally or without lawful authority;
>
> (*ii*) to inquire into and determine the extent to which the management, regulatory and monitoring systems have failed to deter, prevent, detect and punish offences relating to mining, storage, transportation, trade and export of such ore, done illegally or without lawful authority, and the persons responsible for the same;
>
> (*iii*) to inquire into the tampering of official records, including records relating to land and boundaries, to facilitate illegal mining and identify, as far as possible, the person responsible for such tampering; and
>
> (*iv*) to inquire into the overall impact of such mining, trade, transportation and export, done illegally or without lawful authority, in terms of destruction of forest wealth, damage to the environment, prejudice to the livelihood and other rights of tribal people, forest dwellers and other persons in the mined areas, and the financial losses caused to the Central and the State Governments.
>
> **3.** The Commission shall also recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority."

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28. In the Preamble to the notification appointing the Commission, it was noted that there were reports that mining, raising, transportation and export of iron ore and manganese ore illegally or without lawful authority was being carried on in various States in one or more of the following forms:

"(*a*) mining without a licence;

(*b*) mining outside the lease area;

(*c*) undertaking mining in a lease area without taking approval of the State Government concerned for transfer of concession;

(*d*) raising of minerals without lawful authority;

(*e*) raising of minerals without paying royalty in accordance with the quantities and grade;

(*f*) mining in contravention of a mining plan;

(*g*) transportation of raised mineral without lawful authority;

(*h*) mining and transportation of raised mineral in contravention of applicable Central and State Acts and Rules thereunder;

(*i*) conducting of multiple trade transactions to obfuscate the origin and source of minerals in order to facilitate their disposal;

(*j*) tampering with land records and obliteration of inter-State boundaries with a view to conceal mining outside lease areas;

(*k*) forging or misusing valid transportation permits and using forged transport permits and other documents to raise, transport, trade and export minerals;"

It is in the above context that the Terms of Reference were framed.

29. On 1-7-2013 the Commission gave the First Report on Illegal Mining of Iron and Manganese Ores in the State of Odisha. The report contains an executive summary and very briefly the Commission stated that:

(*i*) All modes of illegal mining, as stated in the Notification dated 22-11-2010 of the Central Government are being committed in the State of Odisha;

(*ii*) There is a complete disregard and contempt for law and lawful authorities on the part of many of the emerging breed of entrepreneurs;

(*iii*) It appears that the law has been made helpless because of its systematic non-implementation. The executive summary states that the following are discussed in the report:

"(A) Information regarding mining leases should be placed on website to make mining operations more transparent and to display the information for each lease on the departmental/State website with various conditions which are required to be adhered to by the lessee.

(B) Misuse of Rule 24-A(6) of the MCR, 1960 [Mineral Concession Rules, 1960] which provides for deemed extension of lease. Application for renewal of mining lease is not decided for one or other pretexts, may be, there is lack of coordination among various departments which are required to decide renewal application. There is gross misuse of deemed refusal and deemed extension of both the

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provisions of renewal of leases (before 27-9-1994 and after) under Rule 24-A of the MCR, 1960. This casual and negative approach has caused dearly to the State exchequer in the form of hundred crores of stamp duty and others.

* * *

(C) Violation of the provisions of the Forest (Conservation) Act, 1980, Rules and guidelines and directions issued by the Hon'ble Supreme Court of India.

* * *

(D) Violation of the provisions of the Environment (Protection) Act, 1986.

* * *

(E) Misuse of Rules 10 and 12 of the MCDR, 1988 [Mineral Conservation and Development Rules, 1988] which provides for modification and review of mining plan only for a specific purpose, namely,

(*i*) safe and scientific mining;

(*ii*) conservation of minerals;

(*iii*) the protection of environment; and

(*iv*) in case of modification, explanation for the same.

* * *

(F) *Encroachment*:

On the basis of Google Image, the survey report prepared by the State Government by DGPS method, it was found that in 82 mining leases, there was encroachment. Out of the said leases, re-survey was ordered for 37 leases."

30. Soon thereafter, the Commission gave its Second Report on Illegal Mining of Iron and Manganese Ores in the State of Odisha, sometime in October 2013. This report dealt with specific leaseholders and violations committed by them. It is not necessary for us to delve into those specific details.

31. It was submitted before us by the learned counsel for the mining leaseholders that the reports given by the Commission were not acceptable on the ground that a notice had not been given to the leaseholders under Section 8-B or Section 8-C of the Commissions of Inquiry Act, 1952. It was submitted that under these circumstances the reports given by the Commission were vitiated and therefore the foundation of the writ petition filed by Common Cause was taken away. We are not in agreement with the learned counsel for the mining leaseholders.

32. The First Report given by the Commission was a general, overall perspective on the subject while the Second Report went into specific details of several mining leaseholders — but we are not concerned with those specifics. Therefore, whether notices were or were not issued to the leaseholders who were the subject-matter of discussion in the Second Report is of no consequence.

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33. What we are really perturbed about is the facts stated by the Commission in the First Report. So far as this is concerned, we are of the view that no irregularity or illegality has been committed so as to vitiate the First Report. Notwithstanding this, we are not relying upon any of the facts determined by the Commission for the purposes of our judgment and order.

34. The procedure followed by the Commission has been mentioned in Volume I Part II of the First Report, but it is not necessary for us to recount each and every detail. Suffice it to say that a resume of the procedure followed will indicate that full opportunity was given to the leaseholders to have their say.

Resume of the procedure followed by the Commission

35. In March 2011 the Commission sent the first questionnaire to the Secretary concerned of the Government of Odisha seeking the following information regarding each leaseholder:

> "(*i*) the name of the lessee;
>
> (*ii*) area of the lease;
>
> (*iii*) date of the execution of the lease deed;
>
> (*iv*) present status (renewal, mining plan, mining scheme) approval date;
>
> (*v*) production and export particulars from the year 2008-09 up to January 2011; etc."

36. On 20-4-2011 the Commission sent the second questionnaire to the said Secretary concerned seeking further information in a form consisting of 14 questions and 4 tables.

37. Thereafter, between 24-8-2011 and 26-8-2011 the Commission issued the first notice to various mining lessees in Odisha seeking information on affidavit as per Pro formas A and B enclosed with the notice. In Pro forma A the leaseholder was asked to submit details which included the details of environmental clearance, forest clearance and renewal of lease and whether the leased mine was in operation or not. In Pro forma B the leaseholder was asked to submit details which included the details of dispatch, domestic consumption and export in million tonnes of iron ore and manganese ore from 2006-07 to 2010-11.

38. The Commission visited Odisha from 7-12-2011 to 14-12-2011, from 3-10-2012 to 11-10-2012 and from 31-10-2010 to 8-11-2012. The purpose of the visits was to collect information and seek explanations and gather facts from the Departments concerned of the Government of India and the Government of Odisha. During the visits, the Commission received as many as 140 complaints alleging illegal mining. Accordingly, a public hearing was held in Keonjhar and Bhubaneshwar on 11-12-2011 and 12-12-2011.

39. On 21-12-2012 and 12-1-2013 several Senior Counsel were given a personal hearing by the Commission including a personal hearing to the Federation of Indian Mining Industries (for short "FIMI"). Following the submissions made, a fresh notice was issued to the leaseholders from 28-1-2013

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seeking information in Pro formas A to H. In terms of the fresh notice, the leaseholder was required to verify the facts stated therein (which were collected by the Commission) and if found incorrect then to state the correct facts. The fresh notice specifically mentioned that:

"(*i*) The lessee shall come fully prepared to answer, related to this matter and submit all related records.

(*ii*) Explain the production from the leased area without having approval under the FC Act, 1980.

(*iii*) Explain the production during the deemed extension period without having approval under EIA Notification dated 27-1-1994 and amendments thereon.

(*iv*) Explain the excess production in violation of EIA Notification dated 27-1-1994 and amendments thereon under the EP Act, 1986."

40. The report mentions the various dates of hearing given to the learned counsel for the leaseholders, the State of Odisha, FIMI, Federation of Indian Chambers of Commerce and Industry (FICCI) and the Ministry of Environment and Forests of the Government of India (for short "MoEF") which are as follows:

"Hearing No.	*Date*	*Place*
1.	21-12-2012	Office of the Commission, Ahmedabad.
2.	12-1-2013	–do–
3.	18-2-2013	–do–
4.	27-2-2013	Circuit House, Bhubaneshwar (Odisha).
5.	28-2-2013	–do–
6.	1-3-2013	–do–
7.	2-3-2013	–do–
8.	4-3-2013	–do–
9.	16-3-2013	Circuit House, Annexe, Ahmedabad.
10.	20-3-2013	–do–
11.	23-3-2013	Office of the Commission, Ahmedabad.
12.	2-4-2013	Circuit House, Annexe, Ahmedabad.
13.	3-4-2013	–do–
14.	4-4-2013	–do–
15.	12-4-2013	Office of the Commission, Ahmedabad.
16.	13-4-2013	–do–
17.	21-4-2013	Gujarat University Convention Centre, Nr. Helmet Cross Road, 132 ft. Ring Road, Ahmedabad.
18.	24-5-2013	Office of the Commission, Ahmedabad.
19.	25-5-2013	–do–"

41. The number of learned counsel and representatives who were heard by the Commission and with whom interactions took place are mentioned in Annexure A to Vol. I of the First Report. The list of learned counsel runs into 18 pp. — from p. 33 to p. 50 of Vol. I of the First Report. Some individual lawyers

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appeared for several leaseholders but the fact of the matter is that everybody who wanted to be heard was given a hearing.

42. The function of the Commission as stated in the First Report, at the present stage, is best described in the words of the Commission itself. It is stated as follows:

> "*9*. The function of the Commission, at this stage, is only to inquire, assess the data collected and to submit the report on the said basis. On that basis, some remedial measures are suggested by the Commission for controlling illegal mining and violation of the Acts and/or Rules. For that, there is no question of issuing notices to the lessees.
>
> For collecting the data and assessing it, the principles of natural justice are fully complied with, as stated above. On the basis of the data submitted by the lessees and the submissions made by the learned counsel for them, the report is submitted."

It is further clarified on p. 198 of Vol. I of the First Report that with regard to individual mining leases in which there is a violation of the provisions of the Forest (Conservation) Act, 1980 and/or conditions of environmental clearance, etc. a report would be submitted later on.

43. It is therefore abundantly clear that the First Report is generally a limited fact-finding enquiry on the basis of information supplied by the mining leaseholders. Therefore, there is absolutely no question of any notice being issued to any mining leaseholder under Section 8-B or the right of cross-examination being granted to any mining leaseholder under Section 8-C of the Commissions of Inquiry Act, 1952. We are satisfied that the Commission made adequate efforts to collect the facts and this collation in the First Report was possible with the assistance of the mining leaseholders and their learned counsel and representatives as well as the government authorities and FIMI and FICCI. Under these circumstances, no leaseholder can seriously contend that the procedure adopted by the Commission in collecting facts was either irregular or not in accordance with law. As mentioned above, any mining leaseholder who wanted to be heard was given an opportunity of being heard and was fully aware of what the Commission was attempting to achieve and if any particular mining leaseholder chose not to associate with it, it was at his or her own peril. Lack of knowledge of the proceedings before the Commission cannot be appreciated and we are quite satisfied that all the mining leaseholders were fully aware of what was going on, if not personally then certainly through their list of learned counsel running into 18 pages or their representatives individually or their Federation.

44. In *Goa Foundation*[10] there was a challenge to the report of the Justice Shah Commission in respect of its conclusions pertaining to the State of Goa. This was dealt with by this Court in paras 11 to 14 of its decision. This Court declined to quash the report in view of the statement made by the learned

10 *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590

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Advocate General of Goa. But, this Court took the view that: (SCC p. 601, para 14)

> "*14.* … We will, however, examine the legal and environmental issues raised in the Report of the Justice Shah Commission and on the basis of our findings on these issues consider granting the reliefs prayed for in the writ petition filed by Goa Foundation and the reliefs prayed for in the writ petitions filed by the mining lessees, which have been transferred to this Court."

45. In the present petitions before us, there is no challenge to the reports of the Justice Shah Commission. However, we propose (as in *Goa Foundation*[10]) to confine ourselves to some limited facts adverted to by CEC in its final report. We do not propose to base any of our conclusions on the reports of the Commission.

46. The learned counsel for the petitioners insisted that the illegal or unlawful mining activity carried on in the State of Odisha as noted by the Commission deserves to be investigated by the Central Bureau of Investigation. Reference in this regard was made to the passage in Part III of Vol. I of the First Report of the Commission to the following effect:

> "Since this is one of the biggest illegal mining ever observed by the Commission, it is strongly felt that this is a fit case to handover to Central Bureau of Investigation, for further investigation and follow-up action."

47. Similarly, on p. 125 of Chapter II of Vol. I of the Report, it is stated as follows:

> "8. Terms of Reference No. 8 provides that 'The Commission may take the services of any investigating agency of the Central Government in order to effectively address its terms of reference.'
>
> The Commission, therefore, suggests that Central Bureau of Investigation (CBI) may be directed to investigate into allegations of corruption made against politicians, bureaucrats and others."

We will consider this at the appropriate stage.

48. Suffice it to say for the time being that the Commission made certain significant observations in Chapter II of the Report to the effect that:

> (*a*) That the tribals in the area have been displaced or stay in pathetic and miserable conditions in same area. There is rampant air pollution with the trees having the colour of minerals making it clear that tribals are forced to breathe polluted air and drink polluted water.
>
> (*b*) Streams and ground water is polluted and there is hardly any facility of drinking water. Women have been seen fetching water from dirty nalas.
>
> (*c*) Mining companies and beneficiation plants are drawing water from rivers and nearby water resources are getting depleted at a fast rate. River Baitrani has been seriously affected by this activity.

10 *Goa Foundation* v. *Union of India*, (2014) 6 SCC 590

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(*d*) Basic facilities such as medical facilities, shelter/residence, education facilities are absent. Roads have a heavy flow of traffic and on one road of the area about 7000 trucks passed during night time.

(*e*) The labour is not being paid adequate wages beyond the minimum wages even though the income of the mine owners runs into billions of rupees.

49. Adverting to corruption in the area due to illegal mining activities, the Commission felt that the Vigilance Commission was unlikely to conduct an impartial and independent enquiry for arriving at just and proper findings because of external pressures. Accordingly, it would be more appropriate if the Central Bureau of Investigation (CBI) conducts a detailed enquiry into all cases that have been registered between 2008 and 2011. It was also noted that the Railways have issued demand notices to the extent of Rs 1874 crores. The latest position with regard to these notices is not available.

50. It was also noted that notices have been issued in 146 cases to various leaseholders for recovery of mined ore as per Section 21(5) of the MMDR Act. In the Koira circle, notices have been issued to 55 lessees for more than Rs 13,000 crores; in Joda circle, notices have been issued to 72 lessees for recovery of more than Rs 44,000 crores; in Keonjhar circle, notices have been issued to 4 lessees for recovery of about Rs 1065 crores; in Koraput circle, notices have been issued to three lessees for the recovery of about Rs 44 lakhs; and in Bolangir circle, notice has been issued to 1 lessee for the recovery of about Rs 29.5 crores. In Baripada circle, notices have been issued to 11 lessees for recovery of more than Rs 467 crores. In other words notices have been issued to the lessees for recovery of more than Rs 59,000 crores! (According to CEC the figure exceeds Rs 61,000 crores)!!

51. We have adverted to the reports of the Commission, without relying on them, only to highlight the gravity of the situation and nothing more. The gravity of the situation is also apparent from the report of CEC and the Commission seems to support it.

Initial contention

52. The initial contention urged on behalf of the respondent leaseholders was that in giving the Report dated 16-10-2014 CEC has exceeded its remit. In this context, reference was made to the order of 13-1-2014[7] in which it is stated that "The Report will not cover cases other than forest and environmental issues".

53. We are of the opinion that this objection deserves immediate rejection. The subsequent orders passed by this Court have been completely overlooked by the learned counsel inasmuch as on 21-4-2014[8] it was specifically noted by this Court that "CEC, in the meanwhile, will make out a list of such lessees who are operating the leases in violation of the law". Similarly, in the

7 *T.N. Godavarman Thirumulpad* v. *Union of India*, IA No. 3721 in 3629 in WP (C) No. 202 of 1995, order dated 13-1-2014 (SC)

8 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 14 SCC 160

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record of proceedings of 16-5-2014 it was noted that "The Central Empowered Committee will give a final report on the writ petition by the end of July 2014. ..."

54. From a reading of the orders and the proceedings that have been held in this regard from time to time, it is quite obvious to us that the jurisdiction of CEC was not limited and it was expected to give a detailed report on all aspects of illegal mining or mining being carried out without any lawful authority in whatever manner. The initial objection raised on behalf of the leaseholders is therefore rejected.

Central Empowered Committee

55. The Central Empowered Committee or CEC was first constituted by this Court by an order dated 9-5-2002 [*T.N. Godavarman Thirumulpad (50)* v. *Union of India*[14]] as an interim body. Thereafter, it was constituted by a Notification dated 17-9-2002 issued under Section 3(3) of the Environment (Protection) Act, 1986 (for short "the EPA"). It has continued functioning and assisting this Court for more than a decade and even though it has been criticised on a couple of occasions, it is now an established body which renders extremely valuable advice to this Court and provides factual material on the basis of which this Court can make some recommendations and pass appropriate orders.[14, 15]

56. The details of the functioning of CEC have been discussed by this Court in *Samaj Parivartana Samudaya* v. *State of Karnataka*[16]. In that decision, questions were raised about the credibility of CEC and while rejecting the submissions, it was made clear that the recommendations made by CEC are subject to the satisfaction of this Court. We need say nothing more except that during the course of hearing of the present petitions, some of the conclusions arrived at by CEC were disputed by the petitioners and even by the learned Amicus and some were supported by the learned counsel for the mining leaseholders, the learned Attorney General and the learned counsel for the State of Odisha. It is therefore quite clear that in the present cases, CEC as a fact-finding body has functioned impartially and it is only on the conclusions arrived at by CEC on the basis of the facts gathered that there can be some debate and discussion. Anyone may disagree with the views of CEC and there is no need to make heavy weather about this at all.

57. Insofar as the Report given by CEC on 16-10-2014 (the final report) is concerned, before going into the details thereof, we may mention that CEC has stated that it held meetings with the Chief Secretary and other senior officials of the State of Odisha and others on six dates. It also heard the leaseholders and others on seven dates and it held meetings with three of the leaseholders, that is, Jindal Steel and Power Ltd. (JSPL), Sarda Mines Pvt. Ltd. (SMPL) and Essel Mining and Industries Ltd. (Essel) on 10-9-2014. CEC visited the site of the mining lease of SMPL from 4-3-2014 to 7-3-2014 and had site visits of a number of other lessees from 12-7-2014 to 16-7-2014.

14 (2013) 8 SCC 198
15 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2013) 8 SCC 204
16 (2013) 8 SCC 154

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58. As far as the facts collected by CEC are concerned, there is no dispute with regard to their correctness. CEC has recorded that there are 187 iron ore and manganese ore mining leases in the State of Odisha. On the basis of the material and information collected, a statement was prepared showing leasewise and yearwise details of production of iron ore and manganese ore, permissible production and production without environmental clearance/ beyond environmental clearance. The details in this regard have been given as Annexure R-14 to the final report.

59. Regarding the correctness of the information, CEC has this to say:

> "24. A copy of the abovesaid statement prepared by CEC was made available, through the Director, Mines and Geology, Government of Odisha and also through the Federation of Indian Mining Industries (FIMI), to the lessees of each of the mining leases to enable them to verify the production and other details as given in the statement. During the hearings held before CEC between 5-8-2014 and 12-8-2014 and also in the representations filed before CEC a large number of lessees stated that the yearwise production details are not correctly reflected in the statement. Some of them also stated that the environmental clearance details are not properly reflected in the statement. Therefore, it was decided that (*a*) the State Government will reconcile the annual production and other details with the respective lessees, and (*b*) the copies of the environmental clearances may also be filed before CEC by those lessees who are disputing the environmental clearances details provided by the State. Accordingly a meeting was convened by the Director, Mines & Geology (DMG) with the lessees on 14-8-2014 and during which the annual production and other details were reconciled. The reconciled leasewise and yearwise production and other details provided to CEC by the State of Odisha may be seen in the statement enclosed at Annexure R-11 to this Report. The figures modified in the said statement, after reconciliations, are shown in bold print."

60. CEC noted that the Director, Mines and Geology of the Government of Odisha had informed CEC that each leaseholder with the exception of SMPL and JSPL agreed with the reconciled production details. On facts, therefore, there is no dispute with regard to the contents of the report of CEC, although the conclusions might be disputed. Separately, CEC has dealt with the facts concerning SMPL and JSPL pursuant to a meeting held with them on 11-9-2014.

Statutory provisions

61. The grant of a mining lease is governed by the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (or the MMDR Act), the Mineral Concession Rules, 1960 (or the MCR) and the Mineral Conservation and Development Rules, 1988 (or the MCDR).

62. Section 4(1) of the MMDR Act provides that no person shall undertake any mining operation in any area except under and in accordance with the terms and conditions of a mining lease granted under the MMDR Act and the

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Rules made thereunder. A "mining operation" is defined in Section 3(*d*) of the MMDR Act as meaning any operation undertaken for the purpose of winning any mineral. Section 4(2) of the MMDR Act provides that no mining lease shall be granted otherwise than in accordance with the provisions of the said Act and the Rules made thereunder.

63. Section 5(2) of the MMDR Act provides for certain restrictions on the grant of a mining lease. It provides that the State Government shall not grant a mining lease unless it is satisfied that the applicant has a mining plan duly approved by the Central Government or the State Government in respect of the mine concerned and for the development of mineral deposits in the area concerned.

64. Section 10 of the MMDR Act provides for the procedure for obtaining a mining lease and sub-section (1) thereof provides that an application is required to be made for a mining lease in respect of any land in which the mineral vests in the Government and the application shall be made to the State Government in the prescribed form and along with the prescribed fee.

65. Section 12 of the MMDR Act requires the State Government to maintain a set of registers. Among the registers that the State Government is required to maintain are a register of applications for mining leases and a register of mining leases. Every such register shall be open to inspection by any person on payment of such fee as the State Government may fix.

66. Section 13 of the MMDR Act provides for the rule-making power of the Central Government in respect of minerals. The MCR are framed in exercise of power conferred by Section 13 of the MMDR Act.

67. Section 18 of the MMDR Act makes it the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of the environment by preventing or controlling any pollution which may be caused by mining operations. The MCDR are framed in exercise of power conferred by Section 18 of the MMDR Act.

68. The distinction between the MCR and the MCDR is that the MCR deal, inter alia, with the grant of a mining lease and not commencement of mining operations. However, the MCDR deal, inter alia, with the commencement of mining operations and protection of the environment by preventing and controlling pollution which might be caused by mining operations.

69. Section 21 of the MMDR Act deals with penalties and sub-section (1) thereof provides that whoever contravenes the provisions of sub-section (1) or sub-section (1-A) of Section 4 shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to Rs 25,000 or with both. Sub-section (5) of Section 21 of the MMDR Act provides that whenever any person raises without any lawful authority, any mineral from any land, the State Government may recover from such person the minerals so raised or where such mineral has been disposed of the price thereof. In addition thereto the State Government may also recover from such person rent, royalty

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or tax, as the case may be for the period during which the land was occupied by such person without any lawful authority.

Mineral Concession Rules, 1960

70. As far as the MCR are concerned, Rule 22 is of some importance and this provides for an application to be made for the grant of a mining lease in respect of land in which the mineral vests in the Government. An application for the grant of a mining lease is required to be made by an applicant to the State Government in Form I to the MCR. Sub-rule (5) of Rule 22 deals with a mining plan and it requires that a mining plan shall incorporate, amongst other things, a tentative scheme of mining and annual programme and plan for excavation for year-to-year for five years.

71. Rule 22-A of the MCR makes it clear that mining operations shall be undertaken only in accordance with the duly approved mining plan. Therefore, a mining plan is of considerable importance for a mining leaseholder and is in essence sacrosanct. A mining scheme and a mining plan are a sine qua non for the grant of a mining lease.

72. Rule 27 of the MCR deals with the conditions that every mining lease is subject to. One of the conditions is that the lessee shall comply with the MCDR.

73. The format of a mining lease is given in Form K to the MCR and this is relatable to Rule 31 of the MCR which provides that on an application for the grant of a mining lease, if an order has been made for the grant of such lease, a lease deed in Form K or in a form as near thereto as circumstances of each case may require, shall be executed within six weeks of the order, or within such extended period as the State Government may allow.

74. Part VII of Form K deals with the covenants of the lessee/lessees. Clause 10 thereof requires the lessee to keep records and accounts regarding production and employees, etc. The lessee is required, inter alia, to maintain a record of the quantity and quality of the mineral released from the leased land, the prices and all other particulars of all sales of the mineral and such other facts, particulars and circumstances, as the Central Government or the State Government may require.

75. Clause 11-C is of some importance and it requires that the lessee shall take measures for the protection of the environment like planting of trees, reclamation of land, use of pollution control devices and such other measures as may be prescribed by the Central Government or the State Government from time to time at the expense of the lessee.

76. Rule 37 of the MCR deals with the transfer of a lease and provides, inter alia, that a mining lessee shall not without the previous consent in writing of the State Government or the Central Government, as the case may be, assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein. The lessee shall not enter into or make any bona fide arrangement, contract or understanding whereby the lessee will or may directly or indirectly be financed to a substantial extent in respect of its operations or undertakings or be substantially controlled by any person or body of persons.

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Sub-rule (3) of Rule 37 of the MCR enables a State Government to determine any lease if the mining lessee has committed a breach of Rule 37 of the MCR or has transferred any lease or any right, title or interest therein otherwise than in accordance with sub-rule (2) of Rule 37 of the MCR.

Mineral Conservation and Development Rules, 1988

77. The MCDR promulgated under Section 18 of the MMDR Act and referred to in Rule 27 of the MCR are also of some significance. Rule 9 of the MCDR prescribes that no person shall commence mining operations in any area except in accordance with a mining plan approved under Clause (*b*) of sub-section (2) of Section 5 of the MMDR Act.

78. The mining plan may be modified in terms of Rule 10 of the MCDR in the interest of safe and scientific mining, conservation of minerals or for protection of the environment. However, the application for modifications shall set forth the intended modifications and explain the reasons for such modifications. The mining plan cannot be modified just for the asking.

79. Rule 13 of the MCDR provides that mining operations are required to be carried out by every holder of a mining lease in accordance with the approved mining plan. If the mining operations are not so carried out, the mining operations may be suspended by the Regional Controller of Mines in the Indian Bureau of Mines or another authorised officer.

80. From our point of view, Chapter V of the MCDR dealing with "Environment" is of significance. In this Chapter, Rule 31 of the MCDR provides that every holder of a mining lease shall take all possible precautions for the protection of the environment and control of pollution while conducting any mining operations in the area.

81. Rule 37 of the MCDR requires certain precautions to be taken against air pollution and obliges the mining leaseholder to keep air pollution under control and within permissible limits specified under various environmental laws including the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

82. Rule 38 of the MCDR requires the holder of a mining lease to take all possible precautions to prevent or reduce the passage of toxic and objectionable liquid effluents from the mine into surface water bodies, ground water aquifer and usable lands to a minimum. It also mandates effluents to be suitably treated, if required, to conform to the standards laid down in this regard. In other words, the provisions of the Water (Prevention and Control of Pollution) Act, 1974 are required to be adhered to by the mining leaseholder.

83. Rule 41 of the MCDR requires every holder of a mining lease to carry out mining operations in such a manner as to cause least damage to the flora of the area and the nearby areas. Every holder of a mining lease is required to take immediate measures for planting not less than twice the number of trees destroyed by reason of any mining operations and to look after them during the subsistence of the lease after which these trees shall be handed over to the State Forest Department or any other appropriate authority. The holder of a mining

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lease is also required to restore, to the extent possible, other flora destroyed by the mining operations.

84. Briefly therefore, the overall purpose and objective of the MMDR Act as well as the Rules framed thereunder is to ensure that mining operations are carried out in a scientific manner with a high degree of responsibility including responsibility in protecting and preserving the environment and the flora of the area. Through this process, the holder of a mining lease is obliged to adhere to the standards laid down under the Environment (Protection) Act, 1986 or the EPA as well as the laws pertaining to air and water pollution and also by necessary implication, the provisions of the Forest (Conservation) Act, 1980 (for short "the FC Act"). Exploitation of the natural resources is ruled out. If the holder of a mining lease does not adhere to the provisions of the statutes or the rules or the terms and conditions of the mining lease, that person is liable to incur penalties under Section 21 of the MMDR Act. In addition thereto, Section 4-A of the MMDR Act which provides for the termination of a mining lease is applicable. This provides that where the Central Government, after consultation with the State Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, prevention of pollution, etc. then the Central Government may request the State Government to prematurely terminate a mining lease.

Environment Impact Assessment Notification of 27-1-1994

85. As can be seen from the statutory scheme adverted to above, protection and preservation of the environment is a significant and integral component of a mining plan, a mining lease and mining operations — and rightly so.

86. Keeping this in mind, an Environment Impact Assessment Notification dated 27-1-1994 was issued by the Central Government in exercise of powers conferred by Section 3(1) and Section 3(2)(*v*) of the EPA read with Rule 5(3)(*d*) of the Environment (Protection) Rules, 1986. The Environment Impact Assessment Notification dated 27-1-1994 (for short "EIA 1994") is a prohibitory notification and directs that on and from the date of its publication in the Official Gazette:

> (*i*) expansion or modernisation of any activity (if pollution load is to exceed the existing one); and
>
> (*ii*) a new project listed in Schedule I to the notification;

shall not be undertaken unless it has been accorded environmental clearance (for short EC) by the Central Government in accordance with the procedure specified in the Notification.

87. The Notification provides, among other things, that in case of mining operations, site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years from commencing mining operations. What this means is that on receipt of an EC a mining leaseholder can extract a mineral only from a specified site, up to the sanctioned capacity and only for a period of five years from the date of the grant of an EC. This is regardless of the quantum of extraction permissible in the mining plan or the mining lease and regardless

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of the duration of the mining lease. Consequently, a mining leaseholder would necessarily have to obtain a fresh EC every five years and can also apply for an increase in the sanctioned capacity. There is no concept of a retrospective EC and its validity effectively starts only from the day it is granted. Thus, the EC takes precedence over the mining lease or to put it conversely, the mining operations under a mining lease are dependent on and "subordinate" to the EC.

88. On 4-5-1994 an Explanatory Note was added to EIA 1994. We are concerned with the 1st Note which deals with the expansion and modernisation of existing projects. This reads as follows:

> "**1.** ***Expansion and modernisation of existing projects***.—A project proponent is required to seek environmental clearance for a proposed expansion/modernisation activity if the resultant pollution load is to exceed the existing levels. The words "pollution load" will in this context cover emissions, liquid effluents and solid or semi-solid wastes generated. A project proponent may approach the State Pollution Control Board (SPCB) concerned for certifying whether the proposed modernisation/expansion activity as listed in Schedule I to the notification is likely to exceed the existing pollution load or not. If it is certified that no increase is likely to occur in the existing pollution load due to the proposed expansion or modernisation, the project proponent will not be required to seek environmental clearance, but a copy of such certificate issued by the SPCB will have to be submitted to the Impact Assessment Agency (IAA) for information. The IAA will however, reserve the right to review such cases in the public interest if material facts justifying the need for such review come to light."

89. The Note is significant and from its bare reading it is clear that if any proposed expansion or modernisation activity results in an increase in the pollution load, then a prior EC is required. The project proponent should approach the State Pollution Control Board concerned (for short "SPCB") for certifying whether the proposed expansion or modernisation is likely to exceed the existing pollution load or not. If the pollution load is not likely to be exceeded, the project proponent will not be required to seek an EC but a copy of such a certificate from SPCB will require to be submitted to the Impact Assessment Agency which can review the certificate.

90. What is the requirement, if any, under EIA 1994 with regard to an existing mining lease where there is no proposal for expansion or modernisation? Does such a mining leaseholder require an EC to continue mining operations? This is answered in the 8th Note which is also of some importance and this reads as follows:

> "**8.** ***Exemption for projects already initiated***.—For projects listed in Schedule I to the notification in respect of which required land has been acquired and all relevant clearances of the State Government including NOC from the respective State Pollution Control Boards have been obtained before 27-1-1994, a project proponent will not be required to seek environmental clearance from the IAA. However those units who have not as yet commenced production will inform the IAA."

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91. The above Note makes it clear that existing mining projects that have a no-objection certificate from SPCB before 27-1-1994 will not be required to obtain an EC from the Impact Assessment Agency. Of course, this is subject to the substantive portion of EIA 1994 and the 1st Note. However, if the existing mining project does not have a no-objection certificate from SPCB, then an EC will be required under EIA 1994.

92. Two questions immediately arise from a reading of the 1st and the 8th Note. The first question is: What is the base year for considering the pollution load while proposing any expansion activity? The second question is: What is the duration for which an EC is not necessary for an ongoing project which does not propose any expansion, or to put it differently, what is the validity period for a no-objection certificate from SPCB?

93. In our opinion, as far as the first question is concerned, a reading of EIA 1994 read with the 1st Note implies that the base year would need to be the immediately preceding year, that is, 1993-94. This is obvious from the opening sentence of the 1st Note, that is,

> "A project proponent is required to seek environmental clearance for a proposed expansion/modernisation activity if the resultant pollution load is to exceed the *existing levels*." (emphasis supplied)

In its report, CEC has taken 1993-94 as the base year and we see no error in this. Even the MoEF in its Circular dated 28-10-2004 stated with regard to the expansion in production:

> "If the annual production of any year from 1994-95 onwards exceeds the annual production of 1993-94 or its preceding years (even if approved by IBM), it would constitute expansion."

If that expansion results in an increase in the pollution load over the existing levels, then an EC is mandated.

94. It was contended on behalf of the mining leaseholders that in terms of the Circular of 28-10-2004 the annual production even prior to 1993-94 could be considered for ascertaining if there was an expansion or not. We cannot accept this submission for a variety of reasons. For one, the *existing levels* mentioned in the 1st Note clearly have reference to the immediately preceding year and not to a preceding year in a comparatively remote past. Secondly, a very high annual production in any one year is not reflective of a consistent pattern of production — it could very well be a freak year and that freak year certainly cannot be a basic standard or the norm to measure expansion. Then if the interpretation sought to be given is accepted, there would be an absence of consistency and a lack of uniformity with different mining leaseholders having different base years. This is hardly conducive to good governance. Finally, EIA 1994 was intended to prevent the existing environmental load from increasing based on the existing data of the immediate past and not data of a few years gone by. We may add that the only exception that could be made in this regard would be if there is no production during 1993-94. In that event, the immediately

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preceding year would be relevant and that is the only reasonable interpretation that we see for the use of the words "or its preceding years".

95. On the question of the duration or exemption period from an EC in respect of a project that has commenced prior to 27-1-1994 the substantive portion of EIA 1994 and the 8th Note grant an exemption from the requirement of obtaining an EC if there is no expansion and the existing pollution load is not exceeded. In any event, a no-objection certificate from SPCB is necessary for continuing the mining operations. Consequently, even if any mining leaseholder does not have an EC or does not require an EC for continuing mining operations (but has a no-objection certificate from SPCB), the absence of an EC would not have an adverse impact on the mining leaseholder unless of course, there was an expansion in the mining operations without any certificate from SPCB. In addition to this, the validity period (if any) of the certificate from SPCB is important — we have not been made aware whether there is such a validity period or not.

96. The contention of the learned counsel for the mining leaseholders that EIA 1994 was rather vague, uncertain and ambiguous cannot be accepted. In our opinion, on a composite reading of EIA 1994, it is clear that:

(*i*) A no-objection certificate from SPCB was necessary for continuing mining operations;

(*ii*) An expansion or modernisation activity required an EC unless the pollution load was not exceeded beyond the existing levels;

(*iii*) The base year for determining the pollution load and therefore the proposed expansion would be with reference to 1993-94;

(*iv*) Whether an expansion or modernisation would lead to exceeding the existing pollution load or not would require a certificate from SPCB which could be reviewed by the IAA;

(*v*) New projects require an EC; and

(*vi*) Existing projects do not require an EC unless there is an expansion or modernisation for the duration (if any) of the validity of the certificate from SPCB.

We need not say anything more on this subject since CEC has proceeded to discuss the issue of mining in excess of the EC or in excess of the mining plan only from the year 2000-01 onwards. The prior period may, therefore, be ignored and it is the period from 2000-01 onwards which is actually relevant for the present discussion.

97. It was submitted by the learned counsel for the mining leaseholders that the MoEF had caused some confusion with regard to the requirement of an EC at the time of renewal of a mining lease. In this connection, reference was made to a Press Note of July 1994 and a Letter dated 19-6-1997 of the MoEF to the Chief Conservator of Forests in the MoEF.

98. The learned counsel for the mining leaseholders sought to buttress their submission that EIA 1994 was vague and ambiguous by mentioning two Circulars issued by the MoEF on 5-11-1998 and 27-12-2000 extending

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the period for obtaining an EC for new units. However, these circulars are apparently not on our record (which goes into 148 volumes) and therefore we cannot make any comment about them. These circulars were mentioned to also contend that even for new units the absence of an EC would not have an adverse impact on them, since the period for obtaining an EC was extended from time to time. A reference was also made to a Circular dated 14-5-2002 which later on became the subject of consideration by this Court in *M.C. Mehta* v. *Union of India*[17]. A reading of the Circular of 14-5-2002 indicates that several units had come up in violation of EIA 1994. The MoEF had taken the view that such units may be permitted to apply for an EC by 31-3-1999 which was then extended to 30-6-2001 by Circulars dated 5-11-1998 and 27-12-2000, respectively.

99. By the Circular dated 14-5-2002 the deadline for applying for an EC was extended up to 31-3-2003 as a last and final opportunity to obtain an ex post facto EC in respect of units which had commenced mining operations without obtaining a prior EC in violation of EIA 1994. The Circular also stated that:

> "... Suitable directions shall be issued by all States/UTs under the Environment (Protection) Act to units to stop construction activities/operations of all such units that fail to apply for environmental clearance by 31-3-2003. Units which fail to comply with these directions shall be proceeded against forthwith under the relevant provisions of the Environment (Protection) Act, 1986 without making reference to this Ministry."

100. It was submitted that in view of these ambiguous and unclear signals emanating from the MoEF which resulted in confusion being worse confounded, the mining leaseholders were not clear whether or not they were required to obtain an EC particularly in respect of pre-EIA 1994 mining leases and operations.

101. As mentioned above, these dates and the text of the circulars were emphasised by the learned counsel for the leaseholders to contend that it was not obligatory for the mining leaseholders, who did not expand their mining operations, to obtain an EC and in any event the period for obtaining an EC was extended till 31-3-2003 with ex post facto approval. In this context, reliance was placed on *M.C. Mehta*[17] referred to above.

102. We are not in agreement with the contention of the learned counsel for the mining leaseholders on the interpretation given to the various circulars for the reasons given above and must also correctly appreciate the decision of this Court in *M.C. Mehta*[17].

103. In *M.C. Mehta*[17] the issue that arose for consideration was whether mining activity in the Aravalli Hills causes environmental degradation and what directions are required to be issued. While considering this issue, this Court also considered EIA 1994 and the Circular dated 14-5-2002. In doing so, this Court categorically held in para 37 of the Report that the intention of the MoEF was not to legalise the continuance of mining activity without complying with the requisite stipulations. If that were unfortunately so, then it would demonstrate

17 (2004) 12 SCC 118

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a lack of sensitivity of the MoEF to the principles of sustainable development and the object behind issuing EIA 1994. This Court said: (SCC p. 161)

> "*37.* ... It does not appear that MoEF intended to legalise the commencement or continuance of mining activity without compliance of stipulations of the notification. In any case, a statutory notification cannot be notified [modified] by issue of circular. Further, if MoEF intended to apply this circular also to mining activity commenced and continued in violation of this notification, it would also show total non-sensitivity of MoEF to the principles of sustainable development and the object behind the issue of notification. The circular has no applicability to the mining activity."

104. Adverting to the MMDR Act, this Court expressed the view in para 52 of the Report that the approval of a mining plan does not imply that a mining leaseholder can commence mining operations. The mining leaseholder is nevertheless obliged to comply with statutory provisions including the EPA and other laws. It was said: (*M.C. Mehta case*[17], SCC p. 169)

> "*52.* The grant of permission for mining and approving mining plans and the scheme by the Ministry of Mines, Government of India by itself does not mean that mining operation can commence. It cannot be accepted that by approving mining plan and scheme by the Ministry of Mines, the Central Government is deemed to have approved mining and it can commence forthwith on such approval. ... A mining leaseholder is also required to comply with other statutory provisions such as the Environment (Protection) Act, 1986; the Air (Prevention and Control of Pollution) Act, 1981; the Water (Prevention and Control of Pollution) Act, 1974 and the Forest (Conservation) Act, 1980. Mere approval of the mining plan by the Government of India, Ministry of Mines would not absolve the leaseholder from complying with the other provisions."

105. This Court also considered the question of the applicability of EIA 1994 to the renewal of an existing mining lease. It was held that the said notification would apply to the renewal of a mining lease that came up for consideration post 27-1-1994. In other words, for the renewal of a mining lease, an EC was required by the mining leaseholder. It was held in para 77 of the Report: (*M.C. Mehta case*[17], SCC p. 180)

> "*77.* We are unable to accept the contention that the notification dated 27-1-1994 would not apply to leases which come up for consideration for renewal after issue of the notification. The notification mandates that the mining operation shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. The clearance under the notification is valid for a period of five years. In none of the leases the requirements of the notification were complied with either at the stage of initial grant of the mining lease or at the stage

17 *M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118

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of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. No mining operation can commence without obtaining environmental impact assessment in terms of the notification."

106. It is clear from the decision rendered by this Court that EIA 1994 is mandatory in character; that it is applicable to all mining operations—expansion of production or even increase in lease area, modernisation of the extraction process, new mining projects and renewal of mining leases. A mining leaseholder is obliged to adhere to the terms and conditions of a mining lease and the applicable laws and the mere fact that a mining plan has been approved does not entitle a mining leaseholder to commence mining operations. In *M.C. Mehta*[17] this Court concluded that EIA 1994 is clearly applicable to the renewal of a mining lease.

107. Subsequent to the decision in *M.C. Mehta*[17] two clarificatory Circulars were issued by MoEF on 28-10-2004 and 25-4-2005. These were adverted to by the learned counsel for the mining leaseholders but in our opinion they are not relevant except to the extent that they make it explicit that following the decision of this Court in *M.C. Mehta*[17], an EC is required to be obtained before the renewal of a mining lease and that the term "expansion" would include an increase in production or the lease area or both.

108. It was submitted on behalf of the mining leaseholders that the possibility of getting an ex post facto EC was a signal to the mining leaseholders that obtaining an EC was not mandatory or that if it was not obtained, the default was retrospectively condonable. We do not agree. We have referred to various provisions of the MMDR Act and the Rules framed thereunder to indicate the statutory importance given to the protection and preservation of the environment. This was also emphasised in *M.C. Mehta*[17] in which it was also stated that: (SCC p. 161, para 37)

> "*37.* ... It does not appear that MoEF intended to legalise the commencement or continuance of mining activity without compliance of stipulations of the notification."

It appears to us that the MoEF was, in a sense, cajoling the mining leaseholders to comply with the law and EIA 1994 rather than use the stick. That the mining leaseholders chose to misconstrue the soft implementation as a licence to not abide by the requirements of the law is unfortunate and was an act of omission or commission by them at their own peril. We cannot attribute insensitivity to the MoEF or even to the mining leaseholders to environment protection and preservation, but at the same time we cannot overlook the obligation of everyone to abide by the law. That the MoEF took a soft approach cannot be an escapist excuse for non-compliance with the law or EIA 1994.

17 *M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118

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Environment Impact Assessment Notification of 14-9-2006

109. On 14-9-2006 another EIA Notification was issued by the MoEF. This notification (for short EIA 2006) required prior EC for projects or activities mentioned in the Schedule to it both for major as well as minor minerals if the leased area is 5 ha or more. We were informed that several mining leaseholders, in compliance with EIA 2006, applied for and were granted an EC.

110. It was submitted by the learned counsel for the mining leaseholders that the confusion, vagueness and uncertainty caused by EIA 1994 and subsequent circulars and other communications did not end with the issuance of EIA 2006. Reference was made to a Circular dated 13-10-2006 which deals with interim operational guidelines till 13-9-2007 in respect of applications made under EIA 1994. We do not see the relevance of this circular (which really dealt with transitional issues) not only for the reason given in *M.C. Mehta*[17] that circulars cannot override statutory notifications but also because it deals with the procedure for considering applications made under EIA 1994.

111. Reference was also made to a Circular dated 2-7-2007. The passage relied upon reads as follows:

> "It is clarified that all such mining projects which did not require environmental clearance under the EIA Notification, 1994 would continue to operate without obtaining environmental clearance till the mining lease falls due for renewal, if there is no increase in lease area and/or there is no enhancement of production. In the event of any increase in lease area and or production, such projects would need to obtain prior environmental clearance. Further, all such projects which have been operating without any environmental clearance would obtain environmental clearance at the time of their lease renewal even if there is no increase either in terms of lease area or production."

112. The aforesaid Circular relates to three categories that is:

(*i*) Mining leases, where no EC was required under EIA 1994 would continue to operate without an EC;

(*ii*) If there was an increase in the lease area or enhancement of production, an EC was required by the mining leaseholder;

(*iii*) All projects would require an EC at the time of renewal of the mining lease even if there was no increase in the lease area or enhancement of production.

113. Reference was also made to an Office Memorandum dated 19-8-2010. However a reading of this document brings out that it basically relates to construction at site but makes it clear that no activity relating to any project covered under EIA 2006 including civil construction could be undertaken without obtaining a prior EC except fencing of the site to protect it from getting encroached and construction of temporary sheds for the guards.

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114. Reference was also made to Office Memorandums dated 16-11-2010 and 12-12-2012 but having gone through them we find them of little relevance as they deal with procedural issues only.

115. All that we need to say on this subject is that there is no confusion, vagueness or uncertainty in the application of EIA 1994 and EIA 2006 insofar as mining operations were commenced on mining leases before 27-1-1994 (or even thereafter). Post EIA 2006, every mining leaseholder having a lease area of 5 ha or more and undertaking mining operations in respect of major minerals (with which we are concerned) was obliged to get an EC in terms of EIA 2006.

116. An attempt was then made by the learned counsel for the mining leaseholders to get out of the rigours of EIA 1994 and EIA 2006 by contending that some of them had modified the mining plan (with approval) and that therefore they had extracted iron ore or manganese ore, as the case may be, in terms of the mining plan but not necessarily in terms of the EC that had been obtained, if at all.

117. We have already held that a mining plan is subordinate to the EC and in *M.C. Mehta*[17] it was held by this Court that having an approved mining plan does not imply that a mining leaseholder can commence mining operations. That being so, a modified mining plan without a revised or amended EC, is of no consequence. What the contention of the learned counsel suggests to us is that under the shield of a modified mining plan, illegal or unlawful mining in the form of mining without an EC, mining by over-reaching EIA 1994 and EIA 2006 was being carried out.

118. The contention apart, the subterfuge of obtaining a modified mining plan to get over the adverse effects of excess and illegal or unlawful production of iron ore or manganese ore was deprecated by the Ministry of Mines of the Government of India. In a Letter dated 29-10-2010 addressed to the Controller General, Indian Bureau of Mines it was pointed out that the State Governments had expressed a concern that the Indian Bureau of Mines (IBM) had been modifying mining plans for allowing an increase in production of ore without adequate intimation to the State Governments. A concern was raised that such a revision was often being used to increase production of ore, which is sometimes not accounted for in mining operations in the mining lease concerned. It was made clear that all modifications of mining plans shall be effective prospectively only and earlier instances of irregular mining shall not be regularised through a modification of the mining plan.

119. In a subsequent Letter dated 12-12-2011 addressed to the Chief Secretary in the Government of Orissa the said Ministry of Mines noted that there were violations of the actual production limit laid down in the mining plan and that the State Government had finally taken steps to curb illegal mining in respect of overproduction of minerals. There was a reference to suggest (and we take it to be so) that 20% deviation from the mining plan (in terms of overproduction) would be reasonable and permissible. However, it appears from a reading of the communication that illegal mining was going on

17 *M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118

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beyond the 20% deviation limit and that appropriate steps were needed to curb these violations. The learned counsel for the petitioners submitted that such egregious violations must be firmly dealt with by cancellation or termination of the mining lease and a soft approach is not called for.

120. In this context, it is worth noting that a High Level Committee (called the Hoda Committee) on the National Mineral Policy noted in its Report dated 22-12-2006 in para 3.47 as follows:

> "3.47 An EMP [Environment Management Plan] has to be prepared under the MCDR and got approved by IBM. However, this EMP is not acceptable to the MoEF. The miner has to prepare two EMPs separately —one for IBM and another for MoEF. The Committee suggests that IBM and MoEF should prepare guidelines for a composite EMP so that IBM can approve the same in consultation with MoEF's field offices. This will eliminate anomalous situations where increase of even a few tonnes in production requires project authorities to get a fresh EMP approved from the MoEF although the IBM allows a grace of ±10%, keeping in view the fluctuations in the market situation and process complexities. If a single EMP is accepted in principle such anomalies can be resolved in advance. The Committee feels the MoEF should also have a cushion of ±10% in production while giving EIA clearance."

121. The above passage indicates that the permissible variation in production as per the Indian Bureau of Mines is ±10% but according to the Letter dated 12-12-2011 issued by the Ministry of Mines, the reasonable variation limit could be ±20%. It is not clear why there was a shift in the variation, but as rightly pointed out by the learned counsel for the petitioners, the fact that in some cases the variation exceeded 20% was a cause for concern which necessitated strict and punitive action.

122. A submission was made by the learned counsel for the mining leaseholders to the effect that since many of them had been granted the first deemed statutory renewal of the mining lease under Rule 24-A of the MCR, the requirements of EIA 1994 would not be applicable. We were shown various amendments made to Rule 24-A of the MCR from time to time particularly the amendments made on 10-2-1987, 7-1-1993, 27-9-1994, 17-1-2000, 18-7-2014 and 8-10-2014. In our opinion, none of these are of any consequence, the reason being that for the purposes of renewal of the mining lease, an application is required to be made by the mining leaseholders and the deemed renewal clause under Rule 24-A of the MCR will come into operation only after an application for renewal is made in Form J in Schedule I of the MCR. Under Rule 26 of the MCR, the State Government may refuse to renew the mining lease. That apart, the position in environmental jurisprudence with regard to the renewal of a mining lease has been made explicit by this Court in *M.C. Mehta*[17]. Even otherwise, in view of EIA 1994, it is quite clear that the renewal of a mining lease would require a prior EC.

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123. We may also draw attention in this regard to a Circular dated 28-10-2004 issued by the MoEF wherein it was stated that in view of the decision in *M.C. Mehta*[17] all mining projects of major minerals of more than 5 ha lease area that had not yet obtained an EC would have to do so at the time of renewal of the lease.

124. Finally, it was submitted that whenever an EC is granted, it would have retrospective effect from the date of the application for grant of an EC. In this context, it was pointed out that there were enormous delays in granting an EC and that the Hoda Committee had noted with reference to EIA 2006 that if all goes well, the grant of an EC takes about 232 days whereas the international norm is that an EC is granted within six months or 180 days. According to the additional affidavit filed by some mining leaseholders, the period of 232 days mentioned by the Hoda Committee was actually a conservative estimate and that in fact it takes anything up to 390 days for the grant of an EC. It was submitted that the position was even worse under EIA 1994 since the MoEF rarely showed any urgency in the grant of an EC. Examples were cited before us to show that in some instances the grant of an EC took more than two years. Taking all this into consideration it was submitted that it would be more appropriate that the EC is given retrospective effect from the date of the application.

125. We are not in agreement with the learned counsel for the mining leaseholders. There is no doubt that the grant of an EC cannot be taken as a mechanical exercise. It can only be granted after due diligence and reasonable care since damage to the environment can have a long-term impact. EIA 1994 is therefore very clear that if expansion or modernisation of any mining activity exceeds the existing pollution load, a prior EC is necessary and as already held by this Court in *M.C. Mehta*[17] even for the renewal of a mining lease where there is no expansion or modernisation of any activity, a prior EC is necessary. Such importance having been given to an EC, the grant of an ex post facto environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment. The concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006. We make it clear that an EC will come into force not earlier than the date of its grant.

Illegal mining

126. A question raised by the learned counsel for the mining leaseholders concerned is the interpretation of the expression "illegal mining". Reliance was placed on the report of CEC which refers to Rule 2(*ii-a*) of the MCR to conclude that the violation of any rule within the mining lease area would not come within the definition of "illegal mining" except where there has been a violation of the Rules framed under Section 23-C of the MMDR Act. According to CEC:

> "*17*. Illegal mining has been defined as mining operations undertaken by any person in any area without holding a mining lease. It does not

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include violation of any rules within the mining lease area except the Rules made under Section 23-C of the MMDR Act, 1957. The mining lease area shall be considered as an area held with lawful authority by the lessee [refer Rule 2(*ii-a*), MCR, 1960]."

127. As can be seen from the above, there is a difference of opinion between CEC and the Commission on what is illegal mining or mining without lawful authority and we will give our views on the subject.

128. According to the lessees a mining operation only outside the mining lease area would constitute "illegal mining" making illegal mining lease centric. We are unable to accept this narrow interpretation given by CEC and relied upon by the learned counsel for the mining leaseholders.

129. The simple reason for not accepting this interpretation is that Rule 2(*ii-a*) of the MCR was inserted by a Notification dated 26-7-2012 while we are concerned with an earlier period. That apart, as mentioned above, the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the EPA, the FCA, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral.

130. It is not, as suggested by the learned counsel, that illegal mining is confined only to mining operations outside a leased area. Such an activity is obviously illegal or unlawful mining. Illegal mining takes within its fold excess extraction of a mineral over the permissible limit even within the mining lease area which is held under lawful authority, if that excess extraction is contrary to the mining scheme, the mining plan, the mining lease or a statutory requirement. Even otherwise, it is not possible for us to accept the narrow interpretation sought to be canvassed by the learned counsel for the mining leaseholders particularly since we are dealing with a natural resource which is intended for the benefit of everyone and not only for the benefit of the mining leaseholders.

Encroachments

131. Section 4(1) of the MMDR Act makes it clear that no person can carry out any mining operations except under and in accordance with the terms and conditions of a mining lease granted under the MMDR Act and the Rules made thereunder. Obviously therefore, any person carrying on mining operations without a mining lease, is indulging in illegal or unlawful mining. This would also necessarily imply that if a mining lease is granted to a person who carries out mining operations outside the boundaries of the mining lease, the mineral extracted would be the result of illegal or unlawful mining.

132. In its report, CEC has dealt with illegal mining outside the sanctioned mining areas. It is stated that 82 mining leases for iron ore and manganese

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ore were identified by the Commission where there were encroachments in the form of illegal mining pits, illegal overburdened dumps, etc.

133. In respect of these 82 mining leases, the State of Odisha appointed a Committee on the suggestion of the Commission, to survey and identify the exact extent and location of the sanctioned lease area, lease area under occupation of the mining leaseholder and the area under encroachment/illegal mining. The Committee or the Joint Survey consisted of officers of the Revenue Department, Forest Department and Mining Department of the State of Odisha who carried out a field survey in respect of 39 mining leases. The findings of the field survey or the Joint Survey were verified by a team comprising of the Director, Mines, Chief Engineer, ORSAC and the Additional Secretary, F & E Department of the Government of Odisha.

134. It is mentioned in the report of CEC that the Joint Survey for each of the 39 mining leases is technically sound and reliable. However, in respect of some of the leases, it would be desirable for the State Government to take another look at the results of the field survey. Unfortunately, CEC has not identified these mining leases that require another look. Be that as it may, the fact is that a joint survey has not been conducted in respect of 43 mining leases.

135. We are of the view that for completing the record and taking the report of CEC to its logical conclusion, it would be appropriate if a fresh Joint Survey is conducted by officers concerned of the Government of Odisha from the Revenue Department, the Forest Department, the Mining Department and any other department that may be deemed necessary. The Forest Survey of India, the MoEF, the Indian Bureau of Mines and the Geological Survey of India should also be associated in the Joint Survey. In our opinion, it would also be appropriate if CEC is also associated in the Joint Survey and the best and latest technology should be made use of including satellite imagery and thereafter a report is submitted in this Court on or before 31-12-2017 after hearing the 82 lessees identified by the Commission.

Adherence to the mining plan

136. A side issue raised by the learned counsel for the mining leaseholders in this regard was the necessity (if any) of adhering to the annual plan or calendar plan of mining. It was contended that a mining leaseholder could mine in excess of the annual plan. While it is so, this submission must be tempered and appreciated in the proper context. A mining plan is valid for a period of five years but there could be a 20% variation in extraction over and above the mining plan. This is the maximum that is stated to be reasonably permissible according to the Ministry of Mines. In terms of Rule 22(5) of the MCR a mining plan shall incorporate a tentative scheme of mining and annual programme and plan for excavation from year-to-year for five years. At best, there could be a variation in extraction of 20% in each given year but this would be subject to the overall mining plan limit of a variation of 20% over five years. What this means is that a mining leaseholder cannot extract the five year quantity (with a variation of 20%) in one or two years only. The extraction has to be staggered and continued over a period of five years. If any other interpretation is given,

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it would lead to an absurd situation where a mining leaseholder could extract the entire permissible quantity under the mining plan plus 20% in one year and extract miniscule amounts over the remaining four years, and this could be done without any reference to the EC. The submission of the learned counsel in this regard simply cannot be accepted.

137. In the Letter dated 12-12-2011 sent by the Secretary in the Ministry of Mines of the Government of India to the Chief Secretary of the Government of Odisha (adverted to above) concerning violation of annual production limit laid down in the approved mining plan, it was stated, inter alia, that an analysis of production and violations in 104 mining leases for bulk minerals in the last ten years was undertaken by the Indian Bureau of Mines. It was noted that in 71 cases there was excess ore produced beyond the reasonable variation limit of 20%. It was noted that this was partly due to the failure of the State machinery to restrict the movement of minerals.

138. In a further Letter dated 5-9-2012 it was reiterated that any violation of the mining plan or the mining scheme noticed by the State Government should be immediately brought to the notice of the Indian Bureau of Mines to initiate suitable action. It was reiterated that transit passes to such mines should not be issued by the State Government so as to stop any additional outgo. It was added:

> "Needless to say any revision on the limits of production is subjected to statutory clearances under Environment and Forest laws. Having said that, the State Mining and Geology officials should not also lose focus on taking stringent action against any instances of illegal mining, undertaken outside the leased area, and passed off as excess production."

It is quite clear from the correspondence placed before us that as far as the Union of India is concerned, any violation of the requirements of the law has to be firmly dealt with.

139. With reference to the interpretation of Section 21(5) of the MMDR Act (which we shall soon consider) it was stated as follows:

> "Section 21(5) of the MMDR Act is clearly applicable on such land which is occupied without lawful authority. It is clarified that in the context of the MMDR Act, 1957, violations pertaining to mining operations within the mining lease area are to be dealt with only in terms of the provisions of the Mineral Conservation and Development Rules, 1988. The State Governments have clear powers to tackle any offences related to mining outside the mining lease area in terms of Section 23-C of the MMDR Act, 1957. However, the interpretation that a land granted under a mining lease by the State Government can be held to be occupied without lawful authority on the grounds of violation of provisions of any other law of the land is not appropriate and such interpretation may not stand in the court of law. Such Act or Rules, including the Environment (Protection) Act, 1986, or the Forest (Conservation) Act, 1980, etc. clearly provide penalties for violations under those laws. This aspect may be clarified to the State Accountant General also."

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140. All that we need say for the present is that the interpretation given in the aforesaid Letter to Section 21(5) of the MMDR Act is not fully correct. While mining in excess of permissible limits under the mining plan or the EC or FC on leased area may not amount to mining on land occupied without lawful authority, it would certainly amount to illegal or unlawful mining or mining without authority of law.

Section 21 of the MMDR Act

141. The discussion on illegal or unlawful mining takes us to the question of the consequence of illegal or unlawful mining and the interpretation of Section 21(1) and Section 21(5) of the MMDR Act.

142. Section 21(1) of the MMDR Act is clearly relatable to a penal offence and applies if any one contravenes the provisions of Section 4(1) of the MMDR Act. Section 4(1) of the MMDR Act prohibits the undertaking of any mining operation in any area except under and in accordance with the terms and conditions of a mining lease and the Rules made thereunder. Therefore, when a person carries out a mining operation in any area other than a leased area or violates the terms of a mining lease, which incorporates the mining plan and which requires adherence to the law of the land, that person becomes liable for prosecution under Section 21(1) of the MMDR Act. In the event of a conviction, he or she shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to Rs 5 lakhs per hectare of the area.

143. As far as Section 21(5) of the MMDR Act is concerned, according to CEC the provision is applicable only if a person indulges in illegal mining outside the mining lease area. Consequently, Section 21(5) of the MMDR Act is not attracted even if the mineral raised within the mining lease area is without an EC or beyond the quantity prescribed by the EC or beyond the quantity permitted in the mining plan. In such a situation, the provisions of the EPA or the MCR come into play. This interpretation is supported by the learned counsel for the mining leaseholders who affirm that Section 21(5) of the MMDR Act is mining lease area centric. In other words, according to CEC and the learned counsel, for the purposes of Section 21(5) of the MMDR Act illegal mining is mining outside the mining lease area and Section 21(5) of the MMDR Act has to be understood in that light.

144. Reference was also made to the Explanation to Rule 2(*ii-a*) of the MCR where it is stated that for the purposes of this clause, the violation of any rules, other than the Rules made under Section 23-C of the MMDR Act, within the mining lease area by a holder of a mining lease shall not include illegal mining. In other words, it was submitted that Section 21(5) of the MMDR Act is required to be understood in the context of Rule 2(*ii-a*) of the MCR.

145. It was submitted by Shri Ashok Desai learned Senior Counsel for one of the intervenors, that the penalty postulated by Section 21(5) of the MMDR Act though an imposition of a pecuniary liability, is punishment for the commission of an offence. By referring to *Khemka & Co. (Agencies) (P)*

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Ltd. v. *State of Maharashtra*[18] it was contended that the liability sought to be imposed by Section 21(5) of the MMDR Act is not a liability that is created by a clear, unambiguous and express enactment.

146. As far as the Union of India is concerned, in its affidavit filed on 20-1-2017 by Shri Sudhakar Shukla, Economic Advisor in the Government of India, Ministry of Mines, it is submitted (and this submission is supported by the learned Attorney General in his oral submissions) that Section 21(5) of the MMDR Act is in two parts. The first part refers to the raising of minerals without any lawful authority from *any land*. The second part is in addition to what is recoverable under the first part. The addition is to the effect that when a person raises a mineral from any area not in his or her lawful authority, that person is also liable to pay the rent, royalty or tax for the period during which the land was occupied without lawful authority.

147. It is further submitted that "illegal mining" as defined in Rule 2(*ii-a*) of the MCR is also required to be read in the context of Rule 26(4) and Rule 27(4-A) of the MCR which deal with the refusal to renew a mining lease if the mining leaseholder is convicted of illegal mining and the determination of a mining lease in the event the mining leaseholder is convicted of illegal mining. It is submitted that the definition of "illegal mining" in the MCR must be strictly construed and limited to the provisions of the MCR and cannot apply to the provisions of Section 21(5) of the MMDR Act.

148. In conclusion, it is reiterated by the Union of India on affidavit as follows:

> "*55*. That considering all the above, the Ministry would like to submit that the provisions of sub-section (5) of Section 21 would apply to all minerals raised without any lawful authority, be it forest clearances or environment clearances or any other such legal requirements.
>
> *56*. That penalties would arise under Section 21(5) of the MMDR Act, 1957, in respect of any form of mining activity without lawful authority. Mining outside lease area would on the face of it amount to mining without lawful authority and would attract the provisions of Section 21(5); and, in addition, *all forms of mining without lawful authority including that in breach of the limits imposed by the environmental clearance carried out within the lease area would also invite penalties under Section 21(5).*" (emphasis supplied)

149. On behalf of the State of Odisha, it was submitted by Shri Rakesh Dwivedi learned Senior Counsel by relying upon *Karnataka Rare Earth* v. *Deptt. of Mines & Geology*[19] that what is sought to be achieved by Section 21(5) of the MMDR Act is to recover the price of the mineral that has been illegally or unlawfully or unauthorisedly raised with an intention to compensate the State for the loss of the mineral owned by it, the loss having been caused by a person who is not authorised by law to raise that mineral. There is no element of penalty

18 (1975) 2 SCC 22 : 1975 SCC (Tax) 227
19 (2004) 2 SCC 783

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involved in this and the recovery of the mineral or its price is not a penal action but is merely compensatory. This is what this Court had to say in *Karnataka Rare Earth*[19]: (SCC pp. 791-92, paras 12-15)

> "*12*. Is sub-section (5) of Section 21 a penal enactment? Can the demand of mineral or its price thereunder be called a penal action or levy of penalty?
>
> *13*. A penal statute or penal law is a law that defines an offence and prescribes its corresponding fine, penalty or punishment. (*Black's Law Dictionary*, 7th Edn., p. 1421.) Penalty is a liability composed (sic imposed) as a punishment on the party committing the breach. The very use of the term "penal" is suggestive of punishment and may also include any extraordinary liability to which the law subjects a wrongdoer in favour of the person wronged, not limited to the damages suffered. (*See* Aiyar, P. Ramanatha: *The Law Lexicon*, 2nd Edn., p. 1431.)
>
> *14*. In support of the submission that the demand for the price of mineral raised and exported is in the nature of penalty, the learned counsel for the appellants has relied on the marginal note of Section 21. According to Justice Singh, G.P.: *Principles of Statutory Interpretation* (8th Edn., 2001, at p. 147), though the opinion is not uniform but the weight of authority is in favour of the view that the marginal note appended to a section cannot be used for construing the section. There is no justification for restricting the section by the marginal note nor does the marginal note control the meaning of the body of the section if the language employed therein is clear and spells out its own meaning. In *Director of Public Prosecutions* v. *Schildkamp*[20] Lord Reid opined that a sidenote is a poor guide to the scope of a section for it can do no more than indicate the main subject with which the section deals and Lord Upjohn opined that a sidenote being a brief précis of the section forms a most unsure guide to the construction of the enacting section and very rarely it might throw some light on the intentions of Parliament just as a punctuation mark.
>
> *15*. We are clearly of the opinion that the marginal note "penalties" cannot be pressed into service for giving such colour to the meaning of sub-section (5) as it cannot have in law. The recovery of price of the mineral is intended to compensate the State for the loss of the mineral owned by it and caused by a person who has been held to be not entitled in law to raise the same. There is no element of penalty involved and the recovery of price is not a penal action. It is just compensatory."

150. We are in agreement with the view expressed by the learned Attorney General and Shri Dwivedi as also the view expressed in *Karnataka Rare Earth*[19]. The decision in *Khemka & Co.*[18] is not at all apposite. There is no ambiguity in Section 21(5) of the MMDR Act or in its application. We are also

19 *Karnataka Rare Earth* v. *Deptt. of Mines & Geology*, (2004) 2 SCC 783
20 1971 AC 1 : (1970) 2 WLR 279 : (1969) 3 All ER 1640 (HL)
18 *Khemka & Co. (Agencies) (P) Ltd.* v. *State of Maharashtra*, (1975) 2 SCC 22 : 1975 SCC (Tax) 227

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of the opinion that though Section 21(1) of the MMDR Act might be in the realm of criminal liability, Section 21(5) of the MMDR Act is certainly not within that realm.

151. In our opinion, Section 21(5) of the MMDR Act is applicable when any person raises, without any lawful authority, any mineral from *any land*. In that event, the State Government is entitled to recover from such person the mineral so raised or where the mineral has already been disposed of, the price thereof as compensation. The words "any land" are not confined to the mining lease area. As far as the mining lease area is concerned, extraction of a mineral over and above what is permissible under the mining plan or under the EC undoubtedly attracts the provisions of Section 21(5) of the MMDR Act being extraction without lawful authority. It would also attract Section 21(1) of the MMDR Act. In any event, Section 21(5) of the Act is certainly attracted and is not limited to a violation committed by a person only outside the mining lease area — it includes a violation committed even within the mining lease area. This is also because the MMDR Act is intended, among other things, to penalise illegal or unlawful mining on any land including mining lease land and also preserve and protect the environment. Action under the EPA or the MCR could be the primary action required to be taken with reference to the MCR and Rule 2(*ii-a*) thereof read with the Explanation but that cannot preclude compensation to the State under Section 21(5) of the MMDR Act. The MCR cannot be read to govern the MMDR Act.

152. What is the significance of this discussion? It was submitted that CEC has taken the following view:

> "… it may be appropriate that 30% of the notional value of the iron and manganese produced by each of the lessees without/in excess of the environmental clearances may be directed to be recovered from the lessees concerned and with the explicit understanding the lessees as well as the officers concerned will continue to be liable for action under the provisions of the respective Acts."

153. The learned counsel for the petitioners and the learned Amicus were of the opinion that the provisions of Section 21(5) of the MMDR Act require that the entire price of the illegally mined ore should be recovered from each defaulting lessee. Similarly, in its affidavit, the Union of India differs with the recommendation of CEC. According to the affidavit of the Union of India this would be contrary to the statutory scheme and in fact 100% recovery should be made under the provisions of Section 21(5) of the MMDR. We may note that only to this extent, the learned Attorney General differed with the view expressed by the Union of India and submitted that the recommendation of CEC to recover only 30% of the value of the illegally mined ore should be accepted.

154. In our opinion, there can be no compromise on the quantum of compensation that should be recovered from any defaulting lessee — it should be 100%. If there has been illegal mining, the defaulting lessee must bear the consequences of the illegality and not be benefited by pocketing 70% of the illegally mined ore. It simply does not stand to reason why the State should be

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compelled to forego what is its due from the exploitation of a natural resource and on the contrary be a party in filling the coffers of defaulting lessees in an ill-gotten manner.

Calculations on merits

155. The issue now is with regard to the calculations made by CEC with regard to the production of iron ore and manganese ore without or in excess of the EC and/or the mining plan. As already mentioned above, the figures were not disputed (except by JSPL and SMPL). Therefore, only the application of the figures requires consideration and so we do not need to examine each individual case. However, to understand and appreciate the manner in which CEC has arrived at its figures, we may state that this has been specifically mentioned by CEC in its report. The basis of the calculations is as follows:

> "(*a*) the production during the year 1993-94 has been considered as the permissible production during each year till the mining lease did not have the environmental clearance;
>
> (*b*) the permissible production for the year in which the environmental clearance was obtained for the first time has been considered on pro rata basis of (*a*) the prescribed annual production, and (*b*) the date of the grant of the environmental clearance. For this purpose the environmental clearance granted on or before 15th of a month has been considered valid for the entire month. Where the environmental clearance has been granted after 15th of a month it has been considered valid from the subsequent month. For example if the environmental clearance for a mining lease has been granted say on 10-10-2008 for an annual production of say 12 lakhs MT then in that case the permissible production for the mining lease for the year 2008-09 would be taken as 6 lakhs MT (12 × 6/12 lakh MT) and 12 lakhs MT per annum in the subsequent year; and
>
> (*c*) wherever a mining lease having environmental clearance has been granted revised environmental clearance for a higher production the permissible annual production for the year, during which the revised environmental clearance has been granted, has been considered on pro rata basis of the quantities prescribed in the earlier environmental clearance and the revised environmental clearance. For example if the mining lease was having environmental clearance for annual production of 12 lakhs MT and say on 28-9-2009 it has been granted revised environmental clearance for annual production of say 24 lakhs MT then in that case the permissible production for the year 2009-10 would be taken as 18 lakhs MT (12 × 6/12 + 24 × 6/12) and 24 lakhs MT per annum in subsequent years."

156. A submission made by the mining leaseholders was that the maximum production in any year up to 1993-94 should be considered as the base for making the calculations. Such a contention was also urged before CEC and was rejected. We have examined this contention independently and are of the view that the base year of 1993-94 is most appropriate — we have already given our reasons for this. Some lessees might lose in the process while some of them

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might benefit but that cannot be avoided. In any event, each mining leaseholder is being given the benefit of calculations only from 2000-01 and is not being "penalised" for the period prior thereto. We think the mining leaseholders should be grateful for this since it was submitted by the learned counsel for the petitioners and the learned Amicus that the penalty should be levied from the date of EIA 1994. In our opinion, the cut-off from 2000-2001 (without interest) is undoubtedly reasonable and there can hardly be any grievance in this regard. The mining leaseholders cannot have their cake and eat it too, along with the icing on top.

157. Since the recommendation made by CEC in this regard is not totally unreasonable, we accept that the compensation should be payable from 2000-2001 onwards at 100% of the price of the mineral, as rationalised by CEC.

Violation of the Forest (Conservation) Act, 1980

158. Before dealing with the violations of Section 2 of the Forest (Conservation) Act, 1980 (for short "the FCA"), it is necessary to give a brief background.

159. The FCA came into operation initially through the Forest (Conservation) Ordinance, 1980 with effect from 25-10-1980. The said Ordinance was repealed and subsequently the FCA came into effect on 25-12-1980.

160. Section 2 of the FCA provides that no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing, inter alia, that any forest land or any portion thereof may be used for non-forest purposes.

161. The interpretation of Section 2 of the FCA first came up for consideration in *State of Bihar* v. *Banshi Ram Modi*[21]. In that case, Banshi Ram Modi was granted a mining lease for mining and winning mica. During the course of mining operations, feldspar and quartz were discovered. Modi then applied to the Central Government to include these minerals in the lease. The State Government agreed to do so but did not obtain the previous approval of the Central Government for the inclusion of the two minerals in the original lease.

162. The Central Government took the view that since its previous approval had not been obtained for inclusion of feldspar and quartz in the mining lease, Modi could not be permitted to mine these two minerals. This led Modi to approach the High Court with the contention that he was not breaking up or clearing any forest land other than the land on which mining operations were already being carried on. The High Court allowed the writ petition but feeling aggrieved, the State of Bihar preferred an appeal in this Court.

163. The question before this Court was a narrow one, namely, whether prior approval of the Central Government is necessary in respect of a mining lease, granted for winning a certain mineral prior to the coming into force of the FCA, if the lessee applies to the State Government after the FCA came into force for permission to win and carry any new mineral from the broken up area?

21 (1985) 3 SCC 643

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164. While answering this question in the negative, it was held that after the commencement of the FCA no fresh breaking up of forest land or no fresh clearing of the forest on any such land could be permitted by the State Government or any authority without the approval of the Central Government. However, in respect of broken up land, it was held that if the State Government permits the lessee to remove any discovered mineral, it cannot be said that there has been a violation of Section 2 of the FCA particularly since there is no breaking up of any fresh forest land.

165. Subsequently in *Ambica Quarry Works* v. *State of Gujarat*[22] when the lease of the mining holder came up for renewal, the FCA had already come into force. Since the Forest Department of the State of Gujarat refused to give a no-objection certificate, the application for renewal of the lease was rejected. The question that arose for consideration was whether, after coming into force of the FCA, the mining leaseholder was entitled to renewal of the mining lease. While answering the question in the negative this Court held that the renewal of a lease cannot be claimed as a matter of right. The primary purpose of the FCA was to prevent deforestation and ecological imbalance as a result of deforestation. Therefore, the primary duty under the FCA was to the community and the obligation to society must predominate over the obligation to the individuals. While distinguishing *Banshi Ram Modi*[21] this Court held that renewal of the lease would lead to further deforestation or at least it would not help in reclaiming the area where deforestation had already taken place. The primary purpose of the FCA is to prevent further deforestation and any interpretation must subserve that purpose and implement the FCA. Under the circumstances, it was held, considering the scheme of the FCA that refusal to renew the lease without prior approval of the Central Government was not unjustified.

166. This view was reiterated in *Rural Litigation and Entitlement Kendra* v. *State of U.P.*[23] It was held that the FCA does not permit mining in a forest area. Reiterating the view expressed in *Ambica Quarry Works*[22], it was observed that compliance with Section 2 of the FCA is necessary as a condition precedent even for the renewal of a mining lease. This Court went so far as to hold that if any decree or order has already been obtained by any of the mining leaseholders, from any court relating to renewal of their lease, the same shall stand vacated and similarly, any appeal or other proceeding taken to obtain a renewal or against any order or decree granting renewal shall also become non est.

167. The definition of the word "forest" for the purposes of the FCA came up for consideration in *T.N. Godavarman Thirumulpad* v. *Union of India*[3]. In its decision of 12-12-1996[3] this Court observed that during the course of hearing

22 (1987) 1 SCC 213
21 *State of Bihar* v. *Banshi Ram Modi*, (1985) 3 SCC 643
23 1989 Supp (1) SCC 504
3 (1997) 2 SCC 267

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it appeared that there is a misconception about the true scope of the FCA and the meaning of the word "forest" used therein. Consequently, there is also a misconception about the need for prior approval of the Central Government as mandated by Section 2 of the FCA in respect of certain activities in a forest area, which activities are more often of a commercial nature.

168. In this context, it was held that "forest" must be understood according to its dictionary meaning and it would cover all statutorily recognised forests, whether designated, reserved, protected or otherwise. It was further held that "forest" would also include any area recorded as a forest in the government records irrespective of the ownership. With this in mind, this Court directed that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the FCA all ongoing activity within any forest in any State throughout the country, without prior approval of the Central Government must cease forthwith. This particular direction given by this Court is of immense significance.

169. This Court further directed each State Government to constitute within one month an Expert Committee, inter alia, to identify areas which are "forest" irrespective of whether they are so notified, recognised or classified under any law and irrespective of the ownership of the land of such forest.

170. Pursuant to the directions given by this Court, the State of Odisha constituted District Level Committees (for short "DLC") for identification of forest lands. After the identification process, appropriate affidavits were filed by the State of Odisha in this Court in 1997-98, the last being dated 6-1-1998.

171. In the meanwhile, in *T.N. Godavarman Thirumulpad* v. *Union of India*[24] this Court passed certain directions on 4-3-1997 with regard to what was categorised as mining matters. The directions given by this Court are as follows: (SCC p. 315, para 9)

> "*9*. We direct that—
>
> (*1*) where the lessee has not forwarded the particulars for seeking permission under the FCA, he may do so immediately;
>
> (*2*) the State Government shall forward all complete pending applications within a period of 2 weeks from today to the Central Government for requisite decisions;
>
> (*3*) applications received (or completed) hereafter would be forwarded within two weeks of their being so made.
>
> (*4*) the Central Government shall dispose of all such applications within six weeks of their being received. Where the grant of final clearance is delayed, the Central Government may consider the grant of working permissions as per existing practice."

172. It was also made clear that the order passed by this Court including the earlier order dated 12-12-1996[3] shall be obeyed and carried out by the Central

24 (1997) 3 SCC 312
3 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

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Government and the State Governments notwithstanding any order or direction passed by a court including a High Court or Tribunal to the contrary.

173. From the above, it is explicit that in terms of the orders passed by this Court, there was a complete ban on non-forest activity on forest lands with effect from 12-12-1996. The only issue that remained was identification of all such lands by the District Level Committees and as mentioned above this exercise was completed by the State of Odisha on or about 6-1-1998. The lands identified by DLC are compendiously referred to as DLC lands.

174. In this background in IAs Nos. 2746-48 of 2009 in *T.N. Godavarman Thirumulpad*[2] CEC was directed to submit a report which it did on 26-4-2010. It was recommended by CEC that given the peculiar circumstances prevailing in the State of Odisha, mining operations in the entire DLC lands included in the mining leases, may be allowed to continue on payment of the net present value (NPV) subject to the fulfilment of other statutory requirements and rules being complied with.

175. By an order dated 7-5-2010[4] this Court directed that the recommendation of CEC acceptable to the State Government could be complied with. Consequently, the State of Odisha appears to have implemented the recommendations regarding recovery of NPV and realised an amount of about Rs 1750 crores as additional NPV.

176. We have been informed that in addition to the above, the mining leaseholders have subsequently deposited an amount under the heading of penal compensatory afforestation which was introduced through guidelines issued by the MoEF on 3-2-1999. The guidelines in this regard were communicated by the Assistant Inspector General of Forest to the Chief Secretary of all the States and Union Territories and the relevant portion thereof reads as follows:

> "4.3.1 Cases have come to the notice of the Central Government in which permission for diversion of forest land was accorded by the State Government concerned in anticipation of approval of the Central Government under the Act and/or where work has been carried out in forest area without proper authority. Such anticipatory action is neither proper nor permissible under the Act which clearly provides for prior approval of the Central Government in all cases. Proposals seeking ex post facto approval of the Central Government under the Act are normally not entertained. The Central Government will not accord approval under the Act unless exceptional circumstances justify condonation. However, penal compensatory afforestation would be insisted upon by the MoEF on all such cases of condonation.
>
> 4.3.2 The penal compensatory afforestation will be imposed over the area worked/used in violation. However, where the entire area has been

2 *T.N. Godavarman Thirumulpad* v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 6-11-2009 (SC)

4 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 15 SCC 177

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deforested due to anticipatory action of the State Government, the penal compensatory afforestation will be imposed over the total lease area."

177. It was submitted by the learned counsel for the lessees that since additional NPV as well as an amount towards penal compensatory afforestation has been paid by the defaulting mining leaseholders, the violation of Section 2 of the FCA stands condoned or in any event the illegal or unlawful mining in forest lands stands regularised.

178. CEC did not accept this submission made on behalf of the mining leaseholders on the ground that no retrospective forest clearance has been granted and even otherwise there is no provision to condone or regularise the violation of Section 2 of the FCA.

179. We are of the opinion that the view expressed by CEC in this regard is partially correct. Given the fact that the defaulting mining leaseholders have been asked to pay and have paid additional NPV as well as an amount towards penal compensatory afforestation, it must be assumed that the violation of the FCA has been condoned to a limited extent, more particularly since in its order dated 7-5-2010[4] this Court permitted the State of Odisha to accept such recommendations of CEC made in the report dated 26-4-2010 as are acceptable to it. The relevant recommendations made by CEC read as follows:

"(*c*) No forest land can be leased/assigned without first obtaining the approval under the FC Act. Therefore, the forest area approved under the FC Act should not be lesser than the total forest area included in the mining leases approved under the MMDR Act, 1957. Both necessarily have to be the same. In view of the above, this Hon'ble Court while permitting grant of temporary working permission to the mines in Orissa and Goa has made it one of the preconditions that the NPV will be paid for the entire forest area included in the mining leases. Similarly, all the mining leaseholders in Orissa should be directed to pay the NPV for the entire forest area, included in the mining leases;

(*d*) In Orissa, substantial areas included in the mining leases as non-forest land have subsequently been identified as DLC forest (deemed forest/forest-like areas) by the Expert Committee constituted by the State Government pursuant to this Hon'ble Court's order dated 12-12-1996[3]. While processing and/or approving the proposals under the FC Act in many cases such areas have been treated as non-forest land. It is recommended that (*i*) the NPV for the entire DLC area included in the mining lease, after deducting the NPV already paid, should be deposited by the leaseholder concerned, and (*ii*) the mining operations in the unbroken DLC land (virgin land) should be permissible only if the permission under the FC Act has been obtained/is obtained for such area. Keeping in view the peculiar circumstances as were existing in Orissa and subject to the above, the mining operations in the broken DLC land may be allowed to be continued

4 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 15 SCC 177
3 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

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provided the other statutory requirements and rules are otherwise being complied with."

180. This still leaves open the question of violation of the order passed by this Court on 12-12-1996[3] followed by the order dated 4-3-1997[24], namely, that mining must cease forthwith in forest areas. In regard to this violation, the only benefit (at best) that can be granted to the mining leaseholders that we are concerned with, is till 6-1-1998 when the affidavit was filed in this Court in IAs Nos. 2746-48 of 2009 in *T.N. Godavarman*[6]. With effect from 7-1-1998 any mining activity in forest and DLC lands would clearly be completely illegal and unauthorised and the benefit that the mining leaseholders have derived from this illegal mining would be subject to Section 21(5) of the MMDR Act. Therefore, the price of the iron ore and manganese ore mined by the mining leaseholders from 7-1-1998 is payable until forest clearance under Section 2 of the FC Act is obtained by the mining leaseholders.

181. The report of CEC dated 16-10-2014 deals with 51 mining leases. It has been recorded by CEC that of them 15 mining leases have been found not involved in undertaking mining operations in violation of the FCA. There are 16 mining leases that have violated the provisions of the FCA between 25-10-1980 and 1999-2000 and the State Government in some of the cases has already issued a show-cause notice to the mining leaseholders. It is further stated that most of the violations pertain to the period prior to 12-12-1996. CEC has not made any particular recommendation in regard to these 16 mining leases nor do we, except to direct the State Government to promptly take a decision on the show-cause notice preferably within a period of four months and in any case before 31-12-2017.

182. CEC has also dealt with 18 other mining leaseholders (other than M/s Essel Mining and Industries Ltd. relating to the Kasia Iron Ore Mines and Jilling-Langlotta Iron & Manganese Ore Mines). With regard to these 18 mining leaseholders, the view taken by us above would hold good and clearly they are liable to compensate the State for the entire price of the iron ore and manganese ore illegally mined with effect from 7-1-1998 until the forest clearance was obtained by the mining leaseholder concerned.

183. We have fixed 7-1-1998 as the cut-off date despite the orders dated 12-12-1996[3] and 4-3-1997[24] only for the reason that it is possible that some mining leaseholders (we do not know how many) were not aware that they were inadvertently conducting mining operations on DLC lands which were identified by the State of Odisha as forest lands on the directions of this Court. For the purposes of Section 21(5) of the MMDR Act, they are entitled to the benefit of doubt and along with them, the other mining leaseholders before us.

3 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267
24 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 3 SCC 312
6 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2014) 6 SCC 167

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184. CEC in this regard has observed as follows:

> "It will be seen that in the above cases the mining operations have been done in the forest land in violation of the Forest (Conservation) Act, 1980 and consequently also in violation of this Hon'ble Court order dated 12-12-1996[3]. CEC recommends that 70% of the notional value of the iron ore and manganese produced by the lessees by undertaking mining operations in the forest land in violation of the Forest (Conservation) Act, 1980 may be directed to be recovered from the respective lessees. Wherever the mineral production is both from the forest land as well as non-forest land then in such cases the notional value of the production from the forest land may be calculated on pro rata basis of the extent of the forest land and non-forest land involved. The notional value of the mineral, time-limit for payment of the compensation, use of the amount received as compensation and other conditions as decided by this Hon'ble Court in respect of the production without/in excess of the environmental clearance may be directed to be followed on pari-passu basis."

185. For the reasons that we have already expressed above, we are not in agreement with CEC that only a part of the notional value (in this case 70%) of the iron ore and manganese ore produced by the mining leaseholders should be recovered. We are of the view that Section 21(5) of the MMDR Act should be given full effect and so we reiterate that the recovery should be to the extent of 100%.

186. There may be some overlap in the period when mining operations were conducted by the mining leaseholders without an EC and/or an FC. We make it clear that mineral extracted either without an EC or without an FC or without both would attract the provisions of Section 21(5) of the MMDR Act and 100% of the price of the illegally or unlawfully mined mineral must be compensated by the mining leaseholder. To the extent of the overlap or the common period, obviously only one set of compensation is payable by the mining leaseholder to the State of Odisha. We order accordingly. However, we make it clear that whatever payment has already been made by the mining leaseholders towards NPV, additional NPV or penal compensatory afforestation is neither adjustable nor refundable since that falls in a different category altogether.

187. We may note that this Court has held in *T.N. Godavarman Thirumulpad* v. *Union of India*[25, 26] that a violation of the FCA is condonable on payment of penal compensatory afforestation charges. This obviously would not apply to illegal or unlawful mining under Section 21(5) of the MMDR Act, but we make it clear that the mining leaseholders would be entitled to the benefit of any temporary working permission granted.

3 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267
25 (2011) 15 SCC 658
26 (2011) 15 SCC 681

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Conclusions on the issues of mining without an EC or FC or both

188. To avoid any misunderstanding, confusion or ambiguity, we make the following very clear:

(*1*) A mining project that has commenced prior to 27-1-1994 and has obtained a no-objection certificate from SPCB prior to that date is permitted to continue its mining operations without obtaining an EC from the Impact Assessment Agency. However, this is subject to any expansion (including an increase in the lease area) or modernisation activity after 27-1-1994 which would result in an increase in the pollution load. In that event, a prior EC is required. However, if the pollution load is not expected to increase despite the proposed expansion (including an increase in the lease area) or modernisation activity, a certificate to this effect is absolutely necessary from SPCB, which would be reviewed by the Impact Assessment Agency.

(*2*) The renewal of a mining lease after 27-1-1994 will require an EC even if there is no expansion or modernisation activity or any increase in the pollution load.

(*3*) For considering the pollution load the base year would be 1993-94, which is to say that if the annual production after 27-1-1994 exceeds the annual production of 1993-94, it would be treated as an expansion requiring an EC.

(*4*) There is no doubt that a new mining project after 27-1-1994 would require a prior EC.

(*5*) Any iron ore or manganese ore extracted contrary to EIA 1994 or EIA 2006 would constitute illegal or unlawful mining (as understood and interpreted by us) and compensation at 100% of the price of the mineral should be recovered from 2000-2001 onwards in terms of Section 21(5) of the MMDR Act, if the extracted mineral has been disposed of. In addition, any rent, royalty or tax for the period that such mining activity was carried out outside the mining lease area should be recovered.

(*6*) With effect from 14-9-2006 all mining projects having a lease area of 5 ha or more are required to have an EC. The extraction of any mineral in such a case without an EC would amount to illegal or unlawful mining attracting the provisions of Section 21(5) of the MMDR Act.

(*7*) For a mining lease of iron ore or manganese ore of less than 5 ha area, the provisions of EIA 1994 will continue to apply subject to EIA 2006.

(*8*) Any mining activity carried on after 7-1-1998 without an FC amounts to illegal or unlawful mining in terms of the provisions of Section 21(5) of the MMDR Act attracting 100% recovery of the price of the extracted mineral that is disposed of.

(*9*) In the event of any overlap, that is, illegal or unlawful mining without an FC or without an EC or without both would attract only 100% compensation and not 200% compensation. In other words, only one set of compensation would be payable by the mining leaseholder.

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(*10*) No mining leaseholder will be entitled to the benefit of any payments made towards NPV or additional NPV or penal compensatory afforestation.

Violation of Section 6 of the MMDR Act

189. We have examined the report of CEC with regard to the alleged violation of Section 6 of the MMDR Act and find that there have been several amendments to Section 6 relating to the maximum area for which a mining lease may be granted to a person. The following is the result of the amendments:

1. From 1-6-1958 to 11-9-1972—maximum lease area 10 sq miles.

2. From 12-9-1972 to 9-2-1987—maximum lease area 10 sq km or 1000 ha in any one State.

3. From 10-2-1987 to 17-12-1999—maximum lease area 10 sq km or 1000 ha in any part of the country.

4. From 18-12-1999 till date—maximum lease area 10 sq km or 1000 ha in one State.

190. While the word "person" has not been defined in the MMDR Act, a reading of Section 5 thereof indicates that the State Government shall not grant a mining lease to any person unless such person is an Indian national or a company as defined in the Companies Act, 1956 and subsequently in the Companies Act of 2013.

191. Sub-section (2) of Section 6 of the MMDR Act provides that a person acquiring by, or in the name of, another person a mining lease which is intended for him/her shall be deemed to be acquiring it himself/herself.

192. For the purposes of determining the total area that can be acquired for mining operations, Section 6(3) of the MMDR Act provides that the area held under a mining lease by a person as a member of a cooperative society, company or other corporation or a Hindu Undivided Family or a partner of a firm shall be deducted from the area referred to so that the sum total of the area held by such person under a mining lease only as such member or partner or individually may not in any case exceed the total area specified.

193. In this background, CEC examined the case of seven mining leaseholders. They are:

1. Essel Mining and Industries Limited
2. Rungta Mines Limited
3. Rungta Sons Pvt. Limited
4. Bonai Industrial Company Limited
5. Feegrade & Co. Pvt. Limited
6. M/s Mangilal Rungta
7. Jindal Steel & Power Limited

194. As far as Essel Mining and Industries Ltd. is concerned we propose to deal with this mining leaseholder on another occasion since even CEC has placed this mining leaseholder in a special category.

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195. Similarly, so far as Rungta Mines Ltd., Rungta Sons Pvt. Ltd. and M/s Mangilal Rungta are concerned, although CEC has come to the conclusion that these persons have not acquired mining leases in violation of Section 6 of the MMDR Act, there are some critical observations made by the Commission with regard to the "Rungta Group". The learned counsel for the petitioner submitted that the view of CEC in this regard needs reconsideration. Since the "Rungta Group" was not heard by us, we propose to hear the above Rungta companies to ascertain, inter alia, whether there has been any violation of the provisions of Section 6 of the MMDR Act.

196. As far as Jindal Steel & Power Ltd. is concerned, we propose to hear this company on another occasion since the suggestion of CEC is that it is the benami holder of Sarda Mines Pvt. Ltd. If it is so held to be a benami holder of Sarda Mines Pvt. Ltd. then there is a violation of Section 6 of the MMDR Act. However, CEC has refrained from making any observations or recommendation in this regard. Accordingly, we propose to hear Jindal Steel & Power Ltd. on a later occasion on this limited issue.

197. As far as Bonai Industrial Company Ltd. and Feegrade & Co. Pvt. Ltd. are concerned, CEC has concluded that they have not violated Section 6 of the MMDR Act. That being the position, and nothing having been shown to the contrary, we accept the recommendation of CEC in this regard.

Violation of Rule 37 of the Mineral Concession Rules, 1960

198. CEC has discussed the possible violation of Rule 37 of the MCR. In this context, it was noted that there were several mining leaseholders who had entered into raising contracts which were actually a transfer of the lease as postulated by Rule 37 of the MCR.

199. On this basis the State of Odisha constituted a Committee on 8-7-2011 to carry out a study of the financial transactions between the mining leaseholders and the raising contractors to determine whether there is a prima facie violation of Rule 37 of the MCR.

200. On an examination of the material before it the Committee concluded that eight mining leaseholders violated Rule 37 of the MCR. These mining leaseholders are as under:

(*i*) R.P. Sao, Guali Iron Ore Mines, Keonjhar

(*ii*) Indrani Patnaik, Unchabali Iron Ore Mines, Keonjhar

(*iii*) M/s K.J.S. Ahluwalia, Nuagaon Iron Ore Mines, Keonjhar

(*iv*) M/s Aryan Mining & Trading Corporation Pvt. Ltd., Narayanposhi Iron Ore Mines, Sundergarh

(*v*) M/s Mideast Integrated Steel Ltd., Roida, Sidhamatha Iron Ore Mines, Keonjhar

(*vi*) Kavita Agrawal, Kusumdihi Manganese Mines, Sundergarh

(*vii*) Mala Roy & Others, Jalabari Iron Ore Mines, Keonjhar

(*viii*) M/s Sharda Mines (P) Ltd., Thakurani Iron Ores Mines, Keonjhar

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201. Pursuant to the report of the Committee, a show-cause notice was issued to these mining leaseholders by the State of Odisha. Six of the mining leaseholders (other than M/s Aryan Mining & Trading Corporation Pvt. Ltd. (for short Aryan) and Kavita Agrawal (Kusumdihi Manganese Mines) challenged the show-cause notice and the decision of the Committee by filing revision petitions under Section 30 of the MMDR Act read with Rule 55 of the MCR before the Central Government. The challenge to the show-cause notice was on the ground that persons who were not government servants could not have been included in the Committee and also that the Committee was not notified in the Official Gazette as required by Section 26(2) of the MMDR Act.

202. The Central Government set aside the order constituting the Committee and the State of Odisha has challenged the orders of the Central Government before the Orissa High Court through writ petitions. We are told that the writ petitions filed by the State of Odisha are pending in the High Court.

203. As far as Aryan is concerned, we were informed that the matter was pending with the State of Odisha and a request was made to us to permit the State of Odisha to pass a final order on the submissions made by Aryan. On 28-4-2017[27] we had permitted the State of Odisha to pass final orders but we are not aware whether any orders have since been passed.

204. As far as Kavita Agrawal is concerned, her lease was terminated by the State of Odisha and the Central Government also dismissed her revision petition on 28-4-2014. The said mining leaseholder has since filed a writ petition which is pending in the Orissa High Court.

205. During the course of hearing it was proposed by the learned counsel appearing for some of the mining leaseholders that it might be appropriate if the raising contracts between these eight mining leaseholders and the raising contractors are given a fresh look. This suggestion was not acceptable to one of the mining leaseholders. However, we are of the opinion that the suggestion is reasonable and it will be appropriate if in fact a fresh look is given to the raising contracts entered into by the mining leaseholders and the raising contractors. We are also of the opinion that such an order ought to be passed with the consent of the mining leaseholders since any delay in disposal of the issue would not really subserve the interests of anybody including the mining leaseholders.

206. Accordingly, for considering the appointment of an appropriate committee in respect of the eight mining leaseholders mentioned above, we

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27 *Common Cause* v. *Union of India*, WP (C) No. 114 of 2014, order dated 28-4-2017 (SC), wherein it was directed:

"It has been pointed out by Mr Rakesh Dwivedi, learned Senior Counsel appearing for the State of Odisha and Mr Arvind Datar, learned Senior Counsel appearing for Aryan Mining and Trading Corporation that the proceedings pursuant to the show-cause notice under Rule 37 of the Mineral Concession Rules are complete and both of them say that a final order may be passed pursuant to the show-cause notice. We permit the authorities to pass the order. Arguments heard in part. List the matters on 2-5-2017 as part-heard matters."

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would like to hear the learned counsel for the parties. We make it clear that the proposed committee will be entitled to lift the corporate veil, the importance of which in cases such as the present, has been emphasised in *State of Rajasthan* v. *Gotan Lime Stone Khanij Udyog (P) Ltd.*[28]

Intergenerational equity

207. Mr Prashant Bhushan, learned counsel for the petitioner sought to impress upon us the need to consider intergenerational equity and if possible to place a limit on the extent of mining in the State of Odisha by referring to an article titled: "Intergenerational equity: a legal framework for global environment change" by Edith Brown Weiss. He laid emphasis on three principles that form the basis of intergenerational equity.

208. The first principle relied on is called the principle of "conservation of options". This requires each generation to conserve the diversity of the natural and cultural resource base in such a manner that the options available to future generations are not restricted. It was submitted that the extent of mining activities being carried on in Odisha indicate that the entire iron ore will perhaps be fully extracted within a period of 30 years and nothing would be available for future generations. Therefore some sort of a limit would have to be placed on the mining operations.

209. The second principle relied on is the principle of "conservation of quality". This was with reference to the submission that future generations should not be subjected to a quality of the planet worse than what it is today. In other words, future generations are also entitled to quality enjoyment of the diversity in the natural and cultural resource base.

210. The third principle relied upon was the principle of "conservation of access" which is to say that future generations have an equitable right to access the diversity of the natural and cultural resource base as is available to the present generation.

211. There is no doubt considerable substance in the submission particularly if this is considered in the light of intergenerational rights and obligations which have been dealt with in the said article. However, it is really not for this Court to lay down limits on the extent of mining activities that should be permitted by the State of Odisha or by the Union of India. Nevertheless, this is an aspect that needs serious consideration by the policy and decision-makers in our country in the governance structure. At present, keeping in mind the indiscriminate mining operations in Odisha, it does appear that there is no effective check on mining operations nor is there any effective mining policy. The National Mineral Policy, 2008 (effective from March 2008) seems to be only on paper and is not being enforced perhaps due to the involvement of very powerful vested interests or a failure of nerve. We are of the opinion that the National Mineral Policy, 2008 is almost a decade old and a variety of changes have taken place since then, including (unfortunately) the advent of rapacious mining in several parts of the country. Therefore, it is

28 (2016) 4 SCC 469

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high time that the Union of India revisits the National Mineral Policy, 2008 and announces a fresh and more effective, meaningful and implementable policy within the next few months and in any event before 31-12-2017. We are constrained to pass this direction in view of the facts disclosed in these petitions and in judgments delivered by this Court with regard to mining in Goa and Karnataka.

Inquiry by the Central Bureau of Investigation

212. It was emphasised by Shri Prashant Bhushan that because of the rampant illegal or unlawful mining being carried out in Odisha, there should be an enquiry by the Central Bureau of Investigation (for short "CBI") to ascertain and determine the persons involved either in turning a Nelson's eye to rampant illegal or unlawful mining or being conspirators in the activity and the extent of the illegal or unlawful mining. It was submitted that the Justice Shah Commission had very strongly recommended an inquiry conducted by CBI and criminal elements being brought to book for the despoliation of the land.

213. For the present, we do not propose to direct an investigation or inquiry by CBI for the reason that what is of immediate concern is to learn lessons from the past so that rapacious mining operations are not repeated in any other part of the country. This can be achieved through the identification of lapses and finding solutions to the problems that are faced. Undoubtedly, there have been very serious lapses that have enabled large-scale mining activities to be carried out without forest clearance or environment clearance and eventually the persons responsible for this will need to be booked but as mentioned above, the violation of the laws and policy need to be prevented in other parts of the country. The rule of law needs to be established. We are therefore of the view that it would be appropriate if an Expert Committee is set up under the guidance of a retired Judge of this Court to identify the lapses that have occurred over the years enabling rampant illegal or unlawful mining in Odisha and measures to prevent this from happening in other parts of the country.

214. There is no doubt that the recommendations of the Commission can form a platform for the study but it is also necessary to use technology for maintenance of registers, records and data through computers, satellite imagery, videography and other technology tools so that the natural wealth of our country is not rapaciously exploited for the benefit of a few to the detriment of a large number, many of whom are tribals inhabiting the land for several generations.

Utilisation of funds by the special purpose vehicle

215. In IAs Nos. 2746-48 of 2009 filed by Rabi Das, an order was passed on 27-1-2014[29] relating to the preparation of a scheme by CEC for setting up a special purpose vehicle (SPV) for tribal welfare and area development works. The relevant extract of the order reads thus:

> "50% of the additional amounts of net present value (NPV) recovered by the State of Odisha from the mining lessees will be used by the

29 *T.N. Godavarman Thirumulpad* v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 27-1-2014 (SC)

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State of Odisha through a special purpose vehicle (SPV) for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. The State of Odisha will accordingly file within four weeks from today, a comprehensive plan for the development of tribals out of the aforesaid funds, taking into consideration their requirements of health, education, communication, recreation, livelihood and cultural lifestyle as indicated in this Court's judgment in *T.N. Godavarman Thirumulpad (104)* v. *Union of India*[30]."

216. Subsequently on 28-4-2014[31] this Court accepted the scheme prepared by the Government of Odisha in consultation with the Central Empowered Committee. The scheme was captioned "Setting up of special purpose vehicle (SPV) for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of mineral bearing areas in the State of Odisha". This Court then passed the following order on 28-4-2014[31]:

"Pursuant to orders passed by this Court on 27-1-2014[29], the Government of Odisha in consultation with the Central Empowered Committee has prepared a scheme captioned "Setting up of special purpose vehicle (SPV) for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of mineral bearing areas in the State of Odisha.

The Central Empowered Committee has submitted a report dated 9-4-2014 and has recommended that the scheme prepared by the Government of Odisha may be approved by this Court and the ad hoc CAMPA may be directed to transfer to the SPV 50% of the additional amount of the NPV recovered from the mining leaseholders by the State of Odisha for undertaking tribal welfare and development works.

We have perused the scheme prepared by the State Government of Odisha and the recommendation of the Central Empowered Committee and we approve the scheme and direct ad hoc CAMPA to transfer to the SPV 50% of the additional amount of the NPV within a month for undertaking tribal welfare development works.

The interlocutory applications be listed in the month of July 2014."

217. Some of the salient features of the scheme are as follows:

5. The SPV will undertake specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. These will include works/projects related to livelihood intervention, health, water supply and sanitation, education, special programmes for development of women and children, entrepreneurial development of local people, communication and infrastructure projects and agro

30 (2008) 2 SCC 222

31 *T.N. Godavarman Thirumulpad* v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 28-4-2014 (SC)

29 *T.N. Godavarman Thirumulpad* v. *Union of India*, IAs Nos. 2746-48 in WP (C) No. 202 of 1995, order dated 27-1-2014 (SC)

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silvi-horticultural based livelihood projects through identified agencies/ Government Departments. While taking up such projects/works a bottom up planning and participatory approach will be followed.

* * *

9. The general superintendence of the affairs will be vested in its Board of Directors including (*a*) to receive grants/funds and have custody of the same; (*b*) to approve Annual Budget estimates and sanction the expenditure within the limits of the budget; (*c*) to enter into any agreement for and on behalf of the SPV; (*d*) institute and defend legal proceedings; (*e*) to consider and approve the annual report, audit report, annual accounts and the financial estimates of the SPV; (*f*) to prescribe procedure to be followed for implementation of the projects/works and for maintenance of accounts; and (*g*) to undertake any other ancillary activities/works for the furtherance of the objective of the SPV.

(*a*) The funds made available to the SPV will be utilised only for the purpose for which the SPV has been set up and will not be used for any other purpose or transferred to any other authority; and

(*b*) The composition of the Board of Directors of the SPV, as provided in the present scheme, will be modified only after obtaining permission from the Hon'ble Supreme Court.

10. The accounts of the SPV will be internally audited annually by the Chartered Accountant firms empanelled with the CAG/Principal Accountant General, Odisha. The audit of the accounts of the SPV, receipts as well as expenditure, will be done annually by the office of the Principal Accountant General, Odisha.

11. The State Government has, earlier, registered a society, namely, Society for Inclusive Development of Mineral Bearing Areas of Odisha, which has been registered vide Registration No. 23354/74 of 2011-12 under the Societies Registration Act, 1860 to act as SPV for the purpose. It is now proposed to wind up the said Society and to replace it with "Odisha Mineral Bearing Areas Development Corporation" to be set up under Section 25 of the Companies Act.

218. It appears that the scheme has been implemented with the Chief Secretary of Odisha as the ex-officio Chairman of the SPV. There are several other members and directors of the SPV. There is no further information available with this Court with regard to the implementation of the scheme.

219. During the course of hearing, some of the mining leaseholders represented by Shri Gopal Subramanium, Senior Advocate offered to deposit and in fact did deposit an amount of Rs 237.05 crores for utilisation by the SPV for carrying out welfare works and activities in the districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha. The deposit was made by way of a cheque on 6-4-2017 and was without prejudice to the rights and contentions of the lessees. In terms of our directions, the Registry has encashed the cheque and

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kept the amount in a short-term fixed deposit. We have mentioned this only to point out that there are huge amounts available with the special purpose vehicle for tribal welfare and area development works and we have absolutely no idea about the utilisation of the funds or whether they are in fact being used for tribal welfare and area development works. We also expect that as a result of the orders that we are passing today, very large amounts will again be made available to the State of Odisha. These amounts should also be kept with the special purpose vehicle.

220. To ensure that the amounts are utilised for the benefit of tribals in the affected districts and for area development works, we would like the Chief Secretary of Odisha to file an affidavit stating the work done as well as providing the audited accounts of the receipt and expenditure of the SPV from its inception.

Conclusion

221. In view of the findings above, we dispose of the writ petitions to the extent of the directions that we have already given.

222. IAs Nos. 45 (filed by Zenith Mining) and 47 (filed by Kavita Agrawal) are dismissed since their lease has not been extended or has been determined and they do not have any environmental clearance or forest clearance.

223. IA No. 66 (filed by J.N. Pattnaik) is also dismissed since there is no forest clearance available.

224. We have been informed that S.A. Karim (IA No. 9) actually had a working lease and has wrongly been included as a non-operational lease. Accordingly, IA No. 9 (filed by S.A. Karim) is also dismissed but as being infructuous. However, it is made clear that the State Government should ensure that the lessee S.A. Karim in fact has valid statutory clearances.

225. Pending show-cause notices issued by the State Government should be decided by 31-12-2017 (if not already decided) after hearing the noticees concerned.

226. We would like to hear Jindal Steel and Power Ltd., Sarda Mines Private Ltd., Rungta Group of Companies and Essel Mining and Industries Ltd. on the applications filed by them. For this purpose list the matter again after two weeks so that a convenient date of hearing can be fixed.

227. The amounts determined as due from all the mining leaseholders should be deposited by them on or before 31-12-2017. Subject to and only after compliance with statutory requirements and full payment of compensation and other dues, the mining leaseholders can restart their mining operations.

228. We would also like to hear the eight mining leaseholders concerned on the question of appointing an appropriate committee in respect of the applicability of Rule 37 of the Mineral Concession Rules to them.

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229. We would also like to hear the learned counsel for all the parties with regard to setting up of an Expert Committee presided over by a retired Judge of this Court to identify the lapses that have occurred over the years that have enabled rampant illegal and unlawful mining in Odisha and to recommend preventive measures not only to the State of Odisha but generally to all other States where mining activities are proceeding on a large scale. For the present, we pass no direction with regard to any investigation by CBI.

230. We direct the Union of India to have a fresh look at the National Mineral Policy, 2008 which is almost a decade old, particularly with regard to conservation and mineral development. The exercise should be completed by 31-12-2017.

231. The Chief Secretary of Odisha should file an affidavit as indicated by us within a period of six weeks and in any case on or before 30-9-2017. The Registry will list these petitions along with the affidavit immediately after its receipt for our consideration.

232. All other pending IAs are disposed of in terms of our orders.

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(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

GOEL GANGA DEVELOPERS INDIA PRIVATE LIMITED .. Appellant;

Versus

UNION OF INDIA THROUGH SECRETARY MINISTRY OF ENVIRONMENT AND FORESTS AND OTHERS .. Respondents.

Civil Appeals No. 10854 of 2016 with Nos. 10901 of 2016 and 5157-58 of 2018†, decided on August 10, 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The issues involved in this appeal were:

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

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

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Held :

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

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

Notification dated 4-4-2011

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

Clarification dated 7-7-2017

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

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

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

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

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

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

Allegations made by the original applicant against various officials

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Is demolition the only answer?

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

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

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

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

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

Whether the original applicant is entitled to special damages?

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

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

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

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Advocates who appeared in this case :

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

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

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2. (2017) 9 SCC 499, *Common Cause* v. *Union of India* 273*g*
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8. 2016 SCC OnLine NGT 4213, *Tanaji Balasaheb Gambhire* v. *Union of India* **(partly reversed)** 265*e-f*, 266*e*, 266*e-f*, 267*a*, 275*a-b*, 275*c*, 275*f-g*, 276*a*, 283*c*, 284*d*, 287*g*, 288*a*, 288*b-c*
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26. (1980) 2 SCC 167 : 1980 SCC (Tax) 222, *Northern India Caterers (India) Ltd.* v. *Lt. Governor of Delhi* 278*g-h*

The Judgment of the Court was delivered by

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

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

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

> "*54.* For the aforesaid reasons, the applicant succeeds in his legal pursuit to challenge the non-compliance of EC conditions by Respondent 9 and obtain certain directions. Hence the Application is allowed and we issue following directions:
>
> 1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition

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

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

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

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

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

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

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

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

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

2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302
1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

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

The factual matrix

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

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

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

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302

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

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

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

"*Part A—Specific conditions*

I. Construction phase

* * *

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

* * *

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

Concept of "built-up area" under the Notification dated 14-9-2006

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

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

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

Rule 2.39 defines "floor area ratio" as follows:

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

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

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

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

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

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

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

(*c*) Projection as specifically exempted under these Rules;

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

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

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

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

(*g*) (*Deleted*);

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

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

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

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

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

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

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

Notification of 4-4-2011

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

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

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

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

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

Clarification dated 7-7-2017

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

F. No. 22-35/2017-IA.III
Government of India
Ministry of Environment, Forests and Climate Change
(Impact Assessment Division)
******

Indira Paryavaran Bhawan
Jor Bag Road, Aliganj,
New Delhi - 110 003
Dated 7-7-2017

OFFICE MEMORANDUM

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

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

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

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

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

5. This issues with approval of competent authority.

sd/-
(Dr Ashish Kumar)
Joint Director Ph: 011-24695474
Email: ashish.k@nic.in

All States/UTs/SIEAAs/MoEF & CC Divisions

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

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

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

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

3 (2017) 9 SCC 499

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

Environmental clearance dated 20-11-2017

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

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

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

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

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

Allegations made by the original applicant against various officials

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

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

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

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

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

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

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

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

***Challenge to the order dated 8-1-2018 passed in Tanaji Balasaheb Gambhire* v. *Union of India*[2]**

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

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

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

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
2 2018 SCC OnLine NGT 302

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

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

> "**1.** ***Application for review of judgment.***—(1) Any person considering himself aggrieved—
>
> (*a*) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
>
> (*b*) by a decree or order from which no appeal is allowed, or
>
> (*c*) by a decision on a reference from a Court of Small Causes,
>
> and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.
>
> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.
>
> * * *
>
> **5.** ***Application for review in court consisting of two or more Judges.***— Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the court shall hear the same."

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

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

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

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

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

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

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

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

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

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

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

5 (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473
6 *Malthesh Gudda Pooja* v. *State of Karnataka*, 2009 SCC OnLine Kar 919
7 *Malthesh Gudda Pooja* v. *State of Karnataka*, 2009 SCC OnLine Kar 918

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4217
9 *Tanaji Gambhire* v. *Union of India*, 2017 SCC OnLine NGT 1954

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

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

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

10 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4201
11 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4204
12 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4205
13 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4206
14 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4219
15 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4203
16 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4207
17 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4208
18 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2015 SCC OnLine NGT 838
19 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 1330
20 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4209

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

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

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

Is demolition the only answer?

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

21 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4215
22 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4210
23 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4211
24 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4202
25 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4212
26 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4214
1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
20 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4209
2 2018 SCC OnLine NGT 302

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

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

Whether the original applicant is entitled to special damages?

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

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

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

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

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

Quantification of damages

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

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

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

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

Carbon footprint

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

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

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

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

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

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

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

2 2018 SCC OnLine NGT 302

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

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

Findings and directions

66. We summarise our findings and directions as follows:

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

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

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

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

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

66.6. That the order dated 27-9-2016[1] of NGT is upheld except insofar as Direction 1 is concerned.

66.7. The order in review application passed by NGT on 8-1-2018[2] is held to be totally illegal and is accordingly set aside.

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302

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

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

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

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

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

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

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

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

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

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3-Judge Bench
2019
March 5

(2019) 18 Supreme Court Cases 494

(BEFORE DR A.K. SIKRI, S. ABDUL NAZEER AND M.R. SHAH, JJ.)

MANTRI TECHZONE PRIVATE LIMITED . . Appellant;

Versus

FORWARD FOUNDATION AND OTHERS . . Respondents.

Civil Appeals No. 5016 of 2016† with Nos. 8002-8003, 9227, 10992-95, 12152, 12156-60, 12326 of 2016, 1343, 4923-24 and 14966 of 2017 and 2246 of 2018, decided on March 5, 2019

A. **Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Power of NGT to direct Remedial/Compensatory/Punitive Measures**

— NGT's power to grant and give directions for relief, compensation and restitution under NGT Act, 2010 — Scope of — Overriding effect of NGT Act, 2010 over State legislation in cases of conflict — Extent of

— Held, NGT while directing restoration of environment can specify buffer zones around specific lakes and water bodies in contradiction to zoning regulations under the State Municipal Corporation Act or Master Plan framed under town planning laws, as NGT Act has overriding effect — NGT Act being a Central Act enacted under Sch. VII List I Entry 13 of the Constitution shall have overriding effect over State legislation — Therefore, specific directions of NGT relating to penalty (on basis of pollution pays principle) and environmental restoration (liability being on project proponents, who had caused damage to water bodies), affirmed even if NGT's direction relating to buffer zones (no construction zones of various lengths specified for water body types concerned) was different from zoning regulations of State Government

— But general direction of NGT relating to all buffer zones not relating to project proponents and differing from State zoning regulations, set aside — Thus Direction/Condition (1) in order dt. 4-5-2016 in *Forward Foundation*, 2016 SCC OnLine NGT 1409, set aside except directions issued against R-9 & R-10

— Constitution of India — Sch. VII List I Entry 13 — Water/River/Coastal Pollution — Water Conservation/Preservation, Development Projects and Interlinking of Rivers — Primacy of environmental laws over town planning laws — Wetlands (Conservation and Management) Rules, 2010 — Local Government, Municipalities and Panchayats — Town Planning — Ecology/Environmental clearance — Layout/Master/Zonal Plan — Primacy of environmental laws over — National Green Tribunal Act, 2010, Ss. 33, 14, 15, 20 and 22 (Paras 39 to 47 and 60 to 63)

[**Ed.**: Project proponents are Respondents 9 and 10 in Original Application No. 222 of 2014 and appellants in in Civil Appeals Nos. 5016 and 8002-03 of 2016.]

† Arising from the Judgment and Order in *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 7-5-2015) and *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 4-5-2016)

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B. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Scope**

— Held, appeal under S. 22 has to be read subject to conditions provided therein — Thus appeal restricted to substantial question of law arising from judgment of NGT — Merely because remedy of appeal is provided, it does not ipso facto permit appellants to agitate their appeal to seek re-appreciation of factual matrix of entire matter — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38 and 55)

C. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Whether raises substantial question(s) of law — Test**

— It has to be tested whether the question (i) is of general public importance, (ii) directly and substantially affects rights of parties and (iii) is an open question or is not free from difficulty or calls for discussion of alternative views — If question is settled by highest court or plea raised is palpably absurd, it would not be substantial question — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38)

D. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20, 33, 14 and 22 — Limitation of 6 months under S. 14 or 5 yrs under S. 15 — As matter related to environmental degradation and its restoration, limitation of 5 yrs under S. 15, held, would apply — A broad construction should apply to such beneficial legislation — Application before Tribunal not barred by limitation**

— Considering specific prayer of applicants before NGT, evidence supported by data, findings arrived at by NGT, and jurisdiction of NGT it is not an application under S. 14 simpliciter — It was a petition under S. 15 — Non-mention of or erroneous mention of provision of law, not a bar to pass appropriate orders, if NGT had jurisdiction in respect of same — Directions issued by NGT against both project proponents in present case did not suffer from any perversity — General Principles of Environmental Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Limitation period for approaching NGT — Reckoning of (Paras 48 to 55)

E. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20 and 33 — Application before Tribunal, when not barred by res judicata due to earlier writ petition**

— Parties, not common — Issues not directly and substantially same, writ petition related to land acquisition, present application related to environment, ecology and their restoration — No commonality of cause of action of likelihood of conflict between judgments — Prayer and genesis entirely different in their scope and relief — Practice and Procedure — Res Judicata (Paras 56 to 59)

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The present appeals were filed under Section 22 of the National Green Tribunal Act, 2010 (the NGT Act, 2010) against the judgment of restoration and penalty of the Tribunal.

Disposing of the appeals, the Supreme Court

Held :

Appeal to Supreme Court

The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by the Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law. (Para 37)

Chunilal V. Mehta & Sons Ltd. v. *Century Spg. & Mfg. Co. Ltd.*, 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *relied on*

Further, merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22 of the NGT Act, 2010. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision. (Paras 36 to 38)

Jurisdiction of Tribunal

The first question is in relation to the maintainability of the application before the Tribunal. (Para 39)

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

The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act, 2010. (Para 41)

The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 of the NGT Act, 2010 for taking restorative measures in the interest of the environment. (Para 43)

The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. The existence of the Tribunal

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without its broad restorative powers under Section 15(1)(*c*) read with Section 20 of the NGT Act, 2010, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment. (Para 44)

Kishore Lal v. *ESI Corpn.*, (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *relied on*

Section 15 of the NGT Act, 2010 provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the NGT Act, 2010, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the NGT Act, 2010) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions. (Para 45)

Further, Section 18 of the NGT Act, 2010 recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. The only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. (Para 46)

Section 33 of the NGT Act, 2010 provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976; and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP. (Para 47)

The State of Karnataka is aggrieved by the Direction/Condition (1) of the order dated 4-5-2016 of the Tribunal in *Forward Foundation*, 2016 SCC OnLine NGT 1409. The applicants have no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed. Civil Appeals Nos. 5016 and 8002-03 of 2016 filed by appellant-Respondents 9 and 10 are dismissed. The impugned judgment and order insofar as appellant-Respondents 9 and 10 are concerned is sustained. All the other appeals are allowed and Direction/Condition (1) in the order dated 4-5-2016 is set aside except the direction issued against Respondents 9 and 10. (Paras 60 to 62)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 1409, *partly reversed*

Core Mind Software & Services (P) Ltd. v. *Forward Foundation*, 2015 SCC OnLine SC 1778, *referred to*

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Limitation

OA No. 222 of 2014 was not an application simpliciter under Section 14 of the NGT Act, 2010. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the NGT Act, 2010 and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose. (Para 49)

In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. Non-mention of or erroneous mention of the provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal. (Para 50)

The Tribunal has pointed out on the basis of the Committee Report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. (Paras 52 and 51)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

The findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee report and the inspection note of the expert members. The directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity. (Para 54)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

It is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by the Supreme Court under Section 22 of the NGT Act, 2010. (Para 55)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 637, *referred to*

SS-D/62061/S

Advocates who appeared in this case :

Udaya Holla, Advocate General, Shashi Kiran Shetty, Maninder Singh, Dhruv Mehta, Mukul Rohatgi, Neeraj Kishan Kaul, R. Venkataramani, Sajan Poovayya, Ms Kiran Suri and Basavaprabhu S. Patil, Senior Advocates [Mahesh Thakur, Ms Anuparna Bordoloi, Savyasachi Sahai, Ms Vipasha Singh, Gaurav Goel, V.N. Raghupathy, M/s Devasa & Co., Devashish Bharuka, Justine George, Prabhas Bajaj, Ms Kanika

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S., Ravi Bharuka, Ms Sarushree, Satish Kumar, Gaurav Agrawal, George Thomas, Anurag Gharote, A.S. Bhasme, Abid Ali Beeran P., Nishanth Patil, Rohit Prasad, Ananth Suresh, S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Shekhar G. Devasa, Bhuvanendra K.V., S. Mahesh, Manish Tiwari, Luv Kumar, Praveen Vignesh, Priyadarshi Banerjee, Pratibhanu Singh Kharola, Saransh Jain, Meka V. Ramakrishna, Madhavam Sharma, Ms Sriparna Dutta Choudhury, Udayaditya Banerjee, Mahesh Agrawal, Ankur Saigal, Ms Tanvi Manchanda, Nithin P., Ms Priyanka M.P., E.C. Agrawala, S.J. Amith, Ms Rithika Gambir, A. Shwarya Kumar, Dr (Ms) Vipin Gupta, Parikshit P. Angadi, Chinmay Deshpande, Geet Ahuja, Parikshit Angadi, Anup Kumar, O.P. Bhadani, Rajesh Mahale, Anand Sanjay M. Nuli, Dharm Singh, Sandeep Grover, Ms Pankhuri Bhardwaj and Pai Amit, Advocates] for the appearing parties.

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

1. 2016 SCC OnLine NGT 1409, *Forward Foundation* v. *State of Karnataka* **(partly reversed)** 499*e*, 499*g*, 509*a*, 514*e*, 522*e-f*, 523*e-f*
2. 2016 SCC OnLine NGT 637, *Forward Foundation* v. *State of Karnataka* 508*e*
3. 2015 SCC OnLine SC 1778, *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation* 507*f-g*
4. 2015 SCC OnLine NGT 5, *Forward Foundation* v. *State of Karnataka* 499*e*, 505*e-f*, 508*c*, 520*a-b*, 521*a*, 522*a*
5. (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *Kishore Lal* v. *ESI Corpn.* 518*a*
6. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.* 516*e-f*

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.— These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity "the NGT Act") challenging the judgment and order dated 7-5-2015[1] and 4-5-2016[2] respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short "the Tribunal").

2. The appellants in Civil Appeals Nos. 5016 of 2016 and 8002-03 of 2016 are Respondents 9 and 10 in Original Application No. 222 of 2014 (hereinafter referred to as "Respondents 9 and 10"). The said application was filed by Respondents 1 to 3 herein (hereinafter referred to as "the applicants"). Respondents 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as Respondents 1 to 4 in the application. Respondents 12 and 13 herein were subsequently impleaded in the application (for short "the impleaded respondents").

3. The State of Karnataka has filed Civil Appeals Nos. 4923-24 of 2017, challenging the general condition and Direction (1) contained in the order of the Tribunal dated 4-5-2016[2]. The other appeals have been filed by different entities, who were not parties before the Tribunal challenging the order of the Tribunal dated 4-5-2016[2] insofar as it directs a buffer/green zone of 75 m in respect of lakes, 50 m in respect of primary Rajakaluves, 35 m in

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

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case of secondary Rajakaluves and 25 m in case of tertiary Rajakaluves with retrospective effect. According to them, they are adversely affected by the aforesaid condition in the impugned order.

4. The applicants filed OA No. 222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short "KIADB") to Respondents 9 and 10 vide Notifications dated 23-4-2004 and 7-5-2004 respectively for setting up of software technology park, commercial and residential complex, hotel and multi-level car parks. The Master Plan formulated by the Bangalore Development Authority (for short "BDA"), identifies the allotted land as "residential sensitive", though the same land was identified in the Draft Master Plan as "protected zone". It was further contended that the revenue map in respect of properties as referred in the land lease agreements has multiple Rajakaluves (storm water drains). The development projects in question sit right on the catchment and wetland area which feeds the Rajakaluves, which in turn drains rainwater into Bellandur Lake. The project will thus encroach two Rajakaluves of 1.38 ac and 1.23 ac each.

5. The satellite digital images of the area from the year 2000 to 2012 show encroachment upon these Rajakaluves, as well as the manner in which they are covered by the construction. The State Level Expert Appraisal Committee (for short "SEAC"), which was to assist the State Level Environment Impact Assessment Authority (for short "SEIAA"), held its meetings on various dates to examine the project. It had required Appellant 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short "BWSSB") for the project in question. It was also observed that the project lies between Bellandur Lake and Agara Lake. Respondent 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11-11-2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

6. It was alleged that NOC was issued covering an area of 17,404 sq m whereas the built-up area, as noted by SEAC, is 13,50,454.98 sq m. Respondent 9 obtained NOC from BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent 9 had approached the Karnataka State Pollution Control Board (for short "KSPCB") for obtaining clearance, which was granted on 4-9-2012 subject to the fulfilment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by KSPCB to Respondent 9 also contained a condition with regard to obtaining environmental clearance from the competent authority and no construction was to commence until such clearance was granted.

7. The applicants further contended that Respondent 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of SEAC in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over

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the ecologically sensitive area of the lake catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities, the applicant submitted that the conversion of land from "protected zone" to "residential sensitive area" is violative of the law. The project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the Rajakaluves. Respondents 9 and 10 started to level the land by filling it with debris, thus causing damage to the drains. The conditions with regard to no disturbance to the storm water drains, natural valleys and buffer area in and around the Rajakaluves have been violated. It has in turn, affected the groundwater table and borewells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is in violation of the Wetlands (Conservation of Management) Rules, 2010 (for short "the 2010 Rules").

8. It was submitted that SEIAA in its meeting dated 29-9-2012, decided to close the file pertaining to Respondent 10 due to non-submission of requisite information and the application thereof was rejected in November 2012. Despite the rejection, Respondent 10 commenced construction on the project in full swing.

9. The applicants also relied upon the findings of the Joint Legislative Committee, constituted under the Chairmanship of Shri A.T. Ramaswamy in the month of July 2005, which stated that there were 262 waterbodies in Bangalore City in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 km of Rajakaluves have been encroached upon in several places and have become sewage channels. The applicants also relied on the report of the Committee under the Chairmanship of Hon'ble Justice N.K. Patil suggesting immediate remedial action in order to remove encroachments on the lake area and the Rajakaluves and preservation of the lakes in and around Bangalore City. It was further contended that other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore metropolitan area which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tank is not polluted. The Central Government in August 2013 had issued an advisory on conservation and restoration of waterbodies in the urban areas. The applicants claim to have obtained monitoring report of the project by Respondent 5, Ministry of Environment and Forests, through RTI on 21-8-2013. The report dated 14-8-2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that Bellandur Lake is not affected by the construction and operational phase of the project. This approach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

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10. The Lake Development Authority (for short "LDA"), after inspection in the catchment area of Bellandur Lake submitted its report dated 12-6-2013 which confirms that the project will have disastrous impact, including deleterious effect on Bellandur Lake. This report was brought to the notice of KIADB. LDA has also opined that the land should be classified and maintained as sensitive area. KIADB called upon Respondent 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, Respondents 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardising the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 m buffer zone is to be created around the lakes and 50 m buffer zone to be created on either side of the Rajakaluves. It was also pleaded that Respondent 9 had obtained the NOC from BWSSB only with regard to residential units and not for the entire project and that the environmental clearance obtained by Respondent 9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of Respondent 9 alone is approximately 4.5 million litres per day i.e. 135 million litres per month, which is more than what BWSSB supplies to the entire Agaram Ward. The construction of respective projects by Respondents 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of Bellandur Lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the waterbodies.

11. Respondent 9 in its objections contended that it was incorporated with the objective of establishing an information technology park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. It had submitted the proposal to establish such information technology park and other facilities to the State Government and requested for allotment of land for the project. Its proposal was considered in 78th High-Level Committee meeting held on 21-6-2000 and after examining the proposal, it was approved by the Government on 6-7-2000. Before the State High-Level Committee, it had informed that its requirement was 110 ac of land, 25 MW of power from the Karnataka Power Transmission Corpn. Ltd. (for short "KPTCL"), and four lakh litres of water per day from BWSSB. The lands for the project were initially notified vide Notification dated 10-2-2004. Subsequently, the lands were allotted vide letter dated 28-6-2007 for which lease-cum-sale agreement was signed on 30-6-2007. Considering the overall development of the State of Bangalore, this respondent proposed a Mixed Use Development Project consisting of an information

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technology park, residential apartments, retail, hotel and office buildings with a total built-up area of 13,50,454.98 sq m. The Project was conceived as a zero waste discharge project. The Project is located one-and-a-half kilometres away from the southern side of Bellandur Lake. Towards the north, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the east, lies the project of Respondent 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 4-7-2007 which was renewed from time to time.

12. Respondent 9 claims that it has obtained NOC from Airport Authority of India on 9-4-2010. Bharat Sanchar Nigam Ltd., vide its communication dated 16-4-2010, granted clearance for the project construction. BWSSB, vide its communication dated 26-4-2011 issued NOC for portion of the proposed construction to be built. Bangalore Electricity Supply Co. Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental clearance was granted by SEIAA vide communication dated 17-4-2012. The Director General of Police has issued NOC and KSPCB vide order dated 4-9-2012 accorded its consent for construction of the said Project subject to the conditions stated therein. It was further stated that after grant of the environmental clearance on 17-9-2012, the same was published in the leading newspapers *Kannada Prabha* and *The Indian Express* on 12-3-2012 and 14-3-2014 respectively.

13. It submitted a modified building plan which was approved by KIADB vide its letter dated 30-8-2012, which was valid up to 10-8-2014. It started the construction of the Project in November 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the environmental clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs 306.73 crores on the Project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.

14. Respondent 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and mala fides. It had submitted a revised proposal in respect of its project in question and to obtain fresh clearance on 31-8-2007 with an investment of Rs 179.22 crores. The State High-Level Committee had cleared the project which was communicated to it on 25-1-2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains

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and secondary storm water drains that exist in its properties. It has clearances from various authorities, including Environmental Clearance and consent for establishment.

15. KIADB stated that after possession of the land was handed over to Respondents 9 and 10, one year time was granted for the implementation of the Project which was extended from time to time. The building drawings were approved on 4-7-2007, and the modified building drawings were approved on 26-4-2011 and 30-8-2012 with specific conditions. In its meeting held on 16-7-2013, it was resolved to inform Respondents 9 to fully comply with the Ecology and Environment Rules and to obtain approvals from LDA and KSPCB. LDA vide its letter dated 24-9-2013, had informed KIADB that the construction activity in the catchment area in Bellandur Lake could drastically impact the lake with deleterious effects and asked it to stop construction activity of Respondents 9 and 10. However, the validity of the building drawings was again extended up to 10-8-2014. The Lokayukta on 17-12-2013 had written a letter in respect of complaint filed by the South-East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21-12-2013 to keep in abeyance the approval accorded and even the re-validations of plans. This was also informed to Respondent 9. The Board took a decision which was communicated to Respondent 9 on 2-1-2014, wherein it asked Respondent 9 to stop all construction activities on the allotted lands. The said communication was challenged by Respondent 9 and on the stop-work notice, stay was granted by the High Court of Karnataka. The stop-work notice dated 23-12-2013 issued by Bruhat Bengaluru Mahanagara Palike (for short "BBMP") was also stayed vide order dated 21-1-2014. The proposal submitted by Respondents 9 and 10 had been approved by the State Government. The land allotted to Respondents 9 and 10 does not consist of any Rajakaluves.

16. LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only when certain newspaper reports surfaced during the month of June 2013 and till that time it was in the dark. After the complaints, it inspected Bellandur Lake and Agara Lake on 12-6-2013 and prepared an inspection report. In the report, it was noticed that large-scale construction activities were going on in the catchment area of Bellandur Lake and that there was a change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB vide letter dated 6-7-2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31-8-2013, that Respondent 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23-9-2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it also communicated its objections to KIADB mentioning that construction activity

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would be in contravention of the directions of the Supreme Court. Despite these warnings, KIADB granted approval to the extension of the building drawings of the project in favour of the project proponents with certain conditions, like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed. Further, the natural sloping pattern of the project site was not to be altered and the lakes and other waterbodies within and/or at the vicinity of the project area should be protected and conserved. Despite the objections, the plans were approved and approvals were extended from time to time. It has taken a categorical stand that the projects as approved by KIADB would have adverse impact on Bellandur and Agara Lakes.

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

17.1. Whether the application filed by the applicants and supported by Respondents 11 and 12, is barred by time and thus, not maintainable?

17.2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?

17.3. Whether the present application is barred by the principle of res judicata and/or constructive res judicata?

17.4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of Writ Petitions Nos. 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and

17.5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

18. The Tribunal by its order dated 7-5-2015[1] at Annexure A-2, disposed of the applications with the following directions: (*Forward Foundation case*[1], SCC Online NGT para 85)

> "*85.* ... (1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal inter alia but specifically on the issues stated hereinafter:
>
> (*a*) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
>
> (*b*) CEO of the Lake Development Authority, Karnataka State.
>
> (*c*) Chief Town Planner of BBMP, Bangalore.
>
> (*d*) Chairman of SEAC which recommended the grant of environmental clearance to the projects in question.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

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(*e*) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.

(*f*) Dr Siddharth Kaul, former Advisor to MoEF.

(*g*) A senior officer from the National Institute of Hydrology, Roorkee.

(2) Member-Secretary of the Karnataka State Pollution Control Board shall act as the Convener of the Committee and would submit the final report to the Tribunal.

(3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the waterbodies, with particular reference to lakes.

(4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of Respondents 9 and 10 or by any of the projects in the area in question.

(5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

(6) The Committee shall substantially notice if any of the conditions of the environmental clearance order in each case of Respondents 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

(7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The Committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of waterbodies.

(8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore.

(9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letters dated 4-7-2007 and 22-4-2008 respectively. Further, the Committee would also report whether both Respondents 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing, etc., in terms of letters

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dated 11-10-2013 and 3-1-2013, issued by the Karnataka Industrial Area Development Board to Respondents 9 and 10 respectively.

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

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

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

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

(14) For the reasons stated in the judgment Respondent 9 is liable and shall pay a sum of Rs 117.35 crores, while Respondent 10 shall pay a sum of Rs 22.5 crores respectively being 5% of the project value, within two weeks from today. The said amount would be paid to KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the project proponent in that area, after taking approval of the Tribunal.

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

19. Feeling aggrieved by the said order, Respondents 9 and 10 filed Civil Appeals Nos. 4829 and 4832 of 2015 before this Court. This Court by its order dated 20-5-2015[3] passed the following order: [*Core Mind Software & Services (P) Ltd. case*[3], SCC OnLine SC paras 2-5]

"2. One of the main contentions raised by the appellants in these appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs 117.35 crores against the original Respondent 9 (the appellant in CA No. 4832 of

3 *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation*, 2015 SCC OnLine SC 1778

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2015) and Rs 22.5 crores against original Respondent 10 (the appellant in CA No. 4829/2015) is imposed.

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

4. With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject-matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment[1] can also be raised.

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

20. In relation to Issue 5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 6-4-2016[4] on these applications as under: (*Forward Foundation case*[4], SCC OnLine NGT)

"***MA No. 603 of 2015 and MA No. 596 of 2015***

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

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

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

21. It is evident from the above orders that the Tribunal had granted opportunity to the parties to address it "limited question", as aforementioned.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
4 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 637

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The Tribunal after hearing the parties passed an order dated 4-5-2016[2] as under: (*Forward Foundation case*[2], SCC OnLine NGT)

a

"***General conditions or directions***

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

c

(*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

(*ii*) 50 m from the edge of the primary Rajkulewas.

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

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

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

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

f All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore.

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

3. Bangalore City receives treated potable water of 1360 MLD from River Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of groundwater exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the

h

2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

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BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

(*i*) At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a prerequisite for grant of EC.

(*ii*) All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.

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

Specific conditions/directions for Respondent 9

In addition to the above directions which should be equally part of EC condition in respect of Respondents 9 and 10, following specific conditions shall apply to Respondent 9:

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

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

(*iii*) Several irrigation canals or tertiary Rajkalewas taking off from the Agara tank were passing through the area of Respondent 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between Agara Lake and Belandur Lake, Respondent 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.

(*iv*) The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic metres in the depth range of 0 to 9 m. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by

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SEIAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur Lake.

(*v*) The kharab land identified by Revenue Department admeasuring 1 ac 2 guntas should be demarcated and maintained separately as green belt.

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

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

* * *

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

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent 10 and the fact that the remedial measures can more effectively be taken by Respondent 10, we reduce environmental compensation payable by Respondent 10 to Rs 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

General directions

1. We direct SEIAA, Karnataka to issue amended order granting environmental clearance within four weeks from today incorporating all the conditions stated in this judgment and such other conditions as it may deem appropriate in light of this judgment and inspection note of the expert members. The project proponents would be permitted to commence activity only after issuance of amended environmental clearance order.

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

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3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the authorities concerned are directed to incorporate such conditions in the projects to whom environmental clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other lakes/wetlands in the city of Bengaluru.

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

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

6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent 9 is concerned. Admittedly the respondent has been allotted and is in possession of land admeasuring 63.94 ac, though environmental clearance has been granted for 2,92,636.03 sq m which is equivalent to 72.22 ac. For this reason alone, environmental clearance cannot be given effect to. While issuing the amended environmental clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent 9 to submit a fresh layout plant and the entire project may be revised in accordance with law.

7. Both the respondents (project proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended environmental clearance that would be issued.

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

With the above directions, Original Application No. 222 of 2014 and Miscellaneous Applications Nos. 596 of 2016 and 603 of 2016 are finally disposed of while leaving the parties to bear their own costs." (emphasis in original)

22. Appearing for the appellants in CA No. 5016 of 2016, Shri Mukul Rohatgi, learned Senior Counsel, has submitted that the State Government in exercise of the power conferred under the Karnataka Industrial Areas Development Act (for short "the KIAD Act") declared the land in question as an industrial area. Thereafter, the land in question has been acquired by the State Government in the year 2004. Following the acquisition, on 28-6-2007, the land was allotted to the appellant by KIADB. SEIAA granted environmental clearance which was followed by public notice concerning clearance on 14-3-2012.

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Neither the allotment of land nor the environmental clearance was challenged before the Tribunal. Thus, none of the statutory decisions or processes, are the cause of action for the purpose of the application. The averments made in the original application does not satisfy or meet the requirements of Sections 14(1) and (3) of the NGT Act and the original application does not spell out the cause of action relevant for the purpose of the said provision. Since the statutory processes and clearances could not have been challenged for being hit by Section 14(3), the construction activities which were the alleged cause of action could not have been challenged. Therefore, the Tribunal ought to have held that the application was not maintainable.

23. Further, the application is barred by limitation. Though environmental clearance was granted on 17-2-2012 and it was published in two leading newspapers on 12-3-2012 and 14-3-2012, modified plan was approved by KIADB on 30-8-2012, the application ought to have been filed within six months from the date on which cause of action for the dispute first arose in terms of Section 14 of the NGT Act. The present application has been filed in March 2014 which was much beyond the prescribed period of limitation. No application seeking condonation of delay has been filed accompanying the application. Hence, the Tribunal ought to have dismissed the application on the ground that as it is barred by time.

24. It was also argued that buffer zone laid down by NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22-6-2007. This is contrary to the Karnataka Town and Country Planning Act, 1961 (for short "the Planning Act").

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

26. Shri Maninder Singh, learned Senior Counsel appearing for the appellants, in CAs Nos. 5016 and 10995 of 2016, while supporting the submissions made by Shri Rohatgi, has submitted that the appellant has obtained sanction and approvals for the project from the competent authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible i.e. 30-9-2013. Hence, imposing penalty/compensation is entirely unsustainable.

27. The learned Advocate General, Shri Udaya Holla, appearing for the appellant State of Karnataka in CAs Nos. 4923-24 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of NGT to the extent of setting aside the buffer zone in respect of waterbodies and drains specified in

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the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation. Therefore, the order of NGT to that extent is liable to be set aside.

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

29. On the other hand, Shri Sajan Poovayya, learned Senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in CAs Nos. 5016 and 8002-03 of 2016 (Respondents 9 and 10). He has no objection to set aside the order insofar as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of NGT in para 1 of the order dated 4-5-2016[2] except the directions issued against Respondents 9 and 10. In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeals Nos. 4923-24 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents 9 and 10.

30. Shri Poovayya has strongly opposed the submissions made by the learned Senior Counsel appearing for the appellants in CA No. 5016 of 2016 and CAs Nos. 8002-03 of 2016. It is submitted that the Tribunal is a specialised body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act. Section 14 provides for the jurisdiction over all civil cases where a substantial question relating to environment is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. The Tribunal has the jurisdiction under Section 15(1)(*a*) of the NGT Act to provide relief

2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

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and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Sections 15(1)(*b*) and 15(1)(*c*), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas, as the Tribunal may think fit. Sections 15(1)(*b*) and 15(1)(*c*) have not been made relatable to enactment specified in Schedule I of the Act. Section 15(1)(*c*) is an entire island of power and jurisdiction read with Section 21 of the Act. He submits that whenever ecology is being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment. The limitation provided in Section 14 is period of six months from the date on which cause of action first arose whereas in Section 15 it is five years. Therefore, the petition is not barred by time.

31. He has further submitted that the provisions of Section 33 shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force. This gives the Tribunal overriding powers over anything inconsistently contained in the KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short "the KMC Act"). Therefore, the Tribunal while providing for restoration of environment in an area can specify buffer zone around specific lakes and waterbodies in contravention with zoning regulation.

32. Regarding limitation, he has submitted that the application filed by Respondents 1 to 3 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining sensitive area in its natural condition so that ecological balance of the area is not disturbed. Therefore, the petition was under Section 15 of the Act and it can be filed within five years from the date on which the cause for such compensation or relief first arose.

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

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

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

> "**22.** ***Appeal to Supreme Court.***—Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):
>
> Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."

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

37. Section 22 provides for an appeal to the Supreme Court on the grounds specified in Section 100 CPC. Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. The scope of appeal under Section 22, therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.*[5] This Court has laid down the test as under: (AIR p. 1318, para 6)

> "*6.* … The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

38. It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to

5 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

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seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision.

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

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

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

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

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

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore*

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Lal v. *ESI Corpn.*[6], para 17.) The existence of the Tribunal without its broad restorative powers under Section 15(1)(*c*) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

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

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

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

48. The second question raised by the appellants is that the petition is barred by time. According to the appellants, environmental clearance was granted to Respondent 9 on 17-2-2012 for which notice was published in the leading newspaper on 12-3-2012 and 14-3-2012. Modified building plan was approved on 30-8-2012, which was followed up to 10-8-2014. Similar events had taken place in regard to the project of Respondent 10 who had been

6 (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1

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granted environmental clearance on 30-9-2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.

49. OA No. 222 of 2014 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

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

51. Shri R. Venkataramani, learned Senior Counsel, appearing for the appellant in CA No. 5016 of 2016 has submitted that the constructions had not commenced before the grant of environment clearance. The inspection report dated 11-1-2012 of the Chairman of KSPCB observes that "no construction" had commenced on the date of inspection. This report cannot be overlooked on the basis of some dumping of debris which could not be attributed to the appellant. He has pointed out the report of the Committee appointed by the Tribunal in the month of August 2015, wherein it was stated that "it started construction after obtaining clearance". In this regard he has also taken us through various documents placed on record and submits that there is absolutely no justification in imposing monitoring penalty/compensation without assessment of impact.

52. The Tribunal has pointed out on the basis of the Committee report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee

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constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. That is why, the Tribunal has observed[1] as under: (*Forward Foundation case*[1], SCC OnLine NGT para 72)

> "*72.* In light of the above scope of the project and records before the Tribunal and the defaults on the part of the project proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:
>
> (1) The construction of both the projects had started prior to the grant to environmental clearance.
>
> (2) The EIA Notification of 2006 requires that without grant of environmental clearance, no project can commence its activity. This restriction applies not only to operationalisation of the project but even for the purposes of establishment.
>
> (3) Revenue map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
>
> (4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
>
> (5) Google satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13-11-2000 and 23-11-2010. Secondly, it reveals the excavation work carried out by Respondents 9 and 10 commenced prior to obtaining environmental clearance.
>
> (6) Restriction in regard to extraction of groundwater was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.
>
> (7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to lakes and other waterbodies within and/or at the vicinity of the project area to be protected and conserved. The inspection report by MoEF clearly notes that Conditions (xxxix) and (xl) in the environmental clearance of Respondent 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase."

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

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53. In para 81, the Tribunal has observed as under: (*Forward Foundation case*[1], SCC OnLine NGT para 81)

> "*81.* ... Another very important aspect which cannot be overlooked by the Tribunal is with regard to Respondents 9 and 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with Conditions (xxxix) and (xl) (or alike conditions) in the order granting the environmental clearance. This has even been noticed by MoEF in its monitoring report dated 14-8-2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof."

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

55. We are also of the view that it is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by this Court under Section 22 of the NGT Act.

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

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

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

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58. After elaborately considering this question, the Tribunal has concluded as under: (*Forward Foundation case*[1], SCC OnLine NGT para 51)

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

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

60. The State of Karnataka is aggrieved by the following offending portion of the order dated 4-5-2016[2]: (*Forward Foundation case*[2], SCC OnLine NGT)

> "*1.* In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to the 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—
>
> > (*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

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(*ii*) 50 m from the edge of the primary Rajkulewas.

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

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

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

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

All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore." (emphasis in original)

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

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

62.1. Civil Appeal No. 5016 of 2016 and Civil Appeals Nos. 8002-03 of 2016 filed by the appellant-Respondents 9 and 10 are hereby dismissed. The impugned judgment and order insofar as the appellant-Respondents 9 and 10 are concerned is sustained.

62.2. All the other appeals are hereby allowed and Direction/Condition (1) in the order dated 4-5-2016[2] is hereby set aside except the direction issued against Respondents 9 and 10.

63. There will be no order as to costs.

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2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 12251 of 2018

Hanuman Laxman Aroskar ...Appellant

Versus

Union of India ...Respondent

WITH

Civil Appeal No 1053 of 2019

Federation of Rainbow Warriors ...Appellant

Versus

Union of India and Ors ...Respondents

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NEELAM GULATI
Date: 2019.03.29
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J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

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A Introduction

1 An appeal was filed before the Principal Bench of the National Green Tribunal[1] at New Delhi challenging the grant of an Environmental Clearance[2] for the development of a greenfield international airport at Mopa in Goa. The NGT, by its judgment dated 21 August 2018 came to the conclusion that the present case "is not a case where the project compromises with the environment". While affirming the EC, the NGT came to the conclusion that "further safeguards for environmental protection need to be incorporated". The NGT, accordingly, proceeded to formulate additional conditions, while affirming the grant of the EC.

2 Village Mopa is situated in North Goa, in close proximity to the inter-state boundary which the state shares with Maharashtra. The site of the proposed airport lies at a distance of 35 kilometres from Panaji, the capital of Goa. The village of Mopa is situated in Pernem taluka. The site for the development of the airport is situated on a tabletop plateau which rises to a height of 150 to 180 meters above mean sea level and is surrounded by steep slopes. The soil is predominantly of a laterite character. The airport which presently serves the region is situated at Dabolim, Goa.

3 Since the airport at Dabolim is saturated in terms of its capacity for annual air traffic, the state government initiated a process in 1997 to commission studies and project reports for a proposed international airport, which include the following:

(i) A project report prepared by Engineers and Management Associates, Spain in 1997;

(ii) A preliminary technical feasibility study prepared by the Airports Authority of India in May 1998;

[1] NGT
[2] EC

(iii) A final feasibility report for the proposed airport at Goa prepared by the International Civil Aviation Organisation, Montreal, Canada in August 2005;

(iv) A Goa dual airport study prepared by the International Civil Aviation Organisation in August 2007;

(v) A report of a Six Member Committee chaired by the Chief Minister of Goa in 2008 to "look into all aspects relating to construction of an international airport at Mopa, Goa"; and

(vi) A document styled as the "Airport Master Plan" dated 10 February 2012, submitted to the Public Private Partnership[3] cell of the Government of Goa by Ammann & Whitney, USA envisaging: "consultancy services for preparation of master plan, preliminary project report, tender document and project management services for the proposed greenfield airport and commercial/industrial and allied development near Mopa in the State of Goa".

4 On 1 May 2000, the Government of India communicated its approval for the setting up of an airport at Mopa and for the closure of the existing airport for civilian operations on the commissioning of the new airport. Subsequently, on 1 July 2010, the earlier decision was modified to allow for the continuation of civilian aircraft operations at Dabolim even after the commissioning of the new airport. The process of land acquisition commenced in 2008 under the Land Acquisition Act, 1894. Originally, the land area anticipated for the development of the project was pegged at 4,500 acres. During the pendency of project appraisals, the area required for the proposed airport stood reduced to 2,271 acres.

[3] PPP

5 On 14 September 2006, the Government of India in the Ministry of Environment and Forests[4] issued a notification[5] mandating a prior EC for Category 'A' projects (specified in the Schedule) by the Union Government and for Category 'B' projects at the state level by the State Level Environment Impact Assessment Authority[6]. Following the 2006 notification, the MoEF placed an EIA Guidance Manual for Airports[7] in the public domain in February 2010. The stages of scoping, public consultation and appraisal, leading up to the grant of the EC for the proposed airport are governed by the express terms of the 2006 notification.

6 In March 2011, the State of Goa, as the project proponent submitted Form 1 as stipulated in the 2006 notification to the MoEF. On 8 March 2011, the State of Goa applied for Terms of Reference[8] to the MoEF. The ToR were finalized on 11 and 12 May 2011 by the Expert Appraisal Committee[9] constituted under the 2006 notification. On 1 June 2011, the MoEF issued the ToR for the preparation of the Environmental Impact Assessment[10] report. The ToR was valid for a period of two years until 31 May 2013. On 22 November 2012, the Government of Goa revised the project boundary by decreasing the project area from 4,500 acres to 2,271 acres. At its meetings on 28 and 29 January 2013, the EAC recommended an amendment to the ToR as requested by the state government and granted an extension to the validity of the ToR until 31 May 2014. On 19 June 2013, the MoEF communicated its approval for the amendment of the ToR and for the extension of its validity.

[4] MoEF, later renamed as MoEFCC in 2014
[5] S.O. 1533 ('2006 notification')
[6] SEIAA
[7] Guidance manual
[8] ToR
[9] EAC
[10] EIA

7 On 3 October 2014, the state government floated a tender for the development of a greenfield international airport project on a PPP basis. On 20 October 2014, the Directorate of Civil Aviation, Government of Goa submitted a draft EIA report to the Goa State Pollution Control Board, requesting it to initiate steps to conduct a public hearing. A public hearing was conducted at the project site on 1 February 2015. The EAC, at its meetings held on 9-11 March 2015, recommended an extension of the validity of the ToR for another year ending on 31 May 2015.

8 On 20 May 2015, the State of Goa submitted a final EIA report to the MoEFCC, seeking the grant of an EC for the project. On 29 May 2015, the MoEFCC communicated its approval for extending the validity of the ToR until 31 May 2015. Between 24 and 26 June 2015, the EAC, at its 149th meeting, deliberated on the EIA report and sought additional information from the project proponent, *inter alia*, on:

- "10 years data regarding rainfall in the area;
- Drawing of traffic circulation plan for smooth circulation of Traffic in the area;
- Minimum 20% energy conservation measures should be adopted in incorporating provisions for use of LED, star rated AC's, and a revised energy conservation plan to be submitted;
- Measures taken to comply with the CPCB guidelines formulated for noise pollution control in Airport area to be submitted."

In the meantime, a representation was submitted by the Federation of Rainbow Warriors, one of the appellants before this Court to the EAC. The EAC, at its 151st meeting held on 7-9 September 2015, deliberated upon the representation and sought a clarification from the project proponent on the issues raised. On 28 September 2015, the project proponent submitted its reply to the representation. The EAC, at its 152nd meeting on 20 October 2015, sought a further clarification from the

project proponent on the reply submitted by the Federation of Rainbow Warriors. At that meeting, the EAC recommended the grant of an EC for the project.

9 On 28 October 2015, the MoEFCC, as the regulatory authority under the 2006 notification for Category 'A' projects, communicated its approval for the grant of an EC. Following the grant of the EC, the tender process which had been initiated on 3 October 2014 was concluded on 26 August 2016. Consequent to the opening of the final bids, a technical scrutiny, evaluation coupled with pre-bid meetings, deliberations on the draft concession agreement and other required steps, GMR Goa International Airport Limited[11] was awarded the contract on a revenue sharing of 36.99 percent to the State of Goa. On 8 November 2016, the concession agreement was executed between the Government of Goa and GGIAL for the development and operation of the airport with the concession period of 40 years. Upon financial closure, the three-year period for the construction of the airport commenced on 4 September 2017. The target date for the commissioning of the first phase of the project is 3 September 2020.

10 The grant of the EC was challenged before the Western Zonal Bench of the NGT[12] by the Federation of Rainbow Warriors. Hanuman Laxman Aroskar also filed an appeal[13] before the Western Zonal Bench of the NGT. These appeals were subsequently renumbered[14] before the Principal Bench of the NGT at New Delhi. On 7 November 2017, the NGT issued an ad-interim order restraining the cutting or felling of trees in the area designated as the site of the proposed airport. On 22 November 2017, the order of restraint was modified on the statement of the Advocate

[11] GGIAL
[12] Appeal No. 61 of 2015
[13] Appeal No. 1 of 2016
[14] Appeal Nos. 5 and 6 of 2018

General of Goa that the state shall not cut or fell any trees, nor allow it to take place without valid permission from the lawful authority for a fortnight thereafter in order to enable the appellants to pursue their remedies. On 6 February 2018, the Deputy Conservator of Forests granted permission for felling 21,703 trees at the airport site. The appellate authority under the Goa, Daman and Diu Preservation of Trees Act 1984[15] dismissed the appeal on 7 March 2018.

11 On 8 March 2018, the High Court of Judicature at Bombay at its seat at Goa set aside the order of the Deputy Conservator of Forests and remanded the matter to be heard by the Principal Chief Conservator of Forests. On 2 April 2018, the Principal Chief Conservator of Forests stipulated several conditions for the cutting and the felling of trees at the site of the airport including: (i) enumeration of trees; and (ii) the plantation of ten times the number of trees felled. Upon being moved in a Public Interest Litigation[16], the High Court by its order dated 25 April 2018 allowed the exercise of enumeration to be carried out. As a result, 54,676 trees were enumerated, including the 1,548 trees which had been felled earlier in terms of the order dated 6 February 2018 of the Deputy Conservator of Forests. On 13 January 2018, the High Court issued final directions in the PIL directing the State of Goa to approach the NGT seeking permission for felling and cutting trees. The state was directed to carry out the cutting and felling of trees only after prior permission was granted by the NGT.

[15] Act 6 of 1984
[16] PIL

12 A Miscellaneous Application[17] was filed by the State of Goa before the NGT on 2 July 2018 seeking permission for the felling of trees. By its judgment dated 21 August 2018, the NGT disposed of both the appeals and the Miscellaneous Application filed by the State of Goa, upholding the EC and imposing additional conditions to safeguard the environment. This Court has been informed that the felling of trees was initiated on 3 September 2018 and completed on 14 January 2019. Assailing the judgment of the NGT, two appeals have been filed before this Court: one by Hanuman Laxman Aroskar[18] and the other by the Federation of Rainbow Warriors[19].

13 On 18 January 2019, notice was issued in the appeals and an order of *status quo* was passed by this Court. The appeals were admitted for hearing and final disposal.

B Submissions

14 We have heard Ms Anitha Shenoy, learned counsel appearing on behalf of the appellants. Mr K K Venugopal, learned Attorney General[20] for India appeared on behalf of the State of Goa. Mr Atmaram S Nadkarni, learned Additional Solicitor General[21] of India appeared on behalf of the MoEFCC. Mr Parag P Tripathi, learned Senior Counsel and Ms Aastha Mehta, learned counsel appeared on behalf of the Concessionaire.

15 Ms Anitha Shenoy, learned counsel appearing on behalf of the appellants urged that the EIA report which is carried out under the terms of the 2006 notification

[17] MA No. 975 of 2018
[18] Civil Appeal No. 12251 of 2018
[19] Civil Appeal No. 1053 of 2019
[20] AG
[21] ASG

is a tool to evaluate the environmental consequences of a proposed activity. The proposed international airport, being a Category 'A' project, is governed by the second, third and fourth stages of scoping, public consultation and appraisal respectively envisaged under the 2006 notification. In addition to the 2006 notification, the Guidance manual furnishes a significant sign post in the procedure envisaged prior to the grant of an EC. The project proponent is required to submit Form 1 complete with relevant details of the proposed project and the status of the environment. The ToR which is finalized by the EAC is founded on the disclosures which are made by the project proponent. In this backdrop, the principal submissions urged by the appellants before the Court are as follows:

(i) There were material concealments by the project proponent in failing to disclose that as many as 54,676 trees were required to be felled. Form 1, which was submitted by the project proponent, was silent in regard to the number of trees required to be felled. The final EIA report, while dealing with the biological environment in clause 2.1.5 contains the following statement:

> "2.1.5 Biological environment
> Construction phase
> Impacts (Significance-Medium)
> The area acquired for proposed airport has only few trees, mainly bushes. These will be cleared during site preparation."

Contrary to the above assertion is the statement contained in the counter affidavit filed by the State of Goa:

> "..I say that the permissions which have been obtained for cutting of 54,676 trees have been granted by the concerned authorities in terms of the relevant statutory provisions and after laying down various conditions. I say that the context in which it was mentioned as sparse trees has to be seen from the huge area of the land. The land being 2133 acres, it would proportionally work out to about 25 trees in an area of 1 acre, i.e. 4000 sq. metres., which is one tree in an area of about 160 sq. metres."

The submission urged by the appellants is that the purpose of the EIA report is to form an assessment of the state of environment as it exists in reality. The project proponent is duty bound to make a proper disclosure and the highest level of transparency is required. Accompanying Form 1 is a declaration of the project proponent that the EC will be liable to be rejected in the event of a suppression or mis-statement of material facts. The State of Goa filed a Miscellaneous Application before the NGT seeking permission to fell around 55,000 trees. This is a clear indicator that the original statement by the project proponent in Form 1 as well as in clause 2.1.5 of the EIA report that only a few trees were required to be felled is factually incorrect;

(ii) There was a concealment of Ecologically Sensitive Zones[22] in the State of Maharashtra. In terms of the Guidance manual, primary data through measures and full surveys; and secondary data from secondary sources have to be collected. Primary data includes the study area within 10 kilometres radius from the Aerodrome Reference Point[23] and covers one season other than the monsoon. Secondary data includes data collected within an aerial distance of 15 kilometres for the parameters which are specifically mentioned in column 9 (III) of Form 1 of the 2006 notification and covers one full year. In the present case, while furnishing details of ESZs falling within an aerial distance of 15 kilometres, the EIA report stipulates that there were none in the State of Maharashtra. The State of Goa has also averred in its counter that there are no ESZs within a radius of 15 kilometres from the ARP and that there are no reserve forests in that radius. After hearings had begun before the

[22] ESZ
[23] ARP

NGT, a letter was addressed by the Principal Chief Conservator of Forests on 12 February 2018 to the Director of Civil Aviation stating that a list of reserved forests had been notified under Section 20 of the Indian Forest Act 1927 in Sawantwadi Forest Division of Sindhudurg district in Maharashtra which was obtained from the working plan of Sawantwadi Forest Division (2014-15 to 2023-24). The letter stated that there was no reserved forest notified under Section 20 of the Indian Forest Act 1927 in the Sawantwadi Forest Division, within a radius of 15 kilometres from the ARP. On this aspect, it was urged on behalf of the appellants that restrictions come into force as soon as a notification under Section 4 of the Indian Forest Act 1927 is issued. Under the Forest Conservation Act 1980, any use of forest land for non-forest purposes requires prior permission of the Union Government, as elaborated in the judgment of this Court in **TN Godavarman Thirumalpad** v **Union of India**[24] ("Godavarman"). The purpose of elucidating forest areas which fall within an aerial distance of 15 kilometres from the project site is to enable an assessment to be made of the impact of the project on forested areas. Failure to mention forests in the State of Maharashtra was a significant omission in the EIA report;

(iii) Form 1 requires a disclosure of the details of ESZs within an aerial distance of 15 kilometres of the project boundary. The EIA report rests content in stating that Pernem taluka is not included in an ESZ by the High Level Working Group[25] constituted under the Chairmanship of Dr K Kasturirangan, Member (Science), Planning Commission[26]. The project proponent, in response to the

[24] (1997) 2 SCC 267
[25] HLWG
[26] Kasturirangan report

disclosures required for areas which are important or sensitive for ecological reasons – wet lands, water sources or other water bodies, costal zone, biospheres, mountains and forests, left the required details blank. In this context, it was urged by the appellants that the purpose of the EIA report was not only to make an assessment of the project site but also of an area surrounding the project site within an aerial distance of 15 kilometres. The HLWG recognized that there were ESZs. In the present case, several villages are situated at a bare distance of 1.5 kilometres from the project site in Maharashtra. Yet, there was no disclosure of this fact and the EIA report merely recorded that Pernem taluka is not included in an ESZ;

(iv) The State of Maharashtra comprises nearly 40 per cent of the study area. Yet, there was no sampling of soil, air and water in Maharashtra. Sampling was carried out in 2011 and 2014-15 in Goa but no sampling site is situated in Maharashtra. In the absence of baseline data generated with regard to environmental parameters in the State of Maharashtra surrounding the project site, the EIA report suffers from a gross deficiency; and

(v) The EIA report is grossly deficient in failing to notice wildlife in the surrounding forests. On the contrary, the appellants have relied on a rapid survey conducted to assess the presence of various mammals in the study area. Moreover, no avi-faunal study was done.

16 Apart from the above submissions, Ms Shenoy has urged that the stages of public consultation and appraisal under the 2006 notification are crucial to the assessment process. As far as the public consultation is concerned, the draft EIA is given before the hearing. During the course of the public consultation, as many as 70

persons spoke, 1,150 representations were received and 1,586 persons are stated to have participated. The range of concerns expressed during the course of the public consultation covered a variety of environmental issues. Amongst them was the presence of perennial springs, the porous nature of the laterite plateau where permeation is a source of drainage for water collection and the existence of cashew plantations on which the livelihood of the local residents depends. Under the 2006 notification, the State Pollution Control Board[27] was required to collate the issues raised and the response of the project proponent, before submitting required documents to the EAC. Before the EAC, the project proponent in its presentation, indicated that the objections were only about employment opportunities. The project proponent clearly failed in its duty to appraise the EAC about serious environmental concerns which were raised during the course of the public consultation.

17 On the aspect of appraisal, it has been urged that the minutes of the EAC meeting recommending the grant of an EC contain, as learned counsel for the appellants submitted, “not a line on the EIA report”. The EAC was required to state its reasons for recommending the grant of an EC in terms of the 2006 notification. The reasons must indicate that there was an appraisal by the EAC. In the present case, the recommendations of the EAC are based on vague considerations such as: (i) larger public interest; (ii) non-concealment of the facts by the project proponent; and (iii) the delay which had occurred in the process. The submission urged is that the EAC, as an expert body, has failed to furnish reasons; acted on the basis of considerations which are not germane to the exercise of its functions and failed to apply its mind to relevant considerations including the environmental consequences of the project.

[27] SPCB

18 Finally, it has been submitted that under Section 16(h) of the National Green Tribunal Act 2010,[28] an appellate remedy is provided against the order granting EC. By virtue of the provisions of Section 20, the NGT is under a mandate to apply the principles of sustainable development, the precautionary principle and the polluter pays principle while passing any order, decision or making the award. An appeal lies before this Court under Section 22 from an order, decision or award of the Tribunal on a substantial question of law as specified in Section 100 of the Code of Civil Procedure, 1908. The NGT, by virtue of its adjudicatory authority under Section 16(h), is entrusted with a duty to conduct a merits review. The failure to consider materials on a vital issue constitutes a substantial question of law as does the failure to consider vital issues in the proceedings before it. In the present case, the Tribunal has merely relied on the process conducted by the EAC and its recommendations, abdicating its own jurisdiction to conduct a merits review.

19 Mr ANS Nadkarni, learned ASG appearing on behalf of the MoEFCC urged that the EIA report, besides dealing with environmental concerns, addresses the impact of the project during both the phases of construction and operation. The EAC is sourced from experts from outside the government. The airport project was conceived in 1996; consultants were appointed and three sites were initially short-listed. It was in 2011 that the ToR were sought by and given to the project proponent by the EAC. The draft EIA was placed for public consultation in 2014 and the final EIA report came to be submitted in 2015. The EAC deferred consideration of the EIA report on three occasions, including among them to consider the representation filed by the Federation of Rainbow Warriors.

[28] NGT Act 2010

20 Countering the submission of the appellants on the non-disclosure of **reserved forests** in Form 1, the learned ASG urged the following submissions:

(i) The submission of the appellants was not raised either in the public hearing or in the grounds urged before the NGT, but was addressed in the written submissions filed before the NGT and when a map of the Surveyor General of India was produced;

(ii) Table 2.1.5 of the EIA report states that there is no reserved forest in the State of Maharashtra while delineating ESZs within 15 kilometres from the project boundary. The report proceeded on the plain meaning of the Indian Forest Act 1927 according to which it is only upon the issuance of a notification under Section 20 that a reserved forest is declared;

(iii) As a matter of fact, within the area of 15 kilometres from the project boundary in the State of Maharashtra, no reserved forest stands declared under Section 20(2) of the Indian Forest Act 1927;

(iv) The decision in **Godavarman** (supra) which adopts the ordinary meaning of the expression 'forest' is site specific: the MoEFCC follows it scrupulously even if there is a notification under Section 4 while considering the diversion of forest land for non-forest uses. The decision in **Godavarman** (supra) has also been explained in the decision of this Court in **Construction of Park at Noida near Okhla Bird Sanctuary Anand Arya** v **Union of India**[29] ('Okhla Bird Sanctuary');

(v) The Guidance manual notices that environmental facets which have to be considered in relation to airport development are categorized into seven groups: (a) land use; (b) water quality; (c) air quality; (d) noise pollution; (e)

[29] 2011(1) SCC 744

biological environment; (f) socio-economic changes and occupational health; and (g) solid waste management. Baseline data of these environmental facets is ascertained through primary data extending to one season while secondary data extending to a year is gathered in terms of the Guidance manual and the distance specified in paragraph 4.1; and

(vi) The EIA report records that the surrounding land use of the airport site is predominantly forest land. Land use and land cover specifically for a 10 kilometre radius from the airport site in Maharashtra is also set out in Chapter II of the EIA report, which indicates a reference to the forest area. Annexure IX of the EIA report incorporates land use with land cover maps, both for Goa and Maharashtra in the 10 kilometre radius, which includes forested areas within the State of Maharashtra; Annexure X of the EIA report elucidates surface water bodies both in Maharashtra and in Goa in the radius of 10 kilometres while Annexure XI provides a hydro-geo-morphological map of Goa and Maharashtra. In other words, it was urged that: (i) a legally designated forest under the Indian Forest Act 1927 requires a notification under Section 20; however, at the same time, (i?i) the EIA report contains a clear disclosure of the presence of forest areas in both the States of Goa and Maharashtra within a radius of 10 kilometres including areas of dense forest.

21 As regards the lack of **sampling points** in Maharashtra**,** the learned ASG urged that while all the six sampling points for ambient air quality within 10 kilometres of the study area were in Goa, the air quality which was being tracked was within the stipulated radius and was not confined to the State of Goa. Similarly, in studying the water environment, the ground water quality was measured at four locations in Goa within 10 kilometres of the study area. As regards the monitoring of noise, nine

sampling points were chosen within the State of Goa in accordance with the Central Pollution Control Board[30] guidelines. The monitoring of noise environment, both at the construction and operational phases, has similarly been dealt with in the EIA report. The learned ASG urged that the choice of the sampling locations was not arbitrary: though the sampling points were not in Maharashtra, data required was tracked across a radius of 10 kilometres from the ARP which also included the State of Maharashtra.

22 Dealing with the submission that no avi-faunal study was carried out, it was urged that the EIA report specifically deals with this aspect in paragraph 4.6 of Chapter II which elucidates that 385 species of plants belonging to 88 plant families were documented and identified in the 10 kilometres radial distance of the proposed project site. The study similarly dealt with faunal diversity. As many as 86 species of birds were observed in the course of the avi-faunal study, which has been elucidated in table 4.17 of the EIA report.

23 On the issue of ESZs, the learned ASG urged that there is a specific reference to the Kasturirangan report, under the heading of 'Environmentally Sensitive Zones' in Chapter IV of the EIA report. The EIA report notices that the proposed airport site falls in Pernem taluka of North Goa which has not been included in the ESZs mapped by the HLWG. Annexure XVI of the EIA report is a notification dated 13 November 2013[31] of the MoEF, which contains a list of villages (state, district and taluk-wise) identified by the HLWG. Paragraph 9 of the 2013 notification which has been issued under Section 5 of the Environment (Protection) Act 1986 specifies the categories of new and expansion projects which are prohibited in the ESZ. The proposed airport

[30] CPCB
[31] 2013 notification

project does not fall within the prohibited category. Moreover, since the site of the proposed airport was not included in an ESZ, the prohibition imposed by the 2013 notification had no application.

24 The learned ASG has also urged that the report of the HLWG on Western Ghats, submitted on 15 April 2013, stipulates certain development restrictions in ESZs which are as follows:

(i) A complete ban on mining, quarrying and sand mining;

(ii) A complete ban on thermal power projects while hydro power projects may be permitted subjected to conditions;

(iii) A strict prohibition on 'red category' industries;

(iv) A prohibition on building and construction projects of 20,000 square metres;

(v) All other infrastructure and development projects/schemes would be subject to the grant of an EC as Category 'A' projects under the 2006 notification; and

(vi) All development projects within 10 kilometres of the Western Ghats ESZ and requiring ECs shall be regulated in accordance with the 2006 notification.

Based on the above recommendation of the HLWG, it was submitted that the proposed airport project, which falls under Category 'A' projects as delineated by the 2006 notification, is regulated by it and does not attract a blanket prohibition.

25 The submission that the EAC had failed to apprise the environmental consequences of the project and should have applied its mind to environmental concerns has been countered by relying on the Minutes of the meetings conducted by the EAC:

(i) At its 149th meeting held on 26 June 2015, the EAC sought additional information on six distinct aspects upon receiving the presentation by the project proponent;

(ii) At its 151st meeting held on 7-9 September 2015, the EAC took note of a representation filed by the Federation of Rainbow Warriors and deferred further consideration of proposal for the grant of EC. The project proponent was called upon to submit a response to the issues raised in the representation; and

(iii) At its 152nd meeting held on 20 October 2015, the EAC dealt with clarifications issued by the project proponent to the concerns raised by Rainbow Warriors and proceeded to recommend the project for the grant of an EC subject to the stipulated conditions.

On 28 October 2015, the EC was granted by the Union Government. On the basis of the procedure which was followed by the EAC, the following submissions have been urged:

(i) The application of mind by the EAC can be inferred and seen from the record;

(ii) Where considered necessary, the EAC sought information outside the EIA report;

(iii) Having appraised the EIA report, the EAC imposed site specific conditions; and

(iv) The EAC consists of experts in the field and once it has been shown that all relevant considerations were borne in mind, this Court must give due deference to their view.

26 Mr K K Venugopal, learned Attorney General, appearing on behalf of the State of Goa, urged the following submissions:

(i) The proposed project for setting up an international airport at Mopa has been on the drawing board for nearly two decades. Successive studies were commissioned to assess the feasibility of the project from diverse sources, both within and outside government. This includes studies by private organisations as well as reports by the Airports Authority of India, the International Civil Aviation Organisation and the six member Committee constituted by the state government under the auspices of the Chief Minister;

(ii) The setting up of an airport is an imminent need, since the existing airport at Dabolim has reached a saturation point and is unable to cater to the growing volume of passenger traffic into Goa;

(iii) Tourism, it has been urged, is a major source of revenue for the state, with the banning of mining activities. A balance must be drawn between development and the environment. A distinction needs to be drawn between overwhelming environmental objections which are not reversible and incapable of amelioration, and cases such as the present where the environmental consequences of project are capable of being countered by suitable measures; and

(iv) Objections primarily based on a defect in procedure should not be sufficient to quash a project conceived in public interest with vast benefits for the development of the state and for the members of the travelling public. It was urged that there was no major environmental objection and the challenge to the EIA report is not substantial enough to overcome the interests of three

million passengers. The expected inflow is anticipated to reach 30 million in 2030.

27 On the aspect of the **felling of trees**, the learned AG submitted that following the order of the Bombay High Court, the Principal Chief Conservator of Forests passed an order on 2 April 2018 providing for: (i) enumeration of all trees covered by the project site; (ii) issuance of tree felling permission by the Deputy Chief Conservator of Forests; and (iii) plantation of ten times the number of trees felled under the supervision of the forest department. Thereafter, when the High Court was moved in a PIL, an order was passed on 13 June 2018 that the grant of permission for felling trees and the actual felling of trees will be carried out only after the NGT granted permission in the pending proceedings. A Miscellaneous Application seeking permission for the felling of trees was instituted before the NGT. In its final order dated 21 August 2018, the NGT disposed of both the appeals as well as the Miscellaneous Application. Moreover, the NGT has specifically dealt with the felling of trees in the course of its distinction.

28 On behalf of the concessionaire, Mr Parag P Tripathi, learned Senior Counsel and Ms Astha Mehta, learned counsel urged that upon the grant of an EC, a concession agreement was executed by it with the State of Goa on 8 November 2016. Possession of the project site was handed over on 4 September 2017 and work commenced on 3 March 2018. The indicative capital for Phase 1 of the development is Rs 1,900 crores while the cost of the entire project is likely to be Rs 3,000 crores. The State of Goa has incurred a total expenditure of Rs 240 crores for land acquisition, rehabilitation, road widening, consultancy and other related aspects while the concessionaire has thus far incurred an expenditure of Rs 230 crores as on

18 January 2019. 14.06 per cent of the project work has been completed and a manpower consisting of 1500 persons has been mobilized at the site together with plant and machinery.

29 The concessionaire has stated that it has tied up with a consortium of banks and the servicing of the loans is linked to project milestones. As on 18 January 2019, the major works in progress include: (i) site preparation and earth works such as excavation and filling up of runways, taxiways, aprons and parking bays; (ii) PTB-foundations and column works; and (iii) excavation of the foundations for the ATC building. The concessionaire has submitted that apart from the plantation of ten trees for every single tree which has been felled, the forest department identified about 500 trees for transplantation, which process is being carried out. In this background, it has been submitted that the project should not be interdicted. The concessionaire, it has been urged, is committed to the completion of the project which accords with all the approvals that have been received.

30 The rival submissions now fall for our consideration.

C Scheme of the 2006 notification and the Guidance manual for Airports

C. 1 EIA Process

31 The objective of the EIA process is to ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available.

32 The Constitution (Forty-second Amendment) Act 1976, which came into force with effect from 3 January 1977, inserted Article 48A to the Constitution which

mandates that the State shall endeavor to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51A(g) of the Constitution places a corresponding duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm[32] in June 1972 in which India participated, Parliament enacted the Environment Protection Act 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.

33 On 27 January 1994, the MoEF, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the 1986 Act read with clause (d) of sub-rule 3 of rule 5 of the Environment (Protection) Rules, 1986, issued a notification[33] imposing restrictions and prohibitions on the expansion and modernisation of any activity or new project unless an EC was granted under the procedure stipulated in the notification. Under the notification, any person undertaking a new project or expanding and modernizing an existing project was required to submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

34 The application, which was to be made in accordance with the Schedule provided in the notification was to be submitted with a project report which included with it an EIA Report, an Environment Management Plan[34] and the details of a public hearing which had been carried out in accordance with guidelines issued by the

[32] Stockholm Conference
[33] S.O. 60(E) ('1994 notification')
[34] EMP

Central Government from time to time. Limited exceptions to the public hearing process and the submission of an EIA were provided.

35 MoEF as the Impact Assessment Agency[35] would then evaluate the application and reports submitted. The IAA was empowered to constitute a committee of experts, if necessary, which would have a right of entry into and inspection of the site during or after the commencement of the preparations relating to the project. The IAA would prepare a set of recommendations based on the documents furnished by an applicant within 90 days from the receipt of the documents and a decision would be conveyed to the applicant within 30 days thereafter. The EC granted was valid for a period of five years and a successful applicant was required to submit half-yearly reports to the IAA. Concealing factual data or submitting false or misleading information would make the application liable for rejection and would lead to the cancellation of any EC[36] granted on that basis.

36 The 1994 notification was amended to reflect the growing protection accorded to the environment.

37 On 14 September 2006, MoEF released another notification[37] in supersession of the previous notification.

38 The 2006 notification directed thus:

> "…on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the

[35] IAA
[36] EC
[37] S.O. 1533 ('2006 notification')

State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification."

39 There are significant differences between the 1994 notification and the 2006 notification. They are:

(i) The 2006 notification categorically states that an EC must be granted by the regulatory authority *prior* to the commencement of any construction work or preparation of land;

(ii) The 2006 notification divides all projects into Category 'A' and Category 'B' projects. The MoEFCC continues to regulate projects of a large scale (Category 'A'), while the SEIAA regulate comparatively smaller projects (Category 'B');

(iii) Under the 1994 notification, an applicant was required to submit an application along with all reports including the EIA report at the time of the application. Under the 2006 notification, prior to the preparation of the EIA report by the applicant, the concerned authority formulates comprehensive ToR on the basis of the information furnished by the applicant addressing all relevant environmental concerns. This forms the basis for the preparation of the EIA report. A pre-feasibility report must also be submitted with the application unless exempted in the notification. Under the 2006 notification, a draft EIA is first prepared and it is only after the public consultation process that a final EIA report must be prepared addressing all the concerns raised during public consultation;

(iv) The 2006 notification stipulates the creation of a regulatory body at the state level – SEIAA comprising members with expertise in the field of environmental laws which is charged with granting ECs for Category 'B' projects;

(v) Under the 1994 notification, the final approval was granted by the IAA. Under the 2006 notification, though the final regulatory approval is granted by the MoEFCC or the SEIAA, as the case may be, the approval is to be based on the recommendations of the EAC functioning in the MoEFCC or the State Expert Appraisal Committees[38] which are constituted for that specific purpose;

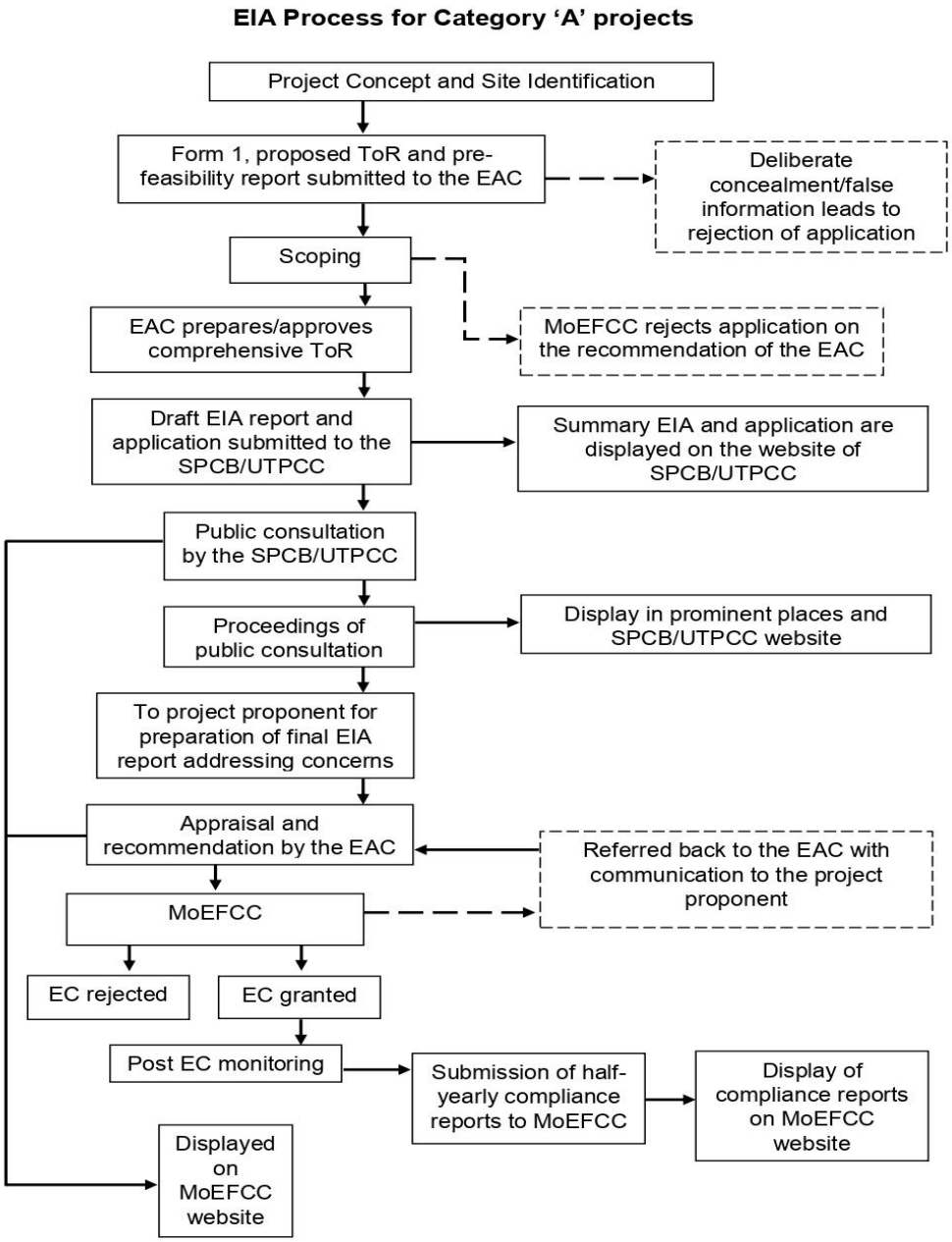
(vi) Under the 2006 notification, the application can be rejected by the regulatory authority on the basis of the recommendation of the EAC or the SEAC, as the case may be, at the preliminary stage itself, prior to public consultation; and

(vii) Under the 1994 notification, the public hearing process was overseen by the State Pollution Control Boards[39] which would constitute a public hearing panel for the purpose. Under the 2006 notification, the public consultation process is expanded to include the receipt of written comments from concerned persons. The public hearing component was to be overseen by the SPCBs or the Union Territory Pollution Control Committee[40].

40 The salient objective which underlies the 2006 notification is the protection, preservation and continued sustenance of the environment when the execution of new projects or the expansion or modernization of existing projects is envisaged. It imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless prior EC has been granted by the concerned authority. The EC is required before any construction work, or preparation of land (except for

[38] SEAC
[39] SPCB
[40] UTPCC

securing the land) is started on the project or activity listed in the Schedule to the notification. The process stipulated under the 2006 notification is illustrated by the following flow-chart:



41 Based on the spatial extent of the potential impact and the potential impacts on human health and natural and man-made resources, the 2006 notification categorizes all projects into Category 'A' and Category 'B' projects. The MoEFCC in the Central Government and the SEIAA at the state level constitute the regulatory authorities for the purposes of the notification. Category 'A' projects require prior environmental clearance from the MoEFCC, based on the recommendation of the EAC constituted by the Central Government for this purpose. Category 'B' projects will require prior environmental clearance from the SEIAA, based on the recommendations of the SEAC. Where no SEIAA or SEAC has been constituted, Category 'B' projects are treated as Category 'A' projects.

42 Once a prospective site has been identified by the applicant for the proposed project, all applications seeking an EC shall be made in the prescribed Form 1 and Supplementary Form 1A[41], if applicable. The application must be submitted prior to the commencement of any construction activity, or preparation of the land at the site. A pre-feasibility report must also be submitted with the application except in the cases of construction projects in item 8 of the Schedule, for which a conceptual plan must be submitted. The significance of the information furnished by the applicant in Form 1 shall be explored shortly.

43 The process to obtain environmental clearance as stipulated by the notification for **new** projects[42] comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the notification:

1) Screening;

[41] Only for construction projects listed under item 8 of the Schedule

[42] Applications for EC for expansions or modernization of **existing** units as stipulated under the notification are made in Form 1 and shall be considered by the EAC or the SEAC within 60 days, which will decide on the due diligence necessary including the preparation of the EIA and public consultations and the application shall be appraised accordingly for the grant of environmental clearance.

2) Scoping;

3) Public Consultation; and

4) Appraisal.

44 **SCREENING** – This step is restricted only to Category 'B' projects. This stage entails an examination of whether the proposed project or activity requires further environmental studies for the preparation of an EIA for its appraisal prior to the grant of an EC. Those projects requiring an EIA are further categorized as Category 'B1' projects and remaining projects are categorized as Category 'B2' projects. Category 'B2' projects do not require an EIA. The categorization is in accordance with the guidelines issued in this regard by the MoEFCC from time to time.

45 **SCOPING** – At this stage, the EAC or the SEAC, as the case may be, formulates detailed and comprehensive Terms of Reference which address all relevant environmental concerns for the preparation of the EIA. Amongst other things, the information furnished by the applicant in Form 1/Form 1A along with the proposed ToR by the applicant form the basis for the preparation of the ToR. The ToR must be conveyed to the applicant within 60 days of the receipt of Form 1, failing which, the ToR proposed by the applicant shall be deemed as approved. Significantly, applications for EC may be rejected by the regulatory authority at this stage itself on the recommendation of the EAC or the SEAC, as the case may be, and the decision along with reasons is to be communicated to the applicant within 60 days of receipt of application.

46 **PUBLIC CONSULTATION –** Prior to this stage, a Summary EIA is prepared in the format given in Appendix IIIA on the basis of the ToR furnished to the applicant. This stage involves the process "by which the concerns of local affected persons and

others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate." The detailed procedure is stipulated in Appendix IV. Subject to the exceptions provided in the 2006 notification, all Category 'A' and Category 'B1' projects shall undertake the public consultation process.

This stage comprises two components:

(i) A public hearing at the site or in its close proximity – district-wise to be carried out in the manner prescribed in Appendix IV; and

(ii) Procurement of written responses from concerned persons having a plausible stake in the environmental aspects surrounding the project.

47 The State Pollution Control Board[43] or the Union Territory Pollution Control Committee[44] is charged with conducting the public hearing in the manner stipulated in Appendix IV and forwarding the proceedings to the regulatory authority within 45 days of a request from the applicant. The regulatory authority is empowered to engage another public agency or authority to carry out the process within a further period of forty-five days in case the SPCB or the UTPCC does not adhere to the prescribed time period stipulated in the notification. The public hearing should be arranged in a "systematic, time bound and transparent manner" to ensure the "widest possible public participation at the project site(s) or in its close proximity District-wise". The public hearing proceeding is filmed and a copy of the video is submitted to the concerned regulatory authority.

[43] SPCB
[44] UTPCC

48 Within seven days of receiving a written request to initiate the public consultation process, the SPCB or the UTPCC shall place the Summary EIA and the application on their website and invite responses. The concerned authority may also make use of other appropriate media in addition to publication on their website to ensure wide publicity of the project. On a written request from any concerned person, the authority will make available a hard copy of the Draft EIA for inspection at a notified place during office hours till the date of the public hearing. A duty is placed on the authority to forward all responses and comments received at this stage to the applicant through the quickest available means.

49 After the public consultation process, the applicant is duty bound to address all the material environmental concerns expressed during the process and make appropriate changes to the Draft EIA and EMP. The applicant shall then forward the final EIA report to the regulatory authority to initiate the next stage. Alternatively, the applicant may submit a supplementary report to the Summary EIA and EMP.

50 **APPRAISAL** - This stage involves detailed scrutiny by the EAC or the SEAC of all the documents submitted by the applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which the applicant shall be invited for furnishing clarification in person or through an authorized representative. Appendix V stipulates that the following documents are also submitted to the regulatory authority:

(i) Final EIA Report

(ii) A copy of the video tape or CD of the public hearing proceedings

(iii) A copy of the final layout plan

(iv) A copy of the project feasibility report.

51 The regulatory authority must examine the documents "strictly with reference to the ToR" and communicate any inadequacy to the EAC or the SEAC, as the case may be, within 30 days of receipt of the documents. Within sixty days of the receipt of all the documents, the EAC or the SEAC, as the case may be, shall complete the appraisal process as prescribed in Appendix V. Within the next fifteen days, the EAC or the SEAC shall make categorical recommendations to the concerned regulatory authority to either grant the EC on the stipulated terms and conditions *or* reject the application, together with reasons. The appraisal of projects which are not required to undergo the public consultation process or the submission of an EIA is to be carried out on the basis of the prescribed application Form 1 or Form 1A, as applicable.

52 The MoEFCC or the SEIAA shall thereafter consider the recommendations of the EAC or the SEAC and convey its decision to the applicant within 45 days of receipt of the recommendations. The regulatory authorities shall *normally* accept the recommendations of the EAC or the SEAC, as the case may be. Where there is a disagreement, the regulatory authority shall ask for a reconsideration of the recommendation within 45 days of the receipt of the recommendations. This decision shall be conveyed to the applicant. The EAC or the SEAC shall then reconsider its recommendation within a further period of 60 days and make its recommendations to the regulatory authority. The regulatory authorities shall then take a decision after considering the views communicated to it and convey the decision to the applicant within the next 30 days.

53 If no decision is communicated to the applicant within the time prescribed, the applicant may proceed according to the recommendation of the EAC or the SEAC recommending either the grant or rejection of the EC. The decision of the regulatory

authority and the final recommendations of the EAC or the SEAC shall be public documents on the expiry of the prescribed timelines. Deliberate concealment and/or the submission of false or misleading information material to the steps involved in the grant of an EC make the application liable for rejection and cancellation of any EC granted on that basis.

54 The 2006 notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. It serves as a balance between development and protection of the environment: there is no trade-off between the two. The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula. The notification demonstrates an increasing awareness of the complexities of the environment and the heightened scrutiny required to ensure its continued sustenance, for today and for generations to come. It embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the environment and development.

55 It is for this reason that the EAC and SEAC comprise experts in the field of environmental law. The Chairperson of the EAC shall be a person who is an "outstanding and experienced environmental policy expert or expert in management or public administration with wide experience in the relevant development sector". Appendix VI to the 2006 notification stipulates that the EAC and the SEAC comprise 15 members who are either 'experts' or 'professionals'. Experts must have atleast 15 years of relevant experience in the field or an advanced degree (PhD) with 10 years

of relevant experience. Where experts are not available, professionals may be appointed to the EAC.

56 The EAC and the SEAC are charged with evaluating the information submitted by the applicant in Form 1/Form 1A and preparing comprehensive ToR which guide the preparation of the EIA reports. Given that these bodies comprise experts in the field of environmental law, the recommendation of the EAC or the SEAC to grant EC to an applicant or reject the application is *normally* accepted by the regulatory authority.

57 The regulatory authority at the state level (SEIAA) which is charged with the approval or rejection of an application for EC comprises three members who possess the qualifications in the field as prescribed in Appendix VI. Significantly, sub clause (7) of paragraph 3 of the 2006 notification stipulates that all decisions of the SEIAA shall be unanimous and taken in a meeting. Given the environmental consequences of a proposed project, no difference of opinion is provided for in the grant of an EC at the state level. It is further mandated that the project management submit half-yearly compliance reports to the regulatory authority in respect of the EC and conditions.

58 Under the 2006 notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A. Crucial information regarding the particulars of the proposed project is sought to enable the EAC or the SEAC to prepare comprehensive ToR which the applicant is required to address during the course of the preparation of the EIA. Some of the information sought is produced thus:

(i) Construction, operation or decommissioning of the project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.);

(ii) Use of natural resources for construction or operation of the Project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply);

(iii) Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health;

(iv) Production of solid wastes during construction, operation or decommissioning;

(v) Release of pollutants or any hazardous, toxic or noxious substances to air;

(vi) Generation of noise and vibration, and emissions of light and heat;

(vii) Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea;

(viii) Risk of accidents during construction or operation of the project, which could affect human health or the environment; and

(ix) Environment sensitivity which includes, amongst other things, the furnishing of the following details:

a. Areas protected under international and national legislation;

b. Ecologically sensitive areas; and

c. Areas used by protected, important or sensitive species of flora or fauna.

59 Under the 2006 notification, the EC process is based on the information provided by the applicant in Form 1. That the information provided in Form 1 is crucial can be borne from the following circumstances:

(i) The EAC or the SEAC, as the case may be, formulates comprehensive ToRs on the basis of the information furnished in Form 1 which addresses all possible environmental concerns. It is on the basis of the ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment;

(ii) At the appraisal stage, the regulatory authority examines the documents submitted by the applicant "strictly with reference to the ToR" and communicates any inadequacy to the EAC or the SEAC;

(iii) Category B2 projects, which do not require scoping, are evaluated by the SEAC on the basis of the information furnished by the applicant in Form 1 alone;

(iv) The appraisal of all projects or activities which are not required to undergo public consultation, or submit an EIA report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable; and

(v) An application for extension of the validity of the EC for certain projects is to be made by submitting a revised Form 1 within the validity period.

60 The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable concerned persons to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For

this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. Clause (vi) of paragraph 8 of the notification provides thus:

> "Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

C.2 Guidance manual for airports

61 In February 2010, the MoEF brought out its Guidance manual for airports. The need for a sector specific manual arose because the 2006 notification "re-engineered the entire EC process" under its earlier avatar of 1994 and new sectors were incorporated into the ambit of the EC process. The 2006 notification noted that as many as 39 developmental sectors require prior ECs. Sector specific manuals, it was hoped, would bring about standardisation in the quality of appraisal and obviate potential inconsistencies between the work performed by SEIAAs and SEACs. Chapter IV of the Guidance manual, which is titled 'Description of Environment', prescribes the study area for carrying out an EIA:

> "Primary data through measurements and field surveys; and secondary data from secondary sources are to be collected in the study area within 10 km radius from Aerodrome Reference Point (ARP). Primary data should cover one season other than monsoon and secondary data is to cover one full year. The basis for selection of these criteria is that the aircraft gains a height of 1000ft in this area below which noise and air pollution are generated maximum during its take off stage. Secondary data should be collected within 15 km aerial distance for the parameters as specifically mentioned at column 9 (III) of Form I of EIA Notification, 2006. Details of secondary data, the method of collection of secondary data,

> should be furnished. Similarly, the proposed locations of monitoring stations of water, air, soil and noise etc should be shown on the study area map."

62 Baseline data of environmental parameters which may be affected by airport activities is collected through primary monitoring in the study area and through secondary sources. The baseline data facilitates the evaluation of the predicted impact on environmental attributes in the study area by using scientific analysis and EIA methodologies. The object is to also aid in the preparation of an EMP that would outline measures for improving environmental quality as well as retain the scope for future expansions in a sustainable manner. The Guidance manual specifically requires collection of baseline data on the following: (i) land environment; (ii) water environment; (iii) air environment; (iv) noise environment; (v) biological environment; (iv) socio-economic environment and (vii) solid waste.

The importance of collecting data on land environment is emphasised in the following extract:

> "The terrain and hill slope, general slope and elevation of the area, the flow direction of streams and rivers, the water bodies and wet lands and the vegetation which together describe the physiography of the land, will control the drainage pattern in the region. Land farms, terrain, may get affected due to construction of airport. It may require large scale quarrying, dredging and reclamation, which may cause changes in the topography. This in turn may affect the drainage pattern of the land / terrain. Baseline data pertaining to existing land at the proposed project area including the description of terrain hill slopes, terrain features, slope and elevation are to be collected. Study of land use pattern, habitation, cropping pattern, forest cover, environmentally sensitive places etc., is to be undertaken by employing remote sensing techniques and ground truthing. Ecological features of forest area; agricultural land; grazing land; wildlife sanctuary land & national parks; migratory routes of fauna; water bodies; and drainage pattern including the orders of the drain and water sheds are to be described. Settlements in the study area may be delineated with respect to ARP on the site

> map. High rise buildings, industrial areas and zones, slaughter houses and other features of flight safety importance may also be marked on the map. Secondary data from Central Water Board GOI; State ground water department, State Irrigation Department is to be obtained. Geomorphology of the region is to be clearly delineated. Study of land use patterns, habitation, cropping pattern, and forest cover data is undertaken. Information on the location of water bodies, drainage, forests, surface travel routes with respect to the project site is obtained within the study area and plotted on a map. This map will show the natural slopes and the drainage patterns, which give a guideline while planning the drains in the airport project. The drains help in discharge of storm water from the airport to avoid flooding and water logging in the project area."

The study of the water environment is necessitated for the following reasons:

> "Ground water quality is important, as change in its chemical parameters will affect the water quality. Airport activities during construction / operation may have impact on ground water quality. Due to airport construction existing low areas may be reclaimed with dredged spoil. The pollutants from dredged spoil are likely to enter into the ground water. This is likely to increase sedimentation of pollutants in airport area, which may migrate in time to the neighbouring ground water. Also runoff from solid waste if any, may percolate into the ground and may contaminate the ground water. Hence, they need to be studied through primary surveys and secondary sources. Monitoring locations are to be finalized as per CPCB norms which can represent the baseline conditions."

On the aspect of air environment, the Guidance manual emphasises that:

> "Aircraft engines produce emissions that are similar to other emissions resulting from any oil-based fuel combustion. These, like any exhaust emissions, can affect local air quality at ground level. It is emissions from aircraft below 1,000ft, above the ground (typically around 3km from departure or, for arrivals, around 6km from touchdown) that are chiefly involved in influencing local air quality. These emissions disperse with the wind and blend with emissions from other sources such as emissions from domestic sources, emissions from industries and from surface transport."

Local emissions attributed to aircraft operations at airports include Oxides of Nitrogen[45], Carbon Monoxide[46], Hydrocarbons[47], Sulphur Dioxide[48], and particulate matter (PM 10 and PM 2.5).

63 The Guidance manual brings into focus the biological environment. It acknowledges that airport operations may alter eco-systems, threaten endangered species and disturb the movement and breeding patterns of wildlife. In this context, the collection of baseline data on sensitive habitats and wild or endangered species in the project area is contemplated. The Guidance manual stipulates thus:

> "Airport operations may cause change in local ecosystems, threaten endangered species, and disturb movements and breeding patterns of local wildlife. Airports are located within a variety of settings (both urban and rural), which support habitats and species of their own, some of which will have direct interaction with those located on the airport and vice versa. Some local areas will also be designated for their nature conservation value. The biological environment of the airport should hence be seen as an integral component of the wider landscape scale ecological network. To accomplish this,
>
> - Baseline data from field observations for various terrestrial and aquatic systems are to be generated.
> - Comparison of the data with authentic past records to understand changes is undertaken.
> - Environmental components like land, water, flora and fauna are characterized and,
> - The impact of airport development on vegetation structure in and around project site is to be understood.
>
> Data on sensitive habitats, wild or endangered species in the project area also is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences. Wildlife symbolizes the functioning efficiency of the entire eco system. Just as wild flora needs special treatment for preservation and growth, wild fauna as well deserves specific conservatory pursuits for posterity. As per Wildlife Act (1972), the various wild animals are enlisted in the schedules of wildlife Act based on the intensity of threat to

[45] NO_x
[46] CO
[47] HC
[48] SO_2

> them as rare, endangered, threatened, vulnerable etc. Primary data on survey of the wild animals and birds in the study area is collected and identified with the classification into various schedules taken from secondary data."

64 It is in the backdrop of the 2006 notification and the Guidance manual that it becomes necessary to assess the process that was adopted in the present case and its outcome.

D Forests

65 The essence of the challenge to the EC is two-fold:

(i) Form 1, which was filed by the project proponent, did not contain any disclosure of the name or identity of forests within an aerial distance of 15 kilometres. Item 2 under the heading of 'Environmental Sensitivity' requires a clear disclosure of "areas which are important or sensitive for ecological reasons – wet lands, water sources or other water bodies, coastal zone, biospheres, mountains and forests"; and

(ii) Table 2.1 of Chapter II of the EIA report delineates ESZs within an aerial distance 15 kilometres from the project boundary. For the State of Goa, the table indicates the presence of forests but not of protected forests. For the State of Maharashtra, Table 2.1 indicates that there were neither reserved nor protected forests within 15 kilometres from the project boundary.

66 The learned ASG made an earnest effort to support this by urging that a reserved forest is one which is notified under Section 20 of the Indian Forest Act 1927. The issuance of a notification under Section 4, it was urged, is indicative only of an intent and a forest stands reserved under sub-section (2) of Section 20 only upon the issuance of a notification. The ASG submitted that the reliance which the

appellants placed on the Survey of India map is misplaced as, in the absence of a notification under Section 20, a forest cannot be regarded as being reserved.

In the alternative, it was urged that as a matter of fact, the EIA report (save and except Table 2.1) takes into account the forest cover surrounding the site and within the prescribed aerial distance. As regards Form 1, the learned ASG submitted that at that stage, the project proponent may not be expected to be aware of all the features of the environment and hence the omission to refer to forests and other areas which are sensitive ecologically should be discountenanced.

67 We cannot gloss over the patent and abject failure of the State of Goa as the project proponent in failing to disclose wet lands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 kilometres as required by Form 1. The disclosure in Form 1 constitutes the very foundation of the process which is initiated on the basis of the information supplied by the project proponent. Following the disclosure in Form 1, ToR are formulated, and this leads to the preparation of the EIA report. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1.

68 There can be no manner of doubt that Form 1 is an important ingredient in the entire process envisaged under the 2006 notification. Hence, clause (vi) of para 8 of the 2006 notification provides that deliberate concealment or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection and lead

to the cancellation of a prior EC granted on that basis. The declaration which is required of the project proponent is to a similar effect.

69 We are unable to accept the submission that the disclosure required was of reserved forests comprehended within a notification under sub-section (2) of Section 20 of the Indian Forest Act 1927. Form 1 requires a disclosure of areas which are important or sensitive for ecological reasons, among them, being "forests". The expression "forests" is used without reference to a statutory or artificial definition and must hence incorporate a meaning which bears upon the ordinary description of the term. The expression "forests", means a forest as commonly understood, without reference to a notification under the Indian Forest Act 1927 or any other statutory enactment. Such an interpretation will subserve the purpose of an EIA. The purpose is to ensure that all relevant facets of the environment are noticed, that base-lines are documented, and that the potential impact of a project or activity on the environment is assessed. Forests are forests without reference to recognition in a statutory form devised for a specific purpose.

70 The need to construe the expression 'forests' in a broad and generic sense was emphasized in the decision of this Court in **Godavarman** (supra). This Court held:

> "4. The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(*i*) of the Forest (Conservation) Act. The term 'forest land', occurring in Section 2, will not only include 'forest' as understood in the

> dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership."

71 Subsequently, in **Okhla Bird Sanctuary** (supra), this Court explained the position:

> "Almost all the orders and judgments of this Court defining "forest" and "forest land" for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries."

In **Okhla Bird Sanctuary** (supra), trees had been planted with an intent to set up an urban park. This Court found it "inconceivable" that those trees would turn into a forest "within a span of ten to twelve years and the land, which was for agricultural use would be converted into forest land". Hence, the decision was based on a factually distinguishable situation. The decision emphasises that in construing the term forest, courts must have due regard both to text and to context.

72 In the context of the 2006 notification and the underlying purpose of facilitating an EIA report, the expression 'forests' must receive its ordinary and natural connotation. The effort must not be o overlook and destroy forests but to notice and protect them.

73 Having said this, we must delve into the alternate submission that the EIA report does, as a matter of fact, consider the prevalence of forested areas both in Goa and in Maharashtra within the study area. In this context, para 2 of the Executive Summary introducing the EIA report acknowledges that the "surrounding land use of the airport site is predominantly forest land". In the context of land environment, the EIA report records that "forest is the predominant land use in the study area". The

EIA report acknowledges that territories in Maharashtra fall within one kilometre from the proposed greenfield airport. Villages falling in Goa and Maharashtra within the 10 kilometre radius were considered for assessment. Para 2.3.1 of Chapter II deals with land use. Land use/land cover statistics for a 10 kilometre radius from the Mopa airport in the State of Maharashtra have been tabulated. Among them is the following:

Sr.No.	Description	Area (Sq.M.)	Area (Ha)
5	Forest-Tree Clad Area- Dense	66341913.84	6634.19

Similarly para 4.4 in Chapter IV, which is titled 'description of environment statistically', provides thus:

> "Surrounding land use of the airport site is predominantly forest land. The northern and eastern side of site is reserve forest areas, whereas western side is barren and village cultivated land. The existing land use plan is attached as Annexure IX."

74 The presence of a "diverse system set as dense and open forest, cultivated lands, sand dune vegetation, wet lands and human habitation" is noticed in para 4.6 dealing with the biological environment. Annexure IX to the EIA report provides land use/land cover maps for both Goa and Maharashtra in the study area. The maps in Annexure IX cover forested areas in Maharashtra and Goa within an aerial boundary of 10 kilometres from the project site. Annexure XI contains the hydro-geo-morphological maps for Goa and Maharashtra.

75 Though the EIA report adverts to the presence of forests within the study area in Goa and Maharashtra, we have to consider whether this by itself warrants the grant of an EC inspite of the fact that there has been a patent failure on part of the

project proponent to make a transparent and candid disclosure of material facts in Form 1. Information furnished in Form 1 is crucial to the preparation of the ToR by the EAC. The EAC comprises of experts. It is constituted, among other reasons, for the specific purpose of assessing the information furnished in Form 1 and preparing comprehensive ToR. There is an intrinsic link between the disclosures in Form 1 which constitute the basis for formulating the ToR and between the ambit of the EIA report required by the ToR and the final EIA report. The ToR guide the preparation of the EIA report. A failure to disclose information in Form 1 impairs the functioning of the EAC in the preparation of the ToR and in consequence, leads to preparation of a deficient EIA report.

76 The submission that the EIA report deals with the prevalence of forested areas and warrants the grant of an EC cannot be accepted for yet another reason. EACs and SEACs are conferred with the authority to reject applications for the grant of an EC at the stage of scoping itself, prior to the preparation of the ToR. The application may be rejected on the basis of the information furnished by the project proponent in Form 1. Claiming an EC as a matter of right merely because the EIA report has assessed parameters that were omitted in Form 1, bypasses the authority of the EAC and SEAC to reject an application at the preliminary stage and cannot be countenanced. The regulatory authority is required to assess the final documents submitted to it “strictly with reference to the ToR” and communicate to the EAC and SEAC any discrepancies between the EIA report and the ToR. A deficient ToR on the basis of the non-disclosure of material information in Form 1 impedes this process.

77 The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 notification has a cascading effect on the salient

objective which underlies the 2006 notification. The 2006 notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment. An applicant cannot claim an EC, under the 2006 notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 notification, that must have consequences in law. There can be no gambles with the environment: a 'heads I win, tails you lose' approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law.

E Ecologically Sensitive Zones (ESZs)

78 The substratum of the case of the appellants is based on the following extract contained in the EIA report:

> "Ecologically Sensitive Zones Ministry of Environment and Forests had constituted a High Level Working Group (HLWG) under the Chairmanship of Dr. K. Kasturirangan, Member (Science), Planning Commission vide office order dated 17.08.2012 to study the preservation of the ecology, environmental integrity and holistic development of the Western Ghats in view of their rich and unique biodiversity. HLWG submitted its report to the MoEF on 15th April 2013. HLWG identified 37% of natural landscape having high biological richness, low forest fragmentation, low population density and containing Protected Areas, World Heritage Sites and Tiger and Elephant corridors as an Ecologically Sensitive Areas (ESA). The present proposed airport site is falling under Pernem taluka of North Goa district. The Pernem taluka has not been included in the Ecologically Sensitive Areas submitted by HLWG. The MoEF order on ESA is attached as Annexure XVI."

According to Ms Shenoy, the EIA report notices the Kasturirangan report submitted on 15 April 2013. The submission is that the EIA report has conveniently glossed over the areas adverted to by the Kasturirangan report as an ESZ. This includes those areas which fall within the study area on the ground that Pernem taluka, where the project site is situated, has not been included as an ESZ. In this context, reliance is placed on a draft notification dated 3 October 2018 issued by MoEFCC under which the Union Government has proposed to notify 56,825 square metres spread across six states – Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu as the Western Ghats ESZ. The preamble to the draft notification adverts to the steps taken by the Union Government between 2013 and 2016 in pursuance of the report of the HLWG. This includes draft notifications issued on 10 March 2014 and 4 September 2015. The draft notification dated 3 October 2018 emphasises the importance of the Western Ghats as a global biodiversity hot spot:

> "WHEREAS, Western Ghats is an important geological landform on the fringe of the west coast of India and it is the origin of Godavari, Krishna, Cauvery and a number of other rivers and extends over a distance of approximately 1500 kilometres from Tapti river in the north to Kanyakumari in the south with an average elevation of more than 600 metres and traverses through six States namely, Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu;
>
> AND WHEREAS, Western Ghats is a global biodiversity hotspot and a treasure trove of biological diversity and it harbours many endemic species of flowering plants, endemic fishes, amphibians, reptiles, birds, mammals and invertebrates and it is also an important center of evolution of economically important domesticated plant species such as pepper, cardamom, cinnamom, mango and jackfruit;
>
> AND WHEREAS, Western Ghats has many unique habitats which are home to a variety of endemic species of flora and fauna such as Myristica swamps, the flat-topped lateritic plateaus, the Sholas and wetland and riverine Eco-systems;
>
> AND WHEREAS, UNESCO has included certain identified parts of Western Ghats in the UNESCO World Natural Heritage List because Western Ghats is a Centre of origin of

many species as also home for rich endemic biodiversity and hence a cradle for biological evolution;"

79 Ms Shenoy has emphasised that sixteen villages in the Taluka of Sawantwadi of the district of Sindhudurg which fall within the study area have been mapped as an ESZ in the annexure to the draft notification dated 3 October 2018. They are:

"State	District	Taluk	Village Name
Maharashtra	Sindhudurg	Sawantwadi	Tamboli
Maharashtra	Sindhudurg	Sawantwadi	Kumbhavade
Maharashtra	Sindhudurg	Sawantwadi	Degave
Maharashtra	Sindhudurg	Sawantwadi	Banda
Maharashtra	Sindhudurg	Sawantwadi	Padve Majgaon
Maharashtra	Sindhudurg	Sawantwadi	Ronapal
Maharashtra	Sindhudurg	Sawantwadi	Padve
Maharashtra	Sindhudurg	Sawantwadi	Dandeli
Maharashtra	Sindhudurg	Sawantwadi	Madura
Maharashtra	Sindhudurg	Sawantwadi	Dingne
Maharashtra	Sindhudurg	Sawantwadi	Aros
Maharashtra	Sindhudurg	Sawantwadi	Galel
Maharashtra	Sindhudurg	Sawantwadi	Kondure
Maharashtra	Sindhudurg	Sawantwadi	Satarda
Maharashtra	Sindhudurg	Sawantwadi	Dongarpal
Maharashtra	Sindhudurg	Sawantwadi	Sateli Tarf Soundal"

80 A comparison of the above villages with Annexure IX of the EIA report indicates that several of the above villages which have been mapped as ESZs in the

draft notification fall within the 10 kilometre buffer from the project site. Hence, the submission of Ms Shenoy merits a close analysis.

81 The EIA report has rested content with the observation that Pernem taluka, where the project site is situated, is not an ESZ. That is not sufficient or adequate, since the purpose of the EIA report is to make an assessment of ESZs which fall within the study area. Mr Nadkarni's response to the above submission is that: (i) neither the Mopa plateau nor Pernem taluka constitute a part of the Western Ghats; (ii) the HLWG chaired by Dr Kasturirangan recommended a prohibition of specified activities while for other activities, the 2006 notification was required to be followed; (iii) the EIA report, while considering the project, has also adverted to the Kasturirangan report; and (iv) infrastructure projects except in the prohibited category are permissible, subject to an EIA.

82 The report of the HLWG dated 15 April 2013 recommends that there should be a complete ban on mining, quarrying and sand mining activity in the ESZ. Similarly, it recommends that no thermal power project should be allowed in ESZs and that all 'red category' industries should be strictly banned. Building and construction projects of 20,000 square metres and above should not be allowed. However, all other infrastructure and development projects, which have been recommended, should be subject to the grant of ECs under Category 'A' projects of the 2006 notification.

83 The Union Government issued a notification on 13 November 2013 in pursuance of Section 5 of the Environment (Protection) Act 1986 to the effect that from the date of the issuance of those directions, no pending case or fresh case shall be considered by the EACs/MOEF or SEACs/SEIAAs covering the following industries:

(a) Mining, quarrying and sand mining;

(b) Thermal power plants;

(c) Building and construction projects of 20,000 square metres area and above;

(d) Township and area development projects with an area of 50 hectares and above and/or with a built-up area of 1,50,000 square metres and above; and

(e) 'Red category' industries.

84 The submission of the ASG is that there is no prohibition on setting up a Category 'A' project in an ESZ. An infrastructure project such as an airport does not fall within the range of prohibited activities. What is necessary is that the project must be assessed in terms of the 2006 notification.

85 The glaring deficiency which emerges from the EIA report is its failure to notice the existence of ESZs within a buffer distance of 10 kilometres of the project site. On one hand, the EIA report takes note of the HLWG report dated 15 April 2013. But, on the other hand, the EIA report ignores the existence of ESZs within the study area on the ground that the **project site** is not situated in an ESZ. That, as we have seen, can never be accepted as an adequate response. The purpose and object of the EIA report is to map areas, understand their vulnerabilities, and conduct a study on a scientific basis of the impact of the proposed project on an ecologically sensitive terrain. The EIA report fails to meet a classical requirement of administrative law: to take into account a relevant consideration namely, that within the study area which has to be considered, there is the presence of ESZs.

86 In deducing the impact of a proposed activity on an ESZ, it is not sufficient to take recourse to a generic assessment of a proposed activity on the ecology of the

study area. The EIA report must factor in those specific features which make an area ecologically sensitive. These would encompass all aspects of environmental concern which render the area ecologically sensitive. This would include wet lands, water sources, water bodies, costal zones, biospheres, mountains and forests. The vulnerabilities of each of them must be studied as distinctive components together with a holistic analysis of their existence in a chain of bio-diversity. Where an area is ecologically sensitive because of the presence of flora or fauna requiring protection, that must be specifically adverted to and studied. The deficiency of the EIA report emanates from its failure to notice that the purpose of the study was not only to determine whether the project site is ecologically sensitive. Confining itself to this aspect, the EIA report failed to consider a crucial and relevant consideration.

F Sampling Points

87 The submission of the appellants is that the Guidance manual requires the collection of primary data through measures and field studies in the study area within 10 kilometres radius from the ARP. Secondary data has to be collected within a 15 kilometres aerial distance for the parameters mentioned in Colum 9(III) of Form 1 of the 2006 notification. In the present case, it was urged that not a single sampling station with reference to any of the parameters is situated in Maharashtra. As a result, no sampling sites for any of the parameters fall within 40% of the study area. Consequently, no primary data collection was done despite the carrying out of two samples in 2011 and 2014 respectively. In response to this submission, it has been urged that all sampling points were based on para 4.1 of the Guidance manual. As a result, it was submitted that areas within Goa and Maharashtra were studied along

with impact studies. In order to assess the submission, it is necessary to refer to relevant aspects of the EIA report:

F.1 Air quality

88 In order to study the ambient air quality in terms of Suspended Particulate Matter, Respirable Particulate Matter, SO_2, NO_X, CO and HC, Ambient Air Quality monitoring stations were set up at six locations. They are at Sinechaadvin, Katwal, Mopa village, Pernem, Nagzor and Patradevi. All are in Goa. The location at Patradevi was on the border shared by Goa with Maharashtra. The study area extended to a radial distance of 10 kilometres from the ARP. We accept the submission of the ASG that they would hence cover areas falling within both Goa and Maharashtra. Para 4.1.2 of Chapter IV of the EIA report sets out the baseline data collected at the monitoring stations. Since the entire study area within a radius of 10 kilometres was considered for monitoring air quality, we accept the submission that the location of the sampling points within Goa did not preclude the monitoring of air quality within the study area.

F.2 Water quality

89 Para 4.2 of the EIA report states that ground water quality was measured at four locations: Mopa village, Pernem, Dargal and Patradevi marked within 10 kilometres of the study area. The surface water quality was measured at three locations: Chapora river, Tiraikol river and Nala near Mopa village within 10 kilometres of the study area. The impact assessment is contained in the EIA report. The Mopa plateau is at a height of 155 metres above mean sea level and water from the plateau flows down to the rivers in the State of Goa. The laterite plateau is an

important source of drainage by providing natural channels for water. The impact of a greenfield airport on the closing of natural channels which feed the water bodies has not been scientifically mapped or studied.

F.3 Noise quality

90 While monitoring the noise quality, the EIA report covered a radius of 10 kilometres. In order to obtain baseline data of noise quality, nine monitoring stations were chosen in the study area. While it is true that all nine locations were situated in the State of Goa, one (Patradevi) was situated on the border shared between Goa and Maharashtra. The EIA report contains an impact study and the study area covered includes both the states.

F.4 Flora and fauna

91 The EIA report indicates that the area surrounding the site for the proposed airport has dense forests[49]. These total up to nearly 6,634.19 hectares[50]. Ms Shenoy has urged that it is impossible that the fauna found by the project proponent through both primary sampling and secondary sources was only limited to animals such as: domestic dog, cat and cattle, common house mouse, rat and mongoose, jackal and the three striped palm squirrel. This, in her submission, is a clear indication that the EIA report is faulty and clearly incorrect.

92 While dealing with the above submissions, it is necessary to note that the Guidance manual contains a specific reference to the collection of data of sensitive

[49] See for instance para 2.0 of the executive summary and para 2.3.1 of Chapter I
[50] See Para 2.3.1, Chapter II

habitats and wild/endangered species in the project area. The Guidance manual stipulates thus:

> "Data on sensitive habitats, wild or endangered species in the project area also is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences. Wildlife symbolizes the functioning efficiency of the entire eco system. Just as wild flora needs special treatment for preservation and growth, wild fauna as well deserves specific conservatory pursuits for posterity".

93 The grievance is that no data has been collected from the State of Maharashtra and all secondary data collected by the project proponent related only to the State of Goa. There is substance in the submission which has been urged on behalf of the appellant. A reading of the counter affidavit filed by the State of Goa would seem to support the appellant's submission. It is stated:

> "I say that several recognised publications and research papers were referred to in order to verify and assess the data collected, to name a few of the publications:
>
> i. Birds of Goa by Heinz Lainer & Rahul Alvares;
> ii. The Goan Jungle Book by Nirmal Kulkarni;
> iii. A photographic guide to Butterflies of Goa by Parag Ragnekar;
> iv. Flora of Goa, Diu, Daman, Dadra and Nagarhaveli (Vol.1) by RS Rao;
> v. Flora of Goa, Diu, Daman, Dadra and Nagarhaveli (Vol.2) by RS Rao;
> vi. Red data book published by Botanical Survey of India;
> vii. Study materials published in Goa ENVIS Centre were also referred."

The appellant, on the other hand, has sought to rely upon several independent studies including the following:

> "a. A rapid survey to assess mammal presence at Barazan Plateau, Mopa, Goa, India conducted by Girish Punjabi (Wildlife Biologist) and Atul S Borker (Full Member of IUCN/SSC Otter Specialist Group) that Schedule I species such as gaur, leopard and Indian Pangolin; Schedule II

> species such as giant squirrel, common palm civet; Schedule III species such as sambar, wild pig and Schedule IV species such as Indian hare, Indian porcupine.
>
> The report also mentions the presence of the Sawantwadi – Dodamarg wildlife corridor within the 10 km proposed project site.
>
> b. Report on one day survey conducted to find evidence of Otter presence at Mopa, Goa conducted by Atul Borker (Full Member of IUCN/SSC Otter Specialist Group) that found that a perennial stream on the plateau had presence of the smooth coated otter, that falls within Schedule II of the Wildlife (Protection) Act, 1972.
>
> c. Report on two days survey to find evidence of plant and bird species at Mopa Plateau conducted by Aparna Watve (Ecologist) and Sanjay Thakur (Wildlife Biologist) that found Schedule I species such as the Indian peafowl and the Dipcadi concanese which is critically endangered. The study clearly mentions that the EIA study is entire deficit as it does not accurately consider the flora and fauna of the area as well as the number of trees to be cut."

94 We find that the collection of both primary and secondary data of fauna in the EIA report was perfunctory. The primary study is not based on data collected from acknowledged sources such as the Zoological Survey of India, Wildlife Institute of India and Ministry of Earth Sciences as required under the Guidance manual. Similarly, as regard avi-faunal studies, the EIA report lists 385 plant species in table 4.15 of Chapter IV, titled 'Description on Environment'. It also states that 86 species of birds were observed during the survey in the 10 kilometre study area from the proposed site. Column 9 (III) of Form 1 refers to "areas" in the following terms:

> "areas which are used by protected, important or sensitive species of flora or fauna for breeding, foraging, nesting, resting, over wintering or migration".

The above column was left blank by the project proponent in Form 1. According to the Guidance manual, secondary data has to be collected within an aerial distance of

15 kilometres for the parameters specifically specified in column 9(III) of Form 1 of the 2006 notification. This was evidently not done. A careful avi-faunal study was necessary, having due regard to the fact that the proposed project is an airport site. Bearing in mind the profile of airport operations, foraging or nesting by bird species in and around the airport must not be discarded. It must be accepted that in a project involving the setting up of an airport, the EIA report must deal with the impact of the airport on birds and likewise the impact of birds on aircraft operations.

F.5 Felling of Trees

95 Para 2.1.5 of the executive summary to the EIA report deals with the biological environment. Para 2.1.5 stipulates thus:

> "**The area required for proposed airport has only few trees, mainly bushes**. These will be cleared during site preparation." (Emphasis supplied)

Similarly, Chapter II which deals with project description specifies in para 2.3.1 that "**vegetation and trees are sparse at the site**". That the trees which were required to be felled were far from "few" is evident from the reply filed by the State of Goa in the present proceedings where it has been stated that permissions were granted for the **felling of 54,676 trees**. The EIA report ignored them. The submission in the EIA report that there were only sparse trees is sought to be explained by the state from the perspective of the large area of the land proposed for the project. It is sought to be explained that since the total area is 2,133 acres, the number of trees would proportionately work out to about 25 trees in an area of one acre (about one tree in an area of 160 square metres). In terms of the order passed by the Bombay High Court in the PIL, to which we have adverted earlier, the Principal Chief Conservator of Forests, Goa passed an order on 2 April 2018 providing for (i) the enumeration of

all trees; (ii) exploring the possibility of transplanting existing trees which could be safely transplanted into ground areas; (iii) issuance of tree cutting permission by the Deputy Conservator of Forests; and (iv) planting of ten times the number of trees felled by the concessionaire under the supervision of the Forest Department.

96 On 6 February 2018, the Deputy Conservator of Forests had granted permission for felling of 21,703 trees. Following the dismissal of an appeal under Section 15 of the Goa, Daman and Diu Preservation of Trees Act 1984 filed by the Federation of Rainbow Warriors, a Writ Petition was filed before the Bombay High Court[51]. The High Court set aside the order of the Deputy Conservator of Forests and remanded the proceedings to the Principal Chief Conservator who passed the order which has been noted above. Following the order of the Principal Chief Conservator, 54,676 trees were enumerated. The competent authority granted permission for the felling of trees thereafter on the following dates: (i) 1,422 trees by an order dated 20 April 2018; (ii) 18,408 trees by an order dated 24 July 2018 and (iii) 33,298 trees by an order dated 1 October 2018. Following this exercise, the felling of trees was completed on 18 January 2019. The Bombay High Court having directed that the order of the Principal Chief Conservator of Forests shall be subject to the specific permission of the NGT in the pending proceedings, a Miscellaneous Application was moved before the NGT. While disposing of the main appeal, the NGT also disposed of the Miscellaneous Application and under the head of 'Biological Environment', the following directions have been issued:

> "**E. Biological Environment**
>
> 1. Efforts be made to transplant the trees to other locations in the same vicinity by using appropriate mechanical devices which are available these days.

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2. Efforts be made to plant indigenous species which are tall in size rather than small saplings.
3. Concerns have been raised by appellants with regard to plant species 'Dipcadi concanense' which has been claimed to be a threatened plant. This claim of the appellants have been negated by the respondent by producing a documentation of Botanical Survey of India, Western Regional Centre, Pune, Maharashtra titled as "A Note on Occurrence and Distribution of Dipcadi concanense". By invoking Precautionary Principle, we direct the Project Proponent to draw up a Conservancy by Plan/Scheme for 'Dipcadi concanense' in collaboration with Forest Department, State of Goa and Botanical Survey of India and ensure its implementation."

97 We express our serious displeasure with the manner in which the EIA report made an attempt to gloss over the existence of trees. The EIA report prevaricated by recording that the area required for the proposed airport has only a few trees, mostly bushes. The EIA report states that vegetation and trees are sparse at the site. A photograph and a google map image are put forth as illustrations in figure 2.3 of Chapter II. To realise later that the project involved the felling of 54,676 trees is indicative of the cavalier approach to the issue and a process of fact finding which is parsimonious with the truth. *Post facto* explanations are inadequate to deal with a failure of due process in the field of environmental governance. The State of Goa would have us gloss over the felling of trees by submitting that 54,676 trees over a project area of 2,133 acres averages out to 25 trees per acre or one tree over an area of 160 square metres. This is a fallacious approach to the issue. Mathematical averages cannot displace factual data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinized the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters

or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented.

98 In the written submissions which have been filed by the State of Goa, it has been submitted that of the 54,676 tees which were felled: (i) 32,193 trees representing 59% had a girth of 30 to 50 centimeters; (ii) 19,903 trees representing 36% had a girth of 50 to 100 centimeters; and (iii) 'only 2,580 trees' had a girth exceeding 100 centimeters. The Goa, Daman and Diu Preservation of Trees Act, 1984 defines the expression "tree" in Section 2(j) in the following terms:

> "S. 2(j) - "tree" means any woody plant whose branches spring from and are supported upon the trunk or the body and whose trunk or body is not less than ten centimeters in diameter at a height of one meter from the ground level and includes coconut palm."

This definition has been highlighted to indicate that it incorporates a stringent meaning of the expression 'trees'. The point, however, is simple: there was a glaring omission of the factual existence of as many as 54,676 trees in the EIA report. For project proponents, the environment may not possess a human voice. But the purpose of prescribing an EIA report is precisely to undertake a baseline study on all aspects of the environment and to anticipate the impact of a projected activity on the environment. Ignoring *any* component of the environment amounts to a serious dereliction of duty which detracts from the rule of law in matters of environmental governance.

99 The order of the Principal Chief Conservator of Forests mandating transplantation, where possible, and the plantation of ten trees for every tree felled provides a measure of rectification. But there is a reason why issues pertaining to

vegetational cover must be taken seriously in the EIA process. The formula of planting a set number of trees for every existing tree felled must be alive to the fact that the survival of new plantations is replete with uncertainty. The survival of transplanted trees is equally a matter of uncertainty. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 notification must be transparent, candid and robust. A regulatory regime for environmental governance is based on the hypothesis that all stakeholders will act with rectitude. Hiding significant components of the environment from scrutiny is not an acceptable modality to secure project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy.

G Public Consultation

100 The importance of public consultation is underscored by the 2006 notification. Public consultation, as it states, is "the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate". This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. Public consultation is a process which is designed to hear the voices of those communities which would be affected by the activity. They may be affected in terms of the air which they breathe, the water which they drink or use to irrigate their lands, the disruption of local habitats, and the denudation of environmental eco-systems which define their existence and sustain their livelihoods.

101 Public consultation involves a process of confidence building by giving an important role to those who have a plausible stake. It also recognizes that apart from the knowledge which is provided by science and technology, local communities have an innate knowledge of the environment. The knowledge of local communities is transmitted by aural and visual traditions through generations. By recognizing that they are significant stakeholders, the consultation process seeks to preserve participation as an important facet of governance based on the rule of law. Participation protects the intrinsic value of inclusion.

102 The 2006 notification postulates:

(i) A public hearing at or in close proximity to the project site to ascertain the views of "locally affected persons";

(ii) Obtaining written responses from "other concerned" individuals having a "plausible stake" in the environmental aspects of the project or the activity;

(iii) The duty of the SPCB to conduct hearings and to forward the proceedings to the regulatory authority within the stipulated time;

(iv) Placing on the website of the Pollution Control Board a summary of the EIA report in the prescribed format and the making available of the draft EIA report by the regulatory authority on a written request by any person concerned, for inspection;

(v) The duty of the applicant to address all material concerns expressed during the process of public consultation;

(vi) The making of appropriate changes in the draft EIA and EMP; and

(vii) The submission of the final EIA report by the applicant to the regulatory authority for appraisal.

Each of these features is crucial to the success of a public consultation process. Public consultation cannot be reduced to a mere incantation or a procedural formality which has to be completed to move on to the next stage. Underlying public consultation is the important constitutional value that decisions which affect the lives of individuals must, in a system of democratic governance, factor in their concerns which have been expressed after obtaining full knowledge of a project and its potential environmental effects.

103 Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. Each of these elements is crucial to the design features of the 2006 notification. A breach will render the process vulnerable to challenge on the ground that: (i) significant environmental concerns have not been taken into account; (ii) there was an absence of a full disclosure when the EIA report was put up for consultation; and (iii) concerns which have been expressed by persons affected by the project have not been adequately dealt with or analysed.

104 The public consultation was held on 1 February 2015 at Mopa. Nearly 70 persons spoke on the occasion and 1,586 persons signed the attendance sheet.

1,150 representations were received. Some of the environmental concerns expressed during the public hearing are catalogued below:

(i) Mopa plateau has multiple water sheds and the discharge of water goes down to the rivers;

(ii) Nearly forty springs would be affected along with flora and fauna;

(iii) The public hearing had been conducted in an area where the land was barren and with no plantation;

(iv) The impact on river Chapora, which is within a 10 kilometre radius from the project, has not been adequately analysed;

(v) Mopa plateau has a natural mechanism for ground water recharge;

(vi) Protection of the Western Ghats is necessary, particularly with the view to not disturb flora and fauna;

(vii) The EIA report has not been made available to the affected areas and Gram Panchayats in the buffer zone;

(viii) Local plantations would be affected;

(ix) The number of trees to be felled by the project proponent has not been specified in the EIA report;

(x) The Dodamarg Wildlife Sanctuary had been 'sanitized' by the High Court;

(xi) Forest clearance had not been obtained;

(xii) The sacred groves of the area have not been described, including the Barazan which will be lost;

(xiii) The slopes sustain cashew plantations with nearly forty lakh cashew trees resulting in an annual income of Rs Fifty crores; and

(xiv) No study has been carried out in the 10 kilometre radius falling in Maharashtra.

105 These concerns are at the forefront of the debate in the present case. What is significant, is the manner in which they were projected before the EAC at its 149th meeting on 26 June 2015 where the project proponent made a presentation. The Minutes of the meeting recorded the following observations of the project proponent:

> "x. Public Hearing was conducted on 01.02.2015 at Simechen Adven, Mopa, Goa. **The major issues raised during public hearing and responses sought from the project proponent related to employment opportunities**."
>
> (Emphasis supplied)

On the basis of a factual analysis, Ms Shenoy has submitted that only seven out of the 68 objections dealt with the issue of employment. Evidently, the project proponent failed to address the other significant concerns in the manner which is required by the 2006 notification.

106 In **Utkarsh Mandal** v **Union of India**[52], the Delhi High Court has succinctly summarized the duty of the EAC to apply its mind to the objections raised in the course of public hearings:

> "It is that body that has to apply its collective mind to the objections and not merely the MoEF which has to consider such objections at the second stage. We therefore hold that in the context of the EIA Notification dated 14th September 2006 and the mandatory requirement of holding public hearings to invite objections it is the duty of the EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negatived. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary."

[52] (2009) SCC Online Del 3836

107 Crucial objections and environmental concerns which were raised during the consultative process were reduced to a single issue by the project proponent before the EAC: the need for employment opportunities. The project proponent failed in its duty to inform the EAC. The record does not indicate a critical appraisal or analysis by the EAC. The EAC was duty bound to apply its mind to the environmental concerns raised by stakeholders. The duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by the EAC. The Minutes of the meeting indicate that there was no fair and complete disclosure of the objections which were raised during the public hearing before the EAC. There is evidently a failure in the process of applying and implementing the norms laid down in the 2006 notification in this regard.

H Appraisal by the EAC

108 Appraisal by the EAC is structured and defined by the 2006 notification. The process of appraisal is defined to mean “a detailed scrutiny” by the EAC of the application and other documents like the EIA report and the outcome of the public consultation, including the public hearing proceedings, submitted by the applicant to the regulatory authority for the grant of an EC. The EAC is under a mandate to conduct the process of appraisal in “a transparent manner”. On the conclusion of these proceedings, the EAC has to make “categorical recommendations” to the regulatory authority either for: (i) the grant of a prior environmental clearance on stipulated terms and conditions; or (ii) the rejection of the application. The recommendations made by the EAC to the regulatory authority must be based on “reasons”.

109 The EAC, at its 149th meeting held on 26 June 2015, considered the EIA report and sought a clarification from the project proponent on the following six aspects:

> "i. There is a need to superimpose the layout plan showing the drainage pattern including natural drainage, construction in the area on superimposed map showing clear topography of the region;
>
> ii. 10 year data regarding rain fall in the area;
>
> iii. Justification on sustainability of existing traffic and transportation arrangements especially at inter-section points of the approach road to the airport needs to be submitted;
>
> iv. A traffic circulation plan needs to be evolved for smooth running of traffic in the area;
>
> v. Measures taken to comply with the CPCB guidelines formulated for noise pollution control in airport areas to be submitted; and
>
> vi. Minimum 20% energy conservation measures should be adopted incorporating provisions for use of LED, star rated ACs etc. Revised Energy Conservation Plan to be submitted."

110 A representation was received from the Federation of Rainbow Warriors, consequent to which the consideration was deferred and the project proponent was requested to submit a "point-wise reply to the issues raised" in the representation. The EAC, at its 152nd meeting held on 20 October 2015, observed that the project proponent had provided "pointwise clarifications to the concerns raised by the 'NGO'". The EAC noted thus:

> - "The EIA report has been updated by the PP after taking into account the issues raised in the public hearing and the same has been put in public domain.
> - The project is outside the ESZ delineated by the Dr Kasturirangan Committee and TERI.
> - The project envisages construction of rain water harvesting pits within the plot area, which would contribute to ground water recharge. Hence, the objection of NGO in this regard does not hold.
> - The biological data in respect of flora and fauna was collected by the functional area experts of M/s Engineers India Limited and not by M/s Pragati Labs stationed at

> Goa during November, 2014 to January, 2015 for collection of ambient air quality, noise, water quality, soil, socio-economics."

Following the above statement, the EAC recommended the grant of an EC subject to certain conditions. Para 3.1.2 of the Minutes of the EAC is as follows:

> "The Committee noted the peculiar circumstances of the case and the difficulties in land acquisition which led to delay in preparation of the EIA report, and the larger public interest involved.
>
> Keeping in view the fact that the project proponent has not concealed facts and circumstances of the case and the project is in the public interest, the Ministry may take an appropriate view on the objection that the public hearing could not have been held, in the absence of valid TOR, though the validity has been extended twice and regularized subsequently. The Committee also noted that the public hearing was attended by about 3000 people and hence there is substantive and active public participation as required under the law for public consultation.
>
> The PP further provided their reply to the rebuttal by the said NGO on various issues.
>
> The EAC, after deliberations, recommended the project for grant of EC subject to the above and the following:-
>
> - The project proponent shall ensure availability of adequate land at the junction of the Mopa Airport road and Mumbai/Goa NH 17 for traffic circulation/ management and to provide for all the traffic interchanges and proposed clover.
> - The approach and exit roads to the airport would be approved from the NHAI and should be according to IRC norms.
> - A perusal of the Topo sheet superimposed on the runway area indicates that the extreme end of the runway is covering the drainage area partly. The drainage area which is under the runway needs to be channelized. The area between the parallel taxi way and run way needs to be handled carefully to drain the water from the area in the outfall."

111 The above explanation must be assessed with reference to the norm that the EAC is required to submit reasons for its recommendation. The above extract indicates that the EAC has adverted to the following circumstances:

(i) The “peculiar circumstances” of the case;

(ii) The difficulties in land acquisition which led to a delay in the preparation of the EIA report;

(iii) The “larger public interest” involved;

(iv) The project proponent had not concealed facts and circumstances of the case;

(v) The project is in the public interest; and

(vi) The project proponent had provided a reply to the rebuttal by Rainbow Warriors on various issues.

This analysis of the EIA report is, to say the least, sketchy and perfunctory and discloses an abdication of its functions by the EAC. The requirement that the EAC must record reasons, besides being mandatory under the 2006 notification, is of significance for two reasons:

(i) The EAC makes a recommendation to the regulatory authority in terms of the 2006 notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) provides, shall normally accept the recommendations of the EAC. Where it disagrees, it would request reconsideration, stating the reasons for its disagreement. In turn, the EAC will consider the observations of the regulatory authority and furnish its views within a stipulated period; and

(ii) The grant of an EC is subject to an appeal before the NGT under Section 16 of the NGT Act 2010.

The reasons furnished by the EAC for its recommendation are a basic link in the ultimate decision of the regulatory authority. They constitute substantive material which will be considered by the Tribunal when it considers a challenge to the grant of an EC.

112 What, then, do the reasons which have been furnished by the EAC tell us? The EAC relies on the "peculiar circumstances of the case" as the basis of its recommendation. What the peculiar circumstances are, is left for pure guess work or surmise. The EAC refers to the delay in acquisition proceedings, a larger public interest and the fact that the project proponent "has not concealed facts and circumstances". Each one of the reasons which has weighed with the EAC betrays a lack of comprehension of the true nature of its function under the 2006 notification. The EAC has failed to consider relevant circumstances bearing on the environmental impact of the project and has instead considered circumstances extraneous to its function. That the project proponent, according to the EAC, has not concealed facts and circumstances is not reason enough to warrant a grant of an EC. Moreover, even this hypothesis (as we have seen earlier) is incorrect. There is no analysis of the EIA report. The EAC has failed to answer to the call to its expertise.

113 Clause (vi) of para 8 of the 2006 notification stipulates thus:

> "(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

Deliberate concealment or the submission of false or misleading information or data material for screening, scoping, appraisal or decision on the application makes it liable for rejection. That the project proponent must submit all information and data without concealing relevant features is a basic hypothesis and expectation of the 2006 notification. The EAC has, in the brief reasons which are contained in para 3.1.2, not applied its mind at all to the environmental concerns raised in relation to the project nor do its reasons indicate an appraisal of those concerns by evaluating the impact of the project.

114 The EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment. It is not bound by the analysis which is conducted in the EIA report. It is duty bound to analyse the EIA report. Where it finds it deficient it can adopt such modalities which, in its expert decision-making capacity, are required. The reasons which are furnished by the EAC constitute a live link between its processes and the outomce of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated.

115 Mr ANS Nadkarni, learned ASG urged that the EAC had, in its 149th meeting, sought additional information on six issues. Subsequently, at its 151st meeting, it deferred consideration upon the representation filed by the Federation of Rainbow Warriors and at its 152nd meeting, it analysed the response of the project proponent to the representation. Hence, the EAC must be deemed to have applied its mind. This approach is completely flawed. At its 149th meeting, the EAC specifically called for a clarification on six issues. The next meeting was deferred. The Minutes of the 152nd meeting contain no assessment of whether the clarifications which were sought

by the EAC had been replied to its satisfaction by the project proponent. The objection to the modalities adopted by the EAC, however, are more fundamental. The Minutes of the 152nd meeting indicate that the EAC primarily, if not exclusively, dealt with the "pointwise clarifications" of the project proponent to the representation by the Federation of Rainbow Warriors. Dealing with a representation is not exhaustive of the function of the EAC. Arguably, if no representation was received, or if a representation submitted by an individual objector is found to be incorrect, that by itself is no ground to recommend an EC.

116 The EAC, as an expert body, has to scrutinize all relevant aspects of the project or activity proposed, including its impact on the environment. In taking that decision, the EIA report is an input for its analysis. The scrutiny and appraisal has to be undertaken by the EAC as an expert body and its reasons must reflect that this has been done. As the Minutes indicate, the non-application of mind by the EAC is evident with reference to the presence of 15 ESZs in the study area. The EAC notes that the project is outside the ESZ delineated by the Kasturirangan Committee. In the absence of a critical analysis, the EAC failed in discharging its duties under the 2006 notification. The recommendations of the EAC furnish a guide for the MoEFCC. Indeed, the 2006 notification stipulates that the recommendations of the EAC would normally be accepted. Consequently, a failure of due process before the EAC, as in the present case, must lead to the invalidation of the EC.

I The appellate jurisdiction of the NGT: the requirement of a merits review

117 The NGT is entrusted with appellate jurisdiction under Section 16 of the NGT Act 2010. Section 16(h) provides thus:

> "16 Tribunal to have appellate jurisdiction. - Any person aggrieved by,-
>
> …
>
> (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);"

Section 20 mandates that the Tribunal shall, while passing any order, decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Several decisions of this Court have given meaning to these principles[53].

118 The decision of the NGT indicates that several significant submissions were urged before it. The entire analysis by the NGT is contained in one paragraph of its judgment dated 21 August 2018 which is extracted below:

> "27. We find that the Expert Appraisal Committee had before it point wise reply of the project proponent which we have already quoted above. Therein delay in land acquisition process and collection of fresh baseline data are mentioned. It is also mentioned that data for Maharashtra was also considered. Other issues duly explained are hydro-geological features and data with regard to flora and fauna, socio-economic profile, topography, vegetation, observance of due procedure in public hearing, relevance of study with regard to ecosensitive areas of Western Ghats, feasibility of proposed airport in terms of cost benefit analysis as well as environmental cost benefit analysis. EAC also considered the data compiled by various offices. Mere fact that different opinions have been expressed by other experts is not enough to hold that EAC did not apply its mind. The rehabilitation programme was also produced before the EAC".

[53] **Vellore Citizens Welfare Forum** v **Union Of India**, (1996) 5 SCC 647; **M C Mehta** v **Kamal Nath**, (1997) 1 SCC 388; **M C Mehta** v **Union of India**, (1997) 2 SCC 353; **A P Pollution Control Board** v **Prof M V Nayudu (Retd.)**, (1999) 2 SCC 718; **Narmada Bachao Andolan** v **Union of India**, (2000) 10 SCC 664; **Indian Council for Enviro Legal Action** v **Union of India**, (2011) 8 SCC 161

The next paragraph contains a brief reference to the fact that the requirement of a study over a distance of 15 kilometres is in regard to the collection of secondary data. The above paragraph, in our view, does not fulfil the requirement of a merits review by an expert adjudicatory body vested with appellate jurisdiction.

119 The NGT Act provides for the constitution of a Tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment. In order to be eligible for appointment as an expert member, a person must fulfill the following qualifications prescribed in Section 5(2):

> "(2) A person shall not be qualified for appointment as an Expert Member, unless he,
>
> (a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or
>
> (b) has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution."

The NGT is an expert adjudicatory body on the environment.

120 In two of its previous decisions, the NGT has shown the path along with which it must traverse in arriving at its decisions. In **Save Mon Region Federation** v **Union of India**[54], the grant of an EC to a 780 Megawatts Hydroelectric Project in Tawang

[54] 2013 (1) All India NGT Reporter 1

district of Arunachal Pradesh was challenged. The NGT framed the question before it in broad terms:

> "…the material issue, therefore, that needs to be answered in the present Appeal is as to whether the process of grant of prior EC to the project in question suffers from vice of faulty scoping process or not."

Having reviewed the information furnished in Form 1 by the project proponent as well as the multiple reports on record on the bird species involved in the site for the proposed project, the NGT held that facts material to the case were not present before the EAC and the consequent 'vacuum in the EIA report' lead to aberrations in the appraisal process conducted by it. Suspending the EC granted to the project, the NGT accepted the contention which was urged before it that the NGT has the 'authority to take an appropriate decision on the facts placed before it' and 'set aside or suspend the EC'.

Similarly, in **Shreeranganathan K P** v **Union of India**[55], the grant of an EC to the KGS Aranmula International Airport Project was challenged. The NGT found fault with the process leading to up to the grant of the EC since sector specific issues had not been dealt with. The NGT extensively reviewed the information submitted by the project proponent in Form 1, the deficiencies in the EIA report, the process of appraisal conducted by the EAC and the sector specific guidelines laid down with regard to the constructions of airports and held thus:

> "182. … a duty is cast upon the EAC or SEAC as the case may be to apply the cardinal principle of Sustainable Development and Principle of Precaution while screening, scoping, and appraisal of the projects or activities. While so, it is evident in the instant case that the EAC has miserably failed in the performance of its duty not only as mandated by the EIA Notification, 2006, but has also disappointed the legal

[55] 2014 ALL (I) NGT Reporter (1) (SZ) 1

> expectations from the same. For a huge project as the one in the instant case, the consideration for approval has been done in such a cursory and arbitrary manner without taking note of the implication and importance of environmental issues. …Thus, the EAC has not conducted itself as mandated by the EIA Notification, 2006 since it has not made proper appraisal by considering the available materials and objections in order to make proper evaluation of the project before making a recommendation for grant of EC.
>
> 187…the Tribunal is of the considered opinion that there is no option but to scrap the impugned EC granted by the MoEF to the 3rd respondent/project proponent for setting up the Aranmula airport"

121 The failure to consider materials on a vital issue and indeed the non-consideration of vital issues raises a substantial question of law leading to the invoking of the jurisdiction of this Court under Section 22 of the NGT Act 2010. The failure of process in the present case has been compounded by the absence of a merits review by the NGT.

122 The learned ASG has placed reliance on the decision of this Court in **Lafarge Umiam Mining Private Limited** v **Union of India**[56] ("Lafarge") to contend that the failure to disclose the presence of trees should not lead to the invalidation of the EC. In that case, an application was made under the 1994 notification for the grant of an EC to a proposed limestone mining project at Nongtrai Village, East Khasi Hills District, Meghalaya. EC was granted for the project in 2001. Pursuant to a letter by the Principal Chief Conservator of Forests to the MoEF drawing attention to the non-disclosure of forests, the project proponent applied for a revised EC and forest clearance under the Forest (Conservation) Act 1980. An ex post facto EC along with forest clearance was granted in 2010. Challenging the grant of the EC, it was urged

[56] (2011) 7 SCC 338

that there was a failing on part of the project proponent to disclose the presence of forests on the proposed project site.

123 A three judge Bench of this Court rejected the challenge and upheld the grant of the EC to the proposed project. This Court relied, among other factors, on the following: (i) the mining of limestone in the Khasi Hills dates back to 1763 and is an integral part of the culture of the Nongtrai Village; (ii) the site was cleared after thorough consultation with the custodian of the land, who decided to lease the land for the mining project following the loss of revenue caused due to mining by the unorganized sector; (iii) the Headman of the Nongtrai and the village durbar, who participated at the public hearing and filed written submissions before this Court, supported the project and certified that no damage would be caused to adjacent lands; (iv) at the stage of site clearance, the MoEF had before it certificates by the Executive Committee, Khasi Hills Autonomous District Council and the DFO, Khasi Hill Division, Shillong, certifying that there were no forests in the proposed project site; (v) the DFO certified that that the proposed mining site was not a forest as defined in **Godavarman** (supra); (vi) the 2006 notification was not applicable; and (vii) the MoEF had, at multiple stages, sought clarifications from the project proponent and had undertaken requisite care and caution to protect the environment. Upholding the grant of the EC and the forest clearance, this Court held thus:

> "120…The word "development" is a relative term. One cannot assume that the tribals are not aware of principles of conservation of forest. **In the present case, we are satisfied that limestone mining has been going on for centuries in the area and that it is an activity which is intertwined with the culture and the unique landholding and tenure system of Nongtrai Village**. On the facts of this case, we are satisfied with the due diligence exercise undertaken by MoEF in the matter of forest diversion. **Thus, our order herein is confined to the facts of this case.**" (Emphasis supplied)

124 The decision of this Court in **Lafarge** (supra), was based on the facts summarized above. Significantly, the standard of judicial review which must be applied in cases relating to the environment has been formulated by the three judge Bench in **Lafarge** (supra). Chief Justice S H Kapadia noted that the doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. The principles of judicial review in environmental matters have been enunciated thus:

> "In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint."

125 In a recent three judge Bench decision of this Court in **Mantri Techzone Pvt. Ltd.** v **Forward Foundation**[57], this Court had the occasion to construe the provisions of Section 22 of the NGT Act 2010. Speaking for the Bench, Justice Abdul Nazeer held that the test to determine whether a substantial question of law arises (within the meaning of Section 100 of CPC) was formulated in the decision of a Constitution Bench in **Sir Chunilal** v **Mehta and Sons, Ltd.** v **Century Spinning and Manufacturing**[58], where it was held thus:

> "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly

[57] (2019) 4 SCALE 218
[58] 1962 Supp. (3) SCR 549

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

Re-appreciation of the 'factual matrix' has been held to be distinct from a substantial question of law. In the present case, we have indicated the basis for the invocation of the jurisdiction of this Court under Section 22. There was a failure to follow binding norms under the 2006 notification. There were serious flaws in the decision-making process. Relevant material has been excluded from consideration and extraneous circumstances were borne in mind. The EAC as an expert body abdicated its obligations to make an expert determination based on reasons. The NGT as an adjudicatory body failed to exercise the jurisdiction entrusted to it under Section 16(h) read with Section 20 of the NGT Act 2010 by merely deferring to the decision to recommend and grant an EC. The parameters in regard to the existence of substantial questions of law have hence been established in the classical or conventional sense of that expression.

J Environmental Rule of Law

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

127 Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement – both in developed and developing countries alike.[59] The environmental rule of law seeks to address this gap.

128 The environmental rule of law provides an essential platform underpinning the four pillars of sustainable development— economic, social, environmental, and peace.[60] It imbues environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance.[61] The environmental rule of law becomes a priority particularly when we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, supports sustainable economic and social development, protects public health, contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights.[62] Similarly, the rule of law in environmental matters is indispensable "for equity in terms of the advancement of the Sustainable Development Goals[63], the provision of fair access by assuring a

[59] United Nations Environment Programme, First Environmental Rule of Law Report. Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y
[60] Ibid
[61] Ibid
[62] Ibid
[63] SDGs

rights-based approach, and the promotion and protection of environmental and other socio-economic rights."[64]

129 Amartya Sen argues for a broadening of the notion of sustainable development which is the most dominant theme of environmental literature, from a need-based standard[65] to a standard based on freedoms.[66] Thus recharacterized, it encompasses the preservation, and when possible even the expansion of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar - or more - freedoms. The intertwined concepts of environmental rule of law thus further intragenerational as well as intergenerational equity.

130 Decision 27/9 which was adopted by the United Nations Environment Programme's[67] Governing Body at its first universal session in 2013 on 'Advancing Justice, Governance and Law for Environmental Sustainability' was the first internationally negotiated document to establish the term 'environmental rule of law.' It declared that "the violation of environmental law has the potential to undermine sustainable development and the implementation of agreed environmental goals and objectives at all levels and that the rule of law and good governance play an essential role in reducing such violations". It thus urged governments and organisations to reinforce cooperation to combat noncompliance with environmental laws towards achieving sustainable development. It also called upon the Executive Director to assist with the "development and implementation of environmental rule of law with attention at all levels to mutually supporting

[64] UN Environment, Environmental Rule of Law. Available at https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0
[65] Bruntdland definition of Sustainable Development
[66] Amartya Sen, Sustainable Development and our responsibilities. Available at http://www.comitatoscientifico.org/temi%20SD/documents/SEN%20Responsibility&SD%2010.pdf
[67] UNEP

governance features, including information disclosure, public participation, implementable and enforceable laws, and implementation and accountability mechanisms including coordination of roles as well as environmental auditing and criminal, civil and administrative enforcement with timely, impartial and independent dispute resolution." Similarly, the first United Nations Environment Assembly in 2014 adopted resolution 1/13, which calls upon countries "to work for the strengthening of environmental rule of law at the international, regional and national levels."

131 In 2016, the First World Environmental Law Congress, cosponsored by the International Union for Conservation of Nature and UN Environment, adopted the IUCN World Declaration on the Environmental Rule of Law[68] which outlines 13 principles for developing and implementing solutions for ecologically sustainable development:

(i) Obligation to Protect Nature

(ii) Right to Nature and Rights of Nature

(iii) Right to Environment.

(iv) Ecological Sustainability and Resilience

(v) In Dubio Pro Natura

(vi) Ecological Functions of Property

(vii) Intragenerational Equity

(viii) Intergenerational Equity

(ix) Gender Equality

(x) Participation of Minority and Vulnerable Groups

(xi) Indigenous and Tribal Peoples

[68] IUCN, Environmental Rule of Law. Available at ://www.iucn.org/commissions/world-commission-environmental-law/wcel-resources/environmental-rule-law

(xii) Non-regression

(xiii) Progression

132 Dhvani Mehta's doctoral thesis[69] explores this idea of environmental rule of law in the Indian context by analysing the functioning of the three institutions of the government with regard to environmental law. It develops a framework to assess whether the environmental rule of law in India is being strengthened or weakened, through an analysis of the legal instruments of each of the institutions of government—statutes, executive orders, and judicial decisions. The indicators on the basis of which this is done are: a) the capacity of statutes to guide behaviour (one of the organising principles of the rule of law) by clearly articulating goals or balancing competing interests; b) the ability of the executive to take flexible but reasoned decisions grounded in primary legislation; and c) the ability of the judiciary to apply statutory interpretation and consistent standards of judicial review to give effect to environmental rights and principles.

133 In 2015, the International community adopted the 2030 Agenda for Sustainable Development and its 17 SDGs[70]. These 17 goals are:

(i) Eradication of poverty;

(ii) Eradication of hunger;

(iii) Good health and well-being;

(iv) Quality education;

(v) Gender equality;

(vi) Clean water and sanitation;

(vii) Affordable and clean energy;

[69] Dhvani Mehta, The Environmental Rule of Law in India, University of Oxford, 2017. Available at https://ora.ox.ac.uk/objects/uuid:730202ce-f2c4-4d2f-9575-938a728fe82a

[70] SDGs

(viii) Decent work and economic growth;

(ix) Industry, innovation and infrastructure;

(x) Reduced inequalities;

(xi) Sustainable cities and communities;

(xii) Sustainable consumption and production;

(xiii) Climate action;

(xiv) Protecting life below water;

(xv) Life on land;

(xvi) Peace, justice and strong institutions; and

(xvii) Partnerships to achieve the goals.

134 Each of these goals has a vital connection to the others. Together, they provide an agenda for human development: development in a manner which accords adequate protection to the environment. The UNEP recognises that the natural environment – forests, soils and wet lands – contributes to the management and regulation of water availability and water quality, strengthening the resilience of water sheds and complements investments in physical infrastructure and institutional and regulatory arrangements for water access and disaster preparedness.

135 SDG 13 emphasises the urgent action required to combat climate change and its impacts. This is based on the recognition that extreme weather events such as heat waves, droughts, floods and tropical cyclones have aggravated the need for water management, pose a threat to food security, increase health risks, damage critical infrastructure and interrupt the provision of basic civil services.

136 The statistics on climate change indicate that:

(i) Between 1880 and 2012, average global temperatures have increased by 0.85 degrees Celsius;

(ii) Between 1901 and 2010, as ocean expanded, the global average sea level has risen by 19 centimeters;

(iii) Since 1990, global emissions of CO_2 increased by almost 50 per cent; and

(iv) Between 2000 and 2010, emissions grew at a more rapid rate than each of the three decades preceding it.

137 In this backdrop, SDG 16 emphasises the need to protect, restore and promote sustainable use and management of terrestrial eco systems and forests, combat desertification of river lands, prevent land degradation and halt the loss of biodiversity. Terrestrial eco systems provide a range of eco system services including the capture of carbon, maintenance of soil quality, provision of habitat for biodiversity, maintenance of water quality and regulation of water flow together with control over erosion. Maintenance of eco systems is hence crucial to efforts to combat climate change, mitigate and reduce the risks of natural disasters including floods and landslides. In this backdrop, promoting environmental justice and ensuring strong institutions is quintessential to promoting peaceful and inclusive societies for sustainable development. SDG 16 therefore construes the promotion of the rule of law as intrinsic towards implementing multilateral environmental agreements and progressing towards internationally agreed environmental goals.

138 On 2 October 2016, India ratified the Paris Agreement[71] on climate change which reaffirmed the goal of 'limiting global temperature increase to well below 2 degrees Celsius, while pursuing efforts to limit the increase to 1.5 degrees above

[71] Entered into force on 4 November 2016

pre-industrial levels'. Article 5 of the Agreement encourages parties to conserve and enhance sinks and reservoirs of greenhouse gases, which includes forests. Under its Nationally Determined Contributions under the Paris Agreement, India made the following three commitments[72]:

(i) Greenhouse gas emission intensity of its Gross Domestic Product will be reduced by 33-35% below 2005 levels by 2030;

(ii) 40% of India's power capacity would be based on non-fossil fuel sources; and

(iii) An additional 'carbon sink' of 2.5 to 3 billion tonnes of CO_2 equivalent through additional forest and tree cover will be created by 2030.

139 In March 2019, UNEP released the Global Environment Outlook themed 'Healthy Planet, Healthy People'.[73] Noting clear 'links between human health and the state of the environment', the report concludes that clean-up and efficiency improvements are not adequate to pursue the 2030 Agenda and the SDGs and achieve the internationally agreed environmental goals on pollution control. Instead, 'transformative change' which reconfigures basic social and production systems and structures is needed. This includes well-designed policies on institutional frameworks, social practices, cultural norms and values along with their implementation, compliance and enforcement. In this view, a systemic and integrated policy action[74] would ensure that a "healthy environment is a prerequisite and foundation for economic prosperity, human health and well-being"[75]

[72] India's Intended Nationally Determined Contribution: Working Towards Climate Justice at P. 29, submitted to the UNFCCC secretariat
[73] Global Environment Outlook 6, UNEP, 4 March 2019
[74] Global Environment Outlook 6, UNEP, 4 March 2019
[75] Ibid

140 The rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the rule of law. Public access to information is, in similar terms, fundamental to the preservation of the rule of law. In a domestic context, environmental governance that is founded on the rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution. Proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution.

141 The 2006 notification must hence be construed as a significant link in India's quest to pursue the SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. The fundamental principle which emerges from our interpretation of the 2006 notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.

142 Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the need for a new airport is paramount with an increasing volume of passengers and consequently the flaws in the EIA process should be disregarded. The need for setting up a new airport is a matter of policy. The role of the decision makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed. This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether necessary steps to mitigate adverse consequences to the environment can be strengthened.

143 In the present case, as our analysis has indicated, there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. Disclosures in Form 1 are the underpinning for the preparation of the ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part of this judgment including the failure to acknowledge that within the study area contemplated by the Guidance manual, there is a presence of ESZs.

144 The EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. The 2006 notification postulates that normally, the MoEFCC would accept the recommendation of the EAC. This makes the role of the EAC even more significant. The NGT is an adjudicatory body which is vested with appellate jurisdiction over the grant of an EC. The NGT dealt with the submissions which were urged before it in essentially one

paragraph. It failed to comprehend the true nature of its role and power under Section 16(h) and Section 20 of the NGT Act 2010. In failing to carry out a merits review, the NGT has not discharged an adjudicatory function which properly belongs to it.

145 In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Equally, as an area requiring balance between development of infrastructure and the environment, we are of the view that appropriate directions should be issued by this Court, which would ensure that while the need for a public project as significant as an international airport is duly factored into the decision making calculus, such development proceeds on a considered view of the importance of the prevailing state of the environment. Bearing in mind the need to bring about a wholesome balance between the development of infrastructure of an airport and the preservation of the environment, we have come to the conclusion that time bound directions should be issued.

146 Bearing in view the necessity to maintain a balance between the need for an airport and environmental concerns, we are of the view that it would be appropriate if the EAC is directed to revisit the conditions subject to which it granted its EC on the basis of the specific concerns which have been highlighted in this judgment. Such an exercise primarily is for the EAC to carry out in its expert decision making capacity. The EAC is entrusted with that function as an expert body. The role of judicial review is to ensure that the rule of law is observed. Hence, we propose by the directions which we will issue under Article 142 of the Constitution, to direct the EAC to revisit the conditions for the grant of an EC. While doing so, it would be open to the EAC to have due regard to the conditions which were incorporated in the order of the NGT

and to suitably modulate those conditions in pursuance of the liberty which we have preserved to it. To facilitate an expeditious decision, we propose to direct the EAC to carry out this exercise in a prescribed time schedule during which period, the EC shall remain suspended. We propose to direct that after the EAC has formulated its views, they shall be placed before this Court in a Miscellaneous Application in the present proceedings, so as to enable the Court to pass final orders. The Miscellaneous Application may be filed either by the State of Goa as the project proponent or by the MoEFCC. We clarify that no other Court or Tribunal shall entertain any challenge to the ultimate decision of the EAC and final orders thereon shall be passed by this Court in the present proceedings.

K Directions

147 We accordingly issue the following directions:

(i) The EAC shall revisit the recommendations made by it for the grant of an EC, including the conditions which it has formulated, having regard to the specific concerns which have been highlighted in this judgment;

(ii) The EAC shall carry out the exercise under (i) above within a period of one month of the receipt of a certified copy of this order;

(iii) Until the EAC carries out the fresh exercise as directed above, the EC granted by the MoEFCC on 28 October 2015 shall remain suspended;

(iv) Upon reconsidering the matter in terms of the present directions, the EAC, if it allows the construction to proceed will impose such additional conditions which in its expert view will adequately protect the concerns about the terrestrial eco systems noticed in this judgment. The EAC would be at liberty to lay down

appropriate conditions concerning air, water, noise, land, biological and socio-economic environment;

(v) The EAC shall have due regard to the assurance furnished by the concessionaire to this Court that it is willing to adopt and implement necessary safeguards bearing in mind international best practices governing greenfield airports;

(vi) We grant liberty to the State of Goa as the project proponent and the MoEFCC, as the case may be, to file the report of the EAC before this Court in the form of a Miscellaneous Application so as to facilitate the passing of appropriate orders in the proceedings; and

(vii) No other Court or Tribunal shall entertain any challenge to the report that is to be submitted before this Court by the EAC in compliance with the present order.

148 Before we part with the present case, we consider it appropriate to record a finding on the *bona fides* of the appellants before this Court. It was briefly urged by the respondents that the appellants have invoked the jurisdiction of this Court based on a personal agenda and consequently, the present appeal is liable to be dismissed. This argument cannot be accepted. We accept the submission of Ms Shenoy, learned counsel appearing on behalf of the appellants, that the non-consideration of vital issues by the EAC has led to the invocation of the statutory remedy available to them under Section 22 of the NGT Act 2010. Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment. If a court comes to the finding that the appeal before it was lacking *bona fides*, it may issue directions which it thinks

appropriate in that case. In cases concerning environmental governance, it is a duty of courts to assess the case on its merits based on the materials present before it. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow.

149 The learned Attorney General for India has presented the submissions before this Court with his characteristic sense of objectivity and candour. We wish to record our appreciation for the able assistance rendered to this Court by Ms Anitha Shenoy, learned counsel for the petitioner, Mr ANS Nadkarni, learned Additional Solicitor General for the MoEF, Mr Parag P Tripathi, learned senior counsel and Ms Aastha Mehta, learned counsel for the concessionaire.

150 The appeal is allowed in the above terms. There shall be no order as to costs.

Civil Appeal No 1053 of 2019

151 This appeal is also disposed of in the same terms, conditions, directions and observations as in Civil Appeal No 12251 of 2018.

……..…..…..……..…….....J.
[Dr DHANANJAYA Y CHANDRACHUD]

…..…..…..…..……..…….....J.
[HEMANT GUPTA]

New Delhi;
March 29, 2019

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2021 SCC OnLine SC 897

In the Supreme Court of India

(BEFORE A.M. KHANWILKAR, HRISHIKESH ROY AND C.T. RAVIKUMAR, JJ.)

Civil Appeal Nos. 12122-12123 of 2018

Municipal Corporation of Greater Mumbai ... Appellant(s);

Versus

Ankita Sinha and Others ... Respondent(s).

With

Civil Appeal No. 86/2019

Civil Appeal No. 5902/2019

Civil Appeal No. 6273 of 2021

(Arising out of SLP(C) No. 6732/2021)

Civil Appeal No. 6274 of 2021

(Arising out of SLP(C) No. 5930/2021)

Civil Appeal No. 6275 of 2021

(Arising out of SLP(C) No. 6733/2021)

Civil Appeal No. 6276 of 2021

(Arising out of SLP(C) No. 16448 of 2021)

Diary No. 11655/2021

Civil Appeal No. 6277-6278 of 2021

(Arising out of SLP(C) No. 16449-16450 of 2021)

Diary No. 13789/2021

Civil Appeal No. 6279 of 2021

(Arising out of SLP(C) No. 16451 of 2021)

Diary No. 13811/2021

Civil Appeal No. 6280-6281 of 2021

(Arising out of SLP(C) No. 16452-16453 of 2021)

Diary No. 13890/2021

Civil Appeal No. 2897/2021

Civil Appeal No. 6282 of 2021

(Arising out of SLP(C) No. 11426 of 2021)

Civil Appeal No. 6283 of 2021

(Arising out of SLP(C) No. 11427 of 2021)

Civil Appeal No. 6262 of 2021

Diary No. 16948 of 2021

Civil Appeal No. 6284 of 2021

(Arising out of SLP(C) No. 11798 of 2021)

Civil Appeal No. 6285 of 2021

(Arising out of SLP(C) No. 12669 of 2021)

Civil Appeal No. 6286 of 2021

(Arising out of SLP(C) No. 16454 of 2021)

Diary No. 19534/2021

Civil Appeal Nos. 12122-12123 of 2018, Civil Appeal No. 86/2019, Civil Appeal No. 5902/2019, Civil Appeal No. 6273 of 2021 (Arising out of SLP(C) No.

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

Decided on October 7, 2021

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.:—

"Estragon : Let's go.
Vladimir : We can't.
Estragon : Why not?
Vladimir : We're waiting for Godot."[1]

2. Leave granted in the Special Leave Petitions.

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

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

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

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

7. Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, Mr. Dhruv Mehta, Mr. Atmaram Nadkarni, Mr. Krishnan Venugopal, Mr. V. Giri, Mr. Sajan Poovayya and Mr. Sidhartha Dave, learned Senior Counsel together with Mr. E.M.S Anam, Ms. Amrita

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Sharma, Mr. S. Thananjayan have taken a common stand. They have argued that the NGT is a Tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act *suo motu*, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed. The learned counsel also argue that the NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, the NGT by acting *suo motu* cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with the NGT (which is available with superior courts) is highlighted to keep away *suo motu* power from the NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in later part of this order.

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

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

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

11. Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away *suo motu* power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered* v. *Dharminder Bhohi*[2] wherein, provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus, Section 19(25)

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conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

12. Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore* v. *Union of India*[3], opined on behalf of a Division Bench that,

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

13. The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak* v. *Achyut Kashinath*[4], observed as under:—

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

14. The second limb of contention is that the Act is applicable to '*disputes*' as, necessarily referring to a *lis* between two parties. The counsel has relied upon *Techi Tagi Tara* v. *Rajendra Singh Bhandari*[5] wherein the term '*substantial question relating to environment*' was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

> "19. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute — it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.
>
> 20. ...In *Prabhakar* v. *Deptt. of Sericulture* [*Prabhakar* v. *Deptt. of Sericulture*, [(2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] the following definition of "dispute" was noted in paras 34 and 35 of the Report : (SCC p. 21)
>
> "*34*. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:
>
> '"*Dispute*".—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;'
>
> *35*. *Black's Law Dictionary*, 5th Edn., p. 424 defines "dispute" as under:
>
> '*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.'"

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

16. Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226

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and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board* v. *Sterlite Industries (I) Ltd.*[6] Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

> "41. ...Suffice it to say that the NGT is not a tribunal set up either under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act.....
>
> 43. ...In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(*b*) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges and Immunities of State Legislatures, In re* [*Powers, Privileges and Immunities of State Legislatures, In re*, [(1965) 1 SCR 413 : AIR 1965 SC 745], made in the following words : (SCR p. 499 : AIR p. 789, para 138)
>
> > "*138*. We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.
> >
> > 'Prima facie', says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England*, Vol. 9, p. 349]'."
>
> For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in *BSNL* [*BSNL* v. *TRAI*, [(2014) 3 SCC 222], we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in *Wilfred J.* v. *Ministry of Environment & Forests* [*Wilfred J.* v. *Ministry of Environment & Forests*, [2014 SCC OnLine NGT 6860] must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected."

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

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

18. In order to understand the contours of jurisdiction of the NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which

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shaped the creation of the NGT and the broad issues that they sought to address through the specialized institution should now be brought to the fore.

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

> "It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.
>
> These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Art. 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer Courts at the District and State level, the High Courts have consistently refused to entertain writ petitions under Art. 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.
>
> It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts."

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

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

> "Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Art. 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil Court, in the Environmental Courts. If we vest powers of Judicial review as under Art. 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in *L. Chandra Kumar* v. *Union*

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of India, [(1997) 3 SCC 261.

No doubt, the Environment Court exercising powers of a Civil Court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter."[7]

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

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

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

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

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

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

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

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

6. In view of the foregoing paragraphs, a need has been felt to establish a

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

25. A reading of the Statement of Objects and Reasons shows that paragraph 4 thereof refers to the *National Environmental Tribunal Act, 1995 (NET)* which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a large number of environmental cases are pending in higher Courts which involve multi-disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialized environmental Courts.

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

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

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

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

III. THE NEED FOR PURPOSIVE INTERPRETATION

30. While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgement, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging societal concerns and these have prompted us to opt

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for purposive interpretation. The Statue will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes*, authored by Justice G.P. Singh who explained thus,

> "When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.
>
> It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an 'elementary rule' by Viscount Simonds : a compelling rule by Lord Sommervell of Harrow; and a "settled rule" by B.K. Mukherjee J. "I agree" said Lord Halsbury, "that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it."

31. The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional Courts flagging their environmental concerns.

32. The application of the *Heydon's Rule* could adequately aid us here as the Rule directs adoption of that construction which "*shall suppress the mischief and advance the remedy*" as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co.* v. *State of Bihar*[8],

> "...the office of all judges is to make such construction as shal suppresses the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

33. Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

> 'A purposive construction of an enactment is one which gives effect to the legislative purpose by—
>
> (*a*) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or
>
> (*b*) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.'

34. Justice Frankfurter of US Supreme Court in '*Some Reflections on the Reading of Statutes*', has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner,

> 'The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.
>
> ...
>
> Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'."[9]

35. Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo's phraseology in *Panama Refining Co.* v. *Ryan*, and the same is taken as a lodestar in our quest,

> "the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view"[10].

36. The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew

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procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.[11] The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

IV. SALIENT STATUTORY FEATURES OF NGT ACT

37. Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions will require the Court's attention. Section 2(1)(c) of the NGT Act defines the term "environment"; Section 2(1)(m) defines "substantial question relating to environment". Chapter III relates to jurisdiction, power and proceedings of the Tribunal. The Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) "*as the Tribunal may think fit*". Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) "*any person aggrieved including any representative body/organization*" and the *locus standi* is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the CPC and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

38. While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice & Procedure) Rules, 2011* (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

> *"24. Order and directions in certain cases - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."*

39. The said Rules make it clear that the NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

40. By choosing to employ a phrase of wide import, i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to

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the environmental principles and even hauling up authorities for inaction, when need be.

41. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

42. Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT.

43. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

V. NON-ADJUDICATORY ROLES OF NGT

44. As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See *Vellore Citizens' Welfare Forum* v. *UOI*[12]; *M.C. Mehta* v. *UOI*[13] etc.]

45. The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc. As one looks at these enactments, an expanded role for the NGT is clearly discernible. The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

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

47. The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report,

> "The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. .... The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive

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jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time."

48. We have earlier discussed that the NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active "*dispute*", but the formulation of *decisions*.

49. With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan* v. *Union of India*[14], highlighted the NGT's role in the context, in the following words:—

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice."

50. In the above case, this Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of the NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo motu* by the Courts.

VI EXERCISE OF SUO MOTU POWER BY NGT

51. Let us now explore whether the NGT in discharge of its functions, should also have *suo motu* power. The specialized tribunal's exercise of *suo motu* powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments. However, As long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

52. Explaining the purpose for constituting the special court to deal with environmental issues, in *Mantri Techzone (P) Ltd.* v. *Forward Foundation*[15], Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:—

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

53. As can be seen from the quoted passage, this Court recognized that the NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context observed that the Tribunal has special jurisdiction for enforcement of environmental rights.

54. Elaborating further, in paragraphs 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that,

> "46. ... As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction."

55. Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri* v. *DDA*[16] was not to constrict the *suo motu* powers of the NGT. To appreciate the implication of the ratio in *Rajeev Suri*, it must be noticed that it was in the specific context of '*Merits Review*' and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

> "503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

56. Thus, the ratio in *Rajeev Suri* to the quoted extent will not clash with the view propounded here as the exposition is not to allow any inherent power of residuary character for the NGT. In its own domain, as crystalized by the statute, the role of the NGT is clearly discernible.

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

> "The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters."

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

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VII. UNIQUENESS OF NGT VIS-A-VIS OTHER TRIBUNALS

59. While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

60. The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok Bhushan in *State of Meghalaya* v. *All Dimasa Students Union*[18], fittingly observed thus:—

> "163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain* v. *CIT* [*L. Hirday Narain* v. *CIT*, [(1970) 2 SCC 355], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14 : (SCC p. 359)
>
> > "14. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private— of a citizen."

61. Reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising "*wide range of jurisdiction*" and the "*wide range of powers*", given to it by the statute.

62. During the course of its functioning, the NGT has been recognized as one of the most progressive Tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. To understand how the NGT is perceived globally, we may usefully refer to the views of Chief Justice Brian Preston of the Land and Environment Court of NSW Australia,

> "The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the rule of law and promoting good governance."[19]

VIII. THE SUI GENERIS ROLE OF NGT

63. The NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution. The structure of *Sui generis* institutions was explained in *Paramjit Kaur* v. *State of Punjab*[20], wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,

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"14. The concept of sui generis is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbiter is entrusted acts sui generis, that is, on its own and not under any law."

64. In *DG NHAI* v. *Aam Aadmi Lokmanch*[21], Justice S. Ravindra Bhat commenting on the *sui generis* role of the NGT, so appropriately stated as follows:—

"38. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.

* * * \

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68. Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take *suo motu* cognizance of matters, for effective discharge of its mandate.

69. The analysis for this segment should commence with Section 14 of the NGT Act and the same being of great relevance is being extracted hereunder,

> "14. Tribunal to settle disputes. - (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
>
> (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.
>
> (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose : Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

70. The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

71. In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

72. The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

73. It may also be relevant to bear in mind that while dealing with contested cases,

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the NGT is required to pass "*award*" and "*order*" and the statute repeatedly uses the word "*decision*". Therefore, it is appropriate to correlate the word "*decision*" to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in *DG, NHAI* (supra).

74. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in *State of Punjab* v. *Shamlal Murari*[22] has so correctly prioritized the substantive rights and observed succinctly,

> "8. ...We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

75. While discussing the NGT's power and responsibility, it is essential to keep in mind the *Principle 10* of *the Rio Declaration* which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

X. THE PRECAUTIONARY PRINCIPLE

76. Tracing the origin of the *Precautionary Principle*, Scott Lafranchi in his treatise[23] has expounded on the proactive role of the authorities in the following passage:—

> "Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm."16 The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "'can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies.'"

77. The origin of the *Precautionary Principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

78. As earlier seen, S.20 of the NGT Act which includes the term "*decision"*, in addition to "*order*" and "*award*", also require the Tribunal to apply the '*Precautionary Principle*' and the statutory mandate being relevant is extracted:—

> "20. Tribunal to apply certain principles. - The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."

79. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other '*decisions*' or '*orders*' to governmental authorities or polluters, when they fail to "*to anticipate,*

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prevent and attack the causes of environmental degradation"[24]. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

80. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, '*The Nature of the Judicial Process*', stated thus,

> "It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided."

81. The above could be a pointer towards the preemptive functions of the NGT as a *sui generis* body.

XI. ENVIRONMENTAL JUSTICE AND ENVIROMENTAL EQUITY

82. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.[25] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

83. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role of the Courts in Environmental Law*, wrote the following evocative passage on the concept of environmental justice,

> "Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity", which is understood to mean the fair distribution of environmental risks and protection from environmental harms."[26]

84. There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people.

> "Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school",

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whereas the people who reside there do little or nothing to harm their community."[27]

85. When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An "*equal footing*" conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalized classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

86. The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of *locus standi*.

> "The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."[28]

87. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the '*Blindfold of Lady Justice*', which symbolizes "*the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class.*"[29] The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

88. Proceeding with the above understating, we can comfortably place the NGT within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing- *Environmental Law And Policy In India*, have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights[30], liberalizing the concept of *locus standi* in environmental matters, exercising *suo motu* powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.[31]

89. By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a pollution free environment for a holistic existence.[32] Most crucially, the expansion of Right to Life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar* v. *State of Bihar*, this Court explicitly held the following,

> "Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life."[33]

90. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the '*Absolute Liability Principle*'[34] by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and

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mechanisms in this sphere have been created, on account of this Court's initiative.

> "The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. ...The right was recognized as part of the right to life in 1991. ... The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."[35]

91. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.[36] There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the '*at risk*' nature of some populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.[37]

92. Justice T.S. Doabia in *Environmental & Pollution Laws in India*, has highlighted the larger societal concerns which have informed this Court's deliberation when dealing with environmental matters,

> "The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.
>
> ...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned."[38]

93. Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic, welfare oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, as has been noted, stood transferred to the NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior Court was surely expected to be seen in the Tribunal's approach.

94. Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand Management & Development Authority* v. *Central Empowered Committee*[39] so succinctly said that,

> "40. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools - conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges - of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the

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preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts."

95. It is this environmental rule of law that has been encapsulated with the NGT's creation at this Court's behest. Professor Domenico Amirante in a comparative analysis of similar bodies across the world, notes that,

"With reference to the judicial enforcement of environmental law - which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order - the National Green Tribunal of India seems to be the most comprehensive and promising among the specialized environmental Courts created in Asia over the last decade."[40]

96. The NGT therefore, is the institutionalization of the developments made by this Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

X. CONCLUSION:

97. Before we set out our conclusion, we acknowledge the able contribution of Mr. Anand Grover as *amicus curiae*, assisted by Ms. Astha Sharma, AOR who were requested to assist the Court on the central issue of *suo motu* jurisdiction of NGT.

98. The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a *sui generis* institution and not *unus multorum*, and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.

99. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists[41] with many countries declaring climate emergencies and many others being urged to follow suit[42].

100. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long term and very often irreparable environmental damage which are expected to be arrested by the NGT, urge this Court to advert to what is termed as *the 'Seventh Generation' sustainability principle*, or the '*Great Law of the Iroquois*' (as it originates from the Iroquois Tribe) which requires all decision making to withstand for the benefit of seven generations down the line.

101. It is vital for the wellbeing of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

102. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum

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created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "*global impacts of climate change will fall disproportionately on minority and low-income communities*".[43] Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

103. The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for the NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

104. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

105. When the Registry of the NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate *suo motu* action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist the NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of *suo motu* jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

106. One could admit to the argument of danger of *suo motu* jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedurals safeguards clarified above in play, the nature of the trigger itself viz. a letter or a '*suo motu*' initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

107. Institutions which are often addressing urgent concerns gain little from procedural nitpicking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

108. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is vested with *suo motu* power in discharge of its functions under the NGT Act.

109. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being

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heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

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[1] *Beckett, S.* (1954). Waiting for Godot : Tragicomedy in 2 Acts.

[2] (2013) 15 SCC 341

[3] (2008) 1 SCC 125

[4] (2011) 9 SCC 541

[5] (2018) 11 SCC 734

[6] (2019) 19 SCC 479

[7] Chapter II, 186th Law Commission Report.

[8] (1955) 2 SCR 603; AIR 1955 SC 661

[9] 47 Columbia Law Review 527

[10] 293 US 388 (1935) (dissenting)

[11] *Sarah Mathew* v. *Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62, *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia*, (2008) 3 SCC 279.

[12] (1996) 5 SCC 647

[13] (1997) 2 SCC 353

[14] (2012) 8 SCC 326

[15] (2019) 18 SCC 494

[16] 2021 SCC OnLine SC 7.

[17] (1999) 2 SCC 718

[18] (2019) 8 SCC 177

[19] GILL, G. (2020). Mapping the Power Struggles of the National Green Tribunal of India : The Rise and Fall? Asian Journal of Law and Society, 7(1), 85-126.

[20] (1999) 2 SCC 131

[21] 2020 SCC OnLine SC 572

[22] (1976) 1 SCC 719

[23] Scott La Franchi, Surveying the Precautionary Principle's Ongoing Global Development : *The Evolution of an Emergent Environmental Management Tool*, [32 B.C. Envtl. Aff. L. Rev. 679 (2005)

[24] *Vellore Citizens* (supra), *S. Jagannathan* v. *Union of India*, (1997) 2 SCC 87, *Karnataka Industrial Areas Development Board* v. *C Kenchappa*, (2006) 6 SCC 371.

[25] Schlosberg D, Defining Environmental Justice : Theories, Movements, and Nature (Oxford University Press 2009)

[26] Schiffer, L. J., & Dowling, T. J. (1997). Reflections On The Role Of The Courts In Environmental Law. Environmental Law, 27(2), 327-342.

[27] Jeff Todd, *A "Sense of Equity" in Environmental Justice Litigation*, [44 HARV. ENVTL. L. REV. 169, 193 (2020).

[28] Supra Note 26.

[29] Ibid

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[30] *Rural Litigation And Entitlement Kendra* v. *State Of U. P.*, AIR 1985 SC 652, *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613, *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577

[31] See M.A.A. Baig, Environmental Law And Justice(1996). Domenico Amirante, Environmental Courts In Comparative Perspective : Preliminary Reflections On The National Green Tribunal Of India (2012). M.K. Ramesh, Environmental Justice : Courts And Beyond, Indian Jo. Of Envtl. L. 20(2002).

[32] Maheshwara Swamy, N. Law Relating to Environmental Pollution and Protection. India, Thompson Reuters, Vol.I, Ed.5.

[33] (1991) 1 SCC 74.

[34] *M.C. Mehta* v. *Union of India*, [(1987) 1 SCC 395.

[35] Rajamani, Lavanya. 2007. Public Interest Environmental Litigation in India : Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability. Journal of Environmental Law

[36] Supra, Note 19.

[37] *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176, *Indian Council for Environmental-Legal Action* v. *Union of India*, (1996) 3 SCC 212, *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718, *A.P. Pollution Control Board II* v. *M.V. Nayudu*, (2001) 2 SCC 62.

[38] Justice T.S. Doabia, Environmental & Pollution Laws in India, 3rd Ed., Vol 2 (2017).

[39] (2021) 4 SCC 309

[40] Domenico Amirante, Environmental Courts in Comparative Perspective : Preliminary Reflections on the National Green Tribunal of India, 29 Pace Envtl. L. Rev. 441 (2012)

[41] Indian Network for Climate Change Assessment, Climate Change and India : A 4X4 Assessment - A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16 November 2010

[42] Secretary-General's Remarks at the Climate Ambition Summit. United Nations. United Nations, December 12, 2020.

[43] Supra Note 23.

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Item No. 01 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Original Application No. 34/2020(WZ)

Tanaji Balasaheb Gambhire Applicant

Versus

Union of India & Ors. Respondent(s)

Date of hearing: 24.02.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Applicant: Mr. Nitin Lonkar, Advocate

Respondent(s): Ms. Mansi Joshi, Advocate for MPCB
Mr. Rahul Garg, Advocate for PMC
Mr. Aniruddha Kulkarni, Advocate for SEIAA
Mr. Saurabh Kulkarni, Advocate for R - 13

ORDER

1. Grievance in this application is against setting up of construction projects by M/s Padmavati Associates, Pune without requisite Environmental Clearances (EC) and in violation of other environmental norms as per details mentioned in the application. The Tribunal sought a report from a joint Committee comprising SEIAA, State PCB and Municipal Corporation, Pune. The Committee has filed its report dated 24.08.2020 mentioning the violations found.

2. The matter was considered earlier on 17.11.2020 and was deferred to enable the learned Counsel for the parties to address the Tribunal on the issue of limitation first. On 01.12.2021, the application was admitted and notices were issued to the contesting respondents, including SEIAA, Maharashtra, State PCB, Pune Municipal Corporation and the Project Proponent-M/s Padmavati Associates, Pune. The Project Proponent has filed reply on 12.11.2020, followed by additional affidavit filed on 03.03.2021. The applicant has filed a rejoinder on 22.10.2021.

3. We have heard learned Counsel for the parties and perused the pleadings as well as the report of the joint Committee.

4. The report of the joint Committee shows that there are two separate projects i.e. Pristine Prism & Pristine Royal (which are two projects in same complex and thus treated as one) and Pristine Privilege. In first project, there are five buildings with built up area of more than 55,000 sq. mtrs. In the second project, the built up area is 4973.74 sq. mtrs. For the first project, EC is required being more than 20000 sq mts but has not been obtained though *ex-post facto* EC and consent to establish and consent to operate have been sought. For the second project, EC was not required but no consent has been taken under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. The Committee has given its point-wise observations with reference to the points raised in the application as follows:-

"3. Point wise observations:-

Sr. No.	*Point examined*	*Observations*

1	*The project proponent has not complied with environmental norms by non-obtaining of mandatory prior Environmental Clearance, Consent to Establish, Consent to Operate.*	*As per the aforementioned particular no.2.1,* ***it is clear that the Project Proponent has carried out construction activity for TBA-55862.25 SQM for project Pristine Prism & Pristine Royal without taking prior Environmental Clearance and has also not obtained consent to establish & consent to operate under Water (P & CP) Act 1974 and Air (P & CP) Act, 1981.*** ***PP has now applied forprior Environmental Clearance to MoEFCC, New Delhi on 09.09.2019.*** ***Environment Department, Gov. of Maharashtra, vide letter dated 29.08.2019 issued proposed directions to M/s. Padmavati Associates u/s 5 of the Environmental (P) Act 1986 r. w. EIA Notification-2006 dated 14.09.2006 and to the Commissioner, Pune Municipal Corporation, Pune, on 16.11.2019. In response to this direction, PMC has issued notice to PP on 13.12.2019.*** ***MPC Board has also issued proposed directions u/s. 33 A of Water (P & CP) Act, 1974, 31 A of Air (P & CP) act, 1981 on 03.03.2020.*** *As per the aforementioned particular no.2.2, it is clear that the project Pristine Prism has TBA- 4973.74 Sq.M and is below 20,000 Sq.M. Therefore, it neither attracts prior Environmental Clearance under EIA Notification 2006, nor consent to establish, consent to operate under Water (P & CP) Act 1974 and Air (P & CP) Act, 1981.*
2	*The part of the project is affected by blue line of Mula River and Buildings A, B, C1 & C2 are following under blue flood line of the Mula River.*	***Both the buildings of Pristine Royal are within the zone of Blue and Red flood lines.*** *PMC has informed that the practice of showing Flood Zone by Blue & Red lines on the Development plan started in 2017. It appears that Above said project were completed in 2015 when there was no practice of depicting the river flood zone on the building proposal drawings.*
3	*PP is extracting Huge quantity of ground water from three borewell and not obtained CGWA permission for ground water extraction, not made test of ground water.*	*No bore wells are observed in premises during the visit.*
4	*PP has not provided Solid Waste treatment & OWC units and waste is dumped to PMC yard.*	***PP has installed OWC of capacity 130 KG/D in Pristine Prism and 75 KG/D in Pristine Royal. However, OWC of Pristine Royal is not in operation.***
5	*PP has not provided any energy conservation system for energy savings.*	*In both the projects solar heater system is provided to all the buildings.*

6	*PP has not provided any rainwater harvesting system.*	***The committee cannot corroborate the claim of the provision of the rain water harvesting system as the said chambers could not be opened.***
7	*PP has not provided 10 % recreational open on virgin land*	***It is the opinion of the PMC that the recreation open spaces that are found only on the Podium*** *are as per their circular.*
8	*Not preserved top layer of fertile soil and no soil test.*	*All buildings are already constructed; as such the committee is unable to offer any comments on soil preservation.*
9	*PP has not made tree plantation as per the norms of required trees.*	*Many trees are observed in the project premises and as per the certification of the Tree Authority PMC dated 18.03.*2015, 285 trees are planted. This number appears to be adequate.
10	*PP has provided swimming tank giving additional burden on the ground water.*	***PP has provided two swimming pools in Pristine Prism and in Pristine Royal as per the revised plan that is approved on 03.07.2018.***
11	*PP has installed 6 DG set at project site causing air pollution.*	*PP has installed 160 KVA DG set in M/s. Pristine Prism and 125 KVA in Pristine Royal.*
12	*Huge quantity of sewage water generated, and PP has not provided STP.*	*PP has installed 160 CMD capacities STP in Pristine Prism; however it is not in operation and untreated domestic waste is drained in PMC sewer line. Pristine Royal has no STP.*
13	*PP has not provided fire and safety system at site and there is no approach road for fire engine.*	*PP has obtained final fire NOC from PMC on 13.07.2015 and previously on 17.06.2009.* *The committee has observed that the fire tender can manoeuvre in the premises so as to carry out the rescue operation.*
14	*PP has not provided the ramp slope in the ration of 1:10*	*No ramp for inter floor vehicular movement is observed in the project premises.*
15	*PP has not provided side margins, 15% amenity space, as per DC rules, not provided 10 % open space on virgin land, not provided DP roadwindingarea of 1270 sqm meters and not hand over to PMC, not developed green belt area of 3000 sqm as shown in DP plan.*	***As informed by the PMC, PP has developed project as per the proposal drawings approved by them. All open spaces [front, rear, & side], and the recreation open spaces on the podium are as per the approvals and thereby in conformity with the DC Rules (1987) and their own circular. 15% amenity space is not required as per provisions of DC Rules (1987) No.13.8.The PP has also developed the green area between the river and the D.P. road that passes through the plot.***

5. In the reply of the Project Proponent, apart from plea of limitation it is stated that projects were set up after necessary commencement certificates and occupation certificates have also been issued which are as follows:-

"

a. *Commencement Certificate No. 4407/05, dated 18/03/2006 issued by PMC. (S. No. 6/2 867 at Aundh, Pune - 411007)*

b. *Revised Commencement Certificate No. 2951/06, dated 15/11/2006 issued by PMC. (S. No. 6/2 & 7 at Aundh, Pune - 411007)*

c. *Revised Commencement Certificate No. 1991/ 07, dated 04/10/2007 issued by PMC. (S. No. 6/2 86 7 at Aundh, Pune - 411007)*

d. Revised Commencement Certificate No. 1971/ 09, dated 04/08/2019 issued by PMC. (S. No. 6/2 & 7 at Aundh, Pune - 411007)

e. Revised Commencement Certificate No. 2449/09, dated 04/11/2019 issued by PMC. (S. No. 6/2 & 7 at Aundh, Pune - 411007)

f. Revised Commencement Certificate No. 3099/10, dated 13/12/2019 issued by PMC. (S. No. 6/2 8s 7 at Aundh, Pune - 411007)

g. *Commencement Certificate No. 1006/12, dated 25/06/2012 issued by PMC. (S. No. 6/2 867 at Aundh, Pune - 411007)*

h. Revised Commencement Certificate No. 0046/15, dated 08/04/2015 issued by PMC. (S. No. 6/2 & 7 at Aundh, Pune - 411007)"

6. Explaining the absence of requisite EC, it is stated that at the time of seeking commencement certificate/completion certificate, no such requirement was indicated to the Project Proponent. EC has now been applied on 09.09.2019 for the project where the built up area is more than 20,000 sq. mtrs. If built up area is less, no EC is required.

Consideration of the matter and order

7. We first deal with the issue of limitation. The application has been filed on 29.06.2020. Even according to the Project Proponent, the projects were continuing beyond 30.06.2015 and thus, threshold bar which applies to proceedings filed five years after the accrual of cause of action is not attracted.

8. On merits, there are thus, violations which can been looked into by this Tribunal and have to be remedied either by compliance or by compensation on polluter pays principle. The first violation is failure to obtain prior EC for the project of more than 20,000 sq. mtrs. The Project Proponent has applied for *ex-post facto* EC on 09.09.2019. Explanation that the PP was not informed about the requirement of EC while issuing commencement certificate cannot be accepted as ignorance of law is no excuse. The matter is covered by Alembic 2020 SCC online 347 and Keystone vs. Anil Tharthare (2020) 2 SCC 66. This apart, there are other violations. Part of constructions is in blue and red flood lines of river Mula. According to the Committee, till 2017, this part was not being complied with. Had EC/consent been sought, this could have been got complied. The PP has benefitted itself by this violation. STP has not being provided in the project with more than 20,000 sq. mtrs for atleast some of the buildings. Further, there is no explanation about the source of water for the swimming pools, if not illegal extraction of groundwater. Oral explanation that water is brought by tankers is neither substantiated nor probable. Open areas have been provided only on podium which according to the Committee is in conformity with the DC Rules, ignoring the law laid down in *Municipal Corpn. of Greater Mumbai v. Kohinoor CTNL Infrastructure Co (P) Ltd., (2014) 4 SCC 538* as follows**:**

> ***"27.*** *Having noted these submissions, it is seen that a podium is permissible only on plots admeasuring 1500 sq m or more. So this provision is not applicable to plots smaller than 1500 sq m. As can be seen from DCR 23(1)(a), it speaks of a layout or sub-division of "vacant land" and open spaces. The open spaces "shall as far as possible" be provided in one place. If a layout or sub-division is more than 5000 sq m, open space can be provided in more than one place, but at least one such place "shall be of not less than 1000 sq m". These provisions clearly show that they are mandatory. Besides, under sub-clause (f) of DCR 23 there is a requirement of keeping the recreational open space permanently open to the sky and trees are to be grown in that space as laid down i.e. five trees per hundred square metres of the recreational space within the plot. DCR 2(64) defines "open space" to mean an area forming an integral part of a site left open to the sky. A*

"site" is defined under DCR 2(83) to mean a parcel or piece of land enclosed by definite boundaries. ***These DCRs when read together, very much make it clear that the recreational/amenity space has to be on the land i.e. on ground level and it has got to be 15%, 20% or 25% of the area depending upon its size****.*

28. *As rightly pointed out by the learned Senior Counsel Mr Nariman and Mr Salve, the requirement of recreational space on the podium under DCR 38(34)(iv) is discretionary. Besides, as the abovereferred sub-clause (iii) lays down, podium shall be basically used for parking. Besides, sub-clause (iv) does not contain a non obstante clause to override the requirement under DCR 23 making it mandatory to provide recreational space on the ground floor. That being so,* ***the provision under DCR 38(34) cannot be read in derogation of the requirement under DCR 23 or else it will result into serious erosion in the basic requirements for a good life affecting the guarantee of right to life, under Article 21 of the Constitution of India. We have therefore to read down sub-clause (iv) of DCR 38(34) as inapplicable and not excluding the mandatory provision under DCR 23****.*

29. *It is also relevant to note that the development schemes under DCRs 33(7), 33(9) and 33(10) provide for lesser recreational area/amenity spaces. Thus, under DCRs 33(7) and 33(10) reduction in the amenity open space is permitted to make the project viable, but still minimum 8% of the project area is required to be maintained as amenity open space. Similarly, for the schemes under DCR 33(9) minimum 10% of the plot area is required to be retained as recreational space. In other properties, where there are no such constraints to make the development schemes of rehabilitation or reconstruction of old buildings or slums viable,* ***there is no reason why the amenity open space at the ground level should be read as permissible, to be reduced.*** *The only ground being given is to provide more parking and more accommodation, meaning thereby more construction, concretisation and financial expediency. Such a purpose cannot be read into the provisions as they presently exist, nor is it desirable to do so from the point of view of the requirement of minimum open spaces at the ground level.*

30. *Besides, as pointed out by Mr Divan, the requirement of having trees and open land around them is necessary from an environmental point of view,* ***since there is already excessive concretisation, and a very serious reduction in open spaces at the ground level.*** *It must be noted that the right to a clean and healthy environment is within the ambit of Article 21, as has been noted in Amarnath Shrine, In re in the following words:*

"12. The scheme under the Indian Constitution unambiguously enshrines in itself the right of a citizen to life under Article 21 of the Constitution. The right to life is a right to live with dignity, safety and in a clean environment."

The right to a clean and pollution free environment, is also a right under our common law jurisprudence, as has been held by this Court in Vellore Citizens' Welfare Forum v. Union of India[5] *where this Court held: (SCC p. 660, para 16)*

"16. The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment."

> ***31.*** *In the same judgment the Court emphasised the importance of sustainable development, and the need for a balance between development and ecological considerations, in the following words: (Vellore Citizens' Welfare forum case[5], SCC pp. 657-58, para 10)*
>
> *"10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. 'Sustainable Development' is the answer … 'Sustainable Development' as defined by the Brundtland Report means 'development that meets the needs of the present without compromising the ability of the future generations to meet their own needs'. We have no hesitation in holding that 'Sustainable Development' as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists."*
>
> ***32. Therefore, after reflecting upon the legal position, we are clearly of the opinion that having 15%, 20% or 25% of the area (depending upon the size of the layout) as the recreational/amenity area at the ground level is a minimum requirement, and it will have to be read as such****. We therefore, answer Issue (i) by holding that it is not permissible to reduce the minimum recreational area provided under DCR 23 by relying upon DCR 38(34). However, if the developers wish to provide recreational area on the podium, over and above the minimum area mandated by DCR 23 at the ground level, they can certainly provide such additional recreational area."*

9. The report shows that the State PCB has issued notice under Section 31A of the Water Act but the violations alleged and further action taken is not known. The report also shows that STP was not functional and sewage was being discharged into drain. OWC was also not properly functioning. Stabilized waste for use as soil conditioner. Rejects were to be channelised through authorized agency. The report proceeds on the basis that projects not requiring EC do not require consent under the Water and the Air Acts.

10. It is observed in several matters that residential societies are facing the issue of lack of proper sewage and solid waste management system. This requires the concerned authorities to lay down standards for disposal of sewage effluent and existence of sewerage system in housing societies including those not requiring EC to enforce the water and air quality standards and clarify that even if EC is not required, consent mechanism is not dispensed with. MoEF&CC and CPCB may take necessary action in this regard within three months.

11. With regard to the present case, in view of above discussion, we direct a joint Committee of SEIAA, Maharashtra, State PCB and Pune Municipal Corporation to take further remedial action to fix liability for the violations, including assessment and recovery of compensation. The Committee may also prepare plan for restoration out of the compensation, to be recovered from the PP. Compensation assessment and action plan preparation may be done within one month which may be executed in an appropriate manner, including with the association of the Project Proponent, if found viable.

The application is disposed of.

A copy of this order be forwarded to MoEF&CC, CPCB, SEIAA, Maharashtra, State PCB and Pune Municipal Corporation by e-mail for compliance.

Adarsh Kumar Goel, CP

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

Dr. Afroz Ahmad, EM

February 24, 2022
Original Application No. 34/2020(WZ)
SN

Item No. 02 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Original Application No. 33/2020 (WZ)

(With report dated 02.03.2022)

Tanaji Balasaheb Gambhire Applicant

Versus

Union of India & Ors. Respondent(s)

Date of hearing: 02.03.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Applicant: Mr. Nitin Lonkar, Advocate

Respondent: Mr. Aniruddha S. Kulkarni, Advocate for SEIAA
Ms. Mansi Joshi, Advocate for MPCB
Mr. Rahul Garg, Advocate for PMC
Mr. Saurabh Kulkarni & Mr. Ninad Laud, Advocates for R-13 (Prayeja City)

ORDER

1. This application has been filed with a grievance that the project proponent (PP) has violated the environmental norms by not obtaining mandatory prior Environmental Clearance, consent to establish, consent to operate, CGWA permission for ground water extraction, non-installation of pollution control devices, non-plantation of tress, non-installation of STP, non-installation of solid waste treatment, OWCS unit, illegal ground water extraction, illegal operation of DG sets at site, not providing 10% recreation space as per norms, absence of soil preservation, absence of soil and ground water test, illegal construction of

basements, not using eco-friendly building material for construction, completing construction without Environmental Clearance, absence of prior consent to establish from the State PCB, non-compliance of show cause notice issued by the Competent Authority, non-implementation of the remedial measures.

2. The Tribunal constituted a joint Committee comprising State Environment Impact Assessment Authority (SEIAA), the Maharashtra State Pollution Control Board and the Municipal Commissioner, Chinchwad/Pune to ascertain facts and give a report to this Tribunal. Report dated 25.08.2020 filed by the Committee, showing violations, calling for remedial action, was considered on 17.11.2020. The Tribunal constituted another joint Committee comprising CPCB, the SEIAA and the State PCB to take remedial action and to file an action taken report. The Tribunal also assessed interim compensation of Rs. 5 crores to be deposited with the State PCB.

3. On Appeal of the Project Proponent, the Hon'ble Supreme Court vide order dated 12.01.2021 in *Civil Appeal No. 4/2021, M/s Prayeja City vs. Union of India & Ors.* set aside the order of this Tribunal and remanded the matter back for opportunity of hearing to the Project Proponent in light of order passed in *Civil Appeal No. 3893 of 2020* titled *M/s Sai Baba Sales Pvt. Ltd. vs. Union of India & Ors.* The PP has filed its reply inter alia raising issue of limitation.

4. Stand of the PP is that the building plan was sanctioned on 30.03.2007, commencement certificate was granted on 07.05.2008, five years before the filing of the application on 29.06.2020. Revised commencement certificate for Phase-II of the project has been granted on 08.10.2015. On 10.07.2017, revised commencement certificate for Phase-

I of the project has been granted. The Project Proponent applied for EC for second project, after revision of the plan, in 2020. SEIAA has recommended grant of EC which covers both the projects.

5. Accepting the statement in the reply on facts to be correct, the second project commenced on 08.10.2015, within five years before the Application was filed before the Tribunal. Both the projects are patently integral. Grant of subsequent EC does not exonerate the PP of consequences of violation in obtaining prior EC, as held inter-alia in *Alembic Pharmaceuticals Ltd. vs. Rohit Prajapati and Ors., 2020 SCC Online SC 347* and *Keystone Realtors (P) Ltd. v. Anil v. Tharthare* reported in *(2020) 2 SCC 66*.

6. Thus, even after considering the viewpoint of the PP, in the light of order of the Hon'ble Supreme Court, the matter will need consideration on merits.

7. Report of the joint Committee filed today is that the construction of the project commenced without prior EC for which Environmental Compensation was liable to be paid assessing compensation at Rs. 16,97,25,000/- or Rs. 7,36,87,500/- in the alternative, to be decided by this Tribunal. The recommendations in the report are as follows:-

> ***"7.0 Recommendations***
>
> *(a) <u>For violation of EIA Notification dated 14/09/2006</u>*
>
> *In view of the aforesaid violations of:*
>
> *(i) Starting construction and almost completing the project i.e. Prayeja City-I as per the Layout Sanctioned no. CC/4871/06, dated 30/03/2007 for the total built-up area of 23, 505.98 sq-m; Layout Sanctioned no. CC/0436/08, dated 07/05/2008 for the total built-up area of 31,530.06 sq-m; Layout Sanctioned no. CC/2311/12, dated 08/11/2012 for the total built-up area of 38,761.21 sq- m, and; Layout Sanctioned no.*

CC/1001/17, dated 10/07/2017 for the total built-up area of 56,292.04 sq-m (FSI: 27, 871.63 q-m and Non-FSI: 28,420.41 sq-m) without obtaining prior EC from SEIAA;

the committee recommends that SEIAA, Maharashtra, may proceed for closure or revision of project; taking action under section 15 read with section 19 of the Environment (Protection) Act, 1986; penalty for violations of EIA Notification, 2006; permissibility/demolition of the project; appraisal of the project including Damage Assessment, Remediation Plan and Community Augmentation Plan and their implementation in accordance with the MoEF&CC"s OM dated 28/01/2022 as outlined under para 5.0 (page 12-14) of this report. Damage Assessment, Remediation Plan and Community Augmentation Plan may be derived as per SEIAA Maharashtra"s approach paper dated 30/01/019, as also outlined under para 5.0 (page 7 - 11) of this report.

(b) *<u>For contravening provisions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981</u>*

In view of the aforesaid violations of:

(i) Starting construction for the built up area for more than 20,000 sq. m., as at (a) above, and almost completing the project i.e. Prayeja City-I including giving possession w.e.f. 2012 without obtaining CTE/CTO from MPCB as required under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981;

Rs. 05 Crore OR Rs. 16,97,25,000/- (Rupees Sixteen Crore Ninety Seven Lakhs and Twenty Five Thousand Only) OR Rs. 7,36,87,500/- (Rupees Seven Crore Thirty Six Lakhs Eighty Seven Thousand and Five Hundred Only), as derived under para 6.0 o this report, as deemed fit by the Hon'ble NGT, may also be added in addition to the penalty derived as outlined under para 5.0 (page 12-14) of this report as damages for contravening provisions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

*(c) PMC may examine the architect certificate vide dated 24/02/2022 including verification of current constructed total built up area, as per the latest Layout Sanction vide CC no. 1001/17, dated 10/07/2017 and may take actions for deviation/changes, if any, w.r.t. the latest Layout Sanctioned granted by PMC.***"**

8. Learned Counsel for the PP submits that since the report has been filed only today, the PP may be given opportunity to file response. We accept the prayer and grant two weeks time for filing response as to why

the compensation assessed by the Committee, as may be revised by the Tribunal after considering the stand of the parties, be not required to be paid by the PP, if the project is not to be demolished for the violations.

List for further consideration on 06.04.2022.

Adarsh Kumar Goel, CP

Sudhir Agarwal, EM

Dr. A. Senthil Vel, JM

Dr. Vijay Kulkarni, EM

Dr. Afroz Ahmad, EM

March 02, 2022
Original Application No. 33/2020 (WZ)
SN

Item No. 01 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Org. Application No. 64/2019(WZ)
(I.A. No. 101/2019, I.A. No. 66/2021 & I.A. No. 18/2022)

Mr. Tanaji Balasaheb Gambhire Applicant

Versus

Union of India Through Secretary & 12 Ors. Respondent(s)

Date of hearing: 23.03.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Applicant: Mr. Nitin Lonkar, Advocate

Respondent(s): Ms. Manasi Joshi Advocate for MPCB
Mr. Rahul Garg, Advocate for PMC
Mr. Aniruddha S Kulkarni, Advocate for SEIAA
Mr. Saket Mone, Advocate for R-13

ORDER

1. Grievance in this application is against violation of environmental norms in the construction of the housing project "Ekta California & Florida" at Pune. The allegation is summed up in the application as follows:-

> *"project proponent have completed the construction of total BUA 38339.6 Sq. Mtrs till today comprising of 5 residential buildings, 120 flats and further proposed expansion to increase the capacity of project from 38339.6 Sq. Mtrs to 47429.2 Sq. Mtrs. by 9089.6 Sq. Mtrs by 1 new residential building, 70 flats vide sanction no. CC/3774/16 dated 31.03.2017.*
>
> *The project proponent has not complied with environmental norms by non-obtaining of mandatory prior Environment Clearance,*

Consent to Establish, Consent to Operate, CGWA permission for ground water extraction, Non-installation of pollution control devices, Non-plantation of tree, Non-installation of STP, Non-installation of Solid waste treatment & OWCS unit, illegal ground water extraction, illegal operation of DG Sets at site, 10% recreational space of is not developed as per norms, no soil preservation, no soil and ground water test, illegal construction of basements, no use of eco-friendly building material for construction etc."

2. Vide order dated 22.10.2019, the Tribunal required a joint Committee of SEIAA and State PCB to verify facts and furnish a report. Accordingly, the said joint Committee filed its report on 07.01.2020 after site visit on 15.12.2019 in tabular forms as follows:-

Sr. No.	***Point examined***	***Remarks***
1.	*The Project proponent has not complied with environmental norms by non-obtaining of mandatory prior Environmental Clearance, Consent to Establish, Consent to Operate.*	*As per Architect certificate dated 19.11.2019 PP has carried out construction from 2007 for BUA-37930.6 sqm. (FSI-18991.92 sqm. & Non FSI- 18938.68 sqm) without obtaining prior Environmental Clearance as per EIA Notification 2006, non-obtaining consent to Establish, Consent to operate under Water (P &CP) Act 1974 & Air (P & CP) Act, 1981*
2.	*PP has not obtained CGWA permission for ground water extraction*	*There is one bore well in the premises and PP has not obtained CGWA permissions for the extraction ot ground water.*
3.	*PP has not provided pollution control devices, Non installation of STP*	*PP has provided underground STP of capacity 212 KLD Of MBBR however same is unscientific and ill ventilated.*
4.	*PP has not provided Solid Waste treatment & OWC units.*	*PP provided vermicomposting pit for the treatment of organic waste. But same is not in operation.*
5.	*Illegal operations of DG Set at site*	*PP has installed one DG Set of 240 KVA capacity without obtaining consent from MPC Board.*
6.	*10% recreation space is not developed as per norms*	*PP has provided 10 % open area. However it is observed that entire reserved open space is on podium. PP has constructed club house and swimming pool in this podium area*
7.	*No soil preservation, no soil &ground water test, non-provision of solar energy*	*PP unable to give details of soil preservation for the A, B, C, D & E building.*

		For proposed Bldg. No. F Excavation is carried out one year ago. The excavated material is stored on the adjacent amenity plot which is handed over to PMC. For storing excavated material on this plot. Project Proponent has not obtained any permission from local body. *PP representative unable to produce soil & ground water test report.* *PP has not provided solar energy system for energy conservation.*
8.	*Illegal construction of basements*	*PP has not constructed any basement.*

3. Reply has been filed by the Project Proponent, SEIAA and State PCB. The PP has also filed I.A. No. 66/2021 seeking dismissal of the OA and compilation of judgments. Reply of SEIAA and State PCB is on the pattern of the joint Committee report already quoted above.

4. **According to SEIAA**, prior EC was required but was not sought before commencement of the project. However, the PP applied for EC on 08.08.2018 which was found to be a case of violation. EC was sought for total plot area of 26,000 m^2, FSI area of 24940.54 m^2, Non FSI area of 21628.67 m^2 and total BUA of 46,569.21 m^2. Project proponent informed that the total constructed area on site is 44841.72 m^2.

5. **Stand of the MPCB** is that in view of non-compliances noticed by the joint Committee, the State PBC issued directions to stop construction activities on 04.01.2020 till requisite consent and EC are obtained. Compensation has been assessed based on period of violation as per formula adopted by CPCB which works out to Rs. 15,99,09,375/-.

6. **The stand of Pune Municipal Corporation (PMC)** is that commencement certificate was granted on 31.03.2017 subject to requisite

consents/EC. Since EC was not produced, PMC issued stop work order on 11.12.2019.

7. **Stand of Secretary, Urban Development** is also that the project is in violation of the statutory requirements.

8. **Stand of Project Proponent** in I.A. No. 66/2021 is that the application is not maintainable and barred by limitation. Cause of action for the application arose on 17.03.2007 when the plan for construction was sanctioned. The applicant has no *locus standi* to file the application. There is no damage to the environment. Compilation of judgments has been filed on the point of limitation. Affidavit of the PP filed on 21.10.2020 is that the project "Ekta California" has been completed. Wing "F" known as "Florida" ("Ekta Florida") is proposed. Fremont, Palmdale, Oakland, Santa Monica and Santa Clara are also proposed for which occupation certificates have been granted in 2015 and 2016. Club house has been completed in 2016 and commencement certificate has been obtained in 2017. The threshold of 20,000 sq. mtrs. has not been crossed so as to attract the requirement of EC. Built up area was not defined in EIA Notification of 2006 but the same was defined as per DCR. There was vagueness in the concept of built up area which was clarified by notification dated 04.04.2011 to include basement. Consents under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 are not required in view of judgement of the Delhi High Court dated 23.01.2012 in *LPA No. 895 of 2010, DPCC vs. Splendor Landbase*. Additional affidavit has been filed by the PP in response to the joint Committee report on 21.02.2022 denying the allegations found by the joint Committee. It is stated that built up area should be taken as equal to the FSI area only. No consent under the Water

and Air Acts are required. The PP has complied all environmental norms. The PP has relied upon judgment of the Hon'ble Supreme Court dated 09.12.2021 in *Special Leave to Appeal (C) Nos. 11226-11227/2020, Electrosteel Steels Ltd. Vs. Union of India & Ors.* wherein earlier judgment in *Alembic Pharmaceuticals Ltd. v Rohit Prajapati & Ors.*[1] holding that prior EC is mandatory was held to be distinguishable, having regard to the policy of MoEF&CC for ex-post facto EC instead of closure of the project, to give effect to the principle of "Proportionality" laid down in *Lafarge Umiam Mining Private Limited v. Union of India, (2011) 7 SCC 338*. The policy in question is SOP dated 07.07.2021 issued by the MoEF&CC, permitting ex-post facto EC in violation cases, subject to payment of penalty at the rate of 1% of the total project cost, where project has not commenced and an additional of 0.25% of total turnover, where project had already commenced.

9. We have heard learned Counsel for the parties, perused the record and considered rival submissions. From the resume of pleadings and submissions made, questions for consideration are whether the present petition is maintainable and within limitation, whether there is a violation of environmental norms by the PP in question and if there is such violation, the remedial action required.

Maintainability and Limitation

10. It is patent from the report of the joint Committee that the built up area of the project is more than 20,000 sq. mtrs. which calls for EC. The PP has itself applied for EC on 08.02.2018 with the SEIAA, Maharashtra. If there are violations, the petition has to be held to be maintainable.

[1] 2020 SCC OnLine SC 347

Starting point of limitation is not the approval of the plan, as contended by the PP but the violation in going ahead with construction beyond 20,000 sq. mtrs. without requisite EC and consents and violating environmental norms. The judgments on limitation relied upon by the PP are also not applicable in view of the undisputed factual situation of the present case. Thus, the petition is maintainable and is within limitation which is five years from the date of cause of action, under section 15(3) of the NGT Act.

Violations and Remedial action

11. The violations are patent. The project involves construction with built up area more than 20,000 sq. mtrs. As held in Goel Ganga Developers India (P) Ltd. v. Union of India, (2018) 18 SCC 257, FSI and non FSI both are part of built up area. Observations in the said judgment in para 17 are:

> "**Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble, etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built-up area in terms of the EIA Notification dated 14-9-2006."**

12. The judgment of Delhi High Court is not applicable to the present fact situation which is governed by statutory notification dated 14.9.2006, which was not the situation in the case before Delhi High Court.

13. Judgment in Electrosteel Steels Ltd. Vs. Union of India, supra, that ex-post facto EC can be granted does not help the PP. Even if ex post facto EC is granted, PP has to be held accountable for past violations.

14. Penalty of 1% or additional penalty of 0.25% laid down by the MoEF&CC as a condition for granting ex post facto EC is different from compensation for past violations. Such compensation has to be on the principle of restoration considering nature and extent of violations and paying capacity of the PP. Several variables have to be considered as held inter alia in *M.C Mehta & Anr v. Union of India*[2], *Sterlite Industries (India) Ltd. v. Union of India* [3], *Goel Ganga Developers India Pvt. Ltd. v. UoI*[4], *Alembic Pharmaceuticals Ltd. v Rohit Prajapati & Ors.*[5] *and Mantri Techzone Pvt. Ltd. V. Forward Foundation and Ors.*[6]. The standard formula adopted by the CPCB based on standard amount of compensation multiplied by period of violation can apply in absence of relevant data of project cost and cost of restoration. In the present case, the amount of compensation assessed appears to be roughly 10% of the project cost, though worked out by a different formula. The same can be accepted, subject to the compliance being ensured within next three months in respect of payment of compensation, obtaining requisite ex post facto EC and necessary Consents, apart from all other compliances in the light of the joint Committee report. We accept the report of the joint Committee with regard to the violations and require the Project Proponent to remedy the same within three months.

15. Till compliances and payment of compensation assessed, stop work order will remain in force. The PP will not extract any further ground water without requisite consent. The DG set will also not be operated without requisite consents.

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[2] (1987) 1 SCC 395
[3] (2013) 4 SCC 575
[4] (2018) 18 SCC 257
[5] 2020 SCC OnLine SC 347
[6] 2019 SCC online SC 322, Para 43-47

16. If there is further delay, the PP will be liable to pay further compensation, as may be assessed by the PCB.

17. The amount of compensation has to be utilised for restoration of environment as per action plan to be prepared by the State PCB, PMC, DM Pune, in the light of District Environment Plan.

The application is disposed of.

If any grievance survives, it will be open to the aggrieved party to take remedy in accordance with law.

All pending IAs will also stand disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

Dr. Afroz Ahmad, EM

March 23, 2022
Org. Application No. 64/2019(WZ)
(I.A. No. 101/2019, I.A. No. 66/2021 & I.A. No. 18/2022)
SN

Item No. 02 (Court No. 1)

BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH

(By Video Conferencing)

Appeal No. 32/2020(WZ)

Tanaji B. Gambhire Appellant

Versus

Chief Secretary Government
of Maharashtra & Ors. Respondent(s)

Date of hearing: 04.05.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Appellant: Mr. Nitin Lonkar, Advocate

Respondent: Mr. Anirudha Kulkarni, Advocate for CPCB & SEIAA
Ms. Manasi Joshi, Advocate for R - 6

ORDER

The Issue – case of appellant

1. This appeal has been preferred against order of SEIAA, Maharashtra dated 25.03.2020 granting Environmental Clearance (EC) for construction project "Gangadham Towers" by M/s Goel Ganga India Pvt. Ltd (the PP). The project in question is on plot area 20,798.00 sq. m. with FSI 50,641.85 sq. m. and non-FSI 74,222.80 sq. m. Brief information of the project given in the EC is as follows:-

"

1. Name of Project	M/s Goel Ganga India Pvt Ltd through Shri. Atul Goel
2.Type of institution	Private
3. Name of Project Proponent	Shri. Atul Goel
4. Name of Consultant	NABET Accredited EIA Consultant

5. Type of project	Housing Project
6. New project/expansion in existing project/modernization/diversification in existing project	Amendment in Existing EC
7. If expansion/diversification, whether environmental clearance has been obtained for existing project	EC received vide letter SEAC-III-2015/CR-71/TC-3 dated 17th October 2016
8. Location of the project	S. No. 578/2
9. Taluka	Haveli
10. Village	Bibvewadi
Correspondence Name:	Shri Atul Goel
Room Number:	-
Floor:	3rd Floor
Building Name:	Sanmahu Complex
Road/Street Name:	Bund Garden Road
Locality:	Camp
City:	Pune
11. Whether in Corporation / Municipal / other area	Pune Municipal Corporation (PMC)
12.IOD/IOA/Concession/Plan Approval Number	Sanction Plan Approved by PMC and HRC approval No – CC/0909/2018 Dated 3-7-2018 HRC dated 9-3-2018 No 9256
	IOD/IOA/Concession/Plan Approval Number: Sanction Plan Approved by PMC and HRC approval No – CC/0909/2018 Dated 3-7-2018 HRC-dated 9-3-2018 No 9256
	Approved Built-up Area: 124864.65

"

2. Grievance in this appeal is that originally EC was granted on 17.10.2016. However, the PP changed the scope of the project and sought Consent to Establish which was declined by the State PCB on 02.04.2018 on the ground that the PP had already established the project without prior consent. Before passing order, show-cause notice dated 16.09.2017 was issued. Details of the changed project are as follows:-

“

1.	Name of the project	Ganga Dham Tower
2.	Name, Contact Number Address of proponent	Name: Goel Ganga Developers (I) Pvt. Ltd. Address Sanmahu complex, 3rd floor, Opp. Poona Club, Bund Garden Road , Pune 411001 Telephone Number +91(20) 26124265 Email ID :director@goelganga.com
3.	Consultant	-
4.	Accreditation of consultant (NABET Accreditation)	Accredited
5.	Type of project: Housing project: Industrial Estate: SRA Scheme/ MHADA/ Township or others	Housing project
6.	Location of the project	S. No. 578/2. Bibewadi, Pune
7.	Whether in Corporation / Municipal other area	PMC (Pune Municipal Corporation)
8.	Applicability of the DCR	DC Rule
9.	IOD/IOA/Concession document of any other form of document as applicable (Clarifying its conformity with local planning rules & provision)	Received Sanction No. 3456/14 dated 17.11.2014
10.	Note on the initiated work (if applicable)	Total constructed work (FSI + Non FSI): NA Date and area details in the necessary approvals issued by the competent authority (attach scan copies
11.	LOI/ NOC from MHADA/ other approvals (if applicable)	Applicable (mentioned in sanction)
12.	Total Plot area (sq. m.) Deductions Net plot area	20,798.00 sq.m. 6,732.96 sq.m. 14,065.04 sq.m.
13.	Permissible FSI (including TDR etc.)	27355.03 sq.m. + For EWS 2823.04 sq.m.
14.	Proposed built up area (FSI and non FSI)	FSI area (Sq.m.): 26,547.87 sq.m. + EWS built up : 2823.04 sq.m. = 29,370.91 sq.m. Non FSI area (sq.m.) :49, 256.90 sq.m. Total construction BUA area (sq.m.): 78,627.71 sq.m.
15.	Ground coverage percentage (%) (Note: percentage of plot not open to sky	78.09.68(56%)
16.	Estimated Cost of project	150.73 Cr

17.	*No. of building & its configuration(s)*	*1. Residential: 3 no of building* *Bldg A:* *G+P1+P2+P3+Podium+20* *Bldg B:* *G+P1+P2+P3+Podium+20* *Bldg C:* *G+P1+P2+P3+Podium+20* *2. Commercial Building: NA* *3. Club House: G + 1* *EWS bldg: P + 11*
18.	*Number of tenants and shops*	*205 Tenements + 54 EWS tenements* *1. Total Tenements 259*
19.	*Number of expected residents/users*	*Residential population:1025* *EWS Population: 270* *Total Population: 1295* *Commercial Population: NA*
20	*Tenant density per hector*	*561*
21.	*Height of building(s)*	*69.9 m*
22.	*Right of way (Width of the road from the nearest fire station to the proposed building(s))*	*30.00 m (nearest fire station: Main fire station at Ghorpadi peth)*
23.	*Turning radius for easy access of fire tender movement from all around the building excluding the width for the plantation.*	*9 m*

”

3. It is submitted that the construction project is thus illegal. Grant of *ex-post facto* EC is illegal as requirement of prior EC is mandatory, as held in the judgment of the Hon'ble Supreme Court in the case of same PP being Goel Ganga Developers India Pvt. Ltd. v UOI[1]. To the same effect are later judgements in *Alembic Chemicals v Rohit Prajapati*[2] and *Keystone Realtors Private Limited v. Anil V. Tharthare & Ors.*[3]. In spite of this legal position, the PP has been granted the impugned EC with no remedial action as per law.

Procedural History – facts independently found

4. The matter was earlier heard on 24.05.2021 along with connected matter in respect of same project proponent in *Appeal No. 34/2020(WZ),*

[1] (2018) 18 SCC 257
[2] 2020 SCC OnLine SC 347
[3] (2020) 2 SCC 66

wherein the Tribunal directed constitution of a joint Committee comprising MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB to verify facts and also to suggest remedial action, including the quantum of compensation in the individual case. It was further directed that a copy of the report thereof be also forwarded to the PP and the applicant who may file their comments, if any, before the next date by e-mail. Direction was also issued to SEIAA, Maharashtra to review its functioning as ex post facto ECs were rampant with no adverse consequence against violators and report was required to be filed by the Committee after functional audit of SEIAA. Relevant extracts from the order are:

> ***"****5. We have dealt with the same issue today in the connected matter in respect of same project proponent in Appeal No. 34/2020(WZ) and directed constitution of a joint Committee comprising MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB to review their functioning in the light of the Supreme Court judgements and also to suggest remedial action, including the quantum of compensation in the individual case. The same joint Committee may give its report for the present matter in the light of directions in the connected matter by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF before the next date.*
>
> *6. While submitting the report to this Tribunal, a copy of the report thereof be also forwarded to the PP and the applicant who may file their comments, if any, before the next date by e-mail.***"**

Joint Committee report dated 3.12.2021

5. In pursuance of above, the joint Committee has filed its report dated 03.12.2021. The Committee held its meeting and prepared a questionnaire for seeking relevant information from the concerned organizations. The Committee considered the matter in the light of information received and found that the PP had misrepresented about obtaining full potential sanction/IOD whereas PP was granted only total permissible FSI vide PMC's Sanction No. 2456/14 dated 17/11/2014 which doesn't specify building configuration and non-FSI. The PP also undertook construction of basement prior to amendment of EC which amounted to violation of EC

conditions. Construction was also started without CTE. The Committee then noted the steps taken by the PP and found that PP has raised constructions in addition to the configurations proposed for taking EC. However, the total built-up area was within the limit mentioned in the EC. The Committee has then referred to the approach adopted by SEIAA in recovering environmental compensation for violation of EC requirement and also SOP issued by the MoEF&CC on 07.07.2021 for dealing with such cases. It is however, incorrectly mentioned that SOP was issued in compliance with directions of this Tribunal vide order dated 03.06.2021 in *O.A No. 287/2020, Dastak N.G.O v. Synochem Organics Pvt. Ltd. & Ors.* The Committee then referred to the order of the Hon'ble Supreme Court dated 10.08.2018 in *Civil Appeal NO. 10854 OF 2016; M/s Goel Ganga Developers India Pvt. Ltd. Versus Union of India & Ors.*, wherein for violation of requirement of consent from the State PCB, compensation of Rs. 5 Crores was upheld. Alternative methodology for compensation assessment referred is the mechanism adopted by CPCB based on days of violation for which compensation has been assessed at Rs.2,91,09,375/-. It is then recommended that either of the two amounts be assessed as compensation for violation for not seeking CTE before construction and compensation be assessed for violating requirement of prior EC.

6. The relevant extracts of the report is reproduced below:-

> ***"2. <u>OBSERVATIONS AND FINDINGS</u>***
>
> ***A. <u>Observations w.r.t Environmental Clearance (EC) and violations thereto, if any</u>***
>
> *(a) The project proponent M/s Goel Ganga Developers (I) Pvt. Ltd. has been* ***granted EC by SEIAA Maharashtra vide letter dated SEAC-III-2015/CR-71/TC-3 dated 17.10.2016 for total plot area of 20,798 sq. m. for the project - "Gangadham Towers" at S. No. 578/2, Bibwewadi, Tal.- Haveli, Dist.- Pune, stipulating Layout Sanction details granted by PMC, total built up area and building configuration therein.***

Subsequent to the said EC, ***the PP has obtained Plinth Check Certificates dated 18/5/2017, 03/11/2017 and 31/10/2018 which are as per the Layout Sanction and Building permission No. CC/0149/17 dated 21/4/2017 granted by PMC. Thereafter, the PP has applied on 03/8/2018 for amendment in the said EC dated 17/10/2016 based on Plan Approval No. CC/0909/18 dated 03/7/2018. Subsequent Plinth Certificates have been obtained by PP on 10/7/2020 which is based on Building Permission No. CC-2866/19 dated 14/2/2020 granted by PMC.***

During the visit on 05/10/2021, the committee observed that project is under construction and there was no occupancy.

Details of the building configuration and total built up area mentioned in the aforesaid ECs, Sanction/Building Permissions and construction status are given in Table 1 below:

Table1: Details of the building configuration and total built up area mentioned in ECs, Sanction/Building Permissions and construction status

Sl. No	Particulars (↓)	Building Configuration	Total Built up Area
1	Layout Sanctioned and Building Permission No. CC/2456/14 dated	• Building C1,C2,C3-P+6 • Building C4,C5,C6,C7,C8,C9-P+5 • Building A1 (LIG & MIG)-P+5 • Building B1 (LIG & MIG)-P+5	FSI- 16656.22 Sq.m Non FSI-4542.27 Sq.m
2	EC dated 17.10.2016 granted by SEIAA	Applicable IOD/IOA/Concession document or any other form of document as stipulated at Sl. No. 9 of the table at para 2 of the EC- Sanction No. 2456/14 dated 17/11/2014***** Configuration as stipulated at Sl. No. 17 of the table at para 2 of the EC: 1. Residential: 3 no of building Bldg A: G+P1+P2+P3+Podium+20 Bldg B: G+P1+P2+P3+Podium+20 Bldg C: G+P1+P2+P3+Podium+20 2. Commercial Building: NA 3. Club House: G+1 4. EWS bldg: P+11	FSI area (sq. m.): 26,547 .87sq.m + EWS built up: 2823.04 sq.m= 29,370.91 sq.m Non FSI area (sq. m): 49,256.80 sq.m. Total construction BUA area (sq.m.): 78,627.71 sq.m.
3	Layout Sanctioned and Building Permission No. CC/0149/17 Dated 21/04/2017granted by PMC	• Building A and B-B1+B2+P1+P2+PODIUM+ 20 • Building C-B1+B2+P1+P2+PODIUM+ 14 • Building D- (EWS)- P+11 • Club House-G+1	FSI- 37693.55 Sq.m Non FSI-47481.03 Sq.m.
4	IOD No.CC/0909/18 Dated 03/07/2018 granted by PMC	• Building A,B,C-B1+B2+P1+P2+PODIUM+ 26 • Two Meditation Hall–GF • Building E-P+11 • Building D (EWS)-P+11 • Club House –G+1	FSI-50641.85 Sq.m Non FSI-74222.80 Sq.m

5	Amendment EC dated 25.03.2020 granted by SEIAA	Building configuration has not been stipulated in the EC but Specific Conditions No. V of the EC stipulates that the EC for - FSI: 50641.85 m2, Non-FSI: 74222.80 m2 and Total BUA: 124864.65 m2 (Plan Approval no-CC/0909/18, dated-03.07.2018)	
6	Building Permission No.CC/2866/19dated 14/02/2020	• Building A,B-B1+B2+P1+P2+PODIUM+ 20 • Building C-B1+B2+P1+P2+PODIUM+ 13 • Two Meditation Hall–GF • Building D (EWS)-P+11 • Club House –G+1	FSI-37704.11 Sq.m Non FSI-47158.55 Sq.m
7	Building Permission No.CC/0072/20 dated 11/06/2020 granted by PMC	• Building A,B-B1+B2+P1+P2+PODIUM+ 26 • Building C-B1+B2+P1+P2+PODIUM+ 3 • Two Meditation Hall–GF • Building D (EWS)-P+11 • Club House–G+1	FSI-37479.61 Sq.m, Non FSI-47224.39 Sq.m
8	Status of construction as on 06.10.2021 as informed by PMC per CC/0072/20 dated 11/06/2020 Building Permission	• Building A-B1+B2+P1+P2+PODIUM+26 Floor Slab Completed • Building B- B1+B2+P1+P2+PODIUM+26 Floor Slab Completed • Building C- Work in progress (Excavation for footing is completed and footing work has begun). • Building D (EWS)-P +11 Floor Slab Completed other Work in progress • Club House-(G+1) – Building Completed	**Total Built up Area Constructed = 66,967.84 Sq.m**

**The Sanction No. 2456/14 dated 17/11/2014 stipulated in the EC is Layout and Building Permission issued by PMC.*

Copy of the said EC dated 17.10.2016 and Amendment EC dated 25.03.2020 are given at ***Annexure-II.***

(b) The EC dated 17.10.2016 has been granted w.r.t. Layout Sanctioned and Building Permission vide No. CC/2456/14 dated 17.11.2014 (as at Sl. No. 9 of the table at para 2 of the EC dated 17/10/2016) and the said EC also stipulates nos. of buildings, their configuration and total built up area (as at Sl. No. 17 and 14 of the table at para 2 of the EC dated 17/10/2016).

The building configurations and total built up area in the said stipulated Layout Sanctioned and Building Permission dated 17/11/2014 doesn't match with the nos. of buildings, their configuration and total built up area which have also been stipulated separately in the said EC dated 17/10/2016 (please refer Sl. No. 1 and 2 of the Table 1 above).

(c) The minutes of 46th meeting of State Expert Appraisal Committee–III (SEAC-III), Maharashtra, held during April 25-29, 2016, records that "PP informed that they have obtained full potential sanction."

Relevant part of minutes of subsequent103rdmeeting of the SEIAA Maharashtra held during June 26 – July 02, 2016, wherein SEIAA decided to grant the said EC dated 17/10/2016 under Item No. 49 of the said meeting, is reproduced as below:

"In 103rd meeting of SEIAA, it was observed that PP has submitted IOD vide No. 5/4448 dated 31.03.2015 for a built-up

area of 78627.71 sq.m. The project proposal was discussed on the basis of the consolidated statement, compliance of the issues raised by SEAC-III submitted by PP, layout plan, floor plan, location of environmental infrastructures like STP, RWH, SWM, Disaster management plan, parking plan etc. It was noted that the SEAC III had recommended the proposal to SEIAA.

After detail deliberation, while agreeing with the stipulations as recommended by SEAC III in its 46th meeting and compliance submitted by PP, the SEIAA decided to grant Environmental Clearance for the built up area subject to the following conditions :-

i. The EC is granted as per the IOD approved by the Pune Municipal Corporation (PMC) and if there is any change in the total built-up area/construction area, configuration of the building, location of environmental parameters etc., in the sanctioned plan, the project proponent shall approach SEIAA for amendment of environmental clearance.

…"

Copy of the aforesaid minutes of 46th meeting of State Expert Appraisal Committee-III (SEAC-III), Maharashtra, held during April 25-29, 2016 and minutes of 103rd meeting of the SEIAA Maharashtra held during June 26 – July 02, 2016are given at ***Annexure-III.***

W.r.t. the aforesaid IOD vide No. 5/4448 dated 31.03.2015 mentioned in the minutes of SEIAA and SEAC-III, PMC vide email dated 29.10.2021 and 01/11/2021 has informed that the same is a letter given for total permissible FSI without building configuration and no layout is sanctioned. Copy of the said letter No. 5/4448 dated 31.03.2015 issued by PMC is given at ***Annexure -IV.*** *Thus, PMC letter No. 5/4448 dated 31.03.2015 does not include non-FSI, total built up area and building configuration and may not be full potential sanction/layout sanction/IOD. It may also be seen that the total FSI area stipulated in the EC dated 17/10/2016 is 29,370.91 sq. m. which is higher than the permissible FSI27,355.94 sq. m. mentioned in the said PMC letter dated 31/3/2015.*

Considering that the EC dated 17/10/2016 outlines building configuration, FSI & Non-FSI area and total built up area and there may have been an error in referring Sanction No. 2456/14 dated 17/11/2014in the said EC dated 17/10/2016 in place of the said PMC letter dated 31.03.2015, the committee observes that the PP has not informed SEIAA about such error upon receipt of the said EC dated 17/10/2016.

Thus, PP may have misrepresented the SEAC and SEIAA by informing that they have obtained full potential sanction/IOD whereas PP was granted only total

permissible FSI without building configuration and non-FSI or full potential sanction/IOD/Layout Sanction. This reveals that the PP had not obtained full potential sanction/IOD/Layout Sanction for seeking the EC of proposed nos. of buildings, building configurations, non-FSI area and total built up area as granted vide EC dated 17/10/2016 though the project has been appraised for the same as is evident from aforesaid minutes of meeting of SEAC-III and SEIAA given *at* ***Annexure-III.***

(d) Plinth check certificates dated 18/5/2017, 03/11/2017 and 31/10/2018 have been obtained only for building A, B and D (EWS) prior to amendment EC dated 25/3/2020. These Plinth check certificates have been issued based on Layout Sanctioned and Building permission No. CC/0149/17 dated 21/4/2017 which are same to that of building configuration mentioned in the EC dated 17/10/2016 except that the configuration "G+P1+P2+P3+Podium+nos. of floors" for building A, B and C have been changed to "B1+B2+P1+P2+PODIUM+ nos. of floors" (please refer Sl. No. 2 and 3 of the Table 1 above).

PMC vide email dated 01/11/2021 has informed that there is error in terming the aforesaid building configurations as "B1+B2+P1+P2+PODIUM+nos. of floors" in their Layout Sanctioned and Building permission No. CC/0149/17 dated 21/4/2017 whereas the same are "G+P1+P2+P3+Podium+nos. of floors" as have been stipulated in EC dated 17/10/2016 taking into account the natural contour, definition of basement given under Unified Development Control and Promotions Regulation[4]for Maharashtra State and PMC site visit on 23/10/2021. However, there is partial basement in building A as B1 while B2+P1+P2+PODIUM of building A are above ground level. The email dated 01/11/2021 as received from PMC in this regard is given at ***Annexure-V.***

Based on clarification given by PMC, as above, it may be concluded that no basements have been excavated w.r.t. EC dated 17/10/2016 as well as amendment EC dated 25/3/2020 except one partial basement as B1 in building A and that there is error in building configuration given in the said ECs and Layout Sanctioned and Building permissions/IOD granted by PMC.

The EC dated 25/3/2020 as amendment in EC dated 17/10/2016 has been obtained by the PP based on the IOD No. CC/0909/18 dated 03/7/2018 issued by PMC*. Thereafter, Plinth Check certificate dated 10/7/2020 has been granted by PMC to the PP based on Building permission No. CC/2866/19 dated 14/2/2020.* ***It may be observed that building configuration in amendment EC dated 25/3/2020 is similar to that of building configuration in EC dated 17/10/2016 except the aforesaid one basement***

[4] As per definition under UDCPR, ""Basement" means the lower storey of a building below or partly below the ground level with one or more than one levels." Similar definition has also been laid down under Development Control and Promotions Regulations for PMC (DCPR-2017).

in building A and that nos. of floors have increased from 20 to 26 and two Meditation Halls and another building E (P+11) have been added (please refer Sl. No. 2, 4, 5 and 6 of Table 1 above).

The Meditation Halls and building E (P+11) are yet to be constructed. PMC vide email dated 01/11/2021 has informed that buildings are currently under construction as per Building Permission dated 11/6/2020 and the said Building Permission is in conformation to that of IOD issued dated 03/7/2018 for which amendment EC dated 25/3/2020 is granted. There is no deviation in terms of built up area. The total built up area constructed as on 06/10/2021 is 66,967.84 sq. m. against the total built up area granted vide amendment EC dated 25/3/2020 of 1,24,864.65 sq. m. Details of the same are given at Sl. No. 8 of the Table 1 above.

B. Compliance of Consent required under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981

PMC has informed that as per letter dated 08/11/2016, the PP has conveyed that the development work has started from 08/11/2016. Copy of the said letter dated 08/11/2016 is given at Annexure VI.

The PP has made application dated 23/11/2016 to MPCB for Consent to Establish (CTE) under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. Official of MPCB visited the site on 13/12/2016 and observed that excavation work of one building is completed and foundation civil work and compound wall are in progress. Further, sample flat is ready and site office is completed on site.

***MPCB issued show-cause notice dated 16/9/2017 for refusal of Consent to Establish as PP has commissioned construction works without CTE from MPCB. Thereafter, CTE was refused by MPCB vide letter dated 02/4/2018 citing that the PP failed to reply to the said show-cause notice and started construction work without CTE. Copy of the said show cause notice dated 16/9/2017 and CTE refusal order letter dated 02/4/2018 issued by MPCB are given at Annexure** VII.*

The PP made application dated 03/4/2020 for CTE to MPCB. MPCB official during site visit on 10/8/2020 observed that construction activity is in progress. Tower A and B are completed for RCC work for 04 parking + Podium + 18 floors. Excavation work is in progress in Tower C. 10th floor slab for EWS building is in progress. MPCB issued CTE to the PP on 05/2/2021. Copy of CTE dated 05/2/2021 is given at Annexure VIII.

The above reveals that the PP started development/construction work of the project without CTE from MPCB and violated provisions under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air (Prevention and Control of Pollution) Act,

1981 from the day of start of construction i.e. 08/11/2016 till CTE obtained on 05/2/2021. Obtaining CTE before start of any construction work at site was also one of the "General Conditions for Pre-Construction Phase" laid down under the EC dated 17/10/2016.

3. CONCLUSIONS

(1) The observations, as given at para 2(A) above, reveal that:

(a) PP may have misrepresented the SEAC and SEIAA by informing that they have obtained full potential sanction/IOD whereas PP was granted only total permissible FSI vide PMC's Sanction No. 2456/14 dated 17/11/2014 which doesn't specify building configuration and non-FSI. Thus, the PP had not obtained full potential sanction/IOD/Layout Sanction for seeking the EC dated 17/10/2016 of proposed nos. of buildings, building configurations, FSI & non-FSI area and total built up area as granted vide EC dated 17/10/2016 though the project has been appraised for the same as is evident from aforesaid minutes of meeting of SEAC-III and SEIAA given at Annexure III. Further, PP has not approached SEIAA upon receipt of the said EC dated 17/10/2016 for error, if any, in citing Sanction No. 2456/14 dated 17/11/2014 at Sl. No. 9 of para 2 in the said EC.

(b) The project has been constructed as per building configuration and total built up area as appraised by SEAC and granted by SEIAA and as stipulated at Sl. No. 9 of para 2 in the said EC dated 17/10/2016 except one basement in building A as B1 has been constructed for which prior EC was not granted. Subsequent to the said EC dated 17/10/2016, there has been error in stipulating building configuration as "B1+B2+P1+P2+PODIUM+nos. of floors" in the subsequent Layout Sanctioned and Building permissions/IOD granted by PMC as well as in the amendment EC dated 25/3/2020 thereto instead of "G+P1+P2+P3+Podium+nos. of floors" and there does not exist basements except one partial basement as B1 in only building A, as informed by PMC. However, construction of the aforesaid one basement in building A is evident prior to amendment EC dated 25/3/2020 as the Plinth Check Certificate for building A had already been obtained from PMC on 18/5/2017. EC for the said basement was not obtained vide EC dated 17/10/2016. Thus, there is violation of EC dated 17/10/2016 as well as prior EC requirement and that EC dated 25/3/2020 has been obtained as amendment to the said EC dated 17/10/2016 instead of declaring the said violation and also not declaring the said violation while making application dated 03/8/2018 for amendment in the EC dated 17/10/2016 based on which EC dated 25/3/2020 was granted.

(c) The project is currently under construction as per amendment EC dated 25/3/2020. There is no deviation in terms of built up area. The total built up area constructed as on 06/10/2021 is

66,967.84 sq. m. against the total built up area granted vide amendment EC dated 25/3/2020 of 1,24,864.65 sq. m. Details of the same are given at Sl. No. 8 of the Table 1 above.

(2) The observations, as given at para 2(B) above, reveal that PP started development/construction work of the project from 08/11/2016 without obtaining CTE from MPCB. The CTE is required under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air (Prevention and Control of Pollution) Act, 1981. Upon non-response by PP to MPCB's show-cause notice dated 16/9/2017, MPCB issued CTE refusal vide letter dated 02/4/2018. However, the construction work progressed in violations of provisions the said Acts as per site visit reports of MPCB official on 13/12/2016 and 10/8/2020 and also taking into account of plinth completion certificates dated 18/5/2017, 03/11/2017, 31/10/2018 and 10/7/2020 issued by PMC. Obtaining CTE before start of any construction work at site was also one of the "General Conditions for Pre-Construction Phase" laid down under the EC dated 17/10/2016.

4. APPROACH FOR ENVIRONMENTAL COMPENSATION AND REMEDIAL MEASURES FOR PRIOR ENVIRONMENTAL CLEARANCE (EC) VIOLATION

Notification no. SO 804(E) dated 14.3.2017 on procedure to be adopted for dealing with the prior Environmental Clearance (EC) violation cases were issued by Ministry of Environment, Forest and Climate Change (MoEF&CC) under the Environment (Protection) Act, 1986 giving 06-month amnesty window for such proponents who have violated the EC regulations. These violations were primarily related to initiating the project work or carrying out the project activities without obtaining the mandatory EC. The cases of such proponents were to be assessed and the project constructed at a site were affirmative which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards. In case, where the finding of the Expert Appraisal Committee is negative, closure of the project were recommended along with other actions under the law. Such affirmative projects were also to be appraised with implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

The project proponent were required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification were to be recommended by State Expert Appraisal Committee (SEAC) and finalised by State Environmental Impact Assessment Authority (SEIAA) as per the aforesaid notification dated 14/3/2017 and subsequent notification dated 08/3/2018 issued by MoEF&CC. The bank guarantee were to be deposited prior to the grant of environmental clearance and to be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after the

recommendation by regional office of the MoEF&CC, SEAC and approval of the SEIAA.

In view of the above notifications, a committee was constituted (constituting Ex. Expert Member, NGT; members of SEIAA and SEAC for Maharashtra and advocate) in Maharashtra for evaluation process to evolve uniform guidelines to deal with the cases of violations under the chairmanship of Chairman, SEIAA, Maharashtra and submitted its report to the Department of Environment, Govt. of Maharashtra. After due consultation with stakeholders in a round table workshop, the Department of Environment (DoE) and SEIAA Maharashtra decided to follow the provisions of MoEF&CC notification dated 14.03.2017 as per the report submitted by the committee. Copy of the "Approach for the said Assessment for Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory Environmental clearance (Violation Cases)" decided to be followed by the DoE and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 is available at https://www.ecmpcb.in/login/download_ec_document/QjAwN0E4NkZDM0I2NDY4Mzk3QzUxOEVCQURGNzlGOTcucGRm

The aforesaid notification of MoEF&CC was, however, applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on Hon'ble court direction from 14.03.2018 to 13.04.2018.

Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. & Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority & Ors., vide order dated 03.06.2021 held that "(...) for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process".

Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that"...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country".

In compliance to the directions of the Hon'ble NGT, a Standard Operating Procedure (SoP) for dealing with violation cases were issued by the MoEF&CC vide Office Memorandum F. No. 22-21/2020-IA.III dated 07/7/2021. The SoP outlines similar features of implementation of environmental management plan based on remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance to that of earlier notification dated 14.3.2017 but with some changes.

However, in the matter of Fatima vs The UOI, WP(MD) No.11757 of 2021, Hon'ble Madurai Bench of Madras High Court (Special Original Jurisdiction) vide order dated 15/07/2021 has ordered an interim stay on the said SOP.

In view of the aforesaid interim stay on the SoP for dealing with violation cases issued by the MoEF&CC, the aforesaid approach adopted by SEIAA Maharashtra for dealing with EC violations cases may be considered. Salient features of the said Department of Environment (DoE) and SEIAA Maharashtra adopted approach paper are as below:

(i) It is in line with MoEF&CC Notification dated 14/03/2017 applicable for 06-month amnesty window for such proponents who violated prior Environmental Clearance (EC) requirement and takes into account of ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan preparation & implementation thereto for building construction projects violation cases.

(ii) Environmental damage cost assessment considering various project related attributes (air pollution, water pollution, soil environment, noise & vibration, green belt and Occupational Health & Safety) and their recurring & non-recurring cost.

(iii) Assessment of economic benefits derived due to violation inclusive of the following:

(a) costs saved or/and not taking appropriate environmental protection measures and also, the benefits derived by going ahead with project to gain commercial gains. The same have been considered as 10% of Ready reckoner cost of the construction under violation if it is already occupied (fully or partially) or reasonably in advance stage of completion (more than 50%). In case, the construction is still not in advance stage of completion (less than 50%) and no occupation is given, then the benefits can be taken as 5% of the Ready reckoner cost for the construction in violation;

(b) environmental track record of the project proponent of Rs. 10,00,000/- (Rs. Ten lakhs) for each of earlier or similar other environment clearance violation in other projects being developed by project proponent and/or any one of its directors.

(iv) Preparation of remediation plan and natural and community resource augmentation plan as Environmental management plan (EMP) equivalent to the above-mentioned environmental damage cost and economic benefits, as at (i) and (ii) above, or the amount equivalent to the CER amount as per the MOEF&CC's office Memorandum No: F NO 22-65/2017-IA-III

dated 01/05/2018, whichever is higher. Areas identified for resource allocation through such EMP cost are as below:

Sr No	Description Activity	% Allocation	Implementing Agency	Remarks
1	Afforestation (can include Plantation garden development)	25	Social Forestry & Local Body	The afforestation Can be either Through social forestry or the Local body. Preferably within 50 km from project site
2	Water conservation program (Jalyukt shivar, etc)	25		Preferably within 50 km radius of project site
3	Urban environment and Sanitation (can include Swatccha Bharat, playground development, urban ground-water recharge schemes etc)	20	Local body	
4	Sewerage lines and STP, solid waste Management	20	Local Body	
5	Urban air/noise pollution control initiatives	10	Local Body	

(v) The assessment of above mentioned environmental damage cost and economic benefits and preparation of remediation plan and natural and community resource augmentation plan as environmental management plan (EMP) to be prepared as an independent chapter in the environment impact assessment report by the consultants duly recognised by NABET (National Accreditation Board for Education and Training) while seeking grant of environmental clearance. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or an environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment.
The SEAC will prescribe a specific Terms of Reference for the project on assessment of the above plans.

(vi) The cases of violation will be appraised by SEAC with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of

environmental norms with adequate environmental safeguards; and in case, where the finding of the SEAC is negative, closure of the project will be recommended along with other actions under the law.

(vii) The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

(viii) The project proponent will submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with Maharashtra Pollution Control Board (MPCB) and the quantification will be recommended by SEAC Committee and finalized by SEIAA and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the said plans, and after the recommendation by regional office of the MoEF&CC, SEAC and approval of the SEIAA.

(ix) With regard to implementation of the aforesaid EMP, the project proponent will be required to deposit such apportioned funds of the EMP with concerned authorities and the confirmation of deposit of such funds will be the compliance of such EMP efforts at the project proponents end. Still however, he needs to get engaged with concerned departments to ensure that the amount is effectively spent in time bound manner.

The outer limit for execution of the projects could be maximum 2 years, and if any amount still remains unspent then the same will be reverted back to DoE by concerned department which can conduct specific state level programs form such funds.

5. APPROACH FOR DAMAGES (in addition to the environmental compensation as given at para 4) FOR CONTRAVENING MANDATORY PROVISIONS OF ENVIRONMENTAL LAWS

In the matter of Civil Appeal NO. 10854 OF 2016; M/s Goel Ganga Developers India Pvt. Ltd. Versus Union of India & Ors. the Hon'ble Supreme Court vide order dated 10/8/2018 upheld Rs. 05 crores on project proponent as levied by the Hon'ble NGT for contravening mandatory provision of Environment Laws and for not obtaining the consent from the Board. Vide para 57 of the said Hon'ble Supreme Court order, it has been directed that "(...)The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws."

"Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund" outlines a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies listing the instances for taking cognizance of cases fit for violation and levy environmental compensation. The same has also been referred by the Hon'ble NGT in its order (para 14 to 16) dated 28/8/2019 in the matter of Original Application No. 593/2017 titled

Paryavaran Suraksha Samiti & Anr. Versus Union of India & Ors. The instances considered for levying Environmental Compensation (EC) in the said report are:

a) Discharges in violation of consent conditions, mainly prescribed standards / consent limits.
b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
d) Accidental discharges lasting for short durations resulting into damage to the environment.
e) Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.
f) Injection of treated/partially treated/ untreated effluents to ground water.

Though such listed instances may not be directly applicable in the current matter for arriving at the damages amount (in addition to the environmental compensation as given at para 4) for contravening mandatory provisions of environmental laws (w.r.t. starting construction without CTE and obtaining EC after construction of one basement), an attempt is being made by this committee to assess the environmental compensation using the formula prescribed in the said CPCB report which may be taken as damages amount for contravening mandatory provisions of environmental laws. The formula takes into account of number of days violation took place, pollution index of unit, scale of operation, location factor based on population and an amount factor in Rupees.

Environmental Compensation (EC) in Rupees as mentioned in the aforesaid CPCB report = PI x N x R x S x LF

Where,

PI = Pollution index of the project. Considering that the activity falls under Orange category during construction phase as it may not discharge waste water more than 100 KLD, hence PI = 50

N = Number of days violation took place.

R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. The aforesaid report also suggests to consider R as 250, as the Environmental Compensation in cases of violation. Hence, R = 250.

S = Factor for the scale of operation. The unit being LSI, S=1.5

LF = Location factor, since the population of Pune is more than 1 Million but less than 5 Million, LF=1.25

Considering the period since start of development/construction till the date of application for CTE on which the same was granted on 05/2/2021 by MPCB (i.e. 08/11/2016 till the date of CTE application made on 03/04/2020), N - the number of days violation took place, comes out to be 1,242 days.

Therefore, Environmental Compensation (EC) in Rupees

= 50 x 1242 x 250 x 1.5x 1.25

= ***Rs. 2,91,09,375/- (Rupees Two Crores Ninety One Lakhs and Nine Thousands Three Hundred Seventy Five Only)***

Per day Environmental Compensation (EC) comes out to be Rs. 23,437.5/- (Rupees Twenty Three Thousand Four Hundred Thirty Seven and Five Paise)

6. <u>RECOMMENDATIONS</u>

In view of the aforesaid violations of:

(i) obtaining EC dated 25/3/2020 after construction of one basement in building A of the project for which prior EC was not obtained;

(ii) misrepresenting SEAC and SEIAA Maharashtra about obtaining full potential sanction during grant of EC dated 17/10/2016 and not approaching SEIAA thereafter too, and;

(iii) constructing the project without obtaining CTE required under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 which was also one of the pre-phase construction conditions stipulated in EC dated 17/10/2016;

The committee recommends that SEIAA Maharashtra may proceed for estimating & implementing Environmental Management Plan (EMP) cost as environmental compensation amount following the approach paper adopted by DoE and SEIAA Maharashtra vide SEIAA letter SEIAA-2018/CR-150/SEIAA dated 30/1/2019 for the "Assessment for Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory prior EC". The said approach paper also outlines preparation of remediation plan and natural and community resource augmentation plan equivalent to the said EMP cost taking into account of ecological damage and economic benefit derived due to violation. Areas identified for resource allocation through such EMP cost are Afforestation; Water conservation program; Urban environment and sanitation; Sewerage lines and STP, solid waste management, and; Urban air/noise pollution control. Details of the same including estimation and implementation procedures thereto are given under para 4 of this report.

In addition to the above, Rs. 05 crores or Rs. 2,91,09,375/- (Rupees Two Crores Ninety One Lakhs and Nine Thousands Three Hundred Seventy Five Only), as derived under para 5 of this report, as deemed fit by the Hon'ble NGT, may also be added in the said environmental compensation or EMP cost as damages for contravening provisions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, prior EC requirement notified under the Environment (Protection) Act, 1986 and one of the pre-phase construction conditions stipulated in EC dated 17/10/2016."

Today's consideration and final order

7. We have heard learned Counsel for the appearing parties, perused the records and considered the matter. None appears for the PP even though according to learned counsel for the appellant, complete set of papers have been served on the PP and there was a direction of this Tribunal to provide a copy of the report by the Committee to enable the PP to respond. The Appellant has filed a written statement as follows:-

> ***"****5. That the appellant have filed his comments cum objections to the Joint Committee Report vide its affidavit dated 18.04.2022 and also served the copy to all the respondents on same day along with PP including the joint Committee report and therefore this Appellant have complied the Order dated 24.05.2022 of this Hon'ble Tribunal.****"***

8. The report shows that "**the committee carried out site visit of the construction project- "Gangadham Towers" by M/s Goel Ganga Developers (I) Pvt. Ltd. at S. No. 578/2, Bibwewadi, Tal.-Haveli, Dist.-Pune on 05/10/2021. Smt. Harshada Shinde, Executive Engineer, Pune Municipal Corporation (PMC) and Shri Atul Jayprakash Goyal, Managing Director, along with his representative from M/s Goel Ganga India Pvt. Ltd., were also present during the site visit**."

9. Accordingly, learned Counsel for SEIAA, CPCB and State PCB submit that principles of natural justice for opportunity to the PP are fully complied even if it has chosen not to appear. The Tribunal may proceed against the PP *ex-parte* and to take further decision in the matter on merits as per law. We see no reason to defer the matter further in these circumstances.

10. From the report of the joint Committee, it is seen that the PP has misrepresented to the SEIAA and SEAC of having obtained full potential sanction/IOD whereas PP was granted only total permissible FSI and thus EC has been obtained without complete disclosure. The PP also failed to

obtain CTE from State PCB before commencing the project, as required in terms of EC conditions. Show-cause notice was given to the PP by the PCB and CTE was refused. The conclusions of the Committee with regard to these violations are based on record and we see no reason not to accept the same and proceed on that basis. **We thus hold that the PP has proceeded to construct the project without valid EC and in terms of judgements of the Hon'ble Supreme Court inter-alia in *Alembic Chemicals v Rohit Prajapati* and *Keystone developers v. Anil Tharthare*, in place of directing demolition of the project, the PP has to be required to pay compensation for restoration of the environment.**

11. The report refers to SOP issued by MoEF&CC on 07.07.2021 but it is incorrectly mentioned that it is on the direction of this Tribunal vide order dated 03.06.2021 in *Dastak N.G.O v. Synochem Organics (Supra).* The approach paper of SEIAA is also referred to suggesting that 10% of the project cost be recovered in case the project is completed and 5% where the project is not completed in case there is violation of prior EC. In respect of violation of taking CTE, the Committee has referred to order of the Hon'ble Supreme Court approving damages of Rs. 5 Crore and also referred to a formula of CPCB for calculation of compensation based on the number of days of violation.

12. We are of the view that approach of the Committee in this regard is mechanical and not sound. Basis for compensation is restitution principle based on cost of restoration of damage with deterrent element as per financial capacity. Certain percentage of turnover can also be the basis depending on nature of violation. This is settled inter alia in the judgements of Hon'ble Supreme Court *inter alia* in *MC Mehta, (1987) 1 SCC 395, Sterlite (2013) 4 SCC 575 and Goel Ganga (2018) 18 SCC 257.* The

Committee has suggested compensation of Rs. 5 crores or Rs. 2,91,09,375/- as alternative for violation in obtaining CTE and further compensation based on approach paper of SEIAA dated 30.01.2019, i.e. equivalent to EMP cost considering factors like - Afforestation; Water conservation program; Urban environment and sanitation; Sewerage lines and STP, solid waste management, and Urban air/noise pollution control. It has been clearly found in the present case that EC was obtained after part construction of the project, there was misrepresentation by the PP and construction of the project was without requisite CTE. In respect of violation in proceeding without CTE, compensation has been assessed at Rs. 5 crores or Rs. 2,91,09,375/- and for the remaining, the assessment of cost has been left to SEIAA or this Tribunal. The project cost in the present case is said to be Rs. 250 crores.

13. Having regard to the entirety of facts and circumstances pointed out above, we determine the total compensation payable by the PP at Rs. 10 crores which may be spent on restoration of environment by preparing an appropriate Environmental Restoration Plan by joint Committee comprising of CPCB, State PCB, SEIAA Maharashtra, and District Magistrate, Pune. The Environment Restoration Plan may be prepared within one month and executed within six months in the manner which may be determined by the joint Committee. The State PCB will be the nodal agency for coordination and compliance. The compensation may be paid by the PP within one month and deposited with the State PCB to be kept in a separate account for restoration of environment as directed above.

14. We also note that an affidavit has been filed by the SEIAA Maharashtra to the effect that it is streamlining shortcomings in its procedure. We take the affidavit on record without making any comments for the time being.

15. In view of above discussion, though the impugned EC is illegal being ex post facto, applying the doctrine of proportionality, the same is upheld subject to payment of compensation determined above for restoration of environment. The appeal succeeds to this extent.

A copy of this order be forwarded to the CPCB, State PCB, SEIAA Maharashtra, and District Magistrate, Pune by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

May 04, 2022
Appeal No. 32/2020(WZ)
AB

Item No. 03 (Court No. 1)

BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH

(By Video Conferencing)

Appeal No. 34/2020(WZ)
(I.A. No. 56/2021)

(With report dated 03.12.2021)

Mr. Tanaji B. Gambhire Appellant

Versus

Chief Secretary GOM & Ors. Respondent(s)

Date of hearing: 04.05.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Appellant: Mr. Nitin Lonkar, Advocate

Respondent: Mr. Anirudha Kulkarni, Advocate for CPCB & SEIAA
Ms. Manasi Joshi, Advocate for R - 6

ORDER

The Issue – case of the Appellant

1. This appeal has been preferred against order of SEIAA, Maharashtra dated 31.03.2020 granting Environmental Clearance (EC) for the construction project "Ganga Altus" at Sr. No. 22/2 P. Plot B1, Kharadi, Pune, by the project proponent (PP) M/s Goel Ganga India Private Limited. The construction project in question is on plot area 13,652.42m^2 with FSI 34,804.98m^2 and non-FSI 32,898.07 m^2. Building configuration is as follows:-

Building Name	***Number of floors***	***Height (Mtrs.)***

Wing D	*LG+GR+P1+P2+P3+P4+P5+24 Floors*	*95.7*
Wing E	*LG+GR+P1+P2+P3+P4+P5+24 Floors*	*95.7*
Wing F	*LG + GR + 4*	*18.90*
Club House	*G+1*	*6.45*

2. Grievance in this appeal is that originally EC was granted on 19.09.2008 for office building and hotel for 40 rooms having total plot area of 20072 sq. m., total BUA of 38586 sq.m. but the PP changed the scope of the project in violation of the EC and raised construction. In the changed project, there is structure of 3 residential buildings with 232 flats and 68 shops with total BUA of 37975 sq. m., having total water requirement of 167 KLD, waste water generated from complex will be 150 KLD, solid waste generated will be 631 KGPD (Dry=263 KGPD & wet=368 KGPD), total parking 656 scooters and 528 cycles and further sought expansion by way of EC dated 31.03.2020 under challenged of Plot B1 having the structure of 3 residential buildings with 384 flats, 29 shops and 5 offices with total BUA of 67703.05 sq. m. having total water requirement of 323 KLD, waste water generated from complex will be 262 KLD, solid waste generated will be 1055 KGPD (Dry=441 KGPD & wet=614 KGPD), total parking 653 cars, 993 scooters and 64 cycles and sought *ex-post facto* EC.

3. It is submitted that the construction project is illegal being without the mandatory prior EC. E*x-post facto* EC is not substitute for prior EC as evaluation of impact on environment cannot be fully gone into as held by the Hon'ble Supreme Court in the case of the same PP viz. *Goel Ganga Developers India Pvt. Ltd. v UOI*[1]. There are further judgements of the Hon'ble Supreme Court to the same effect in *Alembic Chemicals v Rohit Prajapati*[2] and *Keystone Realtors Private Limited v. Anil V. Tharthare &*

[1] (2018) 18 SCC 257
[2] 2020 SCC OnLine SC 347

Ors.[3]. If the construction project is without prior EC, the project has either to be demolished or if it is found that environmental damage can be restored, the project can be permitted on payment of assessed compensation on polluter pays principle which needs to be spent for restoration of the environment. The authorities have thus failed to follow the binding law.

Procedural history – independent ascertainment of facts

4. The matter was earlier considered on 24.05.2021 and the Tribunal constituted a joint Committee to furnish a factual report in the matter. The Tribunal also observed that SEIAA, Maharashtra was not taking adequate remedial action against the continuing violations in construction projects being completed and EC being granted ex-post facto, without taking action against such violations for ensuring enforcement of law.

5. The operative part of the order is reproduced below:-

> *"4. Since we are coming across the grievance of continuous violation of environment norms in construction projects being completed without prior EC and the SEIAA, Maharashtra is neither requiring demolition nor payment of assessed compensation to comply with the rule of law and protection of environment, it will be appropriate to require the SEIAA, Maharashtra to review its working in the light of the judgments of the Hon'ble Supreme Court and violations frequently being alleged, including the present case. A proper SOP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SOP to all SEIAAs in the country. In this regard, we may refer to the directions in the earlier order of this Tribunal dated 1.2.2021 in OA 837/2018, Sandeep Mittal vs. MoEF, wherein it was inter-alia, directed:*
>
> > *"**MoEF&CC may give due attention for proper constitution of SEIAAs in the States to ensure the projects of category 'B' and 'B-1' are properly scrutinized."***
>
> *The MoEF&CC may file its action taken report in the matter before the next date.*

[3] (2020) 2 SCC 66

5. We also constitute a joint Committee of MoEF&CC, CPCB, and Maharashtra State PCB to look into the present matter and suggest a remedial action plan for the present case, including the quantum of compensation to be recovered, as far as possible within three months. The CPCB and State PCB will be nodal agency for coordination and compliance. Another connected matter between same parties for a different project being Appeal No. 32/2020(WZ) is also being dealt with by a separate order today and this direction will also apply to the said case. Infact, to avoid duplication if the SEIAA, Maharashtra itself reviews all such cases, to avoid unnecessary and repeated litigation. The Committee may conduct proceedings online but if possible, visit the site. The Committee may also interact with the concerned parties. The report of the joint Committee may be filed by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF before the next date. While submitting the report to this Tribunal, a copy of the report thereof be also forwarded to the PP and the applicant who may file their comments, if any, before the next date by e-mail."

Report of the Committee dated 3.12.2021

6. In pursuance of above, a report has been filed by the joint Committee dated 03.12.2021. The Committee prepared a questionnaire for securing information from the concerned authorities and also undertook visit to the site on 12.10.2021. The Committee has found that there is violation of requirement of prior EC as the EC earlier granted for a part of the project but the PP went ahead with the project without specifying the complete details. There is further violation of project being commenced without prior CTE and CTO from the State PCB as required under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and also extraction of the ground water without requisite permission of the CGWA. Accordingly, compensation has been suggested for restoration. For not obtaining prior CTE & CTO, suggestion is to levy compensation of Rs. 5 crores on the pattern of order of the Hon'ble Supreme Court dated 10.08.2018 in *Civil Appeal No. 10854 of 2016, M/s Goel Ganga Developers India Pvt. Ltd. Vs. Union of India & Ors.* or on the pattern of the formula based on days of violation at Rs. 6,61,17,190/-. In addition, it is suggested that compensation for violation

of requirement of prior EC and extraction of ground water illegally may be separately assessed.

7. The relevant extracts from the report are:-

"2. <u>OBSERVATIONS AND FINDINGS</u>

A. <u>Plot owned by PP in Survey No. 22/2, Karadi, Pune, and its sub-divisions</u>

PMC vide letter no. ZONE 1/3422 dated 25/10/2021 informed that the PP owned 41,000 sq. m. of land out of 63,000 sq.m. under the Survey No. 22/2, Kharadi, Pune, through Director- Mr. Atul Jaiprakash Goel of M/s Goel Ganga India Pvt. Ltd.

*PP made application dated 22/03/2011 to PMC for subdivision of plot area owned by them and revised subdivision application dated 27/07/2011 to PMC wherein subdivision of their entire plot into two plots because of 30 Meter DP road were proposed under Clause No. 13.0 "Rules for Sub-division land & Layout" of the former Development Control Rules for Pune Municipal Corporation, 1987**.** The said proposal was sanctioned by PMC vide no. DPO/CC/468/11 dated 10/05/2011 and no. DPO/CC/2171/11 dated 21/09/2011 with Plot A-11431.54 m^2, Plot B-18427.87 m^2, 30 meter Development Plan (DP) road 7564.22 m^2 and 45 Meter DP road 3576.37 m^2. The same are also depicted in Table 1 below.*

Table 1: Subdivision details of plot area of 41000 m^2 owned by the PP at Survey No. 22/2, Karadi, Pune

Sl. No.	***Name/component of subdivided area***	***Area***
1.	*Plot A*	*11431.54 m2*
2.	*Plot B*	*18427.87 m2*
3.	*45 meter DP road*	*3576.37 m2*
4.	*30 meter DP road*	*7564.22 m2*
	Total	***41000.00 m2***

*Subsequent to the said subdivision DPO/CC/2171/11 dated 21/09/2011, the plot B has been further subdivided into Plot B & B1 vide DPO/CC/1028/19 dated 06/08/2019 under Clause No. 15.0 "Regulation for land Sub-Division and Layout" of the Development Control And Promotion Regulations for Pune Municipal Corporation (DCPR-2017)**.** In the said Sub-Division, Plot B divided into two plots- Plot B of 4775.45 m^2 and Plot B1 of 13652.45 m^2. The same are also depicted in Table 2 below.*

Table 2: Subdivision details of the subdivided plot B as at Table 1

Sl. No.	Name/component of subdivided area of Plot B	Area
1.	Plot B	4775.45
2.	Plot B1	13652.45
	Total	**18427.87**

Copy of PMC vide letter no. ZONE 1/3422 dated 25/10/2021 in this regard is given at ***Annexure II.***

B. <u>Environmental Clearance (EC) and violations thereto, if any</u>

The project proponent M/s Goel Ganga Developers (I) Pvt. Ltd. has been granted EC by MoEF&CC vide letter No.21-658/2007-IA.III dated 19.09.2008 for total plot area of 20,072.04 sq.m. for "Hotel and Office Building" at Survey No. 22/2, Kharadi, Pune, for construction of office building and a hotel (3 floors) for 40 rooms with a total built up area 38,586.0 sq.m. Copy of the EC dated 19/09/2008 given at ***Annexure III.***

As per section 9 of the notification no S.O. 1533 (E) dated 14/9/2006 related to prior environmental clearance notified under the Environment (Protection) Act, 1986, validity of the said EC dated is 5 years i.e. 18.09.2013.

Though PP claims that the said EC of plot area 20,072.04 sq.m. pertains to Plot B portion of the total plot area of 41000 sq.m. owned by PP. However, MOEFCC, IRO Nagpur office informed vide email dated 12/11/2021 that EC dated 19.09.2008 was granted based on the conceptual plan submitted by the Project Proponent and as per the Form-1 and EIA Report available with the Ministry, the plot area was mentioned as 20072.04 sq.m. Copy of MOEF&CC, IRO Nagpur office email dated 12.11.2021 is given at ***Annexure IV.***

The committee observes that in the said conceptual plan, Form 1 and Form 1A, location of the said 20,072.04 sq.m. in the total Plot area 41,000 sq.m. has not been specified. The EC dated 19.09.2008 has been granted on the proposal at sy. no. 22/2, village Kharadi, Taluka Haveli, district Pune as mentioned in para (2) of the said EC without specifying Part A or Part B or any other description of the 20,072.04 sq.m. within the said total Plot area 41,000 sq.m. In view of the same, the said claim of PP that the EC dated 19.09.2008 pertains to Plot B portion could not be ascertained.

The subdivision of plot area owned by PP into Plot A and Plot B was sanctioned in 2011 followed by subsequent subdivision of subdivided Plot B into Plot B and B1 in 2019, as mentioned in para 2(A) and Table 1 and Table 2 above.

Details of the building configuration and total built up area mentioned in the aforesaid EC dated 19/9/2008 and subsequent

Sanction/Building Permissions, construction status in Plot A, Plot B and Plot B1 and EC status are given in the subsequent paras.

(a) Plot A

As per information provided by PMC vide the aforesaid letter dated 25/10/2021 given at Annexure-II:

1. *First Layout Sanctioned for Plot A of 11,431.54 sq. m. plot area was granted to PP on 10/05/2011 followed by various revised Layout Sanctions and Building Permissions. Details of building configurations, Total FSI & Total Non-FSI and Total Built up Area in the said various Layout Sanctions and Building Permissions are given in Table 3 below.*

2. *PP informed vide letter dated 05/09/2011 to PMC that the development work of building on Survey No. 22/2, Plot-A, Kharadi, Pune, will be commenced on 26/09/2011. Copy of the said letter dated 05/09/2011 submitted by PP to PMC is given at* ***Annexure V.***
3. *PP obtained Plinth Check Certificates dated 06/07/2013 and 03/09/2013 for building B and C which are as per Layout Sanctioned and Building Permission CC/0374/12 dated 07/05/2012 and CC/1388/13 dated 30/07/2013 granted by PMC having total built up area12,822.64 sq.m. and 21,407.28 sq.m. respectively.*
4. *PP has also obtained occupancy certificates in parts from PMC dated 21/08/2015 and 31/10/2015 for building B which are as per Layout Sanctioned and Building Permission CC/1388/13 dated 30/07/2013.*
   Part occupancy certificate dated 28/06/2017 has also been obtained by PP from PMC for Building C which is as per Building Permission CC/2080/15 dated 06/10/2015.

5. *PP made further application vide letter 10594/17 dated 28/06/2017 to PMC for further occupancy certificate upon which PMC came to know that built-up area of the said Plot A is crossing 20,000 m² and PMC issued refusal letter dated 21/08/2017 for the same. It was also informed by PMC that since that date the PP has stopped work on Plot A.*
6. *PMC has further granted full potential layout sanctions dated 22/10/2018 and 30/04/2021 to PP with a condition that PP will start work after getting EC.*
7. *Total built-up area constructed as on 12/10/2021 i.e. date of site visit by the committee is 23,990.38 sq.m.*

Copy of the said PMC vide letter no ZONE 1/3422 dated 25/10/2021 is given at ***Annexure II.***

Details of the above are also summarized in Table 3 below.

Table 3: Details of the building configuration and total built up area mentioned in Layout Sanctioned and Building Permissions and construction status for Plot A- 11431.54 m²

Sl. No.	Particulars (↓)	Building Configuration	Total Built up Area
1	Layout Sanctioned No. CC/0468/11 dated 10/05/2011	• Building A- G+Stlit+6 • Building S1- G+1	Total FSI-5213.54 sq.m. Total Non FSI-1700.03 sq.m. TBUA-6913.57 sq.m.
2	Layout Sanctioned No. CC/2171/11 dated 21/09/2011	• Building A- G+Stlit+6 • Building S1- G+1	Total FSI-5213.54 sq.m. Total Non FSI-1700.03 sq.m. TBUA-6913.57 sq.m.
3	Layout Sanctioned and Building Permission No.CC/0374/12 dated 07/05/2012 granted by PMC	• Building A- Ground • Building B- B+G+6	Total FSI- 7965.84 sq.m. Total Non FSI- 4856.8 sq.m. TBUA-12822.64 sq.m.
4	Plinth Check Certificate No. PCC/0369/13 dated 06/07/2013	For Building B- As per Layout Sanctioned and Building Permission No.CC/0374/12 dated 07/05/2012 granted by PMC as mentioned at Sl. No. 3 above.	
5	Layout Sanctioned and Building Permission No.CC/1388/13 dated 30/07/2013 granted by PMC	• Building B- B+G+8 • Building C- B+G+6	Total FSI- 11759.02 sq.m. Total Non FSI- 9648.26 sq.m. TBUA- 21407.28 sq.m.
6	Plinth Check Certificate No. PCC/0602/13 dated 03/09/2013	For Building C-As per Layout Sanctioned and Building Permission No.CC/1388/13 dated 30/07/2013 granted by PMC as mentioned at Sl. No. 5 above.	
7	Part Occupancy Certificate No. OCC/0637/15 dated 21/08/2015	For Building B- 24 Shops with Store and 84 Flats only. As per Layout Sanctioned and Building Permission No.CC/1388/13 dated 30/07/2013 granted by PMC as mentioned at Sl. No. 5 above.	
8	Building Permission No.CC/2080/15 dated 06/10/2015 granted by PMC	• Building B- B+G+8 • Building C- B+G+4	Total FSI- 10872.92 sq.m Total Non FSI- 9280.0 sq.m. TBUA- 20152.92 sq.m.
9	Part Occupancy Certificate No.OCC/0908/15 dated 31/10/2015	For Building B-12 Flats only. As per Layout Sanctioned and Building Permission No.CC/1388/13 dated 30/07/2013 granted by PMC as mentioned at Sl. No. 5	
10	Part Occupancy Certificate No.OCC/0683/17 dated 28/06/2017	For Building C-28 shops. As per Building Permission No.CC/2080/15 dated 06/10/2015 granted by PMC as mentioned at Sl. No. 8.	
11	Layout Sanctioned No. DPO/CC/2200/18 dated 22/10/2018 granted by PMC	• Building A- B+G+11 • Building B- B+G+8 • Building C- B+G+4	Total FSI- 18216.88 sq.m. Total Non FSI- 19758.01 sq.m. TBUA- 37974.89 sq.m.
12	Layout Sanctioned No. DPO/CC/0206/21 dated 30/04/2021 granted by PMC	• Building A- B+G+11 • Building B- B+G+8 • Building C- B+G+4	Total FSI- 21573.97 sq.m. Total Non FSI- 16348.74 sq.m. TBUA- 37922.71 sq.m.
13	Status of construction as on 12/10/2021 as informed by PMC as per CC/2080/15 dated 06/10/2015 Building Permission	• Building B- B+G+8 Floors Slab Completed • Building C- B+G+4 Floor Slab Completed	Total Built up Area Constructed = 23990.38 sq.m.

MPCB has informed vide letter 10.11.2021 that PP has completed construction of work for building B & C in Plot A and handover the

possession to tenants. Only excavation for building A has been carried out in past. During the site visit on 12/10/2021, the committee observed flats/shops were operational in building B and C.

PP has made application dated 01/9/2017 to MoEF&CC for EC for total plot area 11,431.54 sq. m. at Survey No. 22/2(P), Plot A, Kharadi, Pune, during amnesty window for such proponents who have violated the EC regulations as per notification no. SO 804(E) dated 14.3.2017 notified by MoEF&CC under the Environment (Protection) Act, 1986. A fresh application dated 11/4/2018 for EC was made by PP to SEIAA Maharashtra under extended amnesty window period. PP has also proposed ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan as per approach adopted by Department of Environment, Govt. of Maharashtra and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 (please refer para 4 of this report). The SEIAA has informed vide email dated 15.11.2021 that the said EC application dated 11/4/2018 by M/s. Goel Ganga made during the amnesty period w.r.t construction on Plot A is pending with SEIAA.

(b) Plot B (of 18,427.87 m² plot area as resulted after subdivision in 2011)

1. *Upon the aforesaid subdivision in 2011 (and prior to its further sub-division in 2019), PP obtained various Layout Sanctioned and Building Permissions for subdivided Plot B of area 18,427.87 m^2. Details of building configurations, FSI, Non-FSI and Total Built up Area in the said various Layout Sanctioned and Building Permissions are given in Table 4 below.*
2. *PP made an EC application on 01/10/2015 to SEIAA, Maharashtra for construction of residential and commercial development on Plot B (prior to its further subdivision in 2019) for a plot area of 18427.87 m^2. It may be observed that the said EC application dated 01/10/2015 has been made after expiry of validity of the EC dated 19/9/2008 which was valid for 05 years (i.e. 18/9/2013) as per above mentioned section 9 of the notification no S.O. 1533 (E) dated 14/9/2006 notified under the Environment (Protection) Act, 1986.*
3. *The proposal was discussed in the 107th meeting of SEIAA meeting held during 19th to 21st October 2016 and it was noted that there is a Civil Suit No 170/2014 pending against the project and decided to delist the proposal till the case is finally decided.*

Table 4: Details of the building configuration and total built up area mentioned in Layout Sanctioned and Building Permissions for Plot B-18427.87 m² (obtained after subdivision in 2011 and prior to subsequent subdivision in 2019)

Sl. No.	Particulars (↓)	Building Configuration	Total Built up Area
1	Layout Sanctioned No. CC/2899/12 Dated 31/12/2012 granted by PMC	• Building A & B- B+B+P+15 • Building C & D- B+B+P+1	Total FSI- 12854.68 sq.m Total Non FSI- 17011.80 sq.m TBUA- 29866.48 sq.m
2	Layout Sanctioned And Building Permission No. CC/1464/14Dated 11/08/2014 granted by PMC	• Building A- LB+UB+GR+Stilt+Podium+14 Floors (Res. + Comm.) • Building B- LB+UB+GR+Stilt+Podium+2 Floor • Building C- LB+UB+GR+Stilt+Podium+1 Floor	Total FSI- 17174.82 sq.m Total Non FSI- 29412.94 sq.m TBUA- 46587.76 sq.m
3	Building Permission No. CC/1361/15 Dated01/08/2015 granted by PMC	• Building A- LB+UB+GR+Stilt+Podium+14 Floors(Res. + Comm.) • Building B- LB+UB+GR+Stilt+Podium+1 Floor • Building C- LB+UB+GR+Stilt+Podium+1 Floor	Total FSI- 14149.56 sq.m Total Non FSI- 29018.20 sq.m TBUA- 43167.76 sq.m

4. *No plinth check certificate has been obtained by PP. Report of site visit on 28/12/2017 by MoEF&CC official reveals that no construction has been initiated except site office and temporary shed for watchman. Copy of the MoEF&CC official report site visit dated 28/12/2017 is given at as* ***Annexure VI.***

(c) Plot B (of 4775.45 m² plot area as resulted after subsequent subdivision of Plot B in 2019)

1. *PMC informed vide letter dated 25/10/2021 (copy given at* ***Annexure-II****) that in 2019 the Plot B of 18,427.87 m² was further subdivided into Plot B-4,775.45 m2 and Plot B1-13,652.45 m².*
2. *PMC has issued Layout Sanctioned vide CC/1028/19 dated 06/08/2019 on the said subdivided plot B of 4775.45 m² which comprises of FSI-12177.39 m² while the Non-FSI in the said aforesaid sanction is not mentioned. PMC has also informed vide letter no ZONE 1/3422 dated 25/10/2021 (copy given at* ***Annexure II****) that thereafter no sanction plan for the said subdivided Plot B has been issued till date i.e. 20/10/2021.*
3. *During site visit of the committee on 12/10/2021, PP informed that the subdivided Plot B (4775.45 m²) has been sold to other party in 2019. The committee did not observe constructed structures in the said subdivided Plot B except for excavation carried out in the past. Records w.r.t. period when such excavation has been done is not available with PMC as informed by PMC vide email dated 24/11/2021.*

(d) Plot B1 (of 13,652.45 m² plot area as resulted after subdivision of Plot B in 2019)

1. *With regard to subdivided plot as B1 of plot area 13,652.45 m², PP applied for EC vide application dated 11/2/2020 and has been granted EC by SEIAA, Maharashtra vide letter*

SIA/MH/MIS/142595/2020 dated 31/03/2020 for total plot area of 13652.45 sq.m. for the project - "Ganga Altus" at Survey No. 22/2 P, Plot B1, Kharadi, Pune, stipulating layout Sanction details granted by PMC, total built up area of 54,822.15 sq. m. and building configuration therein. Copy of the EC dated 31/03/2020 given at ***Annexure VII.***

2. *The EC dated 31/03/2020 has been obtained by the PP based on the Layout Sanctioned No. DPO/CC/2219/19 dated 23/12/2019 granted by PMC.*
3. *Subsequent to this EC, PP has obtained Plinth Check Certificate dated 21/01/2021 which is as per Building Permission No. CC/3234/19 dated 23/03/2020.*
5. *Further, PMC has issued Layout sanctioned dated 05/04/2021 in which the floors have been revised from 16 (as mentioned in the Layout Sanctioned dated 23/12/2019) to 24 and total built-up area from 54,822.15 m^2 to 65,054.78 m^2 with a condition that "Revised Environmental Clearance to be submitted before starting work above 16 Floors."*
6. *PMC vide letter dated 25/10/2021 has informed that the project has been constructed as per Layout Sanctioned No. DPO/CC/2219/19 dated 23/12/2019 and the said additional 8 floors (Built up-10202.63 m^2) have not been constructed yet.*
7. *PMC has also informed that the total built up area constructed as on 12/10/2021 is 10,198.86 sq.m. against the total built up area granted vide EC dated 31/03/2020 of 54,822.15 sq.m.*
8. *During the visit on 12/10/2021, the committee observed that project is underconstruction and there was no occupancy.*

Details of the above are also summarized in Table 5 below.

Table 5: Details of building configuration and total built up area mentioned in Layout Sanctioned and Building Permissions and EC for Plot B1-13652.45 m^2 (After Sub-Division in 2019)

Sl. No.	*Particulars (↓)*	*Building Configuration*	*Total Built up Area*
1	*Layout Sanctioned No. DPO/CC/2219/19 Dated 23/12/2019 granted by PMC*	• *Building D-LG+GR+P1+P2+P3+P4+P5 (Podium)+16 Floor* • *Building E-LG+GR+P1+P2+P3+P4+P5 (Podium)+16 Floor* • *Building F-LG+GR+4 Floor*	*Total FSI- 24583.86 sq.m. Total Non FSI-30238.29 sq.m. TBUA-54822.15 sq.m.*
2	*EC dated 31.03.2020 Granted by SEIAA, Maharashtra*	***As per Specific Conditions No. V of the EC stipulates that the** EC granted for - FSI: 24583.86 m2, Non-FSI: 30238.29 m^2 and Total BUA: 54822.15 m^2 (Plan Approval no. DPO/CC/2219/19, dated-23.12.2019)*	
3	*Building Permission. No. CC/3234/19 Dated 23/3/2020*	• *Building D-LG+GR+P1+P2+P3+P4+P5 (Podium)+15 Floor* • *Building E-LG+GR+P1+P2+P3+P4+P5 (Podium)+1 Floor*	*Total FSI- 11342.29 sq.m. Non FSI of Building D-1693.41 sq.m.* *Total Non FSI-Not Shown in plan*
4	*Plinth Check Certificate No. PCC/0626/20 dated 20/01/2021*	*For Building D-As per Building Permission No.CC/3234/19 dated 23/03/2020 granted by PMC as at Sl. No. 3 above.*	

5	*Layout Sanctioned No. DPO/CC/0020/2021 dated 05/04/2021*	• *Building D- LG+GR+P1+P2+P3+P5+Stilt +24 Floor* • *Building E- LG+GR+P1+P2+P3+P5+Stilt +24 Floor*	*Total FSI- 41147.64 sq.m. Total Non FSI- 23907.14 sq.m. TBUA- 65054.78 sq.m.*
6	*Status of construction as on 12.10.2021 as informed by PMC*	• *Building D- LG+GR+P1+P2+P3+P4+P5 (Podium) +2 Floors* • *Building E- LG Floor only* • *Building F- GR constructed on site (due to level difference LG Floor & Gr. Floor merge on site)*	*Total Built up Area Constructed = 10198.86 sq.m.* *PMC also informed that the project has been constructed as per Layout Sanctioned No. DPO/CC/2219/19 dated*

Compliance of Consent required under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981

(a) Plot A of plot area 11,431.54 m2

MPCB informed vide letter dated 10.11.2021 that PP has not applied for Consent to Establish/Operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. PP has completed construction of work for Building B & C and handover the possession to tenants. PP has also carried out excavation in the past for the construction of proposed Building A.

PP has not provided any treatment for sewage generation and the same is discharged to PMC sewer line. For the treatment of solid waste, PP has provided vermicomposting pits for Building B which was found to be in operation while for Building C the pit was not found to be in operation. Water supply to the buildings is from PMC. One bore well is observed within the premises of the project from which PP has been extracting ground water without the NOC of Central Ground Water Authority (CGWA). Copy of MPCB letter dated 10.11.2021 is given at ***Annexure VIII.***

PP has informed vide letter dated 05/09/2011 to PMC that the development work of building on Survey No. 22/2, Plot-A, Kharadi, Pune will be commenced on 26/09/2011. (Copy of letter dated 05/09/2011 submitted by PP to PMC is given at ***Annexure V****). Further, PP obtained first Plinth Check Certificates dated 06/07/2013 on Plot A.*

The above reveals that the PP started development/construction and operation of the project without obtaining CTE and CTO from MPCB and violated provisions under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and also extracting ground water from bore well for which NOC has not been obtained from CGWA.

(b) Plot B1 of plot area 13,652.45 m2

*PP made application dated 04/04/2020 for CTE to MPCB. MPCB issued CTE to the PP on 02/12/2020 for total built-up area of 67,703.05 sq.m**.** PP has obtained plinth check certificate dated 21/01/2021 from PMC. Amendment in CTE dated 02/12/2020 has been granted by MPCB vide amended CTE 03/11/2021 for a total built up area of 54,822.15 sq. m. against earlier granted for 67,703.05 sq.m. Copy of CTE dated 02/12/2020 and amendment CTE dated 03/11/2021 are given at **Annexure IX.***

Regarding the date of start of construction, PMC informed vide email dated 18/10/2021 that date of start of construction on Plot B1 is not on record. The committee observes that the 1st Plinth Check Certificate No. PCC/0626/20 has been issued on 20/01/2021 based on Building Permission No.CC/3234/19 dated 23/03/2020 and Intimation

*Application No. PLN/07420/20 dated 07/01/2021 from PP regarding completion of construction work for Building D up to plinth level (please refer Plinth Check Certificate dated 20.01.2021 attached along with PMC vide letter dated 25/10/2021 given at **Annexure II**).*

3. CONCLUSIONS

The observations, as given at para 2, reveal that:

*(a) PP owned plot of 41,000 sq. m. at Survey No. 22/2, Karadi, Pune. The same has been subdivided in 2011 into Plot A-11431.54 m^2, Plot B-18427.87 m^2, 30 meter Development Plan (DP) road- 7564.22 m^2 and 45 Meter DP road- 3576.37 m^2 as per Clause No. 13.0 "Rules for Sub-division land & Layout" of the former Development Control Rules for Pune Municipal Corporation, 1987 and subsequent subdivision of Plot B into two plots- Plot B of 4775.45 m^2 and Plot B1 of 13652.45 m^2 in 2019 as per Clause No. 15.0 "Regulation for land Sub-Division and Layout" of the Development Control And Promotion Regulations for Pune Municipal Corporation (DCPR-2017)**.** During site visit of the committee on 12/10/2021, PP informed during discussion that the subdivided Plot B (4775.45 m^2) has been sold to other party in 2019. The committee did not observe constructed structures in the said subdivided Plot B (4775.45 m^2) except for excavation carried out in the past. Records w.r.t. period when such excavation has been done is not available with PMC as informed by PMC vide email dated 24/11/2021.*

(b) Prior to the aforesaid subdivisions, PP obtained EC granted by MoEF&CC vide letter No.21-658/2007-IA.III dated 19.09.2008 for total plot area of 20,072.04 sq.m. for "Hotel and Office Building" at Survey No. 22/2, Kharadi, Pune, for construction of office building and a hotel (3 floors) for 40 rooms with a total built up area 38,586 sq.m. having validity till 05 years i.e. 18/9/2013.

PP obtained first Plinth Check Certificates dated 06/07/2013 (on Plot A) which is as per Layout Sanctioned and Building

Permission CC/0374/12 dated 07/05/2012 granted by PMC having proposal for 2 buildings with shops of total built up area 12,822.64 sq.m. which is not in conformation to the building configuration stipulated in the said EC dated 19/9/2008. The subsequent Plinth Check Certificates dated 03/09/2013 (on Plot A) which is as per Layout Sanctioned and Building Permission CC/1388/13 dated 30/07/2013 granted by PMC having proposal of 2 buildings with shops of total built up area 21,407.28 sq.m. which is more than 20,000 sq. m. requiring prior EC.

PP has also obtained occupancy certificates in parts from PMC dated 21/08/2015 and 31/10/2015 for building B in Plot A which are as per the said Layout Sanctioned and Building Permission dated 30/07/2013. Part occupancy certificate dated 28/06/2017 has also been obtained by PP from PMC for Building C as per Building Permission CC/2080/15 dated 06/10/2015.

PP made further application vide letter 10594/17 dated 28/06/2017 to PMC for further occupancy certificate upon which PMC came to know that built-up area of the said Plot A is crossing 20,000 m^2 and PMC issued refusal letter dated 21/08/2017 for the same. It was also informed by PMC that since that date the PP has stopped work on Plot A.

MPCB has informed vide letter 10.11.2021 that PP has completed construction of work for building B & C in Plot A and handover the possession to tenants. During the site visit on 12/10/2021, the committee observed flats/shops were operational in building B and C. Total built-up area constructed as on 12/10/2021, i.e. date of site visit by the committee, is 23,990.38 sq.m. as informed by PMC. Only excavation for building A has been carried out in past.

PP has made application dated 01/9/2017 to MoEF&CC for EC for total plot area 11,431.54 sq. m. at Survey No. 22/2(P), Plot A, Kharadi, Pune, during amnesty window for such proponents who have violated the EC regulations as per notification no. SO 804(E) dated 14.3.2017 notified by MoEF&CC under the Environment (Protection) Act, 1986. A fresh application dated 11/4/2018 for EC was made by PP to SEIAA Maharashtra under extended amnesty window period. PP has also presented ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan as per approach adopted by Department of Environment, Govt. of Maharashtra and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 (please refer para 4 of this report). The SEIAA has informed vide email dated 15.11.2021 that the said EC application dated 11/4/2018 by M/s. Goel

Ganga made during the amnesty period w.r.t construction on Plot A is pending with SEIAA.

(c) *With regard to subdivided plot as B1 of plot area 13,652.45 m^2, PP applied for EC vide application dated 11/2/2020 (which is after 05 years validity period of the EC dated 19/9/2008 granted by MoEF&CC) and has been granted EC by SEIAA, Maharashtra vide letter SIA/MH/MIS/142595/2020 dated 31/03/2020 for total plot area of 13,652.45 sq.m. for the project - "Ganga Altus" at Survey No. 22/2 P, Plot B1, Kharadi, Pune, for total built up area of 54,822.15 sq. m. and building configuration therein. Copy of the EC dated 31/03/2020 given at* ***Annexure VII.*** *The EC dated 31/03/2020 has been granted as per the Layout Sanctioned No. DPO/CC/2219/19 dated 23/12/2019 granted by PMC. Subsequent to this EC, PP has obtained Plinth Check Certificate dated 21/01/2021.*

During the visit on 12/10/2021, the committee observed that project is under construction and there was no occupancy. PMC vide letter dated 25/10/2021 (copy given at ***Annexure II)*** *has informed that the project has been constructed as per the Layout Sanctioned No. DPO/CC/2219/19 dated 23/12/2019. PMC has also informed that the total built up area constructed as on 12/10/2021 is 10,198.86 sq.m. against the total built up area granted vide EC dated 31/03/2020 of 54,822.15 sq.m.*

PP has obtained amendment in Consent to Establish (CTE) dated 03/11/2021 under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air (Prevention and Control of Pollution) Act, 1981, for a total built up area of 54,822.15 sq. m. from MPCB against earlier CTE dated 02/12/2020 granted for 67,703.05 sq.m.

(d) *PP claims that the said EC dated 19/9/2008 in plot area 20,072.04 sq.m. of Sy. no. 22/2, village Kharadi, Taluka Haveli, District Pune pertains to Plot B portion of the total plot area of 41000 sq.m. owned by PP in the said survey number plot. However, the committee observes that as per information (copy of email dated 12.11.2021 is given at Annexure IV) provided by MoEF&CC, IRO Nagpur office and examining the conceptual plan, Form 1 and Form 1A, location of the said 20,072.04 sq.m. in the total Plot area 41,000 sq.m. has not been specified in the said Forms. Further, the EC dated 19.09.2008 has been granted on the proposal at sy. no. 22/2, village Kharadi, Taluka Haveli, district Pune as mentioned in para (2) of the said EC without specifying Part A or Part B or any other description of the 20,072.04 sq.m. within the said total plot area 41,000 sq.m. In view of the same, the said claim of PP that the EC dated 19.09.2008 pertains to Plot B portion could not be ascertained.*

Therefore, starting construction in Sy. no. 22/2, village Kharadi, Taluka Haveli, district Pune, not conforming to building configuration stipulated in the EC dated 19/9/2008 may have violated the said EC dated 19/9/2008 as item 5 under Part-B as General Conditions of the said EC dated 19/9/2008 stipulates that "In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry" and in case full or part of the said 20,072.04 sq.m., for which EC has been granted, pertains in Plot A. The non-conforming construction has started within validity period of the said EC dated 19/9/2008 which was valid for 05 years as per section 9 of the notification no S.O. 1533 (E) dated 14/9/2006 related to prior environmental clearance notified under the Environment (Protection) Act, 1986. The same is evident from first Plinth Check Certificates dated 06/07/2013 obtained by PP on Plot A which is as per Layout Sanctioned and Building Permission CC/0374/12 dated 07/05/2012 though PP has also informed to PMC vide letter (copy given at ***Annexure V****) dated 05/9/2011 that the development work of building in Plot A falling under the survey no 22/2, Kharadi, Pune will be commenced on 26/9/2011. Further, configuration of the building under the said Layout Sanctioned and Building Permission CC/0374/12 dated 07/05/2012 is not in conformation to that of granted in EC dated 19/9/2008 (please refer para 2(B) and Table 3.above).*

However, violation of the prior EC requirement provisions of the notification no S.O. 1533 (E) dated 14/9/2006 has occurred by PP by initiating construction for built up area of more than 20,000 sq. m. as is evident from Plinth Check Certificates dated 03/09/2013 (on Plot A) which is as per Layout Sanctioned and Building Permission CC/1388/13 dated 30/07/2013 granted by PMC having proposal of total built up area 21,407.28 sq.m.

PP has though made application to SEIAA for EC for total plot area 11,431.54 sq. m. at Survey No. 22/2(P), Plot A, Kharadi, Pune, during amnesty window for such proponents who have violated the EC regulations as per notification no. SO 804(E) dated 14.3.2017 notified by MoEF&CC under the Environment (Protection) Act, 1986, with proposal of ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan as per approach adopted by Department of Environment, Govt. of Maharashtra and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 (please refer para 4 of this report) which is pending with SEIAA, as stated at para (b) above.

(e) Besides, PP has also violated provisions under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air (Prevention and Control of Pollution) Act, 1981 by not making application and obtaining Consent to

Establish (CTE) and Consent to Operate (CTO) for constructing Building B & C in Plot A and handing over the possession to tenants.

(f) One bore well in plot A has also been reported by MPCB vide letter (copy given at Annexure- VIII) dated 10.11.2021 from which PP has been extracting ground water without the NOC of Central Ground Water Authority (CGWA).

4. APPROACH FOR ENVIRONMENTAL COMPENSATION AND REMEDIAL MEASURES

FOR PRIOR ENVIRONMENTAL CLEARANCE (EC) VIOLATION

Notification no. SO 804(E) dated 14.3.2017 on procedure to be adopted for dealing with the prior Environmental Clearance (EC) violation cases were issued by Ministry of Environment, Forest and Climate Change (MoEF&CC) under the Environment (Protection) Act, 1986 giving 06-month amnesty window for such proponents who have violated the EC regulations. These violations were primarily related to initiating the project work or carrying out the project activities without obtaining the mandatory EC. The cases of such proponents were to be assessed and the project constructed at a site were affirmative which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards. In case, where the finding of the Expert Appraisal Committee is negative, closure of the project were recommended along with other actions under the law. Such affirmative projects were also to be appraised with implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

The project proponent were required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification were to be recommended by State Expert Appraisal Committee (SEAC) and finalised by State Environmental Impact Assessment Authority (SEIAA) as per the aforesaid notification dated 14/3/2017 and subsequent notification dated 08/3/2018 issued by MoEF&CC. The bank guarantee were to be deposited prior to the grant of environmental clearance and to be released after successful implementation of the

remediation plan and Natural and Community Resource Augmentation Plan, and after the recommendation by regional office of the MoEF&CC, SEAC and approval of the SEIAA.

In view of the above notifications, a committee was constituted (constituting Ex. Expert Member, NGT; members of SEIAA and SEAC for Maharashtra and advocate) in Maharashtra for evaluation process

to evolve uniform guidelines to deal with the cases of violations under the chairmanship of Chairman, SEIAA, Maharashtra and submitted its report to the Department of Environment, Govt. of Maharashtra. After due consultation with stakeholders in a round table workshop, the Department of Environment (DoE) and SEIAA Maharashtra decided to follow the provisions of MoEF&CC notification dated 14.03.2017 as per the report submitted by the committee. Copy of the "Approach for the said Assessment for Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory Environmental clearance (Violation Cases)" decided to be followed by the DoE and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 is available at
https://www.ecmpcb.in/login/download_ec_document/QjAwN0E4NkZDM0I2NDY4Mzk3QzUxOE_VCQURGNzlGOTcucGRm

The aforesaid notification of MoEF&CC was, however, applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on Hon'ble court direction from 14.03.2018 to 13.04.2018.

Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. &Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority & Ors., vide order dated 03.06.2021 held that "(...) for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process".

Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that"...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country".

In compliance to the directions of the Hon'ble NGT, a Standard Operating Procedure (SoP) for dealing with violation cases were issued by the MoEF&CC vide Office Memorandum F. No. 22-21/2020-IA.III dated 07/7/2021. The SoP outlines similar features of implementation of environmental management plan based on remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance to that of earlier notification dated 14.3.2017 but with some changes.

However, in the matter of Fatima vs The UOI, WP(MD) No.11757 of 2021, Hon'ble Madurai Bench of Madras High Court (Special

Original Jurisdiction) vide order dated 15/07/2021 has ordered an interim stay on the said SOP.

In view of the aforesaid interim stay on the SoP for dealing with violation cases issued by the MoEF&CC, the aforesaid approach adopted by SEIAA Maharashtra for dealing with EC violations cases may be considered. Salient features of the said Department of Environment (DoE) and SEIAA Maharashtra adopted approach paper are as below:

(i) It is in line with MoEF&CC Notification dated 14/03/2017 applicable for 06-month amnesty window for such proponents who violated prior Environmental Clearance (EC) requirement and takes into account of ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan preparation & implementation thereto for building construction projects violation cases.

(ii) Environmental damage cost assessment considering various project related attributes (air pollution, water pollution, soil environment, noise & vibration, green belt and Occupational Health & Safety) and their recurring & non-recurring cost.

(iii) Assessment of economic benefits derived due to violation inclusive of the following:

(a) costs saved or/and not taking appropriate environmental protection measures and also, the benefits derived by going ahead with project to gain commercial gains. The same have been considered as 10% of Ready reckoner cost of the construction under violation if it is already occupied (fully or partially) or reasonably in advance stage of completion (more than 50%). In case, the construction is still not in advance stage of completion (less than 50%) and no occupation is given, then the benefits can be taken as 5% of the Ready reckoner cost for the construction in violation;

(b) environmental track record of the project proponent of Rs. 10,00,000/- (Rs. Ten lakhs) for each of earlier or similar other environment clearance violation in other projects being developed by project proponent and/or any one of its directors.

(iv) Preparation of remediation plan and natural and community resource augmentation plan as Environmental management plan (EMP) equivalent to the above-mentioned environmental damage cost and economic benefits, as at (i) and (ii) above, or the amount equivalent to the CER amount as per the MOEF&CC's office Memorandum No: F NO 22-65/2017-IA-III dated 01/05/2018, whichever is higher. Areas identified for resource allocation through such EMP cost are as below:

Sr No	Description Activity	% Allocation	Implementing Agency	Remarks
1	Afforestation (can include Plantation garden development)	25	Social Forestry & Local Body	The afforestation Can be either Through social Forestry or the Local body. Preferablywithin 50 km from project site
2	Water conservation Program (Jalyukt shivar, etc.)	25		Preferably within 50 km radius of project site
3	Urban environment and Sanitation (can include Swatccha Bharat, Playground development, Urban ground-water recharge schemes etc)	20	Local body	
4	Sewerage lines and STP, solid waste Management	20	Local Body	
5	Urban air/noise pollution control initiatives	10	Local Body	

(v) The assessment of above mentioned environmental damage cost and economic benefits and preparation of remediation plan and natural and community resource augmentation plan as environmental management plan (EMP) to be prepared as an independent chapter in the environment impact assessment report by the consultants duly recognised by NABET (National Accreditation Board for Education and Training) while seeking grant of environmental clearance. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or an environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment.
The SEAC will prescribe a specific Terms of Reference for the project on assessment of the above plans.

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

(vii) The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

(viii) The project proponent will submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with Maharashtra Pollution Control Board (MPCB) and the quantification will be recommended by SEAC Committee and finalized by SEIAA and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the said plans, and after the recommendation by regional office of the MoEF&CC, SEAC and approval of the SEIAA.

(ix) With regard to implementation of the aforesaid EMP, the project proponent will be required to deposit such apportioned funds of the EMP with concerned authorities and the confirmation of deposit of such funds will be the compliance of such EMP efforts at the project proponents end. Still however, he needs to get engaged with concerned departments to ensure that the amount is effectively spent in time bound manner.

The outer limit for execution of the projects could be maximum 2 years, and if any amount still remains unspent then the same will be reverted back to DoE by concerned department which can conduct specific state level programs form such funds.

5. APPROACH FOR DAMAGES (in addition to the environmental compensation as given at para 4) FOR CONTRAVENING MANDATORY PROVISIONS OF ENVIRONMENTAL LAWS for construction on Plot A

In the matter of Civil Appeal NO. 10854 OF 2016; M/s Goel Ganga Developers India Pvt. Ltd. Versus Union of India & Ors. the Hon'ble Supreme Court vide order dated 10/8/2018 upheld Rs. 05 crores on project proponent as levied by the Hon'ble NGT for contravening mandatory provision of Environment Laws and for not obtaining the consent from the Board. Vide para 57 of the said Hon'ble Supreme Court order, it has been directed that "(...)The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws."

"Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund" outlines a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies listing the instances for taking cognizance of cases fit for violation and levy environmental compensation. The same has also been referred by the Hon'ble NGT in its order (para 14 to 16) dated 28/8/2019 in the matter of Original Application No. 593/2017 titled Paryavaran Suraksha Samiti & Anr. Versus Union of India & Ors. The instances considered for levying Environmental Compensation (EC) in the said report are:

a) *Discharges in violation of consent conditions, mainly prescribed standards / consent limits.*
b) *Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.*
c) *Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.*
d) *Accidental discharges lasting for short durations resulting into damage to the environment.*
e) *Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.*
f) *Injection of treated/partially treated/ untreated effluents to ground water.*

Though such listed instances may not be directly applicable in the current matter for arriving at the damages amount (in addition to the environmental compensation as given at para 4) for contravening mandatory provisions of environmental laws (w.r.t. EC violations, starting construction and operation of the project without CTE/CTO as given at paras 3(d) and (e) above), an attempt is being made by this committee to assess the environmental compensation using the formula prescribed in the said CPCB report which may be taken as damages amount for contravening mandatory provisions of environmental laws. The formula takes into account of number of days violation took place, pollution index of unit, scale of operation, location factor based on population and an amount factor in Rupees.

Environmental Compensation (EC) in Rupees as mentioned in the aforesaid CPCB report for Construction on Plot A = PI x N x R x S x LF

Where,

PI = Pollution index of the project. Considering the project under Orange category as per

CPCB's modified directions no. B-29012/ESS/(CPA)/2015-16 dated 07/3/2016, PI = 50

N = Number of days violation took place.

R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. The aforesaid report also suggests to consider R as 250, as the Environmental Compensation in cases of violation. Hence, R = 250.

S = Factor for the scale of operation. As per data given in minutes of 85th meeting of SEAC-III dated 12/4/2019, estimated cost of project is Rs. 97.44 crores which is large scale

industry (LSI) as per criteria being followed by MPCB. The unit being LSI, S=1.5

LF = Location factor, since the population of Pune is more than 1 Million but less than 5 Million, LF=1.25

As violation of EC dated 19/9/2008 couldn't be ascertained (w.r.t. construction in Plot A within validity period of the said EC dated 19/9/2008) based on available information with the committee, the violation start days may be considered as 03/9/2013 when Plinth Check Certificates dated 03/09/2013 (on Plot A) was obtained which was as per Layout Sanctioned and Building Permission CC/1388/13 dated 30/07/2013 having proposal of total built up area 21,407.28 sq.m. and the same is more than 20,000 sq.m. and thus resulted violations of prior EC requirement provisions of the notification no S.O. 1533 (E) dated 14/9/2006 (please refer para 3(d) above). Thereafter, violations also continued under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air (Prevention and Control of Pollution) Act, 1981 for not making application and obtaining Consent to Establish (CTE) and Consent to Operate (CTO) for constructing Building B & C in Plot A and handing over the possession to tenants.

Considering the aforesaid violations till date of the Hon'ble NGT order dated 24/5/2021, N – the number of days violation took place comes out to be 2821 days.

Therefore, Environmental Compensation (EC) in Rupees

= 50 x 2821 x 250 x 1.5 x 1.25

= ***Rs. 6,61,17,190/- (Rupees Six Crores Sixty One Lakhs Seventeen Thousands One Hundred Ninety Only)***

Per day Environmental Compensation (EC) comes out to be Rs. 23,437.5/- (Rupees Twenty Three Thousand Four Hundred Thirty Seven and Five Paise)

6. <u>RECOMMENDATIONS</u>

(a) *In view of the:*

(i) aforesaid violations of prior EC requirement related notification no S.O. 1533 (E) dated 14/9/2006 in plot A (please refer para 3(d) above);

(ii) approach for environmental compensation and remedial measures for prior EC violations as discussed under para 4 above, and;

(iii) PP's application made for grant of EC during amnesty window for such proponents who have violated the EC regulations as per notification no. SO 804(E) dated 14.3.2017 notified by MoEF&CC under the Environment (Protection) Act, 1986, with proposal of assessed ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan as per approach

adopted by Department of Environment, Govt. of Maharashtra and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 (please refer para 4 of this report) which is pending with SEIAA (please refer para 3 (b) and 2 above)

The committee recommends that SEIAA Maharashtra may appraise the aforesaid application of PP including the proposed Environmental Management Plan (EMP) cost as environmental compensation amount and proceed implementation following the approach paper adopted by DoE and SEIAA Maharashtra vide SEIAA letter SEIAA-2018/CR-150/SEIAA dated 30/1/2019 for the "Assessment for Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory prior EC". The said approach paper also outlines preparation of remediation plan and natural and community resource augmentation plan equivalent to the said EMP cost taking into account of ecological damage and economic benefit derived due to violation. Areas identified for resource allocation through such EMP cost in the said approach paper are Afforestation; Water conservation program; Urban environment and sanitation; Sewerage lines and STP, solid waste management, and; Urban air/noise pollution control. Details of the same including estimation and implementation procedures thereto are given under para 4 of this report.

(b) In addition to the above, Rs. 05 crores or Rs 6,61,17,190/- (Rupees Six Crores Sixty One Lakhs Seventeen Thousands One Hundred Ninety Only), as derived under para 5 of this report, as deemed fit by the Hon'ble NGT, may also be added in the said environmental compensation or EMP cost as damages for contravening aforesaid provisions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, violations of EC dated 19/9/2008 granted by MoEF&CC and prior EC requirement violations of the notification no S.O. 1533 (E) dated 14/9/2006 in plot A.

(c) With regard to the noticed one bore well in plot A extracting ground water without the NOC of Central Ground Water Authority (CGWA), the same may be examined by CGWA and initiate necessary action including deposition of environmental compensation in accordance with the law."

Consideration of the mater, finding and final order

8. We have heard learned Counsel for the appearing parties, perused the records and considered the matter. None appears for the PP even though according to learned counsel for the appellant, complete set of

papers have been served on the PP and there was a direction of this Tribunal to provide a copy of the report by the Committee to enable the PP to respond. The Appellant has filed a written statement as follows:-

> ***"****5. That the appellant have filed his comments cum objections to the Joint Committee Report vide its affidavit dated 18.04.2022 and also served the copy to all the respondents on same day along with PP including the joint Committee report and therefore this Appellant have complied the Order dated 24.05.2022 of this Hon'ble Tribunal.***"**

9. Further, the report shows that **"the committee carried out site visit of the construction project- "Ganga Atlus" by M/s Goel Ganga Developers (I) Pvt. Ltd. at S. No. 22/2 P, Plot B1, Kharadi, Pune on 12/10/2021. Shri. Ajit Surve, Executive Engineer, Pune Municipal Corporation (PMC) and Shri Atul Jayprakash Goyal, Managing Director, along with his representatives from M/s Goel Ganga India Pvt. Ltd., were also present during the site visit."**

10. Accordingly, learned Counsel for the official respondents have rightly suggested that as per principles of natural justice required to be followed, the PP has adequate opportunity. If it has chosen not to appear, the Tribunal may proceed against the PP *ex-parte* and proceed to take further decision in the matter on merits as per law.

11. From the report of the joint Committee, it is seen that the PP has misrepresented to the SEIAA and SEAC and obtained EC without complete disclosure. The PP also failed to obtain CTE from State PCB before commencing the project, as required in terms of EC conditions. Show-cause notice was given to the PP by the PCB and CTE was refused. The conclusions of the Committee with regard to these violations are based on record and we see no reason not to accept the same and proceed on that basis. We thus hold that the PP has proceeded to construct the project without valid EC and in terms of judgements of the Hon'ble Supreme Court inter-alia in *Alembic Chemicals v Rohit Prajapati* and *Keystone developers*

v. Anil Tharthare, in place of directing demolition of the project, the PP has to be required to pay compensation for restoration of the environment. There is also violation of norms for extracting groundwater.

12. The report refers to SOP issued by MoEF&CC on 07.07.2021 but it is incorrectly mentioned that it is on the direction of this Tribunal vide order dated 03.06.2021 in *Dastak N.G.O v. Synochem Organics (Supra).* The approach paper of SEIAA is also referred to suggesting that 10% of the project cost be recovered in case the project is completed and 5% where the project is not completed in case there is violation of prior EC.

13. In respect of violation of taking CTE, the Committee has referred to order of the Hon'ble Supreme Court approving damages of Rs. 5 Crore and also referred to a formula of CPCB for calculation of compensation based on the number of days of violation.

14. We are of the view that approach of the Committee in this regard is mechanical and not sound. Basis for compensation is restitution principle based on cost of restoration of damage with deterrent element as per financial capacity. Certain percentage of turnover can also be the basis depending on nature of violation. This is settled inter alia in the judgements of Hon'ble Supreme Court *inter alia* in *MC Mehta, (1987) 1 SCC 395, Sterlite (2013) 4 SCC 575 and Goel Ganga (2018) 18 SCC 257.* The Committee has suggested compensation of Rs. 5 crores or Rs. 2,91,09,375/- as alternative for violation in obtaining CTE and further compensation based on approach paper of SEIAA dated 30.01.2019, i.e. equivalent to EMP cost considering factors like - Afforestation; Water conservation program; Urban environment and sanitation; Sewerage lines and STP, solid waste management, and Urban air/noise pollution control. It has been clearly found in the present case that EC was obtained after part construction of the project, there was misrepresentation by the PP

and construction of the project was without requisite CTE. In respect of violation in proceeding without CTE, compensation has been assessed at Rs. 5 crores or Rs. 2,91,09,375/- and for the remaining, the assessment of cost has been left to SEIAA or this Tribunal. The project cost has not been specified but according to counsel for the appellant it is not less than Rs.400 crore.

15. Having regard to the entirety of facts and circumstances pointed out above, we determine the total compensation payable by the PP at Rs. 15 crores which may be spent on restoration of environment by preparing an appropriate Environmental Restoration Plan by joint Committee comprising of CPCB, State PCB, SEIAA Maharashtra, and District Magistrate, Pune. The Environment Restoration Plan may be prepared within one month and executed within six months in the manner which may be determined by the joint Committee. The State PCB will be the nodal agency for coordination and compliance. The compensation may be paid by the PP within one month and deposited with the State PCB to be kept in a separate account for restoration of environment as directed above.

16. As regards the directions to conduct functional audit of the SEIAA, Maharashtra, we find that the scope of the audit was modified vide order 08.06.2021 in *O.A. No. 13/2021(WZ), Shashikant Vithal Kamble vs. M/s Key Stone Properties & Ors*. Accordingly, this aspect will now be examined in the said matter. The said matter is now listed for hearing on 18.07.2022.

17. In view of above discussion, the impugned EC being ex post facto, granting on misrepresentations and conditions of EC having been breached, the same has to be made subject to payment of compensation for restoration of environment as above. The appeal is allowed to that extent.

A copy of this order be forwarded to MoEF&CC, CPCB, SEIAA Maharashtra and Maharashtra State PCB by e-mail.

In view of the order passed above in the main appeal, I.A. No. 56/2021 stands disposed of accordingly.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

May 04, 2022
Appeal No. 34/2020(WZ)
(I.A. No. 56/2021)
SN

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3132 OF 2018

D. SWAMY … Appellant

Versus

KARNATAKA STATE POLLUTION CONTROL BOARD AND ORS. … Respondents

J U D G M E N T

Indira Banerjee, J.

This appeal, under Section 22 of the National Green Tribunal Act 2010, is against a final order dated 10th May 2017 passed by the National Green Tribunal, Southern Zone, Chennai, dismissing the Application No.169 of 2016 (SZ) filed by the Appellant under Section 18(1) read with Section 14 of the National Green Tribunal Act 2010, whereby the Appellant had prayed for a direction for closure of the Common Bio-Medical Waste Treatment Facility run by the Respondent No.3, on the ground of alleged non-compliance of the provisions of the Environmental Impact Assessment Notification 2006, hereinafter referred to as "the 2006 EIA

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Date: 2022.09.22 16:41:48 IST
Reason:

Notification" as amended on 17th April 2015.

2. In the meanwhile, by a notification being S.O. 327 (E) dated 10th April 2001, published in the Gazette of India on 12th April 2001, the Central Government has delegated the powers vested in it under the Environment (Protection) Act, 1986 (EP Act) to the Chairpersons of the respective State Pollution Control Boards/Committees to issue directions to any industry or any local or other authority to prevent violation of the Rules.

3. On or about 25th February 2012, the Respondent No.3 applied to the Respondent No.1, Karnataka State Pollution Control Board (hereinafter referred to as "KSPCB") for consent to establish a Common Bio-Medical Waste Treatment Facility over the land bearing Survey No. 82 and 38/2 at Gujjegowdanapura village, Jayapura Hobli, Mysore Taluk and District.

4. By a letter dated 24th November 2012, the Respondent No.1 KSPCB accorded consent to the Respondent No.3 to establish the Common Bio-Medical Waste Treatment Facility under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 for collection, reception, transportation, treatment and disposal of Bio-Medical Waste. The said consent was valid for a period of five years.

5. It appears that M/s Shree Consultant who had been operating a Common Bio-Medical Waste Treatment Facility at Survey No.25 at Mysore and had been collecting Bio-Medical Waste from four districts could not collect Bio-Medical Waste from the district of Hassan because of the Common Bio-Medical Waste Treatment Facility established by the Respondent No.3.

6. M/s Shree Consultant filed appeals bearing Nos.48 and 49 of 2012 before the Karnataka State Environment Appellate Authority, Bangalore challenging the consent granted to the Respondent No.3 to establish the Common Bio-Medical Waste Treatment Facility. The Karnataka State Environment Appellate Authority, Bangalore granted an interim stay of the order granting consent to the Respondent No.3 to establish the Common Bio-Medical Waste Treatment Facility. Ultimately however, the appeal was dismissed by a common judgment and order dated 20th April 2013.

7. M/s Shree Consultant filed Appeal Nos. 46-47 of 2013 before the National Green Tribunal, Southern Zone, Chennai against the common judgment and order dated 20th April 2013 passed by the Karnataka State Environment Appellate Authority, Bangalore in Appeal Nos.48-49 of 2012.

8. By a judgment and order dated 28th November 2013, the Principal Bench of the National Green Tribunal at New Delhi held that Bio-Medical Waste Treatment Plants were required to obtain

an Environmental Clearance (EC) from the Ministry of Environment and Forests, Government of India, hereinafter referred to as "MoEF&CC", in terms of Entry 7(d) of the Notification dated 14th September 2006. The National Green Tribunal had also directed the parties who had been running Common Bio-Medical Waste Treatment Facilities to apply to the MoEF&CC for EC.

9. On 26th February 2014, the Central Pollution Control Board issued guidelines for Common Bio-Medical Waste Treatment Facilities. On 14th July 2014, the National Green Tribunal, Southern Zone, Chennai passed a judgment and order dismissing Appeal Nos. 46-47 of 2013 filed by M/s Shree Consultant and held that the Respondent No.1 had rightly given consent to the Respondent No.3 for establishing its Common Bio-Medical Waste Treatment Facility.

10. On 4th March 2015, the Respondent No.3 applied for grant of consent to operate the Common Bio-Medical Waste Facility under the provisions of the relevant Water Pollution and Air Pollution Acts.

11. On 17th April 2015, MoEF&CC amended the Notification dated 14th September 2006, in view of the Judgment dated 28th November 2013 passed by the National Green Tribunal, Principal Bench, New Delhi in Appeal No. 63 of 2012. By the amendment Entry 7(da) was inserted after Entry 7(d) in the Schedule. Entry 7(da) provided that Common Bio-Medical Waste Treatment

Facilities would be required to obtain EC from the Ministry of Environment and Forest.

12. It appears that on 13th July 2015, the villagers of the Gujjegowdanapura, Manadalli, Harohalli, Chunchunarayahundi, Kallahalli, Arinakere, Mahadevpura at Jayapura Hobli, Mysore made a representation to the Respondent No.1 seeking an order banning the establishment of Common Bio-Medical Waste Treatment Facility by the Respondent No.3.

13. Thereafter, the Respondent No.1 issued notices to the Common Bio-Medical Waste Treatment Facility of the Respondent No.3, calling upon it to submit a report of compliance of pollution norms.

14. On 1st December 2015, the State Level Environment Impact Assessment Authority, Karnataka (SEIAA) issued directions to the Respondent No.1 under Section 5 of the Environment (Protection) Act, 1986 to issue consent for operation of the Common Bio-Medical Waste Treatment Facility and other projects attracting the 2006 EIA Notification and the amendments thereto.

15. By its letter dated 28th December 2015, the Respondent No.1 instructed all the concerned officers of the KSPCB that application for consent to establish or operate projects attracting the 2006 EIA Notification and amendments thereto were to be received by the

KSPCB only if EC was attached to the application.

16. On 19th January 2016, the Respondent No.3 resubmitted its application for consent to operate the Common Bio-Medical Waste Treatment Facility, which had earlier been returned by the Respondent No.1. On 11th February 2016, the Respondent No.1 granted the Respondent No.3 consent to operate its Common Bio-Medical Waste Treatment Facility at Gujjegowdanapura village, Jayapura Hobli in Mysore district. The said consent was valid for the period from 1st July 2015 to 30th June 2016.

17. The Appellant filed Appeal No.3 of 2016 before the Karnataka State Environment Appellate Authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 challenging the consent to the Respondent No.3 to operate the Common Bio-Medical Waste Treatment Facility. Very soon thereafter the MoEF&CC revised the Bio-Medical Waste (Management and Handling) Rules 1998 under Section 6, 8 and 25 of the EP Act.

18. The Appeal No.3 of 2016 filed by the Appellant before the Karnataka State Environment Appellate Authority, against the consent order dated 11th February 2016 passed by the Respondent No.1 came to be withdrawn by the Appellant because the said appeal had become infructuous in view of the expiration of the period of consent to operate granted to the Respondent No.3 on

30th June 2016.

19. By an order dated 17th August 2016, the National Green Tribunal, Southern Zone, Chennai directed that the application for renewal of consent to operate, pending before the Respondent No.1 might be processed in accordance with law subject to the final order passed by the Tribunal.

20. Pursuant to the aforesaid order dated 17th August 2016, the Respondent No.1 renewed the consent order to operate the Common Bio-Medical Waste Treatment Facility in favour of the Respondent No.3 which was valid for the period from 17th August 2016 to 30th June 2021.

21. In exercise of power under Section 3(1) and Section 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules, the Central Government issued a Notification being S.O. 804(E) dated 14th March 2017 which provides for grant of *ex post facto* EC for project proponents who had commenced, continued or completed a project without obtaining EC under the EP Act/EP Rules or the Environmental Impact Notification issued thereunder. Paragraphs 3, 4 and 5 of the said notification, read as hereunder:

> *"(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.*

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para(4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment."

22. The Notification of 2017 is a valid statutory notification issued by the Central Government in exercise of power under Sections 3(1) and 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules in the same manner as the EIA Notification dated 27th January 1994 and the Notification dated 14th September 2006.

23. Section 21 of the General Clauses Act, 1897 provides that where any Central Act or Regulations confer a power to issue notifications, orders, rules or bye-laws, that power includes the power, exercisable in the like manner, and subject to like sanction

and conditions, if any, to add to, amend, vary or rescind any notification, order, rule or bye-law so issued. The authority, which had the power to issue Notifications dated 27th January 1994 and 14th September 2006 undoubtedly had, and still has the power to rescind or modify or amend those notifications in like manner. As held by this Court in ***Shree Sidhbali Steels Ltd. & Others v. State of Uttar Pradesh & Others***[1], power under Section 21 of the General Clauses Act to amend, vary or rescind notifications, orders, rules or bye-laws can be exercised from time to time having regard to the exigency.

24. Puducherry Environment Protection Association filed a Writ Petition being W.P. No.11189 of 2017 in the High Court of Madras assailing the said notification dated 14th March 2017. By a judgment and order dated 13th October 2017, a Division Bench of the High Court refused to interfere with the said notification, holding that the impugned notification did not compromise with the need to preserve environmental purity.

25. The MoEF&CC issued a draft Notification dated 23rd March 2020 which was duly published in the Gazette of India Extraordinary Part II. The Notification was proposed to be issued in exercise of powers conferred by subsection (1) and clause (v) of sub-section (2) of Section 3 of the EP Act for dealing with cases of violation of the notification with regard to EC. It was proposed that

1 (2011) 3 SCC 193

cases of violation would be appraised by the Appraisal Committee with a view to assess whether the project had been constructed or operated at a site which was permissible under prevailing laws and could be run sustainably on compliance of environmental norms with adequate environmental safeguards. Closure was to be recommended if the findings of the Appraisal Committee were in the negative. If the Appraisal Committee found that such unit had been running sustainably upon compliance of environmental norms with adequate environment safeguards, the unit would be prescribed appropriate Terms of Reference (TOR) after which the procedure for grant of EC would follow.

26. The appeal has been opposed by the KSPCB. On behalf of the KSPCB, it is submitted that the appeal is liable to be dismissed on the ground of delay of 62 days in filing the appeal. Reasons for the delay, it is submitted, does not make out sufficient cause for the inordinate delay. It is next contented that there is no substantial question of law of general importance involved in this appeal. The appeal is liable to be dismissed on that ground. It is also contended that the appeal suffers from suppression of facts. On behalf of KSPCB, it is contended that the 2015 amendment dated 17th April 2015 to the EIA Notification is prospective in the light of the law laid down in ***Narmada Bachao Andolan v. Union of India[2].*** The Respondent No.3 had applied to the KSPCB for consent to operate before the EIA Notification dated 17th April

2 (2000) 10 SCC 664

2015, for no prior ECl was required for projects which came to existence after 14th September 2006 but before 17th April 2015.

27. On 21st December 2016, the Central Pollution Control Board, MoEF&CC, Government of India issued revised guidelines for Common Bio-Medical Wastes Treatment and Disposal Facility.

28. By final judgment and order dated 10th May 2017, which is impugned in this appeal, the National Green Tribunal has dismissed the appeal filed by the Appellant, with the observation that the Respondent No.3 could not be directed to be closed down for want of EC.

29. By an Office Memorandum, being F. No. 22-21/2020-1A III, dated 7th July 2021, the MoEF&CC issued Standard Operating Procedure (SoP) for identification and handling of violation cases under 2006 EIA Notification.

30. The said Office Memorandum, inter alia, reads:

> *"The Ministry had issued a notification number S.O.804(E), dated the 14th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.*
>
> *2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.*
>
> *3. Hon'ble NGT in Original Application No.287 of 2020 in the matter of Dastak N.G.O. v Synochem Organics Pvt. Ltd. & Ors. and in applications pertaining to same subject matter in*

> *Original Application No. 298 of 2020 in Vineet Nagar v Central Ground Water Authority & Ors., vide order dated 03.06.2021 held that "(...) for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process".*
>
> *4. Further, the Hon'ble National Green Tribunal in O.A. No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and Ors., vide order dated 24.05.2021 has directed that"....* ***a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country****".*
>
> *5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.*
>
> *6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations/decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined."*

31. The SoP formulated by the said Office Memorandum dated 7th July 2021 refers to and gives effect to various judicial pronouncements including the judgment of this Court in ***Alembic Pharmaceuticals Ltd. v. Rohit Prajapati & Others***[3].

32. In terms of the SoP, the proposal for grant of EC in cases of violation are to be considered on merits, with prospective effect, applying principles of proportionality and the principle that the

3 2020 SCC OnLine SC 347

polluter pays and is liable for costs of remedial measures.

33. A Public Interest Litigation being W.P. (MD) No. 11757 of 2021 (***Fatima v. Union of India***) was filed before the Madurai Bench of the Madras High Court challenging the said Memorandum dated 7th July 2021. By an interim order dated 15th July 2021 a Division Bench of the Madras High Court admitted the Writ Petition and stayed the said memorandum.

34. The Madurai Bench of the Madras High Court observed and held:-

> *"This writ petition has been filed as a public interest litigation challenging the validity of the office memorandum dated 07.07.2021, issued by the respondent.*
>
> *2. We have heard Mr. A. Yogeshwaran, learned counsel appearing for the writ petitioner and Mr.L.Victoria Gowri, learned Assistant Solicitor General of India, accepts notice for the respondent.*
>
> *3. The impugned office memorandum is challenged as being wholly without jurisdiction, contrary to the Environment Impact Assessment Notification, 2006, ultra vires the powers of the respondent under the Environment (Protection) Act, 1986 and violative of the various principles enunciated by the Hon'ble Supreme Court, while interpreting Article 21 and Article 48-A of the Constitution of India.*
>
> *4. Further, it is submitted that the impugned notification is in gross violation of the undertaking given before the Hon'ble Full Bench of this Court in W.P.No.11189 of 2017, wherein, the Court took note of the submissions made on behalf of the Government of India, that the notification impugned therein is only a one-time measure. Further, it is submitted that the respondent failed to see that concept of ex-post facto approval is alien to environment jurisprudence and it is anathema to the Environment Impact Assessment Notification, 2006.*

5. Further, it is submitted that the impugned notification is in gross violation of the judgment of the Hon'ble Supreme Court in the case of Alembic Pharmaceuticals Ltd. v Rohit Prajapati, 2020 SCC Online SC 347 and the orders passed by the National Green Tribunal, Principal Bench, New Delhi, in the case of S.P.Muthuraman v Union of India & Another, 2015 SCC Online NGT 169.

6. Identical grounds were considered by us in a challenge to an office memorandum dated 19.02.2021, which provided a procedure for granting post facto clearance under Coastal Regulation Zone (CRZ) Notification 2011, on the ground that despite no such provisions in the notification and being contrary to the earlier judgments and undertaking. The said writ petition in W.P(MD).No.8866 of 2021 was admitted and by order dated 30.04.2021, the said office memorandum dated 19.02.2021 has been stayed.

7. The core issue in this writ petition is whether the Government of India could have issued the office memorandum and brought about the Standard Operating Procedure for dealing with violators, who failed to comply with the mandatory condition of obtaining prior environment clearance under the Environment Impact Assessment Notification 2006, read with the provisions of Environment (Protection) Act, 1986. This issue was considered by the Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd (supra)****, and it was held that such office memorandum in the nature of circular is without jurisdiction. The operative portion of the judgment reads as follows:*

> *"...What is sought to be achieved by the administrative circular dated 14 May 2002 is contrary to the statutory notification dated 27 January 1994. The circular dated 14 May 2002 does not stipulate how the detrimental effects on the environment would be taken care of if the project proponent is granted an ex post facto EC. The EIA notification of 1994 mandates a prior environmental clearance. The circular substantially amends or alters the application of the EIA notification of 1994. The mandate of not commencing a new project or expanding or modernising an existing one unless an environmental clearance has been obtained stands diluted and is rendered ineffective by the issuance of the administrative circular dated 14 May 2002. This discussion leads us to the conclusion that the administrative circular is not a measure protected by Section 3. Hence there was no jurisdictional bar on the NGT to enquire into its legitimacy or vires. Moreover, the administrative circular is contrary to the EIA Notification 1994 which has a statutory character. The circular is unsustainable in law."*

> *8. Despite the above decision, once again the Government of India, Ministry of Environment, Forest and Climate Change have chosen to adopt the route of issuing the office memorandum and virtually setting at naught the provisions of the Environment Impact Assessment Notification and the Environment (Protection) Act.*
>
> *9. Before the Hon'ble First Bench, a public interest litigation was filed by the Puducherry Environment Protection Association, challenging the notification dated 14.03.2017, on identical grounds and the Hon'ble First Bench by judgment dated 13.10.2017, recorded the submissions of the learned Assistant Solicitor General of India that the said notification was a one-time measure and accordingly, disposed of the writ petition.*
>
> *10. Once again, the Ministry of Environment, Forest and Climate Change have issued the impugned office memorandum. Thus, from what we have noted above, we are of the clear view that the petitioner has made out a prima facie case for entertaining the writ petition. Accordingly, the writ petition is **admitted** and there shall be an order of interim stay."*

35. It is true that in the case of ***Puducherry Environment Protection Association v. Union of India***[4], the Division Bench of Madras High Court took note of and recorded the submission made on behalf of the Union of India that the relaxation was a one time relaxation. In view of such submission, this Court held that a one time relaxation was permissible.

36. It is, however, well settled that words and phrases and/or sentences in a judgment cannot be read in the manner of a statute, and that too out of context. The observation of the Division Bench that a one time relaxation was permissible, is not to be construed as a finding that relaxation cannot be made more than once. If power to amend or modify or relax a notification

4 2017 SCC OnLine Mad 7056

and/or order exists, the notification and/or order may be amended and/or modified as many times, as may be necessary. A statement made by counsel in Court would not prevent the authority concerned from making amendments and/or modifications provided such amendments and/or modifications were as per the procedure prescribed by law.

37. The Division Bench of Madras High Court fell in error in staying the said office memorandum, by relying on observations made by this Court in ***Alembic Pharmaceuticals Ltd***. (supra), in the context of a circular which was contrary to the statutory Environment Impact Notification of 1994. The attention of the High Court was perhaps not drawn to the fact that the notification of 7th July 2021 was in pursuance of the statutory notification of 2017 which was valid. The judgment of this Court in ***Alembic Pharmaceuticals Ltd.*** (supra), was clearly distinguishable and could have no application to the office memorandum dated 7th July 2021 which was issued pursuant to the notification dated 14th March 2017.

38. In ***Electrosteel Steels Limited v. Union of India***[5], this Court held:-

> ***"82. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its opera-***

5 2021 SCC OnLine SC 1247

tion by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative.

83. The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the environment. ExPost facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. ***At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.***

84. ***The 1986 Act does not prohibit ex post facto Environmental Clearance****. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.*

***

88. The Notification being SO 804(E) dated 14th March, 2017 was not an issue in Alembic Pharmaceuticals (supra). This Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January, 1994, which was statutory. Ex post facto environmental clearance should not however be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. ***Ex post facto approval should not be withheld only as a penal measure.*** *The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.*

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> *96. The appeals are allowed. The impugned order is set aside. The* ***Respondent No. 1 shall take a decision on the application of the Appellant for revised EC in accordance with law, within three months from date. Pending such decision, the operation of the steel plant shall not be interfered with on the ground of want of EC, FC, CTE or CTO.****"*

39. The proposition of law enunciated/re-enunciated by this Court in ***Electrosteel Steels Limited*** **(supra)** was reiterated in ***Pahwa Plastics Pvt. Ltd. and Anr. v. Dastak NGO and Ors.***[6]

40. As held by this Court in ***Electrosteel Steels Limited*** (supra) *ex post facto* EC should not ordinarily be granted, and certainly not for the asking. At the same time *ex post facto* clearances and/or approvals and/or removal of technical irregularities in terms of a Notification under the EP Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of mines, running factories and plants.

41. The EP Act does not prohibit *ex post facto* Environmental Clearance. Grant of *ex post facto* EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and

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others dependent on the project, if such projects comply with environmental norms.

42. In ***Lafarge Umiam Mining Private Limited v. Union of India***[7], a three-Judge Bench of this Court held:-

> *"119. The time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decisionmaker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play."*

43. In ***Alembic Pharmaceuticals Ltd***.(supra), this Court observed:-

> *"27. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on*

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> *the environment. An EC can be issued only after various stages of the decision making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as* well as the need for sustainable development."

44. Even though this Court deprecated *ex post facto* clearances, in ***Alembic Pharmaceuticals Ltd***. (supra), this Court did not direct closure of the units concerned but explored measures to control the damage caused by the industrial units. This Court held:-

> *"However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court."*

45. The Notification being SO. 804(E) dated 14th March 2017 was not in issue in ***Alembic Pharmaceuticals Ltd.*** (supra). In ***Alembic Pharmaceuticals Ltd.*** (supra) this Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January 1994, which was statutory. The EIA Notification dated 27th January 1994 has, as stated above, been superseded by the Notification dated

14th September 2006.

46. There can be no doubt that the need to comply with the requirement to obtain EC is non-negotiable. A unit can be set up or allowed to expand subject to compliance of the requisite environmental norms. EC is granted on condition of the suitability of the site to set up the unit, from the environmental angle, and also existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations and to ensure sustainable development, it is imperative that pollution laws be strictly enforced. Under no circumstances can industries, which pollute, be allowed to operate unchecked and degrade the environment.

47. *Ex post facto* environmental clearance should ordinarily not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of *ex post facto* approval outweigh the consequences of regularization of operations by grant of *ex post facto* approval, and the establishment concerned otherwise conforms to the requisite pollution norms, *ex post facto* approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. In a given case, the deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

48. It is reiterated that the EP Act does not prohibit *ex post facto* EC. Some relaxations and even grant of *ex post facto* EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this Court in ***Electrosteel Steels Limited*** (supra), this Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units for their survival.

49. *Ex post facto* EC should not ordinarily be granted, and certainly not for the asking. At the same time *ex post facto* clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations.

50. In our considered view, the NGT rightly found that when the Bio-Medical Waste Treatment facility of the Appellant was being operated with the requisite consent to operate, it could not be closed on the ground of want of prior Environmental Clearance. The issues raised/involved in this appeal are squarely covered by the judgment of this Court in ***Electrosteel Steels Limited*** (supra) and ***Pahwa Plastics Pvt. Ltd.*** (supra). This Court cannot lose sight of the fact that the operation of a Bio-Medical Waste Treatment Facility is in the interest of prevention of environmental

pollution. The closure of the facility only on the ground of want of prior Environmental Clearance would be against public interest. There are no grounds to interfere with the judgment and order of the NGT in appeal as rightly argued by KSPCB and the Respondent No.3. The appeal is barred by delay. In any case, the appeal does not raise any substantial question of law. The appeal is therefore dismissed.

.....J.
[INDIRA BANERJEE]

.....J.
[J. K. MAHESHWARI]

NEW DELHI;
SEPTEMBER 22, 2022