Rejoinder in EXECUTION

APPLICATION NO.05 of 2024 IN Original

Application no.27 of 2022

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Before the National Green Tribunal sitting at Pune, western zone, Memorandum Of Application (under section 18(1) read with sections 14, 15, 16 & 17 of National Green Tribunal Act, 2010)

EXECUTION APPLICATION NO.05 of 2024 IN Original Application no.27 of 2022 WHICH WAS DISPOSED OFF WITH ORDER DATED 27/03/2023

1.Sri Balvant Murlidhar Parchure

C 1011, Meridian CHS, sector 6, Nerul west, Navi Mumbai- 400706, mobile no: 9529696343 Email: balvantparchure@yahoo.co.in

Applicant

V/S

1.Sub Divisional Officer, Sub Divisional Office Dapoli, and at post Dapoli-415712 mobile no: not available, tel. no: 0235828203 email: sdo_dapoli@rediffmail.com

2.Collector, Ratnagiri, collector office, near Jay stambh, at and post Ratnagiri-415612 mobile no: 9011234299, email: revenuecollector@yahoo.in

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3. Director and Member secretary (MCZMA), Environmental department, 15th floor, new administrative building, Mantralay, Mumbai-400032 mobile no: 9920338628, email:mahamczma@gmail.com

4.Sri Mayuresh Ashok Amburle, at and post Harnai, taluka Dapoli, district Ratnagiri -415713 mobile no: 8605289101, email: not available

5.Sri Naved Najir Sayyad, usi park, Kaljai kond, at and post Dapoli, district Ratnagiri -415712 mobile no: 7276731117, email: naved_sayyad@yahoo.in

RESPONDENTS

SUB:REJOINDER TO REPLY FILED BY RESPONDENTS NO.4 AND 5

NOTARY GOVT OF INDIA MONALI G. SHETE Dist.Thane (M.S.) Regn.No.15270/2019 Expiry Date 04 Nov.2029

Sir

1.It is admitted fact that that case filed by sub divisional officer(sdo) ,dapoli in the high court mumbai is still in pre-admission stage.

The said case was filed by sdo against stay given by senior civil division , taluka khed district ratnagiri in case of notice given by respondent no.1 to respondent no.4 and 5 under Maharashtra regional town planning act 1966 under section 53.The present case and execution is under

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environmental protection act 1986 and crz rules 2011,2019.

Respondents no.4 and 5 have raised objection, stating that case is pending in the high court Mumbai and is also stated by respondents no.1 and 2 also who are revenue authority and environmental authority also. In many cases of crz violations, it is observed that these authorities purposely invoke notice under mrtp act 1966 section 53 and not environmental protection act 1986, showing their scant respect towards environment and there by allowing crz violations to escape clutches of law.

I will like to clarify the matter as follows: the distinction between pre-admission cases and admitted cases in the High Court revolves around the status of the petitions filed. Pre-admission cases refer to those petitions that have been filed but have not yet been formally admitted by the court for hearing. In contrast, admitted cases are those in which the court has accepted the petition and has begun the process of hearing it.

Regarding the execution of orders from the National Green Tribunal (NGT) when a case is at the pre-admission stage in the High Court, the NGT has jurisdiction over environmental matters as established by the National Green Tribunal Act, 2010. If the NGT has issued an order concerning a matter that falls under its jurisdiction, that order can typically be executed regardless of the status of a related case in the High Court. Following judgment cited demonstrate the legal

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framework and authority of the NGT, confirming that its orders hold precedence in environmental matters.

1. Municipal Corporation Of Greater Mumbai (S) v. Ankita Sinha And Others (2021)supreme court of india(exhibit 1) This case emphasizes the necessity for matters related to environmental issues to be litigated before the NGT to avoid conflicts with High Court orders.

Thus arguments of respondents no.1,2 ,4 and 5 , are not tenable, and immediate action should be taken against non executing officers and project proponent including environmental compensation. The respondents no.1 and 2 who are supposed to take action under environmental protection act 1986 have purposely invoked mrtp act 1966 section 53 and sent notice as per the same.The stay against this notice was granted by srenior civil division khed ratnagiri and respondents no.1 and 2 have filed appeal in Mumbai high court to vacate stay under **ngt act 14 and 29.**Whethere this error which is not yet rectified is with purpose or otherwise is difficult to understand. It is surprising that respondent no.1 and 2 being authority do not understand the difference in mrtp act 1966 and environmental protection act 1986 and crz rules.

2.Respondentd no.4 and 5 agrees that the crz violation has happened but it is to extent of 0.2 meters etc.

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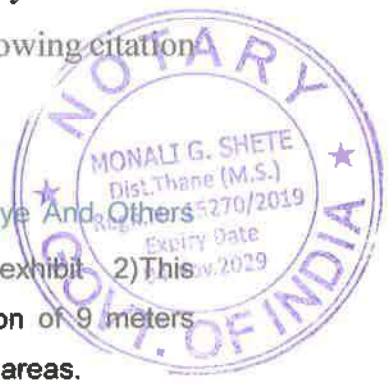
It may be noted that statutory requirement of permission granted to them was ground +1 construction bellow 9 meters and only for **the residential use.**

Respondents no.4 and 5 have violated all the requirement of statutory requirement ,the construction is ground +2 floors and more than 9 meters in height. Respondents no.4 and 5 have accepted report as per their say. As per report the said construction was used for commercial purpose and is not as per permission granted. Hence I request execution of order by honourable ngt without further delay. The following citation confirms to above statement

1Anil Hoble v. Kashinath Jairam Shetye And Others (Supreme Court Of India, 2016)(exhibit 2)This judgment reiterates the height limitation of 9 meters and the restriction to 2 floors in CRZ III areas.



2. Kerala State Coastal Zone Management Authority v. State Of Kerala, Maradu Municipality And Others (Supreme Court Of India, 2019)(exhibit 3) Similar provisions are mentioned regarding the height and number of floors permissible in CRZ III.

Respondents no.4 and 5 have attached notice issued by respondent no.1 and 2 under section 5 of environmental protection act 1986 issued recently and respondents no.4 and 5 have objected the same.I had gone through notice and the

affidavits filed by respondent no.1, and it is stated by them that the total construction was started by respondents no.4 and 5 without permission and the permission was acquired by respondents no.4 and 5 afterwards by misrepresentation. Thus they have acquired post facto crz permission by misrepresentation to authority/respondents no.1,2 and 3.The post facto crz permission is out rightly rejected by high court Mumbai as per order(pil 7 of 2023 vanashkti v/s union of india ors dated 25/09/2024)(exhibit 4) and supreme court of india as per order(writ petition1394/2023 vanashakti v/s union of india dated 16/05/2025)(exhibit 5) as wel as this tribunal.

Though respondent no.4 is traditional community the said construction can not be regularised as it is used for commercial purpose and is violation crz rules.(section 9iv a and b of crz 2019 and section 6 d i and ii of crz 2011) Since construction is of post facto nature and is used for commercial purpose respondents no.1 and 2 are justified to serve notice under section 5 of environmental protection act 1986 and can take action as per the law. Respondents no.4 and 5 are at liberty to take action in appropriate forum and can not raise objection in this case.

The present execution application is regarding demolition of second floor and should be done immediately.

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SRI B.M.PARCHURE

APPLICANT IN PERSON

VERIFICATION

I SRI BALVANT M PARCHURE AGE 67 ,OCCUPATION BUSINESS,FARMER ,R/O NAVI MUMBAI THE APPLICANT HEREIN DO HEREBY VERIFY THAT CONTENTS OF THE APPLICATION AS MENTIONED ARE TRUE AND CORRECT TO MY PERSONEL KNOWLEDGE AND BELIEF AND I HAVE NOT SUPRESSED ANY MATERIAL FACT IN THE WITNESS WHEREOF I SIGNED BELLOW ON 20TH May 2025

Sri BALVANT MURLIDHAR PARCHURE

NOTARY MONALI G. SHETE Dist.Thane (M.S.) Regn.No.15270/2019 Expiry Date 04 Nov.2029 GOVT. OF INDIA

AFFIDAVIT

I SRI BALVANT M PARCHURE AGE 67 ,OCCUPATION BUSINESS,FARMER ,R/O NAVI MUMBAI THE APPLICANT HEREIN SOLEMONELY AFFIRM THAT CONTENTS OF APPLICATION from 1to 2 ARE TRUE TO MY PERSONEL KNOWLEDGE AND INFORMATION AND I SIGN HERE ON 20 th DAY OF may 2025

AFFIANT

NOTARY MONALI G. SHETE Regn.No.15270/19 Dist.Thane (M.S.) GOVT. OF INDIA

BEFORE ME
NOTARY
MONALI G. SHETE
ADVOCATE & NOTARY
Shop No.1, Dighe House,
Behind Sai Baba Mandir,
Court Naka,Thane (W)-400601.

NOTED & REGISTERED
6327 | 25

20 MAY 2025

NOTARY MONALI G. SHETE (M.S.) Regn.No.15270/2019 Expiry Date 04 Nov.2029 GOVT. OF INDIA
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EXHIBIT 1

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[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 12122-12123 OF 2018

MUNICIPAL CORPORATION OF GREATER MUMBAI ...

APPELLANT(S)

VERSUS

ANKITA SINHA & ORS. ...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

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(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

J U D G M E N T

Hrishikesh Roy, J.

"Estragon: Let's go.
Vladimir: We can't.
Estragon: Why not?
Vladimir: We're waiting for Godot." [1]

1. Leave granted in the Special Leave Petitions.

2. The consideration to be made in these matters is whether the National Green Tribunal (for short "the

1 **Beckett, S. (1954).** ***Waiting for Godot: Tragicomedy in 2 Acts.***

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NGT") has the power to exercise *Suo Motu* jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short, "the NGT Act 2010").

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

4. The NGT took *suo motu* cognizance of the above article vide order dated 07.08.2018 and directed that the article writer Ankita Sinha be the applicant in the case OA No. 510 of 2018, registered at the NGT's instance. Thereafter, steps were taken for inspection of the Deonar Dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of

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Greater Mumbai (for short "the MCGM"). Pursuant to the Report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, the NGT vide order dated 30.10.2018 noted that *'damage to the environment and public health is self-evident'* and ordered MCGM to pay compensation to the tune of Rs. 5 crores.

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

6. Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, Mr. Dhruv Mehta, Mr. Atmaram Nadkarni, Mr. Krishnan Venugopal, Mr. V. Giri, Mr. Sajan Poovayya and Mr. Sidhartha Dave, learned Senior Counsel together with Mr. E.M.S Anam, Ms. Amrita Sharma, Mr. S.

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Thananjayan have taken a common stand. They have argued that the NGT is a Tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act *suo motu*, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed. The learned counsel also argue that the NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, the NGT by acting *suo motu* cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with the NGT (which is available with superior courts) is highlighted to keep away *suo motu* power from the NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in later part of this order.

7. Projecting the contrary view, Mr. Nidhesh Gupta, the learned Senior Counsel appearing for the aggrieved

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

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

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important and even a letter addressed by an interested party, will clothe the NGT with power to take action is the concessional submission of Mr. Grover.

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

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both counsel argue for keeping away the *suo motu* power from the NGT.

10.1 Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away *suo motu* power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered Vs. 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

2 (2013) 15 SCC 341

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required to confine itself to within the statutory parameters. Thus, Section 19(25) conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

10.2 Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore Vs. 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."

10.3 The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak Vs. 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

3 (2008) 1 SCC 125
4 (2011) 9 SCC 541

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> and the powers which have not been expressly given by the statute cannot be exercised."

11.1 The second limb of contention is that the Act is applicable to *'disputes'* as, necessarily referring to a *lis* between two parties. The counsel has relied upon *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*[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

5 **(2018) 11 SCC 734**

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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.' "

11.2 The *amicus curiae* has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial

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system but not for any other ameliorative, restorative or preventative functions.

12.1 Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226 and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.,*[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.....

6 (2019) 19 SCC 479

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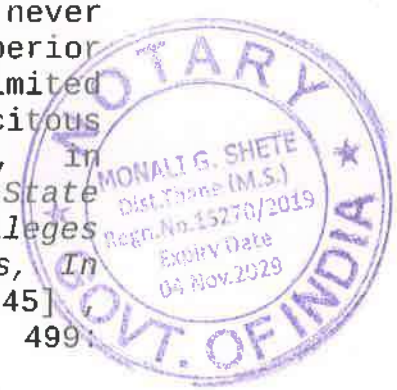
43. ...In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(*b*) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in 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

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> 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."

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

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I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

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

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

> "It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to

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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."

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

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

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> "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 vs. Union 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]

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

7 Chapter II, 186th Law Commission Report.

tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of the NGT.

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

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

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

> "2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at *Rio de Janeiro* in June, 1992, in which India participated, has also called upon the States to provide

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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

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> Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.
>
> 6. In view of the foregoing paragraphs, a need has been felt to establish a specialized tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."

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

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

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

14.4 The paragraph 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common

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efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.

14.5 The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under

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Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

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

III. THE NEED FOR PURPOSIVE INTERPRETATION_

15.1 While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the 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

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societal concerns and these have prompted us to opt for purposive interpretation. The Statue will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes,* authored by Justice G.P. Singh who explained thus,

> "When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.
>
> It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an 'elementary rule' by Viscount Simonds: a compelling rule by Lord Sommervell of Harrow; and a "settled rule" by B.K. Mukherjee J. "I agree" said Lord Halsbury, "that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it."

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15.2 The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional Courts flagging their environmental concerns.

15.3 The application of the *Heydon's Rule* could adequately aid us here as the Rule directs adoption of that construction which *"shall suppress the mischief and advance the remedy"* as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co. vs. 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*."

15.4 Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

8 1955 (2) SCR 603; AIR 1955 SC 661

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> 'A purposive construction of an enactment is one which gives effect to the legislative purpose by–
> (*a*) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or
> (*b*) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.'

15.5 Justice Frankfurter of US Supreme Court in *'Some Reflections on the Reading of Statutes'*, has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner,

> 'The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.
>
> ...
>
> Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'."[9]

Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo's phraseology in *Panama Refining Co. Vs. 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

9 **47 Columbia Law Review 527**

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the parts together and in their relation to the end in view"[10].

15.6 The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.[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 -

16.1 Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions

10 293 U.S. 388 (1935) (dissenting)
11 *Sarah Mathew v. Institute of Cardio Vascular Diseases* (2014) 2 SCC 62, *New India Assurance Co. Ltd. Vs. Nusli Neville Wadia* (2008) 3 SCC 279.

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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

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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

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Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

16.2 While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice & Procedure) Rules, 2011* (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

> *"24. Order and directions in certain cases - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."*

16.3 The said Rules make it clear that the NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

16.4 By choosing to employ a phrase of wide import, i.e. *secure the ends of justice*, the legislature has

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nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.

16.5 Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

16.6 Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or

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organization who may be interested in the subject matter is permitted to approach the NGT.

16.7 The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

V. NON-ADJUDICATORY ROLES OF NGT

17.1 As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such

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matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. *[See Vellore Citizens' Welfare Forum vs. UOI*[12]*; M.C. Mehta vs. UOI*[13] etc.]

17.2 The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc. As one looks at these enactments, an expanded role for the NGT is clearly discernible. The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

17.3 For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of *lis*, would obviously be beyond the usual understanding in civil cases where

12 **(1996) 5 SCC 647**
13 **(1997) 2 SCC 353**

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there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

17.4 The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report,

> "The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. .... The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will

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> involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time."

18. We have earlier discussed that the NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active *"dispute"*, but the formulation of *decisions*.

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19.1 With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan vs. 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.

14 (2012) 8 SCC 326

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> 41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice."

19.2 In the above case, this Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of the NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo motu* by the Courts.

VI EXERCISE OF *SUO MOTU* POWER BY NGT

20. Let us now explore whether the NGT in discharge of its functions, should also have *suo motu* power. The specialized tribunal's exercise of *suo motu* powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High

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Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments. However, As long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

21.1 Explaining the purpose for constituting the special court to deal with environmental issues, in *Mantri Techzone (P) Ltd. vs. Forward Foundation*[15], Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:-

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

15 **(2019) 18 SCC 494**

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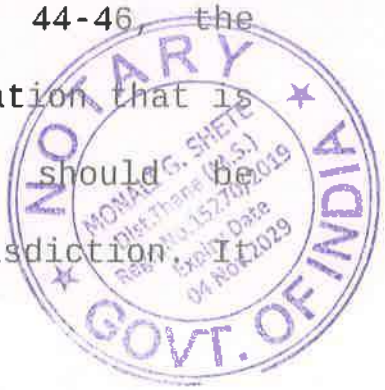
> Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights."

21.2 As can be seen from the quoted passage, this Court recognized that the NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context observed that the Tribunal has special jurisdiction for enforcement of environmental rights.

21.3 Elaborating further, in paragraphs 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that,



> "46. ... As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring

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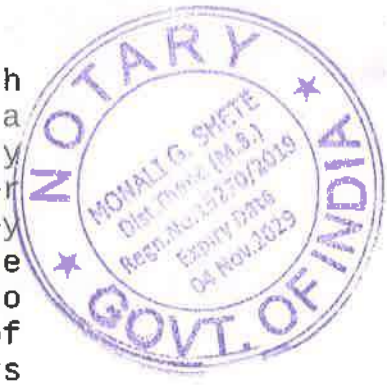
> jurisdiction should be preferred rather than one taking away jurisdiction."

21.4 Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri* vs. *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."



21.5 Thus, the ratio in *Rajeev Suri* to the quoted extent will not clash with the view propounded here as

16 2021 SCC Online SC 7.

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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.

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

> "The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters."

The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a *lis* but to perform equally vital roles which are preventative, ameliorative or remedial in

17 (1999) 2 SCC 718

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nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

VII. UNIQUENESS OF NGT *VIS-A-VIS* OTHER TRIBUNALS

22.1 While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

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Bhushan in *State of Meghalaya vs. 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

18 (2019) 8 SCC 177

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> circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private—of a citizen."

22.3 Reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising *"wide range of jurisdiction"* and the *"wide range of powers"*, given to it by the statute.

23. During the course of its functioning, the NGT has been recognized as one of the most progressive Tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. To understand how the NGT is perceived globally, we may usefully refer to the views of Chief Justice Brian Preston of the Land and Environment Court of NSW Australia,

> "The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the

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rule of law and promoting good governance."[19]

VIII. THE SUI GENERIS ROLE OF NGT

24.1 The NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution. The structure of *Sui generis* institutions was explained in *Paramjit Kaur Vs. State of Punjab*[20], wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,

> "14. The concept of sui generis is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbiter is entrusted acts sui generis, that is, on its own and not under any law."

24.2 In *DG NHAI vs. Aam Aadmi Lokmanch*[21], Justice S. Ravindra Bhat commenting on the *sui generis* role of the NGT, so appropriately stated as follows:-

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

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"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.

**** **** **** ****
**** **** **** ****

76. The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.

77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent

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the future occurrence of incidents that impact the environment, are issued."

24.3 In that case, this Court repelled the argument for a restricted jurisdiction for the NGT, and fittingly observed in paragraph 76 that the powers conferred on the NGT are both reflexive and preventive and the role of the NGT was recognized in paragraph 77 as *"an expert regulatory body"*, which can issue general directions also *albeit* within the statutory framework.

24.4 The above discussion would advise us to say that the NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court. Many of those cases transferred to the NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate *suo motu* proceedings should also be available with the NGT.

24.5 The NGT is a Tribunal with *sui generis* characteristic, with the special and all-encompassing

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jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

25.1 Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take *suo*

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motu cognizance of matters, for effective discharge of its mandate.

25.2 The analysis for this segment should commence with Section 14 of the NGT Act and the same being of great relevance is being extracted hereunder,

> " 14. Tribunal to settle disputes. - (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
>
> (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.
>
> (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose: Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

25.3 The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision

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conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

25.4 In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism

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of the subsequent subsections. The sub Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

25.5 The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any

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application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

25.6 It may also be relevant to bear in mind that while dealing with contested cases, the NGT is required to pass *"award"* and *"order"* and the statute repeatedly uses the word *"decision"*. Therefore, it is appropriate to correlate the word *"decision"* to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in *DG, NHAI* (supra).

25.7 The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The

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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 & Anr. Vs. Shamlal Murari & Anr.*[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."

25.8 While discussing the NGT's power and responsibility, it is essential to keep in mind the *Principle 10* of *the Rio Declaration* which speaks of three fundamental rights i.e., access to information,

22 (1976) 1 SCC 719

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access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

X. THE PRECAUTIONARY PRINCIPLE

26.1 Tracing the origin of the *Precautionary Principle*, Scott Lafranchi in his 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

23 Scott LaFranchi, ***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)

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> 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.'"

26.2 The origin of the *Precautionary Principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

26.3 As earlier seen, 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."

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26.4 The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other *'decisions'* or *'orders'* to governmental authorities or polluters, when they fail to *"to anticipate, prevent and attack the causes of environmental degradation"*[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.

26.5 It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive

24 Vellore Citizens (supra), *S. Jagannathan v. Union of India* (1997) 2 SCC 87, *Karnataka Industrial Areas Development Board v. C Kenchappa and Ors (2006)* 6 SCC 371.

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at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, *'The Nature of the Judicial Process'*, stated thus,

> "It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided."

The above could be a pointer towards the preemptive functions of the NGT as a *sui generis* body.

XI. ENVIRONMENTAL JUSTICE AND ENVIROMENTAL EQUITY

27.1 The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice

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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.

27.2 Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role of the Courts in Environmental Law,* wrote the following evocative passage on the concept of environmental justice,

25 **Schlosberg D, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford University Press 2009)**

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> "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]

27.3 There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people.

> "Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm.Further, those who benefit cause harm to the places where people "live, work, play, and go to school," whereas the people who reside there do little or nothing to harm their community." [27]

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).

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When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An *"equal footing"* conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalized classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

27.4 The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in

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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]

27.5 In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the *'Blindfold of Lady Justice'*, which symbolizes *"the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class."*[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

28.1 Proceeding with the above understating, we can comfortably place the **NGT** within the rubric of the

28 **Supra Note 26.**
29 **Ibid**

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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]

28.2 By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a

30 ***Rural Litigation And Entitlement Kendra & Ors V. State Of U. P. & Ors*** **AIR 1985 SC 652,** ***Charan Lal Sahu Vs. Union of India*** **(1990) 1 SCC 613,** ***Virender Gaur Vs. 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).**

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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 Vs. 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]

28.3 Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the *'Absolute Liability Principle'* [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

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 vs. Union of India, 1987 SCC (1) 395.

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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]

28.4 It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.[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

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.**

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populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.[37]

28.5 Justice T.S. Doabia in *Environmental & Pollution Laws in India,* has highlighted the larger societal concerns which have informed this Court's deliberation when dealing with environmental matters,

> "The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.
>
> ...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned." [38]

28.6 Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic,

37 ***M.C. Mehta vs. 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 vs. M.V. Nayudu*** **(1999) 2 SCC 718,** ***A.P. Pollution Control Board II vs. M.V. Nayudu*** **(2001) 2 SCC 62.**

38 **Justice T.S. Doabia,** ***Environmental & Pollution Laws in India,*** **3rd Ed., Vol 2 (2017).**

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welfare oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, as has been noted, stood transferred to the NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior Court was surely expected to be seen in the Tribunal's approach.

28.7 Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand Management & Development Authority vs. 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

39 (2021) 4 SCC 309

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

28.8 It is this environmental rule of law that has been encapsulated with the NGT's creation at this Court's behest. Professor Domenico Amirante in a comparative analysis of similar bodies across the world, notes that,

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> "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]

The NGT therefore, is the institutionalization of the developments made by this Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

X. CONCLUSION:

29. Before we set out our conclusion, we acknowledge the able contribution of Mr. Anand Grover as *amicus curiae*, assisted by Ms. Astha Sharma, AOR who were requested to assist the Court on the central issue of *suo motu* jurisdiction of NGT.

40 **Domenico Amirante, *Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India*, 29 Pace Envtl. L. Rev. 441 (2012)**

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30. The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a *sui generis* institution and not *unus multorum,* and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.

31. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of

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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].

32. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long term and very often irreparable environmental damage which are expected to be arrested by the NGT, urge this Court to advert to what is termed as *the 'Seventh Generation' sustainability principle*, or the *'Great Law of the Iroquois'* (as it originates from the Iroquois Tribe) which requires all decision making to withstand for the benefit of seven generations down the line.

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.**

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33. It is vital for the wellbeing of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

34. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the *"global impacts of climate change will fall disproportionately on minority and low-income communities"*.[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

43 **Supra Note 23.**

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requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

35. The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for the NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

36. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT

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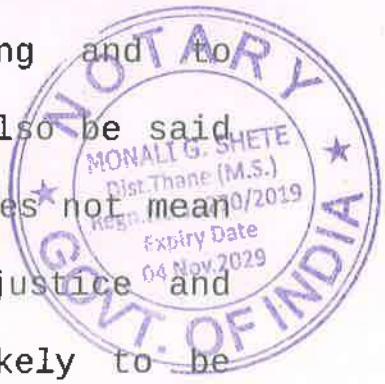
into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

37. When the Registry of the NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate *suo motu* action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist the NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of *suo motu* jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.



38. One could admit to the argument of danger of *suo motu* jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the

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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.

39. Institutions which are often addressing urgent concerns gain little from procedural nitpicking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

40. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying

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that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is vested with *suo motu* power in discharge of its functions under the NGT Act.

41. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being heard separately on merits. Indeed, if the case(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.

.....J.
[A.M. KHANWILKAR]

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.....J.
[HRISHIKESH ROY]

.....J.
[C.T. RAVIKUMAR]

NEW DELHI
OCTOBER 7, 2021

NOTARY
MONALI G. SHETE
Dist.Thane (M.S.)
Regn.No.15270/2019
Expiry Date
04 Nov.2029
GOVT. OF INDIA

EXHIBIT 2 **250**

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NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL DIARY NO. 26024 OF 2016

Anil Hoble .....Appellant(s)

Vs.

Kashinath Jairam Shetye and Ors. .....Respondent(s)

JUDGMENT

A.M.KHANWILKAR, J.

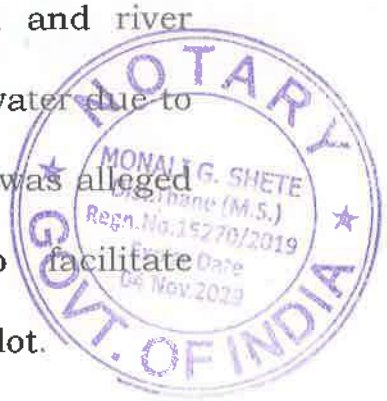
Delay condoned.

2. This appeal arises from the final judgment and order passed by the National Green Tribunal (Western Zone) Bench, Pune dated 29th May, 2015 in Application No. 51/2014 and dated 14th December, 2015 in M.A. No. 180/2015 (WZ) and Review Application No. 15/2015(WZ).

3. Respondent Nos. 1-4 had filed an application before the Tribunal under Section 14(1) read with Section 14(3) of the National Green Tribunal Act, 2010 complaining about degradation of

environment on account of unauthorized construction on plot of land falling within CRZ(III)(No Development Zone - in short NDZ).

4. According to the said respondents (original applicants), the appellant (original respondent No.3) was responsible for construction of a commercial building on plot of land bearing Chalta No.1/PTS No.10, Panjim City and Survey No.65/1-A Village Morombio Grande in Merces Panchayat, without obtaining necessary permission from the concerned Authorities. That construction is detrimental to the coastal ecosystem and river ecosystem; and is also likely to cause pollution of river water due to the commercial activities of the Bar and Restaurant. It was alleged that the appellant exerted political influence to facilitate construction of the unauthorized structure on the said plot.



5. The appellant opposed the said application by raising preliminary objections. Firstly, that the subject application was not maintainable - as remedy of appeal under Section 16 against the decision of the Authority could be preferred. Secondly, the applicants had failed to comply with the procedure prescribed under Rule 13 of the National Green Tribunal (Practices and

Procedure) Rules, 2011. Thirdly, the application was barred by limitation - as the cause of action had arisen soon after the construction work was commenced in the year 2011. The application, however, was not filed within 6 months therefrom. Further, a writ petition for similar challenge was filed before the High Court and has since been withdrawn. No liberty has been given by the High Court to the applicants to pursue the same cause of action. On merits, it was asserted that the structure was in existence prior to 19th February, 1991 when the CRZ Policy came into force. It was used as a garage at the relevant time. The appellant after purchasing the plot and the structure standing thereon vide registered sale deed dated 3rd August, 1992, initially used it for motor garage and allied activity. The same structure after repair and renovation was used as Restaurant and Bar. In substance, the stand of the appellant was that since the structure was in existence prior to 19th February, 1991, the change of user after taking permission of the concerned authorities would not make the same unauthorized. The appellant had taken due permission of the competent Authority for re-roofing and re-flooring

of the structure. It was not a case of construction of a new structure within the No Development Zone (NDZ) as is contended.

6. The Tribunal after analyzing the documentary evidence including the survey reports brought on record by the parties, negatived the plea of the appellant that the structure as it exists at present was constructed prior to 19th February, 1991. The Tribunal recorded that finding on the basis of the contents of the registered Sale Deed dated 3rd August, 1992 executed in favour of the appellant by the original owner of the plot, the House Property Revenue Records, Settlement of Land Records, No Objection Certificate given by the Panchayat, Inspection Report dated 2nd May, 2012, and also the contents of the affidavit filed by the appellants. The Tribunal held that the structure as existed prior to 19th February, 1991, on plot of land bearing Survey No. 65/1-A or in Survey No.83/2-A of Village Morombio Grande in Merces Panchayat, falling within 100 metres distance (in CRZ III area), was a small structure at the corner of the said plot and was used as a garage. The Tribunal then relied on the decision of the High Court of Bombay in the case of **Goa Foundation** vs. **The Panchayat of**

Condolim & The Panchayat of Calangut[1], in which directions were issued to the State Authorities to take action against such unauthorized structures and constructions put up on the land falling within CRZ-III area in Goa, village or town-wise after 19th February, 1991; and further that permission can be granted "only" for repair and renovation of the existing "dwelling units" in such areas. The Tribunal following that decision observed that the structure other than the original structure as existed on 19th February, 1991, standing on land Survey No. 65/1-A or in Survey No.83/2-A of Village Morombio Grande in Merces Panchayat at South Goa be demolished forthwith after following due process. The directions given by the Tribunal read thus :-

> "a. All the structures, including Restaurant and Bar/Pub and allied structures standing in the land Survey No.65/1-A, or in Survey No.83/2-A, of Village Morambio Grande, shall be demolished by Deputy Collector, South Goa, within the period of six(6 weeks)
>
> b. We direct Respondent No.3 Anil to pay amount of rs.20(Twenty) Lacs as costs of degradation of environment and violation of CRZ Notification, 1991, within six(6) weeks to the Environment Department, Govt. of Goa along with costs of Rs. 5000/- (five thousand) as litigation costs, which be equally disbursed in favour of all the applicants.

1 W.P.No.422/ 1998 & W.P.No.99/1999

c. The GCZMA, is directed to hold enquiry regarding houses illegal structures of CRZ area about which permission might have been obtained without following due procedures and to take appropriate action against the violators of CRZ Notifications.

d. The compliances about demolition of illegal structures of Respondent No.3 and costs payment of costs, shall be reported to the tribunal within(6) weeks.

e. The application is accordingly disposed of."

The appellant thereafter filed review petition before the Tribunal which, however, was dismissed on December 14, 2015, thus reiterating the direction already issued by the Tribunal.

7. Aggrieved, the appellant has filed the present appeal challenging both the judgments on the original application and the review application. According to the appellant the finding of fact recorded by the Tribunal with regard to the status of the structure standing on the subject plot is manifestly wrong. It was then contended that even the finding of the Tribunal that permission can be granted only for repair or renovation of dwelling units, was contrary to the CRZ Policy document. Further, the CRZ Policy document does not restrict the user of the existing structure or disallow the change of user therein. Further, the appellant having

taken due permission of the competent Authority to use the structure as Restaurant and Bar must prevail. In the alternative it is submitted that the appellant was entitled to repair and renovate the original structure as it existed on 19th February, 1991 and use it for the purpose/activity permissible after taking approval of the competent Authority in that behalf. The learned counsel for Respondent No. 5 invited our attention to the relevant documents, in particular to the show cause notice issued by Goa Coastal Zone Municipal Authority (GCZMA) dated 25th May, 2012 and the Report of the Enquiry Committee (GCZMA) dated 30th February, 2014 which concluded that there was no violation of CRZ Regulation.

8. The appellant has not seriously pursued the preliminary objections which were otherwise raised in the reply to the application filed before the Tribunal and rejected by the Tribunal. The principal argument of the appellant is that the factual finding recorded by the Tribunal about the status of the structure on the subject plot is manifestly wrong. In the first place, merely because remedy of appeal is provided against the decision of the Tribunal before this Court that does not mean that this Court must

reappreciate the entire evidence on record and specially when the same has already been analysed by the Tribunal, unless the appellant is able to demonstrate that the finding recorded by the Tribunal suffers from error apparent on the face of the record or is perverse. Nevertheless, we permitted the appellant to refer to the relevant contemporaneous record which has already been extensively analysed by the Tribunal. On going through the said documents, we are not in a position to take a view different than the view already taken by the Tribunal. We find that when the appellant purchased the subject plot vide registered Sale Deed dated 3rd August, 1992, only a small structure at the corner of the said plot was in existence and was used as a garage and which was indisputably within 100 metres from the High Tide Line. On this finding, it necessarily follows, that the structure as it exists now is quite different - both in shape, size and location being in the middle of the plot. Obviously, it is an unauthorized structure constructed after 19th February, 1991. The CRZ policy dated 19.02.1991 prohibits any construction upto 200 metres from the High Tide Line. It is to be treated as 'No Development Zone', except for repairs of existing "authorized structures" not exceeding specific

permissible FSI, plinth area and other norms for permissible activities including facilities essential for such activity under the Notification. The relevant clause in the said Notification, dealing with land area falling within CRZ-III area reads thus :-

"

.....

CRZ-III

i. The area upto 200 metres from the High Tide Line is to be earmarked as 'No Development Zone. No construction shall be permitted within this zone except for repairs of existing authorized structures not exceeding existing FSI, existing plinth area and existing density, **and for permissible activities under the notification including facilities essential for such activities. An authority designated by the State Government/Union Territory administration may permit construction of facilities for water supply, drainage and sewerage for requirements of local inhabitants.** However, the following used may be permissible in this zone agriculture, horticulture, gardens, pastures, parks, play fields, forestry and salt manufacture from sea water.

ii. Development of vacant plots between 200 and 500 metres of High Tide Line in designated areas of CRZ-III with prior approval of Ministry of Environment and Forests (MEF) permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in guidelines at Annexure-II.

iii. Construction/reconstruction of dwelling units between 200 and 500 metres of the High Tide Line permitted so long it is within the Ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling units shall

not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 percent of the plot size; the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors ground floor plus one floor. **Construction is allowed for permissible activities under the notification including facilities essential for such activities. An authority designated by State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those panchayats the major part of which falls within CRZ if no other area is available for construction of such facilities.**

iv. Reconstruction/alterations of an existing authorized building permitted subject to (i) to (iii) above.

....."

(emphasis supplied)

9. Relying on sub-clauses (i), (iii) and (iv), it was contended that the Tribunal committed error in law on two counts. Firstly, in assuming that the structure within CRZ area can be used only as a dwelling unit, and secondly, that repairs and renovation permission can be given only to such dwelling units. This submission does not commend us. Sub-clause (i) plainly mandates that "no construction" of any kind be permitted within 200 metres from the High Tide Line. That area has to be treated as "No Development Zone", except for repairs of "existing authorized

structures" (on the date of the Notification i.e. 19th February, 1991) and not exceeding the permissible FSI, plinth area and density and for permissible activities. Sub-clause (iii) deals with CRZ area between 200 to 500 metres of High Tide Line with which we are not concerned in the present case. In as much as, the finding of fact by the Tribunal about the location of the plot is that the plot was within 100 metres from the High Tide Line. There is nothing to doubt the correctness of this finding.

10. The moot question then is: whether the structure as it existed when the respondents moved the Tribunal complaining about violation within the CRZ area was the same structure as on 19th February, 1991 when the CRZ Policy came into being. That finding of fact has been answered against the appellant by the Tribunal and we must agree with the same. For, the structure as it existed when the plot was purchased by the appellant on 3rd August, 1992 was a small structure at the corner of the subject plot and was used only as a garage or for repairs of vehicles and allied activity. The structure in respect of which complaint has been made before the Tribunal was completely different in shape, size and also location

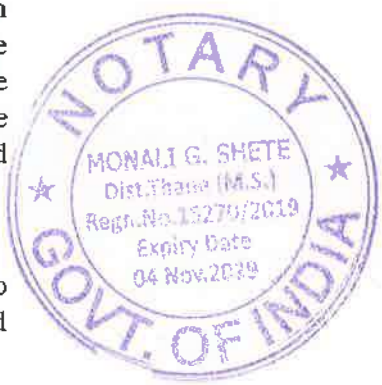
for which reason the Tribunal issued direction to remove the same. The view taken by the Tribunal relying on the decision of the Bombay High Court, which the Tribunal was bound to follow, permitted retention of only dwelling units within CRZ III area and constructed prior to 19th February, 1991. The direction given by the High Court in the case of **Goa Foundation** (supra) have been reproduced by the Tribunal in para 12 of the impugned judgment, which reads thus :-

> "12. The Hon'ble High Court summarized findings and gave directions in paragraph 32 as follows :
>
> (A) To conduct survey and enquiry as regards the number of dwelling units and all other structures and constructions which were existing in the CRZ-III Zone in Goa, village or town wise as on 19th February, 1991 and increase the number thereof thereafter, date-wise.
>
> (B) To identify on the basis of permission granted for construction of the dwelling units which are in excess of double the units with regard to those which were existing 19th February, 1991.
>
> (C) To identify all types of structures and constructions made in CRZ-III zone, except the dwelling units, after 19th February 1991 in the locality comprised of the dwelling units and to take action against the same for the demolition in accordance with the provisions of law.
>
> (D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilization thereof

they are being allowed to be utilized for such construction activities.

(E) Till the survey and enquiry is completed, as directed above, no new licence for any type of construction in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and enquiry to be held as directed above and this should be specifically stated in the licences to be granted for the purpose of repairs and/or renovation of the existing houses.

(F) The Respondent No.5 to conduct an enquiry and fix responsibility for the violation of CRZ notification in relation to clause-III of CRZ-III zone and to take appropriate action against the persons responsible for such violation of the provisions of the Environmental Protection Act and the said notification in relation to the CRZ-III zone.



(G) All this directions stated above are in relation to the CRZ-III zone in Goa in terms of the said notification.

(H) The survey and enquiry should be conducted as expeditiously as possible and should be concluded preferably within the period of six months, and in any case, by 30th May, 2007, and report in that regard should be placed before this court in the first week after the summer vacation of 2007, for necessary for the order.

(I) Meanwhile, on conclusion of the survey and inquiry, necessary action should proceed against the offending structures and report in that regard also should be placed along with the above effort report.

(J) The Respondent No.3 and 4 shall ensure prompt compliance of the directions given in this judgment and shall be responsible for submitting the report required to be submitted as stated above.

(K) All the records relating to the survey and the inquiry should be made available to the public available to the public and in that regard a website should be opened and the entire material should be displaced on the website. The Respondent No.3 should ensure due compliance of this direction by 10th of June, 2007.

(L) The respondent No.1 and 3 shall pay costs of Rs.10,000/- in each of the petitions to the petitioners.

(M) Report to be received from the respondents should be placed before this court in the third week of June, 2007.

(N) Rule is made absolute in above terms."

So long as these directions are in force, the State Authorities or Municipal Authorities were bound by the same and they could not have granted permission to any applicant in breach thereof. Any permission given contrary to those directions must be viewed as nullity and *non-est*, having been given in complete disregard of the directions of the High Court. Thus, the permission granted to the appellant by GCZMA would be of no avail, as it is not consistent with the directions of the High Court.

11. The fact remains that the structure directed to be demolished by the Tribunal, was obviously erected after 19th February, 1991. That being an unauthorized structure within the meaning of

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sub-clause (i) quoted above, could not be used for any purpose whatsoever and was required to be demolished. Therefore, the finding recorded by the Tribunal and the consequential directions given in that behalf are unassailable.

12. In this view of the matter, it is not necessary for us to dilate on the argument as to whether the CRZ Policy prohibits change of user of the structure which was in existence on 19th February, 1991, so as to be used as a Restaurant and Bar. In our opinion, on the facts of the present case, no substantial question of law much less of great public importance arises for our consideration.

13. Hence this appeal must fail and the same is, therefore, dismissed with no order as to cost.

.....CJI
(T.S. THAKUR)

.....J.
(A.M. KHANWILKAR)

.....J.
(DR.D.Y. CHANDRACHUD)

New Delhi
Dated: 7th October, 2016

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EXHIBIT 3

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4784-4785 OF 2019
(Arising out of SLP (C) Nos.4227-4228 of 2016)

THE KERALA STATE COASTAL ZONE MANAGEMENT AUTHORITY ... APPELLANT

VERSUS

THE STATE OF KERALA MARADU MUNICIPALITY & ORS. ... RESPONDENTS

WITH

CIVIL APPEAL NOS.4790-4793 OF 2019
(Arising out of SLP (C) Nos.4231-4234 of 2016)

AND

CIVIL APPEAL NOS.4786-4789 OF 2019
(Arising out of SLP (C) Nos.4238-4241 of 2016)

O R D E R

Leave granted.

Applications for intervention are allowed.

The appeals have been filed by the Kerala State Coastal Zone Management Authority aggrieved by the judgment and order dated 11.11.2016 passed by the High Court in Writ Appeal No.132 of 2013 and other connected appeals.

The appellant authority has been constituted by the Government of India in compliance with the directions issued by this Court in *Indian Council for Enviro-Legal Action* v. ***Union of India*** [(1996) 5 SCC 281] as well as in the exercise of the powers conferred under Section 3 of the Environment Protection Act, 1986. The appellant authority is empowered to deal with the environmental issues

relating to the notified Coastal Regulations Zones (in short, 'CRZ'). Construction activities in the notified CRZ areas can be permitted only in consultation with and prior concurrence of the appellant authority. It is the binding duty of the local self-Government, the competent authority before issuing building permits to forward an application for building permission to the appellant authority along with the relevant record. The appellant authority has issued circulars to all Gram Panchayats, Municipalities, and Municipal Corporations directing them to follow the provisions of CRZ notifications and to act in accordance with the procedures provided in the notifications.

The decision of this Court in *Piedade Filomena Gonsalves v. State of Goa* [(2004) 3 SCC 445] has also been relied upon which explains the significance of CRZ notifications in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of the regulations cannot be lightly condoned. The construction activities of the respondent builders are on the shores of the backwaters in Ernakulam in the State of Kerala which supports exceptionally large biological diversity and constitutes one of the largest wetlands in India.

The area in which the respondents have carried out construction activities is part of the tidally influenced water body and the construction activities in those areas are strictly restricted under the provisions of the CRZ Notifications. Uncontrolled construction activities in these areas would have devastating effects on the natural water flow that may ultimately

result in severe natural calamities. The expert opinions suggest that the devastating floods faced by Uttarakhand in recent years and Tamil Nadu this year are the immediate result of uncontrolled construction activities on river shores and unscrupulous trespass into the natural path of backwaters. The Coastal Zone Management Plan (in short, 'CZMP') has been prepared to check these types of activities and construction activities of all types in the notified areas. The High Court has ignored the significance of approved CZMP.

As per the appellant, these constructions activities are taking place in critically vulnerable coastal areas which are notified as CRZ-III. The panchayats have issued these permissions in violation of relevant statutory provisions and CRZ notifications. The Vigilance Section of Local Self Government Department, Government of Kerala detected these violations and anomalies in the issue of building permits and hence directed the concerned bodies to revoke all the flawed building permits exercising its powers under Rules 16 and 23 of the Kerala Municipality Building Rules, 1999 (in short, referred to as 'the Rules of 1999').

A show cause notice was issued under Rule 16 of the Rules of 1999, asking the builders to show cause why the building permit issued to them be not cancelled. Writ Petitions were filed questioning the same. The learned Single Judge allowed the writ petitions. The Division Bench dismissed the appeals. The High Court has observed that the permit holders cannot be taken to task

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for the failure of local authorities in complying with the statutory provisions and notifications. Review petitions were also dismissed. Hence, the appeals by special leave have been preferred.

After hearing the appeals for two days, we constituted the Committee to hear the parties. Following is the order passed by this Court on 27.11.2018 :

> "1. The writ petitions filed questioning the show cause notice dated 4.6.2007 issued for the removal of the buildings, which according to show cause notice were falling within the prohibited area of CRZ Category. Various violations were mentioned in the show cause notice. Without availing the remedy of filing reply to the show cause notice, writ petitions were filed directly in the High Court. The Single Bench of the High Court vide its judgment and order dated 10.09.2012, allowed the writ petition. Aggrieved thereby, the Municipality preferred writ appeals before the Division Bench, which were dismissed by the impugned judgment and order dated 02.06.2015.
>
> 2. Considering the peculiar facts and circumstances of the case, as there is no categorical finding recorded either by the Single Bench or by the Division Bench that whether the area in question is in CRZ Category-III, Category-I or Category-II. It was claimed by the petitioner before the Single Bench that they fell within the CRZ Category-II, whereas the case set up by Coastal Zone Management Authority in this Court is that area is of CRZ CategoryIII. We deem it appropriate to call for the findings on the aforesaid aspect.
>
> 3. We constitute a Three-Member Committee consisting of the Secretary to the Local Self Government Department, the Chief Municipal officer of the concerned Municipality and the Collector of the District, to hear the objections and to give a finding in terms of Notification dated 19th February 1991.

4. Let the Committee hear the affected parties as well as Kerala State Coastal Zone Management Authority and State Government and consider the matter as submitted by the parties and send a report to this Court as to legality of construction and precisely in which category the area in question is to be categorized and whether building is in prohibited zone. Let the exercise be done within a period of two months and a report be submitted to this Court.

5. Let the report be submitted covering the aspect that may be urged by the parties as to the legality of construction."

The aforesaid order was passed in order to cut short the litigation in respect of the show cause notice issued by the authorities as the only question to be decided was as to whether the area falls in CRZ-III of Coastal Zone Regulations. We have heard the learned counsel at length again after receipt of the report. The Committee consisted of the following members :

1. K. Gopalakrishna Bhat, IAS
   Local Self Government (Rural)
   In-Charge.

2. K. Mohammed Y. Safirulla, AIA,
   District Collector,
   Ernakulam.

3. Subhash P.K.,
   Municipal Secretary,
   Maradu Municipality.

The Committee has given the opportunity of hearing and has dealt with the case set up by all the stakeholders in extensive detail. Following findings and conclusion have been recorded by the Committee :

"The Committee evaluated all arguments raised by the parties and KCZMA, existing Rules and

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Statutes and examined the Google map produced at the time of the meeting.

The findings of the committee are as follows:

1) Marad Panchayat which was formed in 1953 was upgraded into a municipality in November 2010.

2) The Coastal Zone Management Plan (CZMP of Kerala currently applicable is the one that was approved in 1996. As per the said CZMP, Marad has been marked as Panchayat area and hence falls in the Coastal Regulation Zone (CRZ) category of CRZ-III. The area is represented in the Map numbers 33, 33A and 34 of CZMP 1996. These maps are attached as Annexure 1 and 2. A mosaic of the three maps showing the Marad area is attached as Annexure 3. Since the Panchayat has been upgraded to Municipality in the year 2010, the same has been shown as CRZ-II category in the draft CZMP prepared as per the CRZ Notification 2011 and submitted to the MoEF&CC of Government of India recently. Until the Government of Kerala/KCZMA receives a communication from the Government of India on the approval of the CZMP draft submitted, the CZMP of 1996 stands valid. Hence, as on date, Maradu area being a backwater island the provisions as detailed below is applicable after 6th January 2011 i.e., the date on which Government of India published Coastal Zone Management Plan (CZMP).

i) The islands within the backwaters shall have 50 mts width from the High Tide Line on the landward side as the CRZ area;

ii) within 50 mts from the HTL of these backwater islands existing dwelling units of local communities may be repaired or reconstructed however no new construction shall be permitted;

iii) beyond 50 mts from the HTL on the landward side of backwater islands, dwelling units of local communities may be constructed with the prior permission of the Grama panchayat;

iv) foreshore facilities such as fishing jetty, fish drying yards, net mending yard, fishing processing by traditional methods, boat building yards, ice plant, boat repairs and the like, may be taken up within 50 mts width from HTL of these backwater islands.

EXHI 106

CONCLUSION

> The Coastal Zone Management Plan (CZMP) of Kerala currently applicable is the one that was approved in 1996. As per the said CZMP Maradu has been marked as Panchayat area and hence falls in the Coastal Regulation Zone (CRZ) category of CRZ III. Maradu Panchayat has been upgraded to Municipality in the year 2010 and hence in the draft CZMP prepared as per CRZ Notification 2011, it is shown as CRZ II category. The new draft CZMP is submitted to MoEF & CC of Government of India for approval. Until Government of India approved the draft notification CZMP 1996 stands valid."

It is apparent that at the relevant time when the construction has been raised by the respondents in the matters, the area was within CRZ-III. With respect to CRZ-III, the relevant notification dated 19.2.1991 indicates that the area of 200 meters from the High Tide Line is no development zone. No construction shall be permitted within this zone except for repairs of the authorized structures not exceeding existing FSI. The notification dated 19.02.1991 relating to CRZ-III is extracted below:-

> "iii. The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style.
>
> i. The area up to 200 meters from the High Tide Line is to be earmarked as "No Development Zone". No construction shall be permitted within this zone except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area, and existing density, and for permissible activities under the notification including facilities essential for such activities. An authority designated by the State Government/Union Territory Administration may permit construction of facilities for water supply, drainage, and sewerage for requirements of local inhabitants. However, the following

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uses may be permissible in this zone agriculture, horticulture, gardens, pastures, parks, playfields, forestry and salt manufacture from sea water.

ii. Development of vacant plots between 200 and 500 meters of High Tide Line in designated areas of CRZ-III with prior approval of Ministry of Environment and Forests (MEF permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure-II.

iii. Construction/reconstruction of dwelling units between 200 and 500 meters of the High Tide Line permitted so long it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 percent of the plot size; the overall height of construction shall not exceed 9 meters and construction shall not be more than 2 floors ground floor plus one floor. Construction is allowed for permissible activities under the notification including facilities essential for such activities. An authority designated by State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads, and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those panchayats the major part of which falls within CRZ if no other area is available for construction of such facilities.

iv. Reconstruction/alterations of an existing authorised building permitted subject to (I) to (iii) above."

It is also relevant to take note of Rule 23(4) of the Rules of 1999 which is extracted below:-

"23(4) Any land development or redevelopment or building construction or reconstruction in any

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> area notified by the Government of India as a coastal regulation zone under the Environment (Protection) Act, 1986 (29 of 1986) and rules made thereunder shall be subject to the restrictions contained in the said notification as amended from time to time."

It is necessary for the local authority to follow the restrictions imposed by the notification, as amended from time to time. Thus, it was not open to the local authority, i.e., Panchayat, in view of the notification of 1991 to grant any kind of permission without the concurrence of Kerala State Coastal Zone Management Authority. Admittedly, Panchayat has not forwarded any such applications for building permissions and there is no concurrence or permission granted by the Kerala State Coastal Zone Management Authority. As such, we find that once a due inquiry has been held by the Committee, there is no escape from the conclusion that the area fell within CRZ-III, it was wholly impermissible and unauthorised construction within the prohibited area. We also take judicial notice of recent devastation in Kerala which had taken place due to heavy rains compounded by such unbridled construction activities resulting in colossal loss of human life and property due to such unauthorised activity.

This Court in *Vaamika Island (Green Lagoon Resort)* vs. *Union of India & Ors.* [(2013) 8 SCC 760], has observed:-

> "26. The petitioner had affected the construction in violation of the provisions of 1991 and 2011 Notifications as well as Map No.32-A, so found by the High Court. The factual details of the same and where actually the portion of some of the properties of the petitioner in Vettila Thuruthu will fall has been elaborately dealt with by the

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High Court in its judgment in paras 109 to 119. We notice that the High Court has dealt with the issue pointing out that so far as buildings which have been constructed by the petitioner during the currency of the Notification issued in 1991 are concerned, they are clearly in violation of this notification, hence, action has to be taken for the removal of the same. The Director of Panchayat also vide letters dated 7.3.1995, 17.7.1996 directed all the panchayats to strictly follow the provisions of CRZ notification which it was found not followed by granting permission. The High Court has also found on facts that reconstruction work appeared to have been done during the currency of the 2011 Notification and two buildings (193/D and 193/E) were also constructed illegally. The High Court has also noticed another new construction underway. These all are factual findings which call for no interference by this Court. The High Court has clearly noticed that reconstruction work has been done contrary to 1991 as well as 2011 Notifications and the report of the Expert Committee constituted by the Kerala State Committee on Sciences Technology and Environment (KSCSTE) was accepted.

27. We are of the considered view that the above direction was issued by the High Court taking into consideration the larger public interest and to save Vembanad Lake which is an ecologically sensitive area, so proclaimed nationally and internationally. Vembanad Lake is presently undergoing severe environmental degradation due to increased human intervention and, as already indicated, recognising the socio-economic importance of this waterbody, it has recently been scheduled under "vulnerable wetlands to be protected" and declared as CVCA. We are of the view that the directions given by the High Court are perfectly in order in the abovementioned perspective.

28. Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of the 1991 and 2011 CRZ Notifications are perfectly in tune with the decisions of this Court in *Piedade Filomena Gonsalves* v. *State of Goa* [(2004) 3 SCC 445], wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of

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such regulations cannot be lightly condoned."

In *Piedade Filomena Gonsalves* vs. *State of Goa & Ors.* [(2004) 3 SCC 445], this Court has observed :

"4. We do not think that any fault can be found with the judgment of the High Court and the appellant can be allowed any relief in exercise of the jurisdiction conferred on this Court under Article 136 of the Constitution. Admittedly, the construction which the appellant has raised is without permission. Assuming it for a moment that the construction, on demarcation and measurement afresh and on HTL being determined, is found to be beyond 200 meters of HTL, it is writ large that the appellant has indulged into misadventure of raising a construction without securing permission from the competent authorities. That apart, the learned counsel for the respondent, has rightly pointed out that the direction of the High Court in the matter of demarcation and determination of HTL is based on the amendment dated 18.8.1994 introduced in the notification dated 19.2.1991 entitled the Coastal Regulation Zone notification issued in exercise of the power conferred by section 3(1) and Section 3(2)(v) of the Environment Protection Act, 1986, while the appellant's construction was completed before the date of the amendment and, therefore, the appellant cannot take benefit of the order dated 25.9.96 passed in writ petition No. 102 of 1996.

5. It is pertinent to note that during the pendency of the writ petition, the appellant had moved two applications, one of which is dated 11.7.1995, for the purpose of regularisation of the construction in question. Goa State Coastal Committee for Environment-the then competent body constituted a sub-committee which inspected the site and found that the entire construction raised by the appellant fell within 200 meters of the HTL and the construction had been carried out on existing sand dunes. The Goa State Coastal Committee for Environment, in its meeting dated 20.10.1995, took a decision inter alia holding that the entire construction put up by the appellant was in violation of the Coastal Regulation Zone Notification.

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6. The Coastal Regulation Zone notifications have been issued in the interest of protecting the environment and ecology in the coastal area. **Construction raised in violation of such** regulations cannot be lightly condoned. We do not think that the appellant is entitled to any **relief. No fault can be found with the view taken** by the High Court in its impugned judgment."

Further, reference has also been made to a decision of the Kerala High Court in *Ratheesh* v. *State of Kerala [2013 (3) KLT 840]*. The same is extracted below :

"98. However, we would rather rest our decision without pronouncing on the validity of the permits as such. We have found that the Notification is applicable to the island, the island falls in CRZ-I and construction is impermissible. By merely getting a permit under the Building Rules, it cannot be in the region of any doubt that the company cannot arrogate to itself, the right to flout the terms of the Notification. We have already noticed Rule 23(4) of the Kerala Municipality Building Rules, 1999 and Rule 26(4) of the Kerala Panchayat Building Rules, 2011. In this case, we may also note that there is no permission sought from the authority. **It is apposite to note that paragraph 3 (v) clearly mandates that for investment of Rs.5 crores and above, permission must be obtained from the Ministry of Environment WP(C).NO.19564/11 & CON.CASES 21 and Forest. In this case, the investment of the company is far above Rs.5 crores. In respect of investments below Rs.5 crores, for activities which are not prohibited, permission must be obtained from the concerned authority in the State. The company has not made any such attempt at getting permission. That apart, this is a case where, even if permission had been applied for, the terms of the Notification would stand in the way of any such permission being granted in so far as the island is treated as falling in CRZ-I. Construction of buildings as has been done by the company was absolutely impermissible. The fact that in a situation where the construction activity was permissible under the Notification and if the company had obtained permit from the local body, would have made its activities legal, cannot**

avail the company for the reason that under the terms of the Notification, such permit obtained from the panchayat will be of little avail to it in the light of the nature of the restrictions brought about by the Regulations in respect of CRZ-I in which zone the island falls. According to the panchayat, no doubt, the conditions have been imposed also as recommended by the Assistant Engineer who is alleged to have even visited the island. Whatever that be, as observed by us, in the light of the view we have taken, namely that the 1991 Notification applies to the island, it is squarely covered by the same being included in CRZ-I and the constructions were begun even during the currency of the 1991 Notification. The conclusion is inescapable that it is in the teeth of the prohibition contained in the 1991 Notification and, therefore, it is palpably illegal.

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107. At this stage, we must deal with the argument raised before us by the company. It is submitted that a world-class resort has been put up which will promote tourism in a State like Kerala which does not have any industries as such and where tourism has immense potential and jobs will be created. It is submitted that the Court may bear in mind that the company is eco-friendly and if at all the Court is inclined to find against the company, the Court may, in the facts of this case, give direction to the company and the company will strictly abide by any safeguards essential for the preservation of environment.

108. We do not think that this Court should be detained by such an argument. The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. As held by the Apex Court, construction in violation of the Coastal Regulation Zone Regulations are not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument."

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We find that the view taken by the Kerala High Court in the aforesaid decision is appropriate.

In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place in prohibited zone. In view of the findings of the Enquiry, Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court.

The appeals are, accordingly allowed with aforesaid direction. Interlocutory applications, if any, stand disposed of.

.....,J.
(Arun Mishra)

.....,J.
(Navin Sinha)

New Delhi;
May 08, 2019

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ITEM NO.60 COURT NO.4 SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 4227-4228/2016
(Arising out of impugned final judgment and order dated 02-06-2015 in WA No. 132/2013 11-11-2015 in RP No. 787/2015 02-06-2015 in WPC No. 22590/2007 11-11-2015 in WA No. 132/2013 passed by the High Court Of Kerala At Ernakulam)

THE KERALA STATE STATE COASTAL ZONE MANAGEMENT AUTHORITY Petitioner(s)

VERSUS

THE STATE OF KERALA MARADU MUNICIPALITY AND ORS. Respondent(s)

WITH

SLP(C) No. 4231-4234/2016 (XI-A)

SLP(C) No. 4238-4241/2016 (XI-A)

Date : 08-05-2019 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s) Mr. Romy Chacko, AOR
Mr. Shapti Chand J., Adv.
Mr. Vishant Singh, Adv.

For Respondent(s) Mr. Ranjan Kumar, AOR

Mr. V. Giri, Sr. Adv.
Mr. Jayanth Muthraj, Sr. Adv.
Mr. Mohammed Sadique T.R., AOR
Mr. Ranjan Kumar, Adv.
Mr. Anu K. Joy, Adv.
Mr. Amith Krishnan, Adv.
Mr. Alim Anvar, Adv.

Mr. G. Prakash, AOR
Mr. Jishnu M.L., Adv.
Mrs. Priyanka Prakash, Adv.
Mrs. Beena Prakash, Adv.

Mr. M. T. George, AOR

NOTARY GOVT. OF INDIA MONALI G. SHETE Dist.Thane (M.S.) Regn.No.15270/2018 Expiry Date 04 Nov 2020

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Mr. Avishkar Singhvi, Adv.
Mr. Nipun Katyal, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

Applications for intervention are allowed.

The appeals are allowed in terms of the signed order.

Interlocutory applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
COURT MASTER

(Reportable order is placed on the file)

2024:BHC-OS:14641-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO.7 OF 2023

Vanashakti & Anr. ....Petitioners

V/S

Union Of India & Ors. ....Respondents

WITH
INTERIM APPLICATION NO. 1320 OF 2021
IN
PUBLIC INTEREST LITIGATION 7 OF 2023

National Real Estate
Development Council (NAREDCO) ....Applicant

In the matter between:

Vanashakti & Anr. ....Petitioners

V/S

Union of India & Ors. ....Respondents

WITH
INTERIM APPLICATION (L) NO. 35241 OF 2023
IN
PUBLIC INTEREST LITIGATION 7 OF 2023

Government of Nagaland
Through Chief Engineer ....Applicant

In the matter between:

Vanashakti & Anr. ....Petitioners

V/S

Union of India & Ors. ....Respondents

WITH
INTERIM APPLICATION (L) NO. 4411 OF 2023
IN
PUBLIC INTEREST LITIGATION 7 OF 2023

Patel and Associates
Through Its Partner Manji Karashi Patel ....Applicant

V/S

In the matter between:

Vanashakti & Anr. ....Petitioners

V/S

Union of India & Ors. ....Respondents

WITH
INTERIM APPLICATION (L) NO. 35236 OF 2023
IN
PUBLIC INTEREST LITIGATION 7 OF 2023

Government of Nagaland
Through The Chief Engineer ....Applicant

In the matter between:

Vanashakti & Anr. ....Petitioners

V/S

Union of India & Ors. ....Respondents

WITH
INTERIM APPLICATION (L) NO. 4408 OF 2023
IN
PUBLIC INTEREST LITIGATION 7 OF 2023

Patel and Associates ....Applicant

In the matter between:

Vanashakti & Anr. ....Petitioners

V/S

Union of India & Ors. ....Respondents

Shri Akash Rebello a/w Shri Zaman Ali a/w Ms. Karishma Rao and Shri Yogesh Pandey for the Petitioners.

Shri Saurabh Butala a/w Ms. Nikita Mandaniyan i/b Shri Harshad Bhadbhade for the Applicant (NAREDCO).

Shri Saket Mone a/w Ms. Anchita Nair and Shri Abhishek Salian i/b Vidhi Partners for Interveners in IA/4408/2023 and IA/4411/2023, IA/35241/2023 and IA/35236/2023.

Shri Y.R.Mishra with Shri Dashrath A Dube and Shri Upendra Lokegoankar for Respondent No.1/ Union of India.
Smt. Jyoti Chavan, Additional Government Pleader for State of Maharashtra.

Ms. Jaya Bagwe for Respondent No.3 (MCZMA)

CORAM: DEVENDRA KUMAR UPADHYAYA, C.J. &
AMIT BORKAR, J.

RESERVED ON : JULY 10, 2024
PRONOUNCED ON : SEPTEMBER 24, 2024

JUDGMENT (PER : CHIEF JUSTICE)

1. Heard Shri Akash Rebello, learned Counsel representing the petitioner – organization, Shri Y. R. Mishra, learned Counsel representing respondent No.1- Union of India, Shri Saket Mone, learned Counsel representing the Interveners – State of

Nagaland and Patel and Associates and Shri Saurabh Butala representing the intervenor - National Real Estate Development Council (NAREDCO). We have perused the records available before us on this PIL petition.

(A) Challenge:

2. This PIL petition invokes our jurisdiction under Article 226 of the Constitution of India, to assail the validity of Office Memorandum dated 19th February 2021, issued by the Government of India in the Ministry of Environment, Forest and Climate Change which prescribes a procedure for dealing with violations arising on account of not obtaining a prior Costal Regulation Zone (hereinafter referred to as the CRZ) clearance for permissible activities. The impugned Notification permits a project proponent operating in CRZ areas to seek *post facto* clearance as required under the CRZ Notification(s).

(B) Relevant statutory prescriptions:

- **The Environment (Protection) Act, 1986**

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

of the environment and preventing, controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:—

(i) co-ordination of actions by the State Governments, officers and other authorities—

(a) under this Act, or the rules made thereunder; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

***Section 5. Power to give directions**.—*

Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) stoppage or regulation of the supply of electricity or water or any other service.

Section 6. Rules to regulate environmental pollution —

(1) The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the standards of quality of air, water or soil for various areas and purposes;

(b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;

(c) the procedures and safeguards for the handling of hazardous substances;

(d) the prohibition and restrictions on the handling of hazardous substances in different areas;

(e) the prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas;

(f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

Section 25. Power to make rules.—

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the standards in excess of which environmental pollutants shall not be discharged or emitted under section 7;

(b) the procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or cause to be handled under section 8;

(c) the authorities or agencies to which intimation of the fact of occurrence or apprehension of occurrence of the discharge of any environmental pollutant in excess of the prescribed standards shall be given and to whom all assistance shall be bound to be rendered under sub-section (1) of section 9;

(d) the manner in which samples of air, water, soil or other substance for the purpose of analysis shall be taken under sub-section (1) of section 11;

(e) the form in which notice of intention to have a sample analysed shall be served under clause (a) of sub-section (3) of section 11;

(f) the functions of the environmental laboratories, the procedure for the submission to such laboratories of samples of air, water, soil and other substances for analysis or test; the form of laboratory report; the fees payable for such report and other matters to enable such laboratories to carry out their functions under sub-section (2) of section 12;

(g) the qualifications of Government Analyst appointed or recognised for the purpose of analysis of samples of air, water, soil or other substances under section 13;

(ga) the manner of holding inquiry and imposing penalty by the adjudicating officer under sub-section (1) and other factors for determining quantum of penalty under clause (f) of sub-section (4) of section 15C;

(gb) the other amount under clause (c) of sub-section (2) of section 16;

(gc) the other purposes under clause (c) of sub-section (3) of section 16;

(gd) the manner of administration of Fund under sub-section (4) of section 16;

(ge) form for maintenance of accounts of the Fund and for preparation of annual statement of accounts under sub-section (1) of section 16A;

(gf) form for preparing annual report of the Fund under section 16B;

(h) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause (b) of section 19;

(i) the authority or officer to whom any reports, returns, statistics accounts and other information shall be furnished under section 20;

(j) any other matter which is required to be, or may be, prescribed.

- The Environment (Protection) Rules, 1986

Rule 5. Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas-

(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas:-

(i) Standards for quality of environment in its various aspects laid down for an area.

(ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.

(iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(iv) The topographic and climatic features of an area.

(v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.

(vi) Environmentally compatible land use.

(vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any

decision made in any international conference, association or other body.

(ix) Proximity to human settlements.

(x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of processes or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may within seven hundred and twenty five days and in respect of the States of Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim and Jammu and Kashmir in exceptional circumstance and for sufficient reasons within a further period of one hundred and eighty days from such day of publication impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

Provided that on account of COVID-19 pandemic, for the purpose of this clause, the period of validity of the notification expiring in the financial year 2020-2021 and 2021-22 shall be extended up to 30th June 2022 or six months from the end of

the month when the relevant notification would have expired without any extension, whichever is later.

(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3).

Coastal Regulation Zone Notifications:

- Notification dated 6th January 2011

4. *Regulation of permissible activities in CRZ area.-*

The following activities shall be regulated except those prohibited in para 3 above,-

(i) (a) clearance shall be given for any activity within the CRZ only if it requires waterfront and foreshore facilities;

(b) for those projects which are listed under this notification and also attract EIA notification, 2006 (S.O.1533 (E), dated the 14th September, 2006), for such projects clearance under EIA notification only shall be required subject to being recommended by the concerned State or Union territory Coastal Zone Management Authority (hereinafter referred to as the CZMA).

(c) Housing schemes in CRZ as specified in paragraph 8 of this notification;

(d) Construction involving more than 20,000 sq mts built-up area in CRZ-II shall be considered in accordance with EIA notification, 2006 and in case of projects less than 20,000 sq mts built-up area shall be approved by the concerned State or Union territory Planning authorities in accordance with this notification after obtaining recommendations from the concerned CZMA and prior recommendations of the concern CZMA shall be essential for considering the grant of environmental clearance under EIA notification, 2006 or grant of approval by the relevant planning authority.

(e) MoEF may under a specific or general order specify projects which require prior public hearing of project affected people.

(f) construction and operation for ports and harbours, jetties, wharves, quays, slipways, ship construction yards, breakwaters, groynes, erosion control measures;

(ii) *the following activities shall require clearance from MoEF, namely:-*

(a) those activities not listed in the EIA notification, 2006.

(b) construction activities relating to projects of Department of Atomic Energy or Defence requirements for which foreshore facilities are essential such as, slipways, jetties, wharves, quays; except for classified operational component of defence projects. Residential buildings, office buildings, hospital complexes, workshops of strategic and defence projects in terms of EIA notification, 2006.;

(c) construction, operation of lighthouses;

(d) laying of pipelines, conveying systems, transmission line;

(e) exploration and extraction of oil and natural gas and all associated activities and facilities thereto;

(f) Foreshore requiring facilities for transport of raw materials, facilities for intake of cooling water and outfall for discharge of treated wastewater or cooling water from thermal power plants. MoEF may specify for category of projects such as at (f), (g) and (h) of para 4;

(g) Mining of rare minerals as listed by the Department of Atomic Energy;

(h) Facilities for generating power by non-conventional energy resources, desalination plants and weather radars;

(i) Demolition and reconstruction of (a) buildings of archaeological and historical importance, (ii) heritage buildings; and buildings under public use which means buildings such as for the purposes of worship, education, medical care and cultural activities;

4.2 *Procedure for clearance of permissible activities.- All projects attracting this notification shall be considered for CRZ clearance as per the following procedure, namely:-*

(i) The project proponents shall apply with the following documents seeking prior clearance under CRZ notification to the concerned State or the Union territory Coastal Zone Management Authority,-

(a) Form-1 (Annexure-IV of the notification);

(b) Rapid EIA Report including marine and terrestrial component except for construction projects listed under 4(c) and (d)

(c) Comprehensive EIA with cumulative studies for projects in the stretches classified as low and medium eroding by MoEF based on scientific studies and in consultation with the State Governments and Union territory Administration;

(d) Disaster Management Report, Risk Assessment Report and Management Plan;

(e) CRZ map indicating HTL and LTL demarcated by one of the authorized agency (as indicated in para 2) in 1:4000 scale;

(f) Project layout superimposed on the above map indicated at (e) above;

(g) The CRZ map normally covering 7km radius around the project site.

(h) The CRZ map indicating the CRZ-I, II, III and IV areas including other notified ecologically sensitive areas;

(i) No Objection Certificate from the concerned State Pollution Control Boards or Union territory Pollution Control Committees for the projects involving discharge of effluents, solid wastes, sewage and the like.;

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(ii) The concerned CZMA shall examine the above documents in accordance with the approved CZMP and in compliance with CRZ notification and make recommendations within a period of sixty days from date of receipt of complete application,-

(a) MoEF or State Environmental Impact Assessment Authority (hereinafter referred to as the SEIAA) as the case may be for the project attracting EIA notification, 2006;

(b) MoEF for the projects not covered in the EIA notification, 2006 but attracting para 4(ii) of the CRZ notification;

(iii) MoEF or SEIAA shall consider such projects for clearance based on the recommendations of the concerned CZMA within a period of sixty days.

(vi) The clearance accorded to the projects under the CRZ notification shall be valid for the period of five years from the date of issue of the clearance for commencement of construction and operation.

(v) For Post clearance monitoring – (a) it shall be mandatory for the project proponent to submit half-yearly compliance reports in respect of the stipulated terms and conditions of the environmental clearance in hard and soft copies to the regulatory authority(s) concerned, on 1st June and 31st December of each calendar year and all such compliance reports submitted by the project proponent shall be published in public domain and its copies shall be given to any person on application to the concerned CZMA. (b) the compliance report shall also be displayed on the website of the concerned regulatory authority.

(vi) To maintain transparency in the working of the CZMAs it shall be the responsibility of the CZMA to create a dedicated website and post the agenda, minutes, decisions taken, clearance letters, violations, action taken on the violations and court matters including the Orders of the Hon'ble Court as also the approved CZMPs of the respective State Government or Union territory.

- **Notification dated 6th March 2018**

2. after sub-paragraph 4.2, the following sub-para shall be inserted, namely: -

"4.3 Post facto clearance for permissible activities.-

(i) *all activities, which are otherwise permissible under the provisions of this notification, but have commenced construction without prior clearance, would be considered for regularisation only in such cases wherein the project applied for regularization in the specified time and the projects which are in violation of CRZ norms would not be regularised;*

(ii) *the concerned Coastal Zone Management Authority shall give specific recommendations regarding regularisation of such proposals and shall certify that there have been no violations of the CRZ regulations, while making such recommendations;*

(iii) *such cases where the construction have been commenced before the date of this notification without the requisite CRZ clearance, shall be considered only by Ministry of Environment, Forest and Climate Change, provided that the request for such regularisation is received in the said Ministry by 30th June, 2018.*

Notification dated 18th January 2019

8. Procedure for CRZ clearance for permissible and regulated activities:

(i) The project proponents shall apply with the following documents to the concerned State or the Union territory Coastal Zone Management Authority for seeking prior clearance under this notification:-

(a) Project summary details as per Annexure-V to this notification.

(b) Rapid Environment Impact Assessment (EIA) Report including marine and terrestrial component, as applicable, except for building construction projects or housing schemes.

(c) Comprehensive EIA with cumulative studies for projects, (except for building construction projects or housing schemes with built-up area less than the threshold limit stipulated for attracting the provisions of the EIA Notification, 2006 number S.O 1533(E), dated 14th September, 2006) if located in low and medium eroding stretches, as per the CZMP to this notification.

(d) Risk Assessment Report and Disaster Management Plan, except for building construction projects or housing schemes with built-up area less than the threshold limit stipulated for attracting the provisions of the EIA Notification, 2006 number S.O. 1533(E), dated 14th September, 2006).

(e) CRZ map in 1:4000 scale, drawn up by any of the agencies identified by the Ministry of Environment, Forest and Climate Change vide its Office Order number J-17011/8/92-IAIII, dated the 14th March, 2014 using the demarcation of the HTL or LTL, as carried out by NCSCM.

(f) Project layout superimposed on the CRZ map duly indicating the project boundaries and the CRZ category of the project location as per the approved Coastal Zone Management Plan under this notification.

(g) The CRZ map normally covering 7 kilometre radius around the project site also indicating the CRZ-I, II, III and IV areas including other notified ecologically sensitive areas.

(h) "Consent to establish" or No Objection Certificate from the concerned State Pollution Control Board or Union territory Pollution Control Committee for the projects involving treated discharge of industrial effluents and sewage, and in case prior consent of Pollution Control Board or Pollution Control

Committee is not obtained, the same shall be ensured by the proponent before the start of the construction activity of the project, following the clearance under this notification.

(ii) The concerned Coastal Zone Management Authority shall examine the documents in clause (i) above, in accordance with the approved Coastal Zone Management Plan and in compliance with this notification and make recommendations within a period of sixty days from date of receipt of complete application as under:-

(a) For the projects or activities also attracting the EIA Notification, 2006 number S.O. 1533(E), dated 14th September, 2006, the Coastal Zone Management Authority shall forward its recommendations to Ministry of Environment, Forest and Climate Change or SEIAA for category 'A' and category 'B' projects respectively, to enable a composite clearance under the EIA Notification, 2006 number S.O. 1533(E), dated 14th September, 2006, however, even for such Category 'B' projects located in CRZ-I or CRZ-IV areas, final recommendation for CRZ clearance shall be made only by the Ministry of Environment, Forest and Climate Change to the concerned SEIAA to enable it to accord a composite Environmental Clearance and CRZ clearance to the proposal.

(b) Coastal Zone Management Authority shall forward its recommendations to the Ministry of Environment, Forest and Climate Change for the projects or activities not covered in the EIA notification, 2006, but attracting this notification and located in CRZ-I or CRZ-IV areas.

(c) Projects or activities not covered in the aforesaid EIA Notification, 2006, but attracting this notification and located in CRZ-II or CRZ-III areas shall be considered for clearance by the concerned Coastal Zone Management Authority within sixty days of the receipt of the complete proposal from the proponent.

(d) In case of construction projects attracting this notification but with built-up area less than the threshold limit stipulated for attracting the provisions of the aforesaid EIA Notification 2006, Coastal Zone Management Authority shall forward their recommendations to the concerned State or Union territory planning authorities, to facilitate granting approval by such authorities.

(iii) The Ministry of Environment, Forest and Climate Change shall consider complete project proposals for clearance under this notification, based on the recommendations of the Coastal Zone Management Authority, within a period of sixty days.

(iv) In case the Coastal Zone Management Authorities are not in operation due to their reconstitution or any other reasons, then it shall be responsibility of the Department of Environment in the State Government or Union territory Administration, who are the custodian of the CZMP of respective States or Union territories, to provide comments and recommend the proposals in terms of the provisions of the said notification.

(v) The clearance accorded to the projects under this notification shall be valid for a period of seven years, provided that the construction activities are completed and the operations commence within seven years from the date of issue of such clearance. The validity may be further extended for a maximum period of three years, provided an application is made to the concerned authority by the applicant within the validity period, along with recommendation for extension of validity of the clearance by the concerned State or Union territory Coastal Zone Management Authority.

(vi) Post clearance monitoring:

(a) It shall be mandatory for the project proponent to submit half-yearly compliance reports in respect of the stipulated terms and conditions of the environmental clearance in hard and soft copies to the regulatory authority(s) concerned, on the 1st June and 31st December of each calendar year and all such compliance reports submitted by the project proponent shall be published in public domain and its copies shall be given to any person on application to the concerned Coastal Zone Management Authority.

(b) The compliance report shall also be displayed on the website of the concerned regulatory authority.

(vii) To maintain transparency in the working of the Coastal Zone Management Authority, it shall be the responsibility of the Coastal Zone Management Authority to create a dedicated website and post the agenda, minutes, decisions taken, clearance letters, violations, action taken on the violations and court matters including the Orders of the Hon'ble Court as also the approved CZMP of the respective State Government or Union territory.

(C) Submissions on behalf of the petitioners :

3. Impeaching the impugned Office Memorandum, it has been argued by Shri Akash Rebello, learned Counsel representing the petitioner – organization that the Office Memorandum is an

administrative circular whereby a frame-work for granting *post facto* approval has been set up for the projects that have come up without grant of prior CRZ clearance as required under the relevant CRZ Notification which cannot over-ride the CRZ Notifications having been framed in exercise of powers vested with the Central Government under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 (hereinafter referred to as the **Act of 1986**) read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986 (hereinafter referred to as the **Rules of 1986**) which has statutory force and, thus, is binding. His submission is that the Office Memorandum takes departure from the relevant CRZ Notification which could not have been done by the Central Government without amending the relevant CRZ Notification by taking recourse the provisions contained in Section 3(1) and 3(2)(v) of the Act of 1986 read with Rule 5(3)(d) of the Rules of 1986.

4. Further argument made by Shri Rebello is that the relevant CRZ Regulation clearly requires that prior CRZ clearance is mandatory, whereas the impugned Office Memorandum permits seeking *post facto* CRZ clearance, hence, it is contrary to the statutory CRZ Notification.

5. In this regard his further submission is that an administrative circular, like the impugned Office Memorandum, cannot provide for something which, otherwise, is not provided for in the statutory CRZ Notification and accordingly, the impugned Office Memorandum is *ultra vires* the provisions of the CRZ Notification dated 18th January 2019 (hereinafter referred to as the **CRZ Notification, 2019**) for the reason that the CRZ Notification, 2019 does not permit any *post facto* clearance; rather it requires prior clearance for all projects within the CRZ area.

6. It has also been contended on behalf of the petitioner – organization that CRZ Notification dated 6th January, 2011 (**hereinafter referred to as "CRZ Notification, 2011"**) also required clearance prior to commencement of the project and by Notification dated 6th March 2018 an amendment was introduced in CRZ Notification 2011 permitting grant of *post facto* clearance to regularize the otherwise permissible activities, however, the provisions permitting *post facto* clearance vide Notification dated 6th March 2018 was a one-time measure with a cut-off-date. It has been submitted that by Notification dated 6th March 2018, the CRZ Notification, 2011 was amended and clause 4.3 was

added which provided the procedure for *post facto* clearance for permissible activities, however, a perusal of the provisions contained in Clause 4.3 added vide Notification dated 6th March 2018 clearly reveals that such *post facto* clearance was permissible only in case where the construction had commenced before the date of the said Notification i.e. 6th March 2018 without the requisite CRZ clearance with a further caveat that only those requests in this regard shall be considered for grant of *post facto* clearance which were received in the Ministry of Environment, Forest and Climate Change by 30th June 2018. Thus, his submission is that the very language in which clause 4.3 added vide Notification dated 6th March 2018 in the CRZ Notification 2011 is couched manifestly reveals that it was provided for only as a one-time measure.

7. Our attention has also been drawn to the CRZ Notification, 2019 which clearly provides that the said CRZ Notification was issued in supersession of CRZ Notification, 2011. Accordingly, his submission is that even the one-time measure which was available under CRZ Notification, 2011 by way of insertion of clause 4.3 vide Notification dated 6th March 2018, which provided the procedure for seeking *post facto* CRZ clearance, will have no

application on issuance of CRZ Notification, 2019 w.e.f. 18th January 2019 for the simple reason that CRZ Notification, 2019 was issued by the Ministry concerned of the Central Government in supersession of earlier CRZ Notification viz. CRZ Notification, 2011.

8. Next submission of Shri Rebello, learned Counsel representing the petitioner-organization is that CRZ Notification, 2011 and CRZ Notification, 2019 were issued by following the procedure prescribed under Rule 5(3) of the Rules, 1986 which requires that before issuing any such final Notification the Central Government needs to give notice of its intention to impose prohibition or restriction on the location of an industry and the carrying on processes and operations in an area which shall contain brief description of the area or industries, operations, processes and shall also specify the reason of intended imposition of prohibition/restriction. He has also stated that Rule 5 (3)(c) of the Rules, 1986 further provides that any person interested in filing an objection against the imposition of such intended prohibition/restriction on carrying on processes or operations, may do so in writing to the Central Government which has to be considered by the Central Government and

accordingly, it is only thereafter that a final Notification regarding prohibition/restriction etc. can be issued. Shri Rebello has stated that, however, contrary to the provision contained in Rule 5(3) of the Rules 1986, no such procedure as prescribed was followed while issuing the impugned Office Memorandum and thus, the Office Memorandum is not referable to any provision either in the Act of 1986 or in the Rules of 1986. Basis this, it has been contended that the impugned Office Memorandum cannot be permitted to provide for any measure or processes or procedure for grant of *post facto* CRZ clearance in absence of any such provision in the relevant statutory Notification viz. CRZ Notification, 2019.

9. Shri Rebello has further stated that the impugned Office Memorandum is arbitrary as it is purportedly issued in furtherance of CRZ Notification, 2011 which stood superseded by CRZ Notification, 2019 on 18th January 2019 itself and hence, reference of CRZ Notification, 2011 in the impugned Office Memorandum manifests complete lack of application of mind.

10. Additionally, it has also been contended on behalf of the petitioner – organization that the impugned Office Memorandum

is contrary to the settled law laid down by the Hon'ble Supreme Court including in its decision in the case of ***Alembic Pharmaceuticals Ltd. Vs. Rohit Prajapati & Ors.***[1]. He has argued that for justifying issuance of the impugned Office Memorandum reference of ***Alembic Pharmaceuticals Ltd. (supra)*** has been given in the Office Memorandum however, reliance on the said judgment by the Central Government is highly misplaced inasmuch that if we closely read the said judgment it is clear that certain directions given in the said judgments are referable to Article 142 of the Constitution of India which are, thus, to be confined to the facts of the said case and said directions cannot be applied in general. It is his further submission that reference of the judgment of the Jharkhand High Court in the case of ***Hindustan Copper Vs. Union of India***[2] is also misplaced and is irrelevant for the reason that the said judgment dealt with CRZ clearance regime prior to the issuance of CRZ Notification, 2019.

(D) Submissions on behalf Union of India:

11. The PIL petition has been opposed by the Union of India by filing an affidavit in reply. Shri Y. R. Mishra, learned Counsel

[1] 2020 SCC OnLine SC 347

[2] 2014 SCC OnLine Jhar 2157

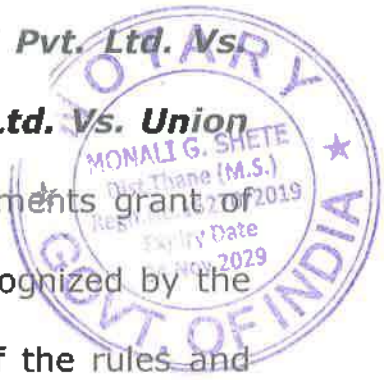
appearing for the Union of India has argued that the concept of *post facto* clearance for permissible activities was introduced vide CRZ Notification dated 6th March 2018 whereby CRZ Notification, 2011 was amended and a provision for *post facto* clearance was inserted therein. He has also stated that the amendment brought in CRZ Notification, 2011 permitted *post facto* CRZ clearance only in case request of such *post facto* clearance was received in the Ministry concerned by 30th June 2018 and since after expiry of the aforesaid cut-of-date the Ministry of Environment, Forest and Climate Change received serval requests from various State Governments for considering the *post facto* CRZ clearance in respect of the permissible activities that had commenced without prior CRZ clearance on account of inadequate knowledge/information of the regulatory regime and other factors and accordingly, the Government of India issued the impugned Office Memorandum prescribing a procedure for dealing with such violations arising on account of not obtaining prior CRZ clearance for permissible activities. It is his further submission that the impugned Office Memorandum has been issued to make such projects and activities compliant with environmental laws at the earliest point of time which was

essential, rather than leaving them unregulated and unchecked which would have caused more damage to the environment.

12. Shri Mishra has further argued that the impugned Office Memorandum has been issued considering the order dated 12th November 2014 passed by the Jharkhand High Court in the case of ***Hindustan Copper Ltd. (supra)*** where it was held, *inter alia;* that action for violation would be an independent and separate procedure and therefore, consideration of proposal for environmental clearance could not await initiation of action against the project proponent. According to Shri Mishra, Jharkhand High Court further held in the said case that the proposal for environmental clearance must be examined on its merits, independent of proposed action for alleged violation of the environmental laws.

13. On behalf of Union of India, it has also been argued that the impugned Office Memorandum has been issued keeping in view certain observations made and directions given by the Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra),*** wherein it has been observed that the closure of industries is not warranted. By the said judgment, payment of compensation as a facet of preserving the environment in

accordance with precautionary principle has been recognized. Shri Mishra stated further that in ***Alembic Pharmaceuticals Ltd. (supra)*** Hon'ble Supreme Court had directed that the proposal for environment clearance must be examined on its merits independent of any proposed action for alleged violation of any environmental laws. He has relied upon certain judgments viz. (i) ***Lafarge Umiam Mining Pvt. Ltd. Vs. Union of India***[3]***,*** (ii) ***Electrotherm Vs. Patel Vipulkumar Ramjibhai***[4]***,*** (iii) ***Gajubha Jadeja Jesar Vs. Union of India & Ors.***[5]***,*** (iv) ***D. Swamy Vs. Karnataka State Pollution Control Board and Ors.***[6]***,*** (v) ***Pahwa Plastics Pvt. Ltd. & Anr. Vs. Dastak NGO & Ors.***[7]***,*** (vi) ***K.T.V. Health Food Pvt. Ltd. Vs. Union of India***[8] ***and*** (vii) ***Electrosteel Steels Ltd. Vs. Union of India***[9] and has stated that in the said judgments grant of *post facto* environmental clearance has been recognized by the Supreme Court which is in a strict compliance of the rules and regulations and therefore, *post facto* clearance is permissible under law.



[3] *(2011) 7 SCC 38*
[4] *(2016) 9 SCC 300*
[5] *2022 SCC OnLine SC 993*
[6] *2022 SCC OnLine SC 1278*
[7] *2022 SCC OnLine SC 362*
[8] *(2023) 5 SCC 440*
[9] *(2023) 6 SCC 615*

14. On the aforesaid counts, it has been urged by Shri Mishra that the impugned Office Memorandum does not suffer from any illegality and hence, no interference in the said Office Memorandum is called for in the instant PIL petition.

(E) Submissions on behalf of Interveners:

15. On behalf of the Intervener viz. Government of Nagaland, Shri Saket Mone, the learned Counsel has argued that the Government of Nagaland has constructed Nagaland State Guest House cum Emporium at Plot No.2B, Sector-30A, at Vashi, Navi Mumbai and that post completion of the construction of the said project at the time of applying for Occupation Certificate (OC), the Navi Mumbai Municipal Corporation has imposed a condition to obtain CRZ clearance and thereafter the Government of Nagaland has, on various occasions, applied for grant of *post facto* CRZ clearance but the same has not been processed by the Maharashtra Coastal Zone Management Authority (MCZMA) on account of the interim order passed by this Court on 7th May 2021. It has been stated that the land where construction of State Guest House cum Emporium has been made lies in a non-CRZ area and therefore, construction activity is permitted in the said land and hence, there is no requirement of obtaining CRZ

clearance. He has also argued that as per the CRZ Notification, 2011 construction of the project is a permissible activity. It is his further submission that the MCZMA, in its meeting dated 11-12th April 2022 observed that application for *post facto* CRZ clearance cannot be processed in the light of the ad-interim order passed by this Court in this PIL petition and since the project lies in non-CRZ area, the interim order, so far as intervenor is concerned, may be vacated. It has, thus, been prayed, in the alternative, that the interim order passed by this Court on 7th May 2021 may be clarified and it be provided that it shall not come in the way of decision on the applicant's application for grant of *post facto* CRZ clearance as per applicable law. Another prayer made by Shri Saket Mone is that the MCZMA be directed to process the application for grant of *post facto* CRZ clearance as per law.

16. On behalf of another intervenor viz. Patel and Associates, Shri Saket Mone has stated that the applicant is a project proponent of a project known as Trishul Goldfield for construction of a residential cum commercial building on land bearing Plot No.34 in Sector No.11 at CBD Belapur and that the Navi Mumbai Municipal Corporation, at the time of applying for

Occupation Certification (OC), has imposed a condition that the applicant needs to obtain CRZ clearance. He has further stated that in furtherance of said condition, the applicant, at various occasions applied for grant of *post facto* clearance however, the MCZMA has not processed the same on account of the interim orders passed by this Court. The prayers in this application of Patel and Associates are similar to the prayers made by Shri Mone, appearing on behalf of State of Nagaland.

17. Intervention in this PIL petition has also been sought by National Real Estate Development Council, which describes itself as an autonomous self-regulatory body formed under the aegis of Ministry of Housing and Urban Affairs, Government of India. On its behalf, it has been stated in the interim application that the impugned notification dated 19th February 2021 has been issued by the Government of India in exercise of its powers available to it under section 3(2)(v) of the Act of 1986 read with Rule 5(3) of the Rules of 1986. It is further stated on its behalf that the Government of India has permitted regularization of activities which are strictly in compliance with CRZ Notification, 2011 and under the impugned Office Memorandum, it is only on specific recommendation and certification of the Coastal Zone

Management Authority that there is no illegality or contravention of any CRZ norms, that such projects shall be considered for regularization on fulfillment of conditions set out in the impugned Office Memorandum. It is, thus, the submission on behalf of this applicant that the impugned Office Memorandum does not violate any provisions, either of the Act of 1986 or the Rules made thereunder and therefore, the same cannot be termed to be illegal.

(F) Issues:

18. On the basis of submissions made by the learned Counsel for the respective parties and the pleadings available on record, the issues which emerge for our consideration and decision are;

(a) as to whether the impugned Office Memorandum dated 19th February 2021 issued by respondent No.1 is in contravention of the provisions of the CRZ Notification, 2019?

(b) as to whether the impugned Office Memorandum supplements or supplants the CRZ Notification, 2019 ?

(c) as to whether reliance on the judgment of the Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra)*** and that of the order dated 12th November 2014 passed by the Jharkhand High Court in the case of ***Hindustan Copper Ltd. (supra)*** is misplaced or such reference can be taken aid of by the Union of India to justify the impugned Office Memorandum?

(G) Discussion:

19. The impugned Office Memorandum is an administrative circular, which has been issued by the Government of India without reference to any provisions, either of the Act of 1986 or the Rules of 1986. As a matter of fact, the CRZ Notifications, 2011, the one issued on 6th March 2018 amending the CRZ Notification, 2011 and the CRZ Notification, 2019 were all issued by the Central Government by following the procedure prescribed under Rule 5(3) of the Rules of 1986 and only after prior publication inviting objections from general public and thereafter finalizing it. However, while issuing the impugned Office Memorandum dated 19th February 2021, no such procedure has been followed; neither is there any averment in the affidavit filed by the Government of India to the said effect. Accordingly, the impugned Office Memorandum is not referable to either the Act of 1986 or the Rules of 1986 and hence, we conclude that the same is merely an executive instruction having no statutory force.

20. Thus, there is no doubt while we observe that the impugned Office Memorandum dated 19th February 2021 is not statutory in nature as are the other CRZ Notifications such as

CRZ Notification, 2011, the notification dated 6th March 2018 and CRZ Notification, 2019.

21. Having concluded as above, we now need to examine, for appropriate decision on the issue (a) as culled out above, as to whether the impugned Office Memorandum is in contravention with CRZ Notification, 2019.

22. We have already noted above that at the time of issuance of the impugned Office Memorandum dated 19th February 2021, it is the CRZ Notification, 2019 which was in vogue for the reason that the CRZ Notification, 2019 clearly states that it has been issued in supersession of the earlier CRZ Notification, namely, CRZ Notification, 2011. It is also undisputable that CRZ Notification, 2019 does not contain any provision for any kind of *post facto* CRZ clearance. To the contrary, paragraph (8) of CRZ Notification, 2019 clearly provides that "***the project proponents shall apply with certain documents to the concerned State or Union Territory Coastal Zone Management Authority for seeking prior clearance under this notification***". Accordingly, the CRZ Notification, 2019 does not prescribe any provision permitting *post facto* clearance,

whereas by the impugned Office Memorandum, a procedure has been prescribed permitting project proponents to obtain *post facto* CRZ clearance in respect of the projects which were started without seeking prior CRZ clearance. One of the reasons indicated in the Office Memorandum dated 19th February 2021 for making a provision for obtaining *post facto* clearance is that the Government of India received several requests from the State Governments for considering the CRZ clearance of the projects in respect of permissible activities which have commenced work without prior CRZ clearance due to inadequate knowledge of the regulatory regime and other factors. The Government of India, in the Office Memorandum, thus, observes that to bring such projects and activities in compliance with the environmental laws at the earliest point of time it is essential, rather than leaving them unregulated and unchecked, which will be more damaging to the environment. The Government of India, while issuing the impugned Office Memorandum, has also noted the order dated 28th November 2014 of the Hob'ble High Court of Jharkhand in the matter of ***Hindustan Copper (supra)***. It has also noted the judgment of Hon'ble Supreme Court in the case of ***Alembic Pharmaceuticals Ltd. (supra)***,

however, in absence of any provision for *post facto* CRZ clearance under the CRZ Notification, 2019, in our considered opinion, the provision prescribing procedure for obtaining *post facto* clearance is not permissible on the basis of the observations made by Hon'ble High Court of Jharkhand in ***Hindustan Copper (supra)*** and those made by Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra)***.

23. So far as reliance placed by the Government of India while issuing the impugned Office Memorandum on ***Alembic Pharmaceuticals Ltd. (supra)*** is concerned, we may note that in paragraph 27 of the said judgment, the Hon'ble Supreme Court has clearly observed that the concept of *ex-post facto* environment clearance is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27th January 1994. The Hon'ble Supreme Court in the said judgment has further observed that in absence of EC, there would be no condition that would safeguard the environment and further that if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. The Hon'ble Supreme Court also stated in the said judgment that in either view of the matter, environment law

cannot countenance the notion of an *ex post facto* clearance and that it would be contrary to both the precautionary principle as well as the need for sustainable development. Para 27 of the ***Alembic Pharmaceuticals Ltd. (supra)*** is extracted hereinbelow: -

> *"**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 is **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 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."*

24. It is only in para 49 of ***Alembic Pharmaceuticals Ltd. (supra)*** that we find that certain observations have been made and directions have been issued to the project proponents for deposit of the amount of compensation with the Pollution Control

Board of the State concerned, where revocation of environment clearance and closure of industries was provided, however, it is to be noticed that the Hon'ble Supreme Court in para 49 itself goes on to observes that, "***these directions are issued under Article 142 of the Constitution***". Para 49 of ***Alembic Pharmaceuticals Ltd. (supra)*** is quoted hereinbelow:

> *"**49.** In this backdrop, 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. At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such noncompliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions issued by the NGT, we are of the view that it would be in the interests of justice to direct the three industries to deposit compensation quantified at ^10 crores each. The amount shall be deposited with GPCB and it shall be duly utilized for restoration and remedial measures to improve the quality of the environment in the industrial area in which the industries operate. Though we have come to the conclusion, for the reasons indicated, that the direction for the revocation of the ECs and the closure of the industries was not warranted, we have issued the order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle. These directions are issued under Article 142 of the Constitution. Alembic Pharmaceuticals Limited, United Phosphorous Limited and Unique Chemicals Limited shall deposit the amount of compensation with GPCB within a period of four months from the date of receipt of the certified copy of this judgment. This deposit shall be in addition to the amount directed by the NGT. Subject to the deposit of*

the aforesaid amount and for the reasons indicated, we allow the appeals and set aside the impugned judgment of the NGT dated 8 January 2016 in so far as it directed the revocation of the ECs and closure of the industries as well as the order in review dated 17 May 2016."

25. In view of the aforesaid, it is abundantly clear that the observations made and directions issued by the Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra)*** are to be read in terms of Article 142 of the Constitution of India and therefore, such observations and directions of Hon'ble Supreme Court are to be confined to the facts of the said case which cannot have general application. Accordingly, we are of the considered opinion that reference to the observations made and directions issued by Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra)*** in the impugned Office Memorandum is highly misplaced and the same cannot be relied upon for justifying issuance of the impugned Office Memorandum in contravention of the provisions contained in CRC Notification, 2019, which, as concluded above, is statutory in nature having been issued by the Government of India under section 3(2)(v) of the Act of 1986 read with Rule 5(3)(d) of the Rules of 1986. Similarly, reference made in the impugned Office Memorandum to the order dated 28th November 2014 of Hon'ble High Court of

Jharkhand in the case of ***Hindustan Copper Limited (supra)*** also does not justify the said Office Memorandum. The order in ***Hindustan Copper Limited (supra)*** pertained to a matter not in relation to CRZ areas. It was a case relating to mining lease which was issued prior to Environment Impact Assessment (EIA) Notification and the question in the said case was as to whether the EIA Notification would be applicable to renewal of mining lease and it is in this context that the Hon'ble Jharkhand High Court observed that application seeking environmental clearance must be examined on merits independent of the proposed action of the alleged violation of CRZ laws. Accordingly, the reference of this order of Hon'ble Jharkhand High Court in the impugned Office Memorandum does not in any manner help the respondent no. 1 for justifying the same as it is clearly in derogation and violation of the CRZ Notification, 2019.

26. It is also to be noticed that the impugned Office Memorandum mentions that the Government of India had received several requests under CRZ Notification, 2011 for considering CRZ clearances in respect of permissible activities which had commenced work without prior CRZ clearance due to inadequate knowledge of the regulatory regime and other

factors. Reference to CRZ Notification, 2011 in the impugned order and that of the requests made by project proponents for *post facto* CRZ clearance are also misplaced for the reason that CRZ Notification, 2019 was issued in supersession of CRZ Notification, 2011 and accordingly, clause 4.3 in CRZ Notification, 2011, which permitted *post facto* clearance, which was inserted by notification dated 6th March 2018, cannot be said to be in operation on the date of issuance of the impugned Office Memorandum. The regulatory CRZ regime which was in operation is the one notified by CRZ Notification, 2019 which does not contain any provision for grant of *post facto* CRZ clearance.

27. It is well settled law that whenever a law is repealed, it must be construed as if it never existed. Such proposition can be found propounded by Hon'ble Supreme Court in the case of ***State of Uttar Pradesh and Ors. vs. Hirendra Pal Singh and Ors.***[10]. Para 22 of the said report is relevant to be quoted here, which runs as under: -

> *"**22.** It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except for certain purposes as provided under section 6*

[10] **(2011) 5 SCC 305**

of the General Clauses Act, 1897. Repeal sis not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly i.e. pro tanto repeal."

28. Thus, as a result of supersession of CRZ Notification, 2011 by promulgating and notifying CRZ Notification, 2019, it may be noted that at the time of issuance of the Office Memorandum dated 19th February 2021, the CRZ Notification, 2011 did not exist and accordingly, any reference to CRZ Notification, 2011 in the impugned Office Memorandum does not justify the issuance of it.

29. In the light of the aforesaid discussion, we are of the unambiguous view that the impugned Office Memorandum dated 19th February 2021 issued by the Government of India is in contravention and derogation of the provisions of CRZ Notification, 2019.

30. Coming to the next issue, namely, issue (b), we may first examine the law as declared by Hon'ble Supreme Court in relation to operation of executive circular/orders/decision in the wake of a statutory notification or any other statutory provision.

31. Jurisprudence in our country recognizes hierarchy of laws

according to which on the topmost pedestal of such hierarchy stand the provisions of the Constitution of India, where after stand the provisions of any legislation made by the Parliament or the State legislatures. Thereafter comes statutory provisions/rules/ instruments made by the competent authority in exercise of its powers vested in it under some legislation and it is only thereafter that in the said hierarchy, the executive instructions/orders/ decisions of the Government stand.

32. We may refer to a judgment of Hon'ble Supreme Court in the case of ***Union of India and Ors. vs. Somasundaram Viswanath and Ors.***[11] where the subject matter related to a service dispute in respect of promotion and seniority of certain Government servants. In the said context, it has been held by Hon'ble Supreme Court that "***if there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail, and if there is a conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the***

[11] **(1989) 1 SCC 175**

appropriate legislature the law made by the appropriate legislature prevails".

33. In the case of ***Rajasthan State Industrial Development and Investment Corporation vs. Subhash Sindhi Cooperative Housing Society, Jaipur and Ors.***[12] the Hon'ble Supreme Court has again emphasized that executive instructions cannot override the law and therefore, any notice/circular/ guidelines, etc., which are contrary to statutory provisions, cannot be enforced. Para 27 of the said report is extracted below: -

> *"**27.** Executive instructions which have no statutory force, cannot override the law. Therefore, any notice, circular, guidelines, etc. which run contrary to statutory laws cannot be enforced."*

34. The Hon'ble Supreme Court in yet another judgment in the case of ***Union of India and Anr. Vs. Ashok Kumar Aggarwal***[13] has reiterated the aforesaid proposition of law that an authority cannot issue orders/office memorandums/executive instructions in contravention of the statutory rules. The Hon'ble Supreme Court has further observed, in no uncertain terms, that such executive instructions can be issued only to supplement the

[12] **(2013) 5 SCC 427**
[13] **(2013) 16 SCC 147**

statutory rules but not to supplant and that the executive instructions should be subservient to the statutory provisions. Para 59 in the judgment of ***Ashok Kumar Aggarwal (supra)*** is quoted hereinbelow: -

> *"**59.** The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/ executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions."*

35. Reiterating the principle an administrative instruction can only supplement the statutory rules in the manner that it does not lead to any inconsistency, Hon'ble Supreme Court in the case of ***SK Naushad Rahman and Ors. vs. Union of India and Ors.***[14] has held that executive instructions may fill up the gaps in the rules, but supplementing the exercise of the rule-making power with the aid of administrative or executive instructions is distinct from taking the aid of administrative instructions contrary to the express provision or the necessary intendment of the rules. Paragraph 33 of this judgment is extracted hereinbelow: -

> *"**33.** There is a fundamental fallacy in the submission which has been urged on behalf of the appellants. Administrative instructions, it is well-settled, can supplement Rules which are framed under the proviso to Article 309 of the Constitution in a*

[14] **(2022) 12 SCC 1**

manner which does not lead to any inconsistencies. Executive instructions may fill up the gaps in the rules. But supplementing the exercise of the rule-making power with the aid of administrative or executive instructions is distinct from taking the aid of administrative instructions contrary to the express provision or the necessary intendment of the Rules which have been framed under Article 309. The 2016 RR have been framed under the proviso to Article 309. Rule 5 of the 2016 RR contains a specific prescription that each CCA shall have its own separate cadre. The absence of a provision for filling up a post in the Commissionerate by absorption of persons belonging to the cadre of another Commissionerate clearly indicates that the cadre is treated as a posting unit and there is no occasion to absorb a person from outside the cadre who holds a similar or comparable post".

36. Thus, in view of the aforesaid proposition of law propounded by Hon'ble Supreme Court, it is more than clear that any executive instruction can only supplement the rules and such executive instruction tends to supplant the rules, the same cannot be permitted to be sustained in the eyes of law.

37. In the instant case, the CRZ Notification, 2019 has been issued by the Central Government in exercise of its powers vested in it under section 3(2)(v) of the Act of 1986 read with Rule 5(3)(d) of the Rules of 1986 and hence, they are statutory in nature. It is also to be seen that the impugned Office Memorandum has been issued without following the procedure as prescribed under Rule 5(3) of the Rules of 1986 and hence, the impugned Office Memorandum is not referable to the said

rules. Accordingly, the impugned Office Memorandum cannot be said to be statutory in nature; rather it only falls in the category of an instrument which has been issued by the Central Government in exercise of its general administrative/executive powers.

38. We may also note that CRZ Notification, 2019 does not contain any provision which permits *post facto* clearance, whereas the impugned Office Memorandum prescribes a procedure for obtaining *post facto* CRZ clearance. Accordingly, the Office Memorandum provides something which is not provided for in the statutory notification and hence, it cannot be said that the impugned Office Memorandum in any manner is supplemental to the CRZ Notification, 2019; rather it supplants the same, which, in view of the afore-discussed proposition of law propounded by Hon'ble Supreme Court in various judgments, is legally impermissible.

39. Considering the issue (c) framed above, we may note that in our discussion in preceding paragraphs we have already held that reference of the judgment of Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra)*** and the order dated

28th November 2014 of Hon'ble Jharkhand High Court in the matter of ***Hindustan Copper Ltd. (supra)*** is misplaced and hence, it is not open for the respondent no. 1 to take aid of the said judgments to justify the impugned Office Memorandum.

40. It may also be emphasized that the provisions contained in Rule 5 of the Rules of 1986 are mandatory in nature as held by the Full Bench of our Court in ***Ajay Marathe vs. Union of India & Ors.***[15]. In this judgment, it has been held that provisions of Rule 5(3)(a)(b) and (c) or the Rules of 1986 are mandatory, inasmuch as, whenever it is intended to impose prohibition or restrictions as contemplated by Rule 5, the Central Government is under a mandate to notify its intention to do so in *Official Gazette* and in such manner as it may deem fit. The Full Bench has further held that it is only when the Central Government is satisfied that it is in public interest to do so, it may dispense with the requirement of prior publication of notice under Rule 5(3)(a) of the Rules of 1986, however, no such argument has been raised on behalf of the Union of India-respondent no. 1 that the impugned Office Memorandum was issued dispensing with the requirement of prior publication of its

[15] **2018(4) Mh. L.J. 770**

intention as required by Rule 5(3)(a) of the Rules of 1986. Even otherwise, what we find is that the impugned Office Memorandum does not refer to any statutory provision, either of the Act of 1986 or the Rules of 1986. Accordingly, the Impugned Office Memorandum cannot be justified for this reason as well.

41. A Division Bench of this Court in its judgment dated 27th August 2001 in the case of ***Mr. Kashhinath Jairam Shetye and Ors. vs. Union of India and Anr.***[16] has observed that requirement of issuance of public notice under Rule 5(3)(a) of the Rules of 1986 is a statutory embodiment of the rule of *audi alteram partem* and in absence of any public interest involved in the dispensation of such public notice, the Central Government could not have, in casual manner, dispensed with such requirement and deprived the public of an opportunity to object to the activities proposed in the eco-sensitive zone. Though the argument based on dispensing with such requirement in public interest has not been made by the learned Counsel representing the respondent no. 1, however, we may observe that in case any provision, as contained in the impugned Office Memorandum, was intended by the Central Government to be made, CRZ

[16] **PIL Writ Petition No. 43 of 2019**

Notification, 2019 was required to be amended by following the statutory requirements contained in Rule 5 of the Rules of 1986. Since before issuance of the impugned Office Memorandum such statutory prescriptions have not been followed, that itself makes the impugned Office Memorandum vulnerable and susceptible due to which it cannot withstand judicial scrutiny.

42. Reliance placed by learned Counsel on behalf of respondent no. 1 on various judgments is of no avail to justify the impugned Office Memorandum. In this regard, we may note that heavy reliance has been placed by learned Counsel for respondent no. 1 on the judgment in the case of ***Pahwa Plastics Pvt. Ltd. (supra)***, however, it was a case where the Hon'ble Supreme Court held that *ex post facto* approval can be granted in certain rare circumstances, but, as is apparent from a perusal of the judgment, what we find is that it was a case where the relevant notification was issued by following the procedure under Rule 5(3) of the Rules of 1986, whereas in the instant case, the impugned Office Memorandum is not referable to any of the statutory prescriptions as discussed above.

43. Learned counsel for respondent no. 1 has also relied upon

the judgment in the case of ***D. Swamy (supra)***, ***Lafarge Umiam Mining Pvt. Ltd. (supra)***, ***Electrotherm (supra)*** and ***Electrosteel Steels Ltd. (supra)*** where the question was as to whether *ex post facto* environmental clearance maybe granted.

44. In the case of ***D. Swamy (supra)***, the Notification dated 14th March 2017 provided for grant of *ex post facto* environmental clearance for the project proponent who had commenced, continued or completed project without obtaining environmental clearance, which was issued by the Central Government in exercise of its power under section 3(1) and section 3(2)(v) of the Act of 1986 read with Rule 5(3)(d) of the Rules of 1986. Thus, the notification, which provided grant of *ex post facto* environmental clearance in ***D. Swamy (supra)***, was statutory in nature, whereas in the instant case, the impugned Office Memorandum is not referable to any of the provisions of the Act of 1986 or the Rules framed thereunder. Thus, in our opinion, the judgment in ***D. Swamy (supra)*** and other judgments will have no application to the facts of the present case.

45. So far as ***Electrosteel Steels Ltd. (supra)*** is concerned,

it was a case where environmental clearance was granted to the project proponent for a particular site on the basis of which consent to establish under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and control of Pollution) Act, 1974 was accorded on the basis of environmental clearance issued by the Central Government, however, the consent to operate was rejected on the ground that the project proponent had shifted the site of its plant and had encroached upon some forest land in contravention of the Forest (Conservation) Act, 1980. It is in these circumstances, specially that the project proponent had shifted the site for establishing its plant which was at some distance away from the site for which environmental clearance was granted and the project proponent was seeking issuance of revised environmental clearance, that the Hon'ble Supreme Court directed the Union of India to take decision on the application of the project proponent for revised environmental clearance. In this judgment, Hon'ble Supreme Court has noticed ***Alembic Pharmaceuticals Ltd. (supra)*** wherein the Hon'ble Supreme Court has deprecated *ex post facto* clearances. The Hon'ble Supreme Court further noticed in ***Electrosteel Steels Ltd. (supra)*** that in ***Alembic***

Pharmaceuticals Ltd. (supra) the notification dated 14th March 2017 was not an issue and that the Court was examining the propriety and legality of the 2002 circular which was inconsistent with the EIA Notification dated 27th January 1994 which was a statutory one. The Hon'ble Supreme Court in ***Electrosteel Steels Ltd. (supra)*** has, thus, referred to the notification dated 14th March 2017 which is a statutory notification unlike the Office Memorandum dated 19th February 2021 which is under challenge in this PIL petition which is merely an executive circular/decision. Accordingly, the judgment in ***Electrosteel Steels Ltd. (supra)*** does not help the respondent no. 1 in any manner for justifying the impugned Office Memorandum.

46. As far as the judgment in the case of ***K.T.V. Health Food Pvt. Ltd. (supra)*** is concerned, it was a case where *post facto* clearance was held to be permissible based on para 4.3 of CRZ Notification, 2011 which was inserted vide notification dated 6th March 2018. The notification dated 6th March 2018, as already observed, was statutorily issued by the Government of India exercising its powers conferred under section 3(2)(v) of the Act of 1986 read with Rule 5(3)(d) of the Rules of 1986. Hence, the

judgment in ***K.T.V. Health Food Pvt. Ltd. (supra)*** does not help the respondent no. 1.

47. On these counts, the other judgments referred to by learned Counsel representing the Union of India also do not persuade us to uphold the validity of the impugned Office Memorandum dated 19th February 2021.

(H) Conclusion:

48. In the light of the discussion made and reasons given above, this Court is of a considered opinion that after issuance of CRZ Notification, 2019, in absence of any amendment in this notification or issuance of any other statutory notification permitting *post facto* CRZ clearance, by issuing the impugned Office Memorandum dated 19th February 2021, which is clearly non-statutory in nature, *post facto* CRZ clearance is legally not permissible. We also conclude that the impugned Office Memorandum dated 19th February 2021 being merely in the nature of an executive circular/order issued by the Union of India runs contrary to and in derogation of the statutory provisions embodied in CRZ Notification, 2019 and hence, is liable to be struck down.

Order:

(a) PIL petition is, thus, allowed and the impugned Office Memorandum dated 19th February 2021 issued by the Government of India in the Ministry of Forest and Climate Change as contained in Exhibit 'A' appended to the PIL petition is hereby quashed.

(b) The applications seeking CRZ clearance made by interveners, namely, the State of Nagaland and M/s. Patel and Associates shall be considered by the competent authority on their own merits and appropriate decision thereon shall be taken in accordance with law, with expedition.

(c) All other interim application(s), if any, stand disposed of.

(d) Costs made easy.

(AMIT BORKAR, J.) **(CHIEF JUSTICE)**

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2025 INSC 718

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.1394 OF 2023

VANASHAKTI ...**PETITIONER**

Vs.

UNION OF INDIA ...**RESPONDENT**

WITH
WRIT PETITION (C) NO.118 OF 2019
WRIT PETITION (C) NO.115 OF 2024
AND
CIVIL APPEAL NO.381-382 OF 2025

NOTARY GOVT. OF INDIA MONALI G. SHETE Dist.Thane (M.S.) Regn.No.15270/2019 Expiry Date 04 Nov.2025

J U D G M E N T

ABHAY S. OKA, J.

1. Part IV-A of the Constitution of India containing fundamental duties as set out in Article 51A was incorporated in the Constitution by the 42nd Amendment Act with effect from 3rd January 1977. Clause (g) of Article 51A provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. This Court in several decisions has held that the right to live in a

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pollution free atmosphere is a part of the fundamental right guaranteed under Article 21 of the Constitution of India.

2. The world changed rapidly after World War II. From the late 1960s and early 1970s, slowly there was a realisation about the drastic consequences of the destruction of environment and pollution of various kinds. In June 1972, at Stockholm, the United Nations Conference on Human Environment was held. In the said conference, several decisions were taken by the world community to protect the environment.

3. In our country, it took fourteen years thereafter for the legislature to come out with a law for protection and improvement of the environment. The Environment (Protection) Act, 1986 (for short, 'the 1986 Act') was brought into force with effect from 19th November 1986. As can be noticed from several orders of this Court and the High Courts, the progress of implementation of the 1986 Act has been very slow.

4. The 1970s and 1980s saw growth of industrialisation in our country. The activities such as mining, gas exploration, thermal power plants, petroleum refining industries, various other industries, building and construction projects, such as, highways started growing.

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5. Again, it took twenty years after the 1986 Act came into force to exercise the power under 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 (for short, '1986 Rules') for coming out with the Environment Impact Assessment Notification, 2006 (for short, 'the EIA notification'). The EIA notification was issued on 14th September 2006. It provided that the projects or activities mentioned in clause (2) thereof shall require prior Environmental Clearance (for short, 'the EC') from the concerned regulatory authority. The concerned regulatory authority in the Central Government is the Ministry of Environment Forests and Climate Change (for short, 'the MoEFCC') for matters falling under Category 'A' in the Schedule, and at the State level, the State Environment Impact Assessment Authority (for short, 'the SEIAA') for the matters falling in Category 'B'. In the Schedule, Categories 'A' and 'B' were incorporated setting out industries and other development work. The entire controversy in this group of petitions is about ex post facto grant of EC.

6. On 14th March 2017, a notification was issued by the MoEFCC. The said notification is hereafter referred to as 'the 2017 notification'. The said notification was made applicable to the projects or activities that have

started the work on site, expanded the production beyond the limit of the EC, or changed the production mix without obtaining EC. The 2017 notification provided that in case of such works, ex post facto EC can be granted. It provided that the projects or activities which are in violation of the EIA notification as on 14th March 2017 were eligible to apply under the 2017 notification for ex post facto EC within a period of six months from 14th March 2017.

7. The National Green Tribunal (for short, 'the NGT') vide order dated 24th May 2021 directed the MoEFCC to prepare a Standard Operating Procedure (for short, 'the SOP') for grant of EC in the cases of violation so as to address the gap in the binding law and practice being currently followed. In purported compliance with the said direction, Office Memorandum dated 7th July 2021 (for short, 'the 2021 OM') was issued.

8. In the meanwhile, the 2017 notification was challenged by way of a writ petition before the High Court of Madras in the case of Puducherry Environment Protection Association v. Union of India[1], which was decided by order dated 13th October 2017. During the course of hearing of the case before the Madras High Court, when it was pointed out that the outer limit for making applications for grant of ex post facto EC have

1 2017 SCC OnLine Mad 7056

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been repeatedly extended, the Union of India gave a categorical undertaking that the 2017 notification was only a one-time measure. By recording the said submission made on behalf of the Union of India that the 2017 notification was certainly and clearly only a one time measure, the High Court disposed of the petition. Later on, by order dated 14th March 2018 passed by the High Court of Madras in another case, the time period under the 2017 notification for submission of proposals by project proponents was extended by a further period of thirty days.

9. In Writ Petition (C) No.1394 of 2023, the first prayer is for quashing the 2021 OM on the ground that it was arbitrary, illegal and ultra vires the provisions of the 1986 Act. The second prayer is for issuing a writ of mandamus directing the MoEFCC and SEIAA/SEACs not to process and entertain any application for ex-post facto EC after 13th May 2018. As stated earlier, the time granted under the 2017 notification to apply was lastly extended till 13th April 2018.

10. In Writ Petition (C) No.118 of 2019, the challenge is to the 2017 notification issued by the MoEFCC. A prayer was made seeking directions to the respondents to produce a list of real estate projects and project proponents who have undertaken real estate development

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projects without obtaining EC under the 2006 notification.

11. In Writ Petition (C) No.115 of 2024, the challenge is to the 2017 notification and the 2021 OM. A prayer for writ of prohibition is made for restraining the MoEFCC from issuing any notification or office memorandum permitting ex-post facto EC.

12. The High Court of Madras by judgment and order dated 30th August 2024 quashed the 2021 OM and another OM dated 19th February 2021. The challenge in Civil Appeal No.381-382 of 2025 is to this decision of the High Court of Madras. In the judgment and order dated 30th August 2024, the Madras High Court declared that its order will operate only prospectively and applications under consideration will remain unaffected. The challenge in this appeal is only to the extent of giving prospective effect to the impugned judgment.

THE EIA NOTIFICATION

13. Firstly, we come to the EIA notification. It has been issued in exercise of powers under 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 1986 Rules. Section 3 of the 1986 Act reads thus:

> "3. Power of Central Government to take measures to protect and improve environment.—(1) Subject to the provisions

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of this Act, **the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.**

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:—

(*i*) co-ordination of actions by the State Governments, officers and other authorities —

(*a*) under this Act, or the rules made thereunder; or

(*b*) under any other law for the time being in force which is relatable to the objects of this Act;

(*ii*) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(*iii*) laying down standards for the quality of environment in its various aspects;

(*iv*) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of

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environmental pollutants from such sources;

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

(*vi*) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(*vii*) laying down procedures and safeguards for the handling of hazardous substances;

(*viii*) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(*ix*) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(*x*) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(*xi*) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

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(*xii*) collection and dissemination of information in respect of matters relating to environmental pollution;

(*xiii*) preparation of manuals, codes or guides relating to the prevention control and abatement of environmental pollution;

(*xiv*) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures."

(emphasis added)

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13.1 Sub-section (1) of Section 3 sums up the very object of the 1986 Act. Therefore, the EIA notification has been issued not only for the purposes of protecting and improving the quality of the environment but also for preventing and abating environmental pollution. Sub-section (1) of Section 3 confers general power of taking measures on the Central Government. Sub-section (2) confers specific power for taking measures in the matters set out in clauses (i) to (ix) thereof. Clause (v) of sub-section (2) of Section 3 empowers the Central Government to take measures for putting restrictions of areas in which any industries, operations or processes shall not be carried out or shall be carried out subject to safeguards.

14. Rule 5 of the 1986 Rules reads thus:

> "**5. Prohibition and restriction on the location of industries and the carrying on of processes and operations in different areas.**—(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas:
>
> (*i*) Standards for quality of environment in its various aspects laid down for an area.
>
> (*ii*) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.

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(*iii*) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(*iv*) The topographic and climatic features of an area.

(*v*) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.

(*vi*) Environmentally compatible land use.

(*vii*) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(*viii*) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(*ix*) Proximity to human settlements.

(*x*) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the

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Central Government shall follow the procedure hereinafter laid down.

(3) (*a*) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(*b*) Every notification under clause (*a*) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries and carrying on of processes or operations in that area.

(*c*) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (*a*) may do so in writing to the Central Government within sixty days from the date of publication in the notification in the Official Gazette.

(*d*) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may [within [seven hundred and twenty-five days [,and in respect of the States of Assam, Meghalaya, Arunachal

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Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim and Jammu and Kashmir in exceptional circumstance and for sufficient reasons within a further period of one hundred and eighty days,]] from such date of publication] impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area:

[Provided that on account of COVID-19 pandemic, for the purpose of this clause, the period of validity of the notification expiring in the financial year 2020-2021 and 2021-2022 shall be extended up to [30th June, 2022] or six months from the end of the month when the relevant notification would have expired without any extension, whichever is later.]

[(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (*a*) of sub-rule (3).]"

14.1 For issuing the EIA notification, power has been exercised under clause (d) of sub-rule (3) of Rule 5 which empowers the Central Government to impose prohibition or restrictions on location of such industries and the carrying on any process or operation in an area. There is a power to impose complete prohibition on carrying on any process or operation in an area. Clause (2) of the EIA notification reads thus:

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"**2. Requirements of prior Environmental Clearance (EC):-** The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule and at District level, the District Environment Impact Assessment Authority (DEIAA) for matters falling under Category 'B2' for mining minerals in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion, modernization or any change in the product mix or raw material mix in existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector in the said Schedule, subject to conditions and procedure provided in the sub-paragraph (ii) of paragraph 7."

14.2 Therefore, without prior EC, construction of new projects or activities, expansion or modernisation of existing projects or activities listed in the Schedule entailing capacity addition with change in process or

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technology, cannot be undertaken. Entire procedure for grant of prior EC is laid down in the EIA notification.

LEGALITY OF THE 2017 NOTIFICATION

15. The 2017 notification refers to the OMs dated 12th December 2012 and 27th June 2013 by which a process was sought to be established for grant of EC in the cases of violation of the EIA notification. It also refers to the judgment of the High Court of Jharkhand holding these two OMs as illegal. The same OMs were also quashed by the NGT as mentioned in the said notification. There are three recitals in the said notification which are relevant. Recital Nos.9 to 11 read thus:

> "**9.** And whereas, the Ministry of Environment, Forest and Climate Change and State Environment Impact Assessment Authorities have been receiving certain proposals under the Environment Impact Assessment Notification, 2006 for grant of Terms of References and Environmental Clearance for projects which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance;
>
> **10. Whereas, the Ministry of Environment, Forest and Climate Change deems it necessary for the purpose of protecting and improving**

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the quality of the environment and abating environmental pollution that all entities not complying with environmental regulation under Environment Impact Assessment Notification, 2006 be brought under compliance with in the environmental laws in expedient manner;

11. And whereas, the Ministry of Environment, Forest and Climate Change deems it necessary to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than leaving them unregulated and unchecked, which will be more damaging to the environment and in furtherance of this objective, the Government of India deems it essential to establish a process for appraisal of such cases of violation for prescribing adequate environmental safeguards to entities and the process should be such that it deters violation of provisions of Environment Impact Assessment Notification, 2006 and the pecuniary benefit of violation and damage to environment is adequately compensated for;"

15.1 Thus, what was sought to be done was to protect the project proponents who committed gross illegality by commencing construction or commencing operation or process without obtaining prior EC as provided in the

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EIA notification. The 2017 notification was a one-time measure. Moreover, this Court in the case of ***Common Cause v Union of India & Ors.***[2], held in no uncertain terms that the concept of *ex post facto* or retrospective EC is completely alien to environmental jurisprudence including the EIA notification. The decision in the case of ***Common Cause***[2] was delivered on 2nd August 2017. Notwithstanding the clear declaration of law which was made on 2nd August 2017, the Central Government did not withdraw the 2017 notification.

16. We may note here that this is not the first time that the concept of prior EC was brought into force. For this purpose, useful reference can be made to a decision of this Court in the case of ***Alembic Pharmaceuticals v. Rohit Prajapati***[3]. It records that there was a notification of 27th January 1994 mandating prior EC for setting up and expansion of industrial projects falling within thirty categories. The issue before this Court was about the legality and validity of the circular dated 14th May 2002, which permitted obtaining of *ex post facto* EC. This Court specifically dealt with the challenge to the circular dated 14th May 2002. In paragraph 12, this Court noted the issue to be decided:

> "**12.** The issue to be adjudicated is whether in view of the requirement of a prior EC

2 2017 (9) SCC 499
3 2020 (17) SCC 157

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under the EIA Notification of 1994, a provision for an ex post facto EC to industrial units could be validly made by means of the Circular dated 14-5-2002."

16.1 Thereafter, this Court considered Section 3(1) of the 1986 Act. In paragraph 21 this Court held thus:

> **"21.** The omission in the appeal to make any attempt to sustain the Circular dated 14-5-2002 with reference to the provisions of Section 3 of the Environment (Protection) Act, 1986 is significant. For an action of the Central Government to be treated as a measure referable to Section 3 it must satisfy the statutory requirement of being necessary or expedient "for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environment pollution". The Circular dated 14-5-2002 in fact does quite the contrary. It purported to allow an extension of time for industrial units to comply with the requirement of an EC. The EIA Notification dated 27-1-1994 mandated that an EC has to be obtained before embarking on a new project or expanding or modernising an existing one. The EIA Notification of 1994 has been issued under the provisions of the Environment (Protection) Act, 1986 and the Environment Protection Rules, 1986, with the object of imposing restrictions and prohibitions on setting up of new projects or expansion or modernisation of existing project. The measures are based on the precautionary principle and aim to protect the interests of

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the environment. The Circular dated 14-5-2002 allowed defaulting industrial units which had commenced activities without an EC to cure the default by an ex post facto clearance. Being an administrative decision, it is beyond the scope of Section 3 and cannot be said to be a measure for the purpose of protecting and improving the quality of the environment. The circular notes that there were defaulting units which had failed to comply with the requirement of obtaining an EC as mandated. The circular provided for an extension of time and inexplicably introduced the notion of an ex post facto clearance. In effect, it impacted the obligation of the industrial units to be in compliance with the law. **The concept of ex post facto clearance is fundamentally at odds with the EIA Notification dated 27-1-1994. The EIA Notification of 1994 contained a stipulation that any expansion or modernisation of an activity or setting up of a new project listed in Schedule I "shall not be undertaken in any part of India unless it has been accorded environmental clearance". The language of the notification is as clear as it can be to indicate that the requirement is of a prior EC. A mandatory provision requires complete compliance. The words "shall not be undertaken" read in conjunction with the expression "unless" can only have one meaning : before undertaking a new project or expanding or modernising an existing one, an EC must be obtained.** When the EIA Notification of 1994 mandates a prior EC, it

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proscribes a post activity approval or an ex post facto permission. What is sought to be achieved by the administrative Circular dated 14-5-2002 is contrary to the statutory Notification dated 27-1-1994. The Circular dated 14-5-2002 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 14-5-2002. 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 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."

(emphasis added)

16.2 Ultimately, in paragraph 23, this Court held thus:

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 27-1-1994. It is, as the judgment

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in *Common Cause* [*Common Cause* v. *Union of India*, (2017) 9 SCC 499] 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 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."

(emphasis added)

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16.3 In fact, as noted in paragraph 22.1, the word 'prior' was not used in the EIA notification dated 27th January 1994. However, the words 'shall not be undertaken' were used. In the 2006 EIA notification, the word 'prior' appears at multiple places.

17. The issue of *ex post facto* EC was dealt with in the case of ***Common Cause***[2], In paragraph 108, a submission was recorded that the possibility of getting *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. In paragraph 125, this Court held thus:

> "**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* [*M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118] 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**

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> **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."
>
> (emphasis added)

18. Therefore, there is already a concluded finding of this Court that the concept of *ex post facto* or retrospective EC is completely alien to environmental jurisprudence and the EIA notification. This view was reiterated by this Court in the case of ***Electrosteel Steels Ltd. v. Union of India and Ors.***[4],. In paragraph 72, this Court held thus:

> "**72. There can be no doubt that the need to comply with the requirement to obtain environment clearance is non-negotiable.** A project can be set up or allowed to expand subject to compliance of the requisite norms. Environmental clearance is granted on condition of the suitability of the site to set up the project from the environmental angle, and existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations, it is imperative that pollution laws be strictly enforced. Under no circumstances, can industries which pollute

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> be allowed to operate unchecked and degrade the environment."
>
> (emphasis added)

18.1 In this case, as well as in the case of ***Alembic Pharmaceuticals***[3], this Court exercised its jurisdiction under Article 142 of the Constitution and permitted *ex post facto* EC in particular cases considering the peculiar factual situation.

19. It is in this context that the legality and validity of the 2017 notification will have to be tested. Interestingly, in paragraph 10 of the notification, it is recorded that the MoEFCC deems it necessary for the purpose of protecting and improving the quality of environment and abating environmental pollution that all the entities not complying with the environmental regulation under EIA notification be brought under compliance within the environmental laws in an expeditious manner. The object of protecting and improving the environment and preventing and abating environmental pollution was achieved by the EIA notification. The object of the 2017 notification appears to be to protect the industries and entities which violated the EIA notification. In fact, paragraph 14 of the 2017 notification is material which reads thus:

> "**14**. The projects or activities which are in violation as on date of this notification only will be eligible to apply for environmental

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> clearance under this notification and the project proponents can apply for environmental clearance under this notification only within six months from the date of this notification."

20. Moreover, the 2017 notification is completely in violation of the law laid down by this court in the case of ***Common Cause***[2] and ***Alembic Pharmaceuticals***[3]**.** From the recitals of the 2017 notification, it is apparent that it was a one-time measure to protect those who were in violation as on the date of the 2017 notification. In view of the settled law, even a 'one-time measure' or 'one-time relaxation' was illegal. The 2021 OM encourages the entities who contributed to pollution by not obtaining prior EC. Whenever EC is granted, it is always conditional. Certain conditions are imposed to abate or reduce the pollution. Such one-time measures add to air and/or water pollution. Such measures infringe the right to live in a pollution free environment guaranteed by Article 21. Thus, the 2017 notification was completely illegal.

21. The Division bench of Madras High Court by judgment dated 13th October 2017, in the case of ***Puducherry Environment Protection Association***[1] dealt with the issue regarding the legality of the 2017 notification which was subject matter of challenge in a Public Interest Litigation. A very specific submission was

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made before the Madras High Court on behalf of the Central Government by the learned Additional Solicitor General, which is recorded in paragraph 4(i) of the judgment. Relevant portion of paragraph 4(i) reads thus:

> "4(i) With regard to precautionary principle, faced with the situation that ex post facto clearance and regularization dates have been repeatedly extended time and again by series of notifications, **learned Additional Solicitor General at the bar, on instructions, submits that this impugned notification shall clearly and certainly be only a one time measure. We record this submission also**.
>
> ....."
>
> (emphasis added)

21.1 This statement was treated as an undertaking of the Central Government, which is clear from paragraph 4(n) of the said judgment:

> "4(n) We are convinced that paragraphs 3,4 and 5 of the impugned notification alluded to supra coupled with the two undertakings made on instructions by learned Additional Solicitor General that (a) public hearing can be read into paragraph 5 of the impugned notification and **(b) this shall certainly and clearly be a one time measure, this writ petition can be closed and disposed of recording the above submissions. We do so.**"
>
> (emphasis added)

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21.2 It is in view of this undertaking that the High Court did not interfere. The Central Government is bound by this undertaking. It is the duty of the Central Government to comply with the undertaking in its true letter and spirit.

22. The period provided in the 2017 notification to apply for *ex-post facto* EC ended on 13th September 2017. In the case of ***Appaswamy Real Estates Limited v. Puducherry Environment Protection Association***[5], the request of the MoEFCC for extending the time provided in the 2017 notification was accepted. As a result, the OM dated 16th March 2018 was issued which permitted the project proponents to apply under the 2017 notification within thirty days from the date of the High Court order. What is pertinent to note is that notwithstanding the grant of extension of time to apply, there was no modification made to paragraph 14 of the 2017 notification which clarified that it is applicable only to those projects and activities which were in violation on the date of the said notification. Therefore, any project or activity or process which required EC under the EIA notification commenced after 14th March 2017 was not protected by the 2017 notification.

23. Apart from the fact that the very concept of grant of *ex-post facto* EC is illegal, it is not possible to understand

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why the Central Government made efforts to protect those who committed illegality by not obtaining prior EC in terms of the EIA notification. As the EIA notification was eleven years old when the 2017 notification was issued, there was no equity in favour of those who committed such gross illegality of not obtaining prior EC. The persons who acted without prior EC were not illiterate persons. They were companies, real estate developers, public sector undertakings, mining industries, etc. They were the persons who knowingly committed illegality. We, therefore, make it clear that hereafter, the Central Government shall not come out with a new version of the 2017 notification which provides for the grant of *ex-post facto* EC in any manner.

LEGALITY AND VALIDITY OF THE 2021 OM

SUBMISSIONS

24. The learned senior counsel appearing for the Petitioner submitted that post a series of judgments of this Court in ***Alembic***[3] and ***Common Cause***[2]**,** it is not permissible to grant *ex post facto* EC. He further submits that the 2021 OM is in violation of the 1986 Act and the EIA notification. He submits that EC must be prior and cannot be granted *ex post facto*. While the 2021 OM does not expressly extend the timeline under the 2017 notification or mention *ex post facto*, the 2021 OM and its

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application has effectively allowed grant of *ex post facto* EC.

25. The main submission of the learned Additional Solicitor General is that the 2021 OM does not seek to grant *ex-post facto* EC. It is only an SOP. The learned ASG invited our attention to the contents of the SOP. Her submission is that it provides for the demolition of projects not allowable or permissible for want of EC. It also provides for the closure of projects allowable/permissible, if prior EC has not been taken as per the EIA notification. She submitted that even if EC is granted, it will be effective from the date of the issue, and therefore, it is not *ex post facto*. She submitted that before such EC is granted, the project proponent will have to pay certain amounts as provided therein based on Polluter Pays Principle. Moreover, the project proponents will have to undertake activities relating to remedial plan and community accommodation plan. She also pointed out that the projects which are not allowable or permissible, shall be demolished. She also pointed out provisions regarding penalty, project proponents furnishing bank guarantee, etc. Thus, in short, her submission is that the object of the 2021 OM is to protect those projects and industries which could have been granted an EC under EIA notification before the date of commencement of activities, but proceeded to commence

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activities without EC. Her submission is that this measure has been taken to ensure that the huge spending on constructions is not lost and wasted.

OUR VIEW

26. The basic submission by learned ASG is based on a premise that what is provided under the 2021 OM is not grant of *ex-post facto* EC. The relevant part of the 2021 OM is in paragraph 10 and 11, which read thus:

> **"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:**

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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 section 19 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

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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 Polluter Pays principle) and undertaking activities relating to Remedial Plan and Community Augmentation Plan (to restore environmental damage caused including its social aspects).

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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**

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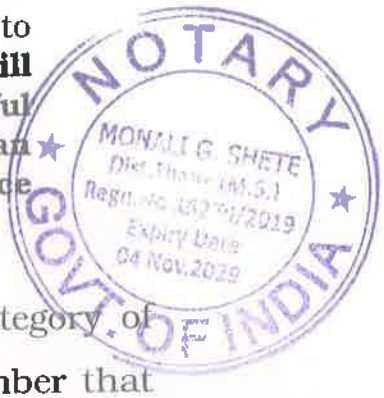
amount of Remediation Plan and Natural & Community Resource Augmentation Plan with Central / the State Pollution Control Board (depending on whether it is appraised at Ministry or by SEIAA). The quantification of such liability will be recommended by Expert Appraisal Committee and finalized by Regulatory 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."**



27. In short, it provides for grant of EC to category of 'allowable/permissible' projects. We must remember that the 2021 OM is applicable even to the completed projects. The 2021 OM says that grant of EC to such projects shall be effective from the date of issue. If the project proponent goes ahead with construction which requires EC under the EIA notification, it will amount to violation of the provisions of 1986 Act and 1986 Rules. It will attract penalty under Section 15 of the 1986 Act. Perusal of the provisions of Section 15 shows that even if the penalty is paid by the project proponent, it will not regularise the project. Therefore, even after the payment of penalty, if the project is under construction, the same has to be stopped and demolished and even if operation has already commenced, the same has to be stopped and demolished. Therefore, the construction work has to be demolished.

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28. Now, we will consider what is the meaning of "*ex post facto*". Various dictionary meanings can be summarised as under:

a) Having retrospective effect or force;

b) From a thing done afterwards;

c) Retroactive or affecting something that has already happened.

29. Now, we will take a case of *ex post facto* EC provided under the 2017 notification. The effect of grant of *ex post facto* clearance is that if without obtaining EC, construction is in progress, the same is allowed to continue. If the construction is complete and operation and processes are going on, the same can go on after *ex post facto* EC is granted. Effect of grant of EC under clause (11) of 2021 OM will be grant of permission to complete the construction of the project, though construction had commenced without prior EC. Where the construction is already complete which is being used for processes etc., by grant of EC, the process/activities can continue. Thus, in effect, the EC granted under clause (11) of 2021 OM regularises something which was illegal with retrospective effect. In effect, the EC granted under clause (11) of 2021 OM will regularise the illegality done by commencing the construction or commencing the project without prior EC. Therefore, in substance, what is provided is grant of *ex post facto* EC. In other

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words what is granted is EC with retrospective effect as it regularises illegality committed earlier. The grant of EC under the 2021 OM, no doubt, is subject to making payment of compensation determined based on Polluter Pays Principle and undertaking activities relating to remedial plan. Once there is a violation of the EIA notification, the project proponent has to compensate following the Polluter Pays Principle. Even if, EC is not granted to him he has to pay for remedial plan to remedy the damage done to the environment. He has to also pay the penalty under Section 15 of the 1986 Act. Therefore, what is done by the 2021 OM is something which was completely prohibited by this Court in the cases of ***Common Cause***[2] and ***Alembic Pharmaceuticals***[3]***.*** It is an attempt to bring in an *ex-post facto* or retrospective regime by craftily drafting the SOP. The grant of EC under the 2021 OM in substance and in effect amounts to *ex post facto* grant of EC. The Court must come down very heavily on the attempt of the Central Government to do something which is completely prohibited under the law. Cleverly, the words *ex post facto* have not been used, but without using those words, there is a provision to effectively grant *ex post facto* EC. The 2021 OM has been issued in violation of the decisions of this Court in the cases of ***Common Cause***[2] and ***Alembic Pharmaceuiicals***[3]. Therefore, we have no manner of

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doubt that the 2021 OM which permits grant of EC is completely arbitrary and illegal. Moreover, the 2021 OM does not refer to exercise of any power under the 1986 Act or the 1986 Rules.

30. There is one more aspect which is required to be noted. As per paragraph 14 of the 2017 notification, provision for grant of *ex post facto* EC was made only in relation to projects or activities which were in violation as of 14th March 2017. Therefore, grant of *ex post facto* clearance was not permitted under 2017 notification for the projects and activities which were commenced or continued after 14th March 2017. The window which was initially for a period of six months was eventually extended till completion of 30 days from 14th March 2018. Therefore, the 2021 OM is brought in to do something which was not permissible under the 2017 notification, the law laid down by this Court, and the solemn undertaking given by the Central Government to the Madras High Court. We must deprecate such effort on the part of the Central Government.

31. The EIA notification is of 14th September 2006. When the 2021 OM was issued, it was nearly 15 years old. Therefore, all project proponents were fully aware of the stringent requirements under the EIA notification. The 2021 OM seeks to protect the violations of the EIA notification which have taken place or continue to take

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place 15 years after the EIA notification came into force. Thus, the 2021 OM seeks to protect violators who have acted with full knowledge of consequences of violating the EIA notification. Those who violate the law regarding obtaining prior EC are not only committing gross illegality, but they are acting against the society at large. The violation of the condition of obtaining prior EC must be dealt with heavy hands. In environmental matters, the Courts must take a very strict view of the violations of the laws relating to the environment. It is the duty of the Constitutional Courts to do so.

32. Under Article 21 of the Constitution of India, the right to live in a pollution free environment is guaranteed. In fact, the 1986 Act has been enacted to give effect to this fundamental right. In 1977, fundamental duties of all citizens were incorporated in the Constitution which enjoined every citizen of India to protect and improve the environment as provided in clause (g) of Article 51A. Therefore, even the Central Government has a duty to protect and improve the natural environment.

33. Today, in the year 2025, we have been experiencing the drastic consequences of large-scale destruction of environment on human lives in the capital city of our country and in many other cities. At least for a span of two months every year, the residents of Delhi suffocate due to air pollution. The AQI level is either dangerous or

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very dangerous. They suffer in their health. The other leading cities are not far behind. The air and water pollution in the cities is ever increasing. Therefore, coming out with measures such as the 2021 OM is violative of fundamental rights of all persons guaranteed under Article 21 to live in a pollution free environment. It also infringes the right to health guaranteed under Article 21 of the Constitution.

34. The 2021 OM talks about the concept of development. Can there be development at the cost of environment? Conservation of environment and its improvement is an essential part of the concept of development. Therefore, going out of the way by issuing such OMs to protect those who have caused harm to the environment has to be deprecated by the Courts which are under a constitutional and statutory mandate to uphold the fundamental right under Article 21 and to protect the environment. In fact, the Courts should come down heavily on such attempts. As stated earlier, the 2021 OM deals with project proponents who were fully aware of the EIA notification and who have taken conscious risk to flout the EIA notification and go ahead with the construction/continuation/expansion of projects. They have shown scant respect to the law and their duty to protect the environment. Apart from violation of Article 21, such action is completely arbitrary.

which is violative of Article 14 of the Constitution of India besides being violative of the 1986 Act and the EIA notification.

35. We are, however, conscious of the fact that *ex post facto* EC may have been granted in certain cases both under the 2017 notification and the 2021 OM. ECs already granted under 2017 notification and the 2021 OM, at this stage, should not be disturbed.

36. Hence, we pass the following order:

a) We hold that the 2017 notification and the 2021 OM as well as all circulars/orders/OMs/notifications issued for giving effect to these notifications are illegal and are hereby struck down;

b) We restrain the Central Government from issuing circulars/orders/OMs/notifications providing for grant of *ex post* facto EC in any form or manner or for regularising the acts done in contravention of the EIA notification;

c) We clarify that the ECs already granted till date under the 2017 notification and the 2021 OM shall, however, remain unaffected.

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37. The writ petitions and civil appeals are accordingly allowed on the above terms.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

New Delhi;
May 16, 2025